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# The New NIL Market May Decrease Overseas Professional Basketball Recruitment of United States Talent

By: Diego Colonna



At only nineteen years old, Cade Cunningham earned a \$10.05 million salary to join the Detroit Pistons as the first overall pick in the 2021 National Basketball Association (the “NBA”) Draft.[1] The remaining top ten picks also earned multi-million-dollar salaries at similarly young ages.[2] With the potential to make millions in their early twenties, it is no wonder why thousands of high school-aged basketball players dream of playing in the NBA one day. In addition to the fierce competition and limited opportunities, there is one major hurdle that young players need to overcome to realize this dream: the NBA’s “one-and-done” rule.

To be eligible for the NBA draft, a player must be at least nineteen years old and at least one full NBA season must have passed since the player graduated high school.[3] Consequently, most players who are poised for a successful NBA career decide to play at the collegiate level in the NCAA Division I for one year before entering the draft—hence the rule’s “one-and-done” nickname. However, players are also eligible for the draft one year out of high school if they sign a contract with a professional basketball team anywhere in the world outside of the NBA.[4]

Brandon Jennings is considered one of the first top high school recruits to forgo his NCAA eligibility to play overseas while awaiting NBA eligibility. Jennings passed on his commitment to NCAA Division I basketball powerhouse University of Arizona to play one year overseas for Pallacanestro Vitrus Roma in Italy[5] and was selected tenth in the first round of the 2009 NBA Draft.[6] While his decision was a shock to many,[7] Jennings' route to NBA eligibility has become more popular over the years among the country's top recruits.

For example, like Jennings, to twenty high school recruit Terrance Ferguson chose to play for the Adelaide 36ers in Australia instead of the University of Arizona.[8] When asked about his decision, Ferguson said playing in Australia provided him the opportunity to focus solely on his basketball development—an opportunity he would not have had while attending college classes.[9] Not surprisingly, Ferguson also emphasized the ability to be compensated for his athletic performance. Ferguson stated, “[a]t college, the only people making money off you are the coaches. You’re not making anything off your jersey sales, ticket sales. Not anything. So go overseas, the way I did, and get your money’s worth. Get paid for what you’re doing.”[10] After being paid approximately \$1 million by the Adelaide 36ers, Ferguson was selected by the Oklahoma City Thunder in the first round of the 2017 NBA Draft.[11]

Following Ferguson's success of landing an NBA contract after playing in Australia, the National Basketball League (“NBL”)—the professional basketball league of Australia—recognized the existence of an untapped market. The NBL launched the Next Stars program in the 2018-2019 season, which aimed to “contract overseas players and develop them in Australia to give them the best chance of being drafted into the NBA.”[12] Current NBA players Josh Giddey, LaMelo Ball, and RJ Hampton are recent alumni of the Next Stars program.[13] These players, like Jennings and Ferguson, were able to compete and be compensated at a professional level while awaiting NBA eligibility, giving the program credit for an increase in NBL alumni entering the NBA.[14]

However, the monetary incentive pushing top recruits to play overseas may be diminishing. On September 30, 2019, California Governor Gavin Newsom signed the Fair Pay to Play Act that allowed college athletes to receive compensation for their name, image, and likeness (“NIL”) beginning in January 2023.[15] Shortly after, similar forms of legislation were proposed in fourteen other states.[16] However, on June 12, 2020, Florida Governor Ron DeSantis signed a similar bill that would allow college athletes to earn compensation for their NIL beginning in July 2021.[17] The uneven playing field this pending legislation would create among universities, particularly benefitting those in Florida, prompted the NCAA to act. On June 30, 2021, the NCAA adopted a new policy that allowed college athletes across the country to earn compensation for the NIL beginning on July 1, 2021.[18]

Popular and high-performing college athletes immediately began to reap the benefits of the NCAA's new policy. Haley and Hanna Cavinder, twins who played basketball at Fresno State and who went viral on social media during the pandemic, partnered with Boost Mobile and Six Star Pro nutrition at 12:01 a.m. on July 1, 2021.[19] Within the past year, the Cavinder twins have earned an estimated \$1.7 million through NIL deals.[20] Men's college basketball players have also found NIL

success. For example, Jordan Bohannon partnered with Iowa Boomin Fireworks, Drew Timme partnered with the Dollar Shave Club, and March Madness breakout star Doug Edert partnered with Buffalo Wild Wings.[21]

Now that young basketball players are monetizing their NIL while playing under the NCAA, one must ask how foreign professional basketball teams that hope to recruit top high school prospects, like the NBL, will be impacted by this shift in NIL policy. The appeal and success of overseas programs like the NBL's Next Stars will be put to the test as the market for NIL deals at the collegiate level evolves over the next few years.

### **Diego Colonna is a Staff Editor at CICLR.**

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[3] *Collective Bargaining Agreement*, NBA and NBPA 1, 273 (Jan. 19, 2017) <https://web.archive.org/web/20171226073929/http://3c90sm37lsaecdwtr32v9qof-wpengine.netdna-ssl.com/wp-content/uploads/2016/02/2017-NBA-NBPA-Collective-Bargaining-Agreement.pdf> [<https://perma.cc/5E3R-J4FL>].

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[9] *Id.*

[10] *Id.*

[11] Scott Polacek, *Terrance Ferguson Picked No. 21 by Thunder in NBA Draft, Joins Russell Westbrook*, Bleacher Rep. (June 22, 2017), <https://bleacherreport.com/articles/2706973-terrance-ferguson-picked-no-21-by-thunder-in-nba-draft-joins-russell-westbrook> [<https://perma.cc/3X4V-6F5J>].

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[13] Brad Winter, *Finding the next Giddey: The NBL Stars on NBA Radar – Aussie and Foreign Stars Who Could Make the Leap*, Fox Sports (Nov. 23, 2021), <https://www.foxsports.com.au/basketball/nbl/finding-the-next-giddey-the-nbl-stars-on-nba-radar-aussie-and-foreign-stars-who-could-make-leap/news-story/e583c9158d902fad53480f288f3d2878> [<https://perma.cc/VUQ2-W8T8>].

[14] *Id.*

[15] Ashley Jo Zaccagnini, *Time's Up: A Call to Eradicate NCAA Monopsony Through Federal Legislation*, 74 SMU L. Rev. F. 55, 68 (2021).

[16] *Id.*

[17] Fla. Stat. Ann. § 1006.74 (LexisNexis 2020).

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<https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx> [<https://perma.cc/87K8-VLB4>].

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[20] *Id.*

[21] Caleb Hightower, *NIL Deals in College Basketball Make One Thing Clear: Money Speaks Louder Than Fit*, *FanBuzz* (July 18, 2022), <https://fanbuzz.com/college-basketball/nil-college-basaketchball-deals/> [<https://perma.cc/KB2K-PYVN>].