



Judge Delays Final Approval of the *House v. NCAA* Settlement Over Roster Limit Concerns: What Your Athletic Department Should Know + 3 Steps to Get Ahead

Insights

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The future of college sports hangs in the balance as negotiations over the NCAA's proposed \$2.8 billion antitrust settlement head into overtime. Judge Claudia Wilken recently declined to grant final approval of the deal due to concerns over its proposed roster limits, and she gave the parties until May 7 to determine whether to modify the terms of the agreement address those concerns. While this continues to play out, here's what your athletic department should know about the latest development in *House v. NCAA* and what lies ahead.

Quick Background on *House v. NCAA*

- The plaintiffs, led by former collegiate swimmer Graham House, filed a **federal antitrust lawsuit** in 2020 alleging that college athletes should receive compensation for the commercial use of their name, image, and likeness (NIL).
- Last summer, the athletes **agreed to a settlement** with the NCAA – a deal that would fundamentally reshape college athletics, and Judge Wilken granted preliminary approval of the deal in October.
- At the **April 7 final approval hearing**, Judge Wilken considered several objections to the proposed settlement agreement, including from several student-athletes. While Judge Wilken expressed concerns about the agreement's proposed roster limits and terms that would bind future student-athletes to the 10-year deal, many believed that she would ultimately approve the settlement.
- Judge Wilken **gave the parties one week to address the court's concerns**. While the parties quickly re-worked the proposed agreement to provide incoming student-athletes with the opportunity to opt-out when or before they first enroll at a Division I institution, they did not modify the proposed roster limits.

What's the Latest?

In an April 23 order, Judge Wilken **declined to grant final approval** of the proposed settlement agreement, due to the court's findings that immediate implementation of the roster limit provisions would cause (and has already caused) harm to student-athletes.

Approximately 5,000 student-athletes across the NCAA's 43 sponsored sports would be impacted by the proposed roster limits, which would require teams to reduce their current rosters and cut student-athletes. Judge Wilken's April 23 order notes that some individuals have already been removed from rosters due to the "premature implementation" of the settlement agreement.

The order **set a May 7 deadline** for the parties to attempt to modify the settlement agreement to mitigate that harm – including, potentially, through a "grandfathering" clause that would allow any athlete currently on a roster to keep their spot.

Is a "Grandfathering" Clause Feasible?

This is the billion-dollar question facing the Power Conferences and NCAA. If those entities choose not to comply with Judge Wilken's request, it is almost certain that she will reject the proposed settlement agreement and the case will continue to move forward towards trial. Given their recent record in litigation and public sentiment towards student-athlete compensation, it is unlikely the entities will receive a favorable outcome in the courtroom.

Alternatively, adding in a "grandfathering" clause or some other limitations could cause immediate problems for colleges and universities. Over the past several months, schools have already taken steps to get in compliance with the proposed settlement agreement, including the anticipated roster limits. Student-athletes have already been cut from their rosters, instructed to enter the transfer portal, with some having already found spots at other colleges and university athletic teams. Additionally, schools have made adjustments to staff and budgets due to the expected roster sizes.

At this point, reversing course would result in turmoil at the end of the semester for all parties involved.

3 Action Steps for Colleges and Universities

To proactively tackle these evolving issues, colleges and universities should consider taking the following steps:

1. **Evaluate Financial Implications.** Conduct financial modeling to understand potential impacts of re-introducing student-athletes and staff members back to teams in the event the *House* settlement is not approved in the near future. Develop scenarios to ensure athletic department financial sustainability with the additional student-athletes and potential impacts from the settlement's revenue-sharing provisions and scholarship adjustments.
2. **Determine Title IX Compliance:** Proactively audit current Title IX compliance policies and practices that were in effect before steps were taken to reduce roster sizes of athletic teams, particularly in relation to planning for an influx of additional student-athletes.
3. **Prepare a Legal Strategy:** Collaborate closely with legal counsel to monitor updates from the *House*. Consider establishing cross-functional working groups including representatives from

athletics, legal, compliance, and finance departments to work together, crunch the numbers, and prepare for swift action if the settlement is approved.

Conclusion

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