

NIL Profit Considerations For Historically Black Colleges

By **LaKeisha Marsh and Montoya Ho-Sang** (September 19, 2022, 6:10 PM EDT)

Headlines like "Shedeur Sanders Signs Historic NIL with Gatorade," and "Ky'Wuan Dukes's NIL Deal is Part of an HBCU Football Renaissance" have dominated college sports news since June 30, 2021, when the NCAA announced that student-athletes would be permitted to profit from their name, image and likeness, or NIL.[1]

Although the NIL spotlight has been primarily on student-athletes at the schools in the large, wealthy Power Five conferences, student-athletes at some historically Black colleges and universities have taken full advantage of the financial benefits of NIL deals. Just look at Rayquan Smith, the running back and decathlete at Virginia public HBCU Norfolk State University. Dubbed the King of NIL, Smith holds close to 70 NIL deals.

With the recent spotlight on student-athletes at HBCUs, as higher education attorneys and HBCU alumnae, we have to ask whether NIL is a pathway for HBCUs to gain the much-needed resources and publicity they deserve.

Given the novel opportunities that NIL provides, legal practitioners in higher education have to be creative in their approaches in guiding their clients through this process and become strategic thought partners with their clients.

This article highlights the importance of HBCUs in sports, provides a potential solution to the underfunding issues HBCUs face, and outlines considerations higher education attorneys should address with their clients when operating in the NIL space.

HBCUs have produced some of the most talented and notable players in professional sports history. Just to name a few:

- Walter Payton: Jackson State University running back who made nine Pro Bowls during his Hall of Fame career with the Chicago Bears;
- Nate Newton: Florida A&M University offensive lineman, two-time All-Pro, three-time Super Bowl champion and six-time Pro Bowler with the Dallas Cowboys;
- Sam Jones: North Carolina Central University Celtics shooting guard winner of 10 NBA championships and made five NBA All-Star teams; and
- Earl "The Pearl" Monroe, Winston-Salem State University, who led the Knicks to a championship and made four All-Star teams.

In fact, Jackson State University has as many pro-football Hall of Famers, four, as the University of Georgia and Florida State University, and more than University of Tennessee's three and University of Florida's two.

Unfortunately, however, HBCU athletic programs are still woefully underfunded compared to their predominantly white institution, or PWI, counterparts.



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It's no surprise that once college athletics integrated and Black athletes started attending and playing for PWIs, the existing resource gap between HBCUs and PWIs widened to the point of no return.

PWIs' broadcast deals, bowl games and support from financially powerful alums led to better facilities, i.e., nicer weight and locker rooms and the ability to attract top-tier recruits. Despite the several decades that have passed since the integration of the first college sports teams, this divide remains.

According to USA Today's NCAA finances database, in 2020, Jackson State's total athletic budget of \$10.5 million equated to only 6% of University of Alabama's \$173.1 million total athletic budget, although both institutions are considered football powerhouses in their respective conferences.

But there is hope. NIL, sometimes referred to as "the ultimate equalizer," could be the answer to the underfunding issues most HBCUs face.

While NIL endorsements put money directly in student-athletes' pockets, it also highlights the particular institution the student-athlete plays for and attends.

Look at all the attention the institutions received when Makur Maker, a five-star basketball recruit, committed to Howard University in 2020 — pre-NIL — and Travis Hunter, a five-star football recruit, committed to Jackson State. Widely reported remarks from Alabama coach Nick Saban about Jackson State and its Pro Football Hall of Fame head coach Deion Sanders followed.[2]

Additionally, when well-known brands partner with institutions, it catapults the schools into the college sports news cycle.

For example, when HBCUs Alabama State University, Alcorn State University, University of Arkansas-Pine Bluff, Grambling State University and Prairie View A&M University entered into a deal with Adidas AG whereby eligible student-athletes of all genders will have the opportunity to become paid affiliate brand ambassadors for Adidas, the story was covered by several sports media outlets.

Similarly, Howard University men's basketball team's historic endorsement deal with College HUNKS made headlines as the company's first full-team endorsement of an HBCU.

Deals with high-profile brands not only provide a financial benefit to an institution's players but also bring attention and resources to the institutions themselves. HBCUs, in particular, stand in a unique position as companies, big and small, clamor to enter history as the first in their respective industries to sign NIL deals with HBCU student-athletes.

Furthermore, the publicity that these NIL deals bring could reengage alum, particularly high profile alum. It's no secret that the HBCU community is notoriously tight-knit and strongly supportive of not only one's respective institution but of HBCUs in general.

NIL endorsement deals present opportunities for high-profile HBCU alum such as Oprah Winfrey, of Tennessee State University, and Sean Love Combs, from Howard University, to craft noteworthy NIL deals through one of their many companies for student-athletes at their alma maters.

News like this is sure to reengage inactive alum and encourage others who may not be familiar with the institution to take a closer look and consider investing in not only the institution's student-athletes but the institution itself.

Although the bright lights of NIL may offer a glimmer of hope to many underfunded HBCU athletic departments and institutions, it is not without its complications. NCAA, conference, state and institutional rules govern NIL agreements with student-athletes.

Institutions need to have clear NIL guidelines and policies even if they do not have that top prospect yet and legal guidance when exploring team-wide deals. Additionally, companies interested in engaging student-athletes need to know what is legally permissible. For example, a student-athlete must provide some service for compensation, and pay for play is not allowed.

And while the brave new world of NIL may not be the savior of HBCUs, it certainly has people talking about and recognizing the value of HBCU student-athletes and the institutions that educate them, which is a step in the right direction.

An earlier version of this article misstated which Georgia State had four Hall of Famers. The error has been corrected.

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[1] <https://hbcubuzz.com/2022/06/kywuan-dukess-nil-deal-is-part-of-an-hbcu-renaissance/>, <https://www.si.com/college/hbcu/football/shedeur-sanders-gatorade-nil>.

[2] <https://news.yahoo.com/nick-saban-accuses-deion-sanders-032414510.html>.