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COMMUNITY COLLEGES

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Compliance

E-SPORTS ON CAMPUS, THE *ALSTON* DECISION, AND NIL REVENUE

[The National College Athletic Association v. Alston](#)

On June 21, 2021, the Supreme Court unanimously ruled against the National Collegiate Athletic Association (NCAA) in deciding to uphold a lower courts' ruling that the NCAA can no longer dictate limits on education-related compensation. This decision does not change the NCAA policy on college athletes' inability to receive direct paychecks for their athletic performance but it does open up the possibility of compensation in the form of laptop computers, musical instruments, scientific equipment, and additional scholarships (including graduate school scholarships).

Electronic Sports (known as E-sports) is a term used to describe competitive video gaming. Unlike standard gaming, esports is competitive, people play against other people, and incorporates a spectator element to these games. Now, whether you believe E-sports are actually sports or not, they are likely already on your campus. In fact, you may already be wrestling with the notion of adding E-sport programs to your roster of programs and teams in your Athletic Departments.

This Melissa Talks will cover both E-sports and what the *Alston* case means for student athletes and MCCC.

College Student Athletes: Post *Alston*

The *Alston* case decided that the NCAA violated anti-trust law by collectively disallowing its members from providing student athletes with unlimited, in-kind educational benefits (the NCAA could still restrict benefits unrelated to education, but could not limit *any benefits related to education*). This is a pretty narrow ruling but it does signal that the amateurism model held by the NCAA is cracking. Let's dig into the difference between educational and non-educational compensation.

Educational Compensation

Athletic scholarships, Graduate school scholarships, scholarship if the student-athlete decides to return to academics after eligibility for athletics is over, Payment for academic tutoring, Paid-post eligibility internships, Academic equipment (laptops, scientific/lab equipment, musical instruments)

Non-Educational Compensation

Financial compensation for athletic performances—in any form—that is akin to a salary.

In the short term, this decision will affect the District in that it must now look for creative advantages to capitalize on its ability to offer educational benefits to student athletes. College athletic programs will also have to look at management costs going forward and how this ruling may allow them to gain a recruiting advantage in offering benefits/resources for prospective student-athletes. It is important to consider long-term implications for women's athletics as well. Colleges will still need to comply with Title IX given these changes allowed for educational compensation.

In the long term, here are some possible implications of this ruling.

1. Athletic Conferences may pass their own rules to limit the offering of educational benefits. The Supreme Court decided the NCAA's restrictions on educational benefits violated antitrust law because it had market power (due to its size) but that argument does not necessarily apply to conferences.
2. The *Alston* decision was NOT about NIL (name, image, and likeness rights) but NIL licensing is coming. A number of states have passed laws allowing for the NIL licensing and now the *Alston* decision is clear that if the NCAA uses its power to try to ban such licensing, it will likely be deemed to have violated antitrust law.
3. Student-athlete class actions challenging the NCAAs labor-side restraints and no-pay rule will continue to be filed. The *Alston* case took nine years from the initial filing to the decision from the Supreme Court, but it has definitely laid the foundation for future challenges.

Name, Image, and Likeness Revenue

Shortly after the *Alston* decision came out, the NCAA changed its rules on NIL revenue. The [NCAA website](#) outlines the changes, but here is a summary of the changes.

1. Student-athletes can now engage in NIL activities in compliance with state laws and colleges can serve as a resource for NIL legal questions.
2. Student-athletes can use professional service providers to help navigate NIL activities.
3. Student-athletes in states without NIL laws can still engage in such activities without violating NCAA rules.
4. States, as well as individual colleges and athletic conferences, may impose reporting requirements.

This means that anything that is not direct compensation for athletic performance is fair game as long as the agreement doesn't violate other laws or place the athlete in a position to endorse things that the school would not want to be associated with: endorsing alcohol, gambling, marijuana dispensaries. Some examples would be: sponsorship agreements with gyms, restaurants, clothing, etc. What is not permitted is to accept payments from boosters without the student-athlete providing something in return.

E-SPORTS: Clubs v. Official Institutional Teams

Clubs

E-sports can begin on your campus as an official college student club. Ways to begin an E-sports student club are:

1. Start with a gamer club: While forming a team may seem like the obvious place to start, consider beginning with a noncompetitive after-school club. This setting has many benefits, including maximizing access for

more participants, flexibility with offering multiple game titles for casual experiences, developing digital citizenship skills through modeling and mentoring, and building strong relationships through a constructive social and emotional learning environment. Start a club by surveying students about their interest in organized gaming. Recruit students to help plan the club, and plan an information session for students. Based on numbers of interested students, schedule club meetings for once or twice a week. Join the North America Scholastic Esports Federation (NASEF) to get developed tools to get your club started.

2. Network to learn and grow: NASEF is a nonprofit organization that provides valuable resources to help schools start programs. While there are other organizations that provide support around team competitions and other opportunities, NASEF is also a place to learn and grow your team's understanding of esports and gaming experiences.

3. Join E-sports education groups via social media: The #EsportsEDU hashtag can be found on platforms like Twitter or Discord. Many gamer groups can be found specifically on Discord because it is a gamer space for networking through chat and video. Discord is also a valuable space for teachers and students to network with other schools. Many schools use it to provide space for students to meet others interested in the same game.

4. Run small tournaments, leagues, speed-runs, and design challenges: Use your students as a focus group to learn what works and where their interests are. This student data can be the basis for choosing which esports school teams to start with and for learning which students are interested in shout-casting and video production of games. Having a formal structure can help students practice global professional skills such as communication, collaboration, and empathy, which supports digital citizenship. With guidance from staff, students gain more growth than what they can achieve alone.

Official Institutional Teams

The NJCAA Esports Mission: NJCAA Esports (NJCAAE), the national governing body for two-year college esports in the United States, is proud to provide two-year college esports teams with governance, competition, and official national championships.

The mission is NJCAAE is to remove all barriers to entry into collegiate esports, engage students in college life encouraging them to finish their degree, and support colleges to recruit and retain students. The NJCAAE has a pretty extensive [handbook](#) that governs incorporating E-sports into your athletic department.

If your college is considering adding E-sports to your Athletic Department, some important things to consider include:

- Contracting with Twitch or another online streaming provider.
- Team membership. Do you have a coach? Who decides team membership? Do you recruit?
- Funding. Do you provide scholarships, travel money, equipment funding, etc.?
- Sponsorships—Should you secure them? How do you vet sponsorships?
- Space for the team and hosting events.

Are video game screenshots a violation of copyright law?

The designer/company owns the copyright to the original work, you own the copyright in the derivative work (the screenshot). However, your work is subject to whatever rights your license to use the game gives you and fair use/fair dealing.

Can you use screenshots of video games for E-sport promotional material?

EA does not object to fair uses of video footage or screenshots on video sharing sites, including YouTube channels that are commercialized, as long as the footage is a version of the game that we have released to the public.

Generally speaking, the designer/company owns the copyright to the original work, the person who took the screenshot owns the copyright in the derivative work (the screenshot). However, your work is subject to whatever rights your license to use the game gives you and fair use/fair dealing.

ADDITIONAL INFORMATION

States with NIL laws effective July 2021:

Alabama

Arizona

Florida

Georgia

Illinois

Kentucky

Mississippi

Nebraska

New Mexico

Ohio

Oregon

Pennsylvania

Texas

States with NIL laws effective in 2022:

Arkansas

Michigan

Nevada

South Carolina

Tennessee

States with NIL laws effective 2023 or later:

California

Colorado

Maryland

Montana

New Jersey

Oklahoma

ARS 15-1892. Student athlete compensation; definitions (Signed into law on March 26, 2021, effective July 23, 2021)

A. Any postsecondary institution that competes in an intercollegiate sport shall allow a student athlete to earn compensation from the use of the student athlete's own name, image or likeness to the extent allowed by the rules established by the relevant National Association for Promoting or regulating collegiate athletics.

B. A student athlete may not be denied a scholarship, have a scholarship revoked, be deemed ineligible for a scholarship or be deemed ineligible for participating in intercollegiate athletics based on earning compensation for the use of that student athlete's name, image or likeness in a manner and to the extent allowed by the rules established by the relevant national association for promoting or regulating collegiate athletics.

C. An athlete agent who advises or represents a student athlete in connection with earning compensation from the use of that student athlete's own name, image or likeness shall comply with Chapter 13, Article 10 of this Title.

D. This section does not authorize student athletes to enter into a contract providing compensation for the use of the student athlete's name, image or likeness if doing so either:

1. Violates the intellectual property rights of any person, including the student athlete's postsecondary education institution.

2. Conflicts with the student athlete's team contract.

E. For the purposes of this section, "athlete agent," intercollegiate sport," "person" and "student athlete" have the same meaning prescribed in Section 15-1762.



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