



REPORT OF THE
NCAA DIVISION II LEGISLATION COMMITTEE
MARCH 21-22, 2023, VIDEOCONFERENCE

ACTION ITEMS.

1. Legislative Items.

a. **Noncontroversial Legislation – NCAA Division II Bylaw 14.5.5.3.9 – Eligibility – Transfer Regulations – Four-Year College Transfers – Exceptions for Transfers from Four-Year Colleges – One-Time Transfer Exception – Transfer from a Non-Division II Institution.**

- (1) Recommendation. Adopt noncontroversial legislation to amend Division II Bylaw 14.5.5.3.9 (one-time transfer exception) to specify that the June 15 written notification of transfer date is not applicable to student-athletes transferring from a non-Division II institution (e.g., Division I, Division III or NAIA). [See Attachment A]
- (2) Effective date. Immediate.
- (3) Rationale. During the 2022 NCAA Convention, the adoption of NCAA Proposal No. 2022-4 (recruiting, eligibility and financial aid – transfer regulations – four-year college transfers – exceptions for transfers from four-year colleges – notification of transfer, one-time transfer exception and financial aid legislation) required, among other conditions, that a transfer student-athlete provide their current institution with written notification of transfer by June 15 in order to utilize Bylaw 14.5.5.3.9 (one-time transfer exception). Since its adoption, there has been an increase in legislative relief waivers for non-Division II transfer student-athletes due to missing the June 15 written notification of transfer date. The majority of waivers were approved. Removing the June 15 written notification of transfer date for non-Division II transfer student-athletes will eliminate staff legislating through the waiver process. This proposal will not eliminate the need for student-athletes transferring from non-Division II institutions (e.g., Division I, Division III or NAIA) to satisfy the remaining conditions of Division II Bylaw 14.5.5.3.9 (one-time transfer exception) in order to be immediately eligible upon transfer.
- (4) Estimated budget impact. None.
- (5) Student-athlete impact. None.

b. **Noncontroversial Legislation – Amateurism – Various Bylaws – Definition of Agent and Use of Agents – Effective Date.**

- (1) Recommendation. Adopt noncontroversial legislation to amend the effective date of Proposal No. 2023-8 (amateurism – various bylaws – definition of agent and use of agents) from August 1, 2023, to August 1, 2023, for any prospective student-athlete initially enrolling full time at a Division II institution on or after August 1, 2023.
- (2) Effective date. Immediate.
- (3) Rationale. Historically, the effective dates on legislative proposals impacting amateurism have been tied to the academic year in which a prospective student-athlete initially enrolls full time to ensure equal treatment of incoming recruiting classes. With the proposal's current August 1, 2023, effective date, prospective student-athletes within the same incoming recruiting class (e.g., the incoming 2023-24 class) may be certified under different legislation. Amending the effective date will permit equal application of the legislation to incoming prospective student-athletes.
- (4) Estimated budget impact. None.
- (5) Student-athlete impact. None.

2. Nonlegislative Items.

- **Name, Image and Likeness – Guidance Related to Institutional Involvement in a Student-Athlete's Name, Image and Likeness Activities.**
 - (1) Recommendation. That the NCAA Division II Management Council adopt a policy to provide guidance on institutional involvement with enrolled student-athletes name, image and likeness activities. [See Attachment B]
 - (2) Effective date. Immediate.
 - (3) Rationale. As part of the continued monitoring of the name, image and likeness landscape, the NCAA Division II Legislation Committee determined that providing the Division II membership with guidance as it relates to institutional involvement with enrolled student-athletes name, image and likeness activities would be beneficial and provide clarity on the application of the legislation as it relates to the name, image and likeness environment.
 - (4) Estimated budget impact. None.
 - (5) Student-athlete impact. None.

INFORMATIONAL ITEMS.

1. **Discussion regarding the Legislative Process and Compliance Subcommittee of the Division II Implementation Committee priority two and three items.** The Legislation Committee continued its discussion on the Division II Implementation Committee's Legislative Process and Compliance Subcommittee's priority two and three items. Specifically, the committee discussed the renaming of Bylaw 12 (amateurism), concluded its discussion regarding Bylaw 13 (recruiting) and began its discussion regarding Bylaw 16 (awards, benefits and expenses for enrolled student-athletes). Further, the committee agreed to postpone discussion of Bylaw 15 until Division I has completed its review. The committee will continue their discussion during its June 28-29, 2023, in-person meeting.
2. **Review of feedback regarding the June 15 written notification of transfer date to transfers from non-Division II institutions.** The committee reviewed feedback from the NCAA Division II Student-Athlete Advisory Committee, NCAA Division II Coaches Connection groups and Division II Conference Commissioners Association Compliance Administrators on the June 15 written notification of transfer date to transfers from non-Division II institutions. After reviewing the feedback, the committee recommended sponsorship of noncontroversial legislation to establish an exception to the June 15 written notification of transfer date for student-athletes transferring from a non-Division II institution (e.g., Division I, Division III or NAIA) [See Legislative Action Item No. 1a].
3. **Discussion regarding Division II legislation adopted at the 2023 NCAA Convention.** The committee reviewed the following proposals that were adopted at Convention.
 - a. Proposal No. 2023-3 (legislative process – amendment process – notification to membership – elimination of initial publication and second publication – timing of official notice). The committee discussed what educational resources and materials should be provided to the membership associated with governance-sponsored and membership-sponsored proposals for Convention and the timeline for providing those materials. The committee recommended providing an iteration of the Division II Student-Athlete Advisory Committee electronic grid, along with the Convention voiceover video. Further, the committee elected to release these materials to the Division II membership by September 23. Finally, once released, the committee directed staff to seek feedback from the membership on the educational materials and resources provided; specifically, whether the materials provided for the 2024 NCAA Convention were helpful and assisted the membership. The committee will review the feedback at its March 2024 meeting and determine if additional materials and/or resources should be provided.
 - b. Proposal No. 2023-8 (amateurism – various bylaws – definition of agent and use of agents). The committee discussed the application of the current effective date for Division II Proposal No. 2023-8 (amateurism – various bylaws – definition of agent and use of agents) and its potential impact on the amateurism certification process. The committee recommended noncontroversial legislation to amend the effective

date from August 1, 2023, to August 1, 2023, for any prospective student-athlete initially enrolling full time at a Division II institution on or after August 1, 2023. [See Legislative Action Item No. 1b].

4. **Discussion regarding guidance related to institutional involvement in a student-athlete's name, image and likeness activities.** The committee reviewed and recommended a Division II policy which clarifies institutional involvement in enrolled student-athletes name, image and likeness activities. The committee determined that this policy would provide clarity to the Division II membership and would be beneficial for institutions and student-athletes. [See Nonlegislative Action Item No. 2]
5. **Discussion of Bylaw 12.5 (use of logos on equipment, uniforms and apparel).** The committee discussed Bylaw 12.5 (use of logos on equipment, uniforms and apparel) and whether it should be removed from the Division II Manual and placed into the playing rules. Further, staff provided the committee with an update on the discussion and recommendation from the NCAA Playing Rules Oversight Panel's January 11, 2023, in-person meeting surrounding Bylaw 12.5 and its removal from the Division II Manual. The committee will continue this discussion at its upcoming June meeting.
6. **Discussion regarding voluntary workouts in team sports during the summer vacation period.** With Proposal No. 2023-9 (recruiting and playing and practice seasons – general playing-season regulations – time limits for athletically related activities – weekly hour limitations – outside of playing season – summer access – voluntary workouts for team sports) being defeated, the committee re-engaged in discussions on whether feedback should still be sought from the Division II Student-Athlete Advisory Committee and Division II Coaches Connection groups on whether voluntary workouts in team sports should be permitted during the summer vacation period. The committee determined no feedback should be sought at this time.
7. **Discussion regarding the Division II compliance forms.** The committee re-engaged in a holistic review of the current Division II compliance forms. The committee supported maintaining the current forms with the recommendation that staff simplify the content to enhance student-athlete comprehension. Any changes to the forms will be effective for the 2024-25 academic year, and thereafter.
8. **NCAA Transfer Portal update.** The committee received an update on Transfer Portal data and trends in Division II and new enhancements that will launch on August 1, 2023.
9. **Update from the NCAA Board of Governors.** The committee was provided an update from the Board of Governors most recent meeting, specifically highlighting the work of the NCAA Board of Governors Subcommittee on Congressional Engagement and Action. Further, staff led the committee through a review of the final report from the Division I Transformation Committee, specifically those items that fall under the committee's

purview. The committee will continue to receive updates during future meetings and discuss whether any changes in Division II are necessary.

10. **Approval of Division II University test bank for required courses, policies and procedures and communication plan for the 2023-24 academic year.** The committee received an update on the six required courses for the 2023-24 coaches certification curriculum, which will be grouped together into a learning plan, and the test questions for the courses. The committee reviewed and approved the test questions to be included in the 2023-24 coaches certification, the 2023-24 Division II University policies and procedures and the Division II University communication plan to inform the membership on the release of the required courses.
11. **Review of the 2026-2032 Division II Strategic Plan timeline.** The committee reviewed the 2026-2032 Division II Strategic Plan timeline and discussed the 2021 Division II SWOT analysis, identifying new topics for consideration in developing the future strategic plan.
12. **Update from the NCAA Division II Presidents Council and Management Council winter 2023 meetings.** The committee received an update on the actions taken at the winter 2023 Division II Presidents Council and Management Council quarterly meetings.
13. **Review of the NCAA Division II Legislation Committee policies and procedures.** The committee reviewed and approved updates to its policies and procedures.
14. **Review of the February 1, 2023, videoconference report.** The committee reviewed and approved its February 1, 2023, videoconference report.
15. **Review of the February 20, 2023, Legislative Review Subcommittee of the NCAA Division II Legislation Committee electronic voting report.** The committee reviewed and approved the Legislative Review Subcommittee's February 20, 2023, electronic voting report.
16. **Subcommittee appointments.** The committee appointed Vaughn Williams, director of athletics, Bentley University, to the Interpretations Subcommittee, effective immediately. Additionally, the committee appointed Matt Green, senior associate director of athletics for internal operations, Flagler College, to the Legislative Review Subcommittee, effective immediately.
17. **Future meeting dates.**
 - a. June 28-29, 2023, in-person meeting; Indianapolis.
 - b. September 2023, videoconference; dates to be determined.

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c. November 2023, in-person meeting; dates to be determined; Indianapolis.

d. March 2024, videoconference; dates to be determined.

Committee Chair: Carlin Chesick, Pennsylvania State Athletic Conference

Staff Liaison(s): Susan Britsch, Academic and Membership Affairs
Rachel Denton, Academic and Membership Affairs
Chelsea Hooks, Academic and Membership Affairs
Jordan Lysiak, Academic and Membership Affairs

NCAA Division II Legislation Committee March 21-22, 2023, Videoconference	
Attendees:	
Brenda Cates, University of Mount Olive.	
Carlin Chesick, Pennsylvania State Athletic Conference.	
Molly Hansen, University of Montevallo.	
Matt Green, Flagler College.	
Audra Kedy, Great American Conference.	
Kara Lindaman, Winona State University.	
Carrie Michaels, Shippensburg University of Pennsylvania.	
Pennie Parker, Rollins College.	
Christopher Ratcliff, Rogers State University.	
Kevin Schriver, Southwest Baptist University.	
Jason Stock, California State University, San Marcos.	
Melinda Terry, St. Edward's University.	
Vaughn Williams, Bentley University.	
Absentees:	
None.	
Guests in Attendance:	
None.	
NCAA Staff Liaisons in Attendance:	
Susan Britsch, Rachel Denton, Chelsea Hooks and Jordan Lysiak.	
Other NCAA Staff Members in Attendance:	
Olivia Beach, Gary Brown, Mike DeCesare, Terri Steeb Gronau, Maritza Jones, Susan Peal, Jared Tidemann, Angela Red and Rachel Seewald.	

Title: ELIGIBILITY -- TRANSFER REGULATIONS -- FOUR-YEAR COLLEGE TRANSFERS -- EXCEPTIONS FOR TRANSFERS FROM FOUR-YEAR COLLEGES -- ONE-TIME TRANSFER EXCEPTION -- TRANSFER FROM A NON-DIVISION II INSTITUTION

Convention Year: 2024

Effective Date: Immediate

Proposal Number: NC-2023-4

Source: NCAA Division II Management Council (Legislation Committee).

Category: Noncontroversial

Topical Area: Eligibility

Status: Ready for Consideration by Management Council

Intent: To specify that the June 15 written notification of transfer date is not applicable to a student-athlete transferring from a non-Division II institution (e.g., Division I, Division III or NAIA).

Bylaws: Amend 14.5, as follows:

14.5 Transfer Regulations.

[14.5.1 through 14.5.4 unchanged.]

14.5.5 Four-Year College Transfers. See Bylaw 13.1.1.2 for prohibition against contacting student-athletes of another four-year collegiate institution without first obtaining authorization through the notification of transfer process. (See Bylaw 14.4 for progress-toward-degree requirements for transfer student-athletes.)

[14.5.5.1 through 14.5.5.2 unchanged.]

14.5.5.3 Exceptions for Transfers From Four-Year Colleges. A transfer student (other than one under disciplinary suspension per Bylaw 14.5.1.1) from a four-year collegiate institution is not subject to the residence requirement for intercollegiate competition, provided the student does not have an unfulfilled residence requirement at the institution from which they are transferring (except for the return to the original institution without participation exception) and any of the following exceptions are satisfied. However, during the student-athlete's first academic year of full-time collegiate enrollment, such conditions may serve as a basis for an exception to the residence requirement for transfer students to a Division II institution who, at the time of initial collegiate enrollment, met the requirements for "qualifiers" (set forth in Bylaw 14.3.1.1) in Division II. See Bylaw 14.5.5.1.2.1 for additional information regarding the eligibility of a 2-4-4 transfer who attended the initial four-year institution for less than one academic year.

[14.5.5.3.1 through 14.5.5.3.8 unchanged.]

14.5.5.3.9 One-Time Transfer Exception. The student transfers to the certifying institution from another four-year collegiate institution, and all of the following conditions are met (for graduate students, see Bylaw 14.1.8.1):

[14.5.5.3.9-(a) through 14.5.5.3.9-(c) unchanged.]

(d) The student must provide written notification of transfer to the institution by June 15 (**see Bylaw 14.5.5.3.9.1 for an exception for midyear and non-Division II transfers**); and

[14.5.5.3.9-(e) unchanged.]

14.5.5.3.9.1 Application of Notification Dates to Midyear **and Non-Division II** Transfers. A midyear transfer student-athlete **or student-athlete transferring from a non-Division II institution (e.g.,**

Division I, Division III or NAIA) is not required to have provided notification of transfer to the institution by the notification deadline in the previous academic year.

[14.5.5.3.9.2 unchanged.]

[14.5.5.4 unchanged.]

Additional Information:

During the 2022 NCAA Convention, the adoption of NCAA Division II Proposal No. 2022-4 (recruiting, eligibility and financial aid -- transfer regulations -- four-year college transfers -- exceptions for transfers from four-year colleges -- notification of transfer, one-time transfer exception and financial aid legislation) required, among other conditions, that a transfer student-athlete provide their current institution with written notification of transfer by June 15 in order to utilize NCAA Division II Bylaw 14.5.5.3.9 (one-time transfer exception). Since its adoption, there has been an increase in legislative relief waivers for non-Division II transfer student-athletes due to missing the June 15 written notification of transfer date. The majority of waivers were approved. Removing the June 15 written notification of transfer date for non-Division II transfer student-athletes will eliminate staff legislating through the waiver process. This proposal will not eliminate the need for student-athletes transferring from non-Division II institutions (e.g., Division I, Division III or NAIA) to satisfy the remaining conditions of Division II Bylaw 14.5.5.3.9 (one-time transfer exception) in order to be immediately eligible upon transfer.

Review History:

Mar 22, 2023: Recommends Approval - Legislation Committee

NCAA Division II Institutional Involvement in a Student-Athlete's Name, Image and Likeness Activities

Background:

Effective July 1, 2021, the NCAA adopted the Interim Name, Image and Likeness (NIL) Policy allowing NCAA student-athletes the opportunity to benefit from their NIL without jeopardizing their NCAA eligibility. A November 2021 question-and-answer document clarifies that schools may not use NIL transactions to compensate student-athletes for athletics participation or achievement or as an improper inducement. Further, the Q&A states that schools should not dictate how student-athletes use their compensation (e.g., should not require student-athletes to use compensation for financial aid). Although not under the NCAA's purview, it also raised other potential issues, such as claims for contractual nonperformance, Title IX issues and employment issues to which campus compliance, Title IX and general counsel staff should be consulted. Finally, the Q&A states that institutions should not provide compensation in exchange for the use of a student-athlete's NIL.

In July 2022, the NCAA Division II Presidents Council and Management Council released additional guidance related to the Interim NIL Policy stating that institutional coaches and staff may not organize, facilitate or arrange a meeting between a booster/NIL entity and a prospective student-athlete or communicate directly or indirectly with a prospective student-athlete on behalf of a booster/NIL entity. However, the guidance did not specifically extend this prohibition to involvement with NIL activities for currently enrolled student-athletes. Additionally, a July 2022 Q&A provides more clarification surrounding the prohibition of institutional involvement with boosters, NIL Collectives and prospective student-athletes. Further, adopted in October 2022, NCAA Division II Proposal NC-2023-30 (amateurism and financial aid – various bylaws – student-athlete name, image and likeness activities) amended Bylaw 12 (amateurism) to align the legislation with and codify the NCAA Interim NIL Policy, remove any legislation that is in direct conflict with the Interim NIL Policy and redraft the legislation surrounding permissible and impermissible activities following an individual's initial full-time collegiate enrollment. However, neither the July 2022 Q&A nor Proposal NC-2023-30 address institutional involvement with NIL activities for currently enrolled student-athletes.

In order to maintain key principles of fairness and integrity across the NCAA and reinforce rules prohibiting improper institutional involvement and pay-for-play, the Presidents Council and Management Council issued the following guidance to clarify the application of existing NCAA legislation in the current NIL environment, specifically addressing institutional involvement in enrolled student-athletes' NIL activities.

Applicable Legislation:

Per NCAA Division II Bylaw 11.1.4, athletics department staff members are prohibited from representing a prospective student-athlete or enrolled student-athlete in marketing their athletics ability or reputation. Further, per Bylaw 12.1.2.1, all NCAA Bylaws, including prohibitions on pay-for-play and improper recruiting inducements, remain in effect, subject to the presence and effect of state law or executive actions. Additionally, as outlined in Bylaws 12.1.4-(a) and (b), it is impermissible for a student-athlete to use their athletic skill for pay from any source and for name, image and likeness-related compensation or incentives to be based upon enrollment-based

decisions, athletic performance or achievement, or simply being a member of a team. Finally, while Bylaw 16.02.3 generally prohibits an institutional staff member or booster from providing a student-athlete with a special arrangement or benefit, Bylaw 16.3 permits institutions to finance and assist student-athletes with personal development services.

Disclaimer:

This document addresses the application of NCAA Division II Bylaws to institutional involvement in a currently enrolled student-athlete's NIL Activities. The guidance in this document is subject to state laws or executive actions with the force of law in effect. Further, institutions should consult legal counsel regarding other issues that may stem from institutional involvement in NIL activities, such as the potential for contractual nonperformance, Title IX and employment related matters.

Effective Date:

The guidance is effective immediately. For violations that occurred prior to the publication date of this document, the Presidents Council and Management Council directed the NCAA enforcement staff to review the facts of individual cases but to pursue only those actions that clearly are contrary to the published interim policy, including the most severe violations of institutional involvement or pay for play. Further, the emphasis of this NIL guidance is on institutions involved in student-athletes' NIL activities and is not intended to question the eligibility of enrolled student-athletes.

Categories of Institutional Involvement in Student-Athletes' NIL Activities:

INSTITUTIONAL EDUCATION AND MONITORING

Permissible under NCAA Division II rules

- Educational sessions for SAs: Financial literacy, taxes, entrepreneurship, social media, etc.
- Educational sessions for NIL entity (e.g., Collectives).
- Educational sessions for boosters.
- Educational sessions for PSAs.
- Required reporting of NIL activity by SAs.

*No impermissible activities identified at this time; additional circumstances to be considered, as appropriate.

INSTITUTIONAL SUPPORT FOR STUDENT-ATHLETE NIL ACTIVITY

<i>Permissible under NCAA Division II rules</i>	<i>Impermissible under NCAA Division II rules</i>
<ul style="list-style-type: none"> • Engage NIL entity to inform SAs of NIL opportunities. • Engage NIL entity to administer a marketplace that matches SAs with NIL opportunities without involvement of institution. • Provide information to SAs about opportunities that institution has become aware of (transmit information without further involvement). • Provide SA contact information and other directory information to NIL entity (e.g., Collectives and others seeking to engage SAs). • Provide stock, stored photo/video/graphics to a SA or NIL entity. • Introduce SA to representatives of NIL entity. • Arrange space for NIL entity and SA to meet on campus or in institution's facilities. • Promote SA's NIL activity, provided there is no value or cost to the institution (e.g., retweeting or liking a social media post). • Promote SA's NIL activity on paid platform provided SA or NIL entity is paying going rate for advertisement (e.g., NIL entity pays for advertisement on video board). • Purchase items related to a SA's NIL deal that are de minimis in value and for the same rate available for the general public. 	<ul style="list-style-type: none"> • Communicate with NIL entity regarding specific SA request/demand for compensation (e.g., SA needs X dollars in NIL money) or encouragement for NIL entity to fulfill SA's request. • Proactively assist in the development/creation, execution or implementation of a SA's NIL activity (e.g., develop product, develop promotional materials, ensure SA performance of contractual NIL activities) unless the same benefit is generally available to the institution's students. • Provide services (other than education) to support NIL activity (e.g., graphics designer, tax preparation, contract review, etc.) unless the same benefit is generally available to the institution's students. • Provide access to equipment to support NIL activity (e.g., cameras, graphics software, computers, etc.) unless the same benefit is generally available to the institution's students. • Allow SA to promote their NIL activity while on call for required athletically related activities (e.g., practice, pre-and postgame activities, celebrations on the court, press conferences).

INSTITUTIONAL SUPPORT FOR NIL ENTITY/COLLECTIVE

<i>Permissible under NCAA Division II rules</i>	<i>Impermissible under NCAA Division II rules</i>
<ul style="list-style-type: none"> • Staff member assists NIL entity in raising money for NIL entity (e.g., appearances at fundraisers, donates autographed item). • Provide assets (e.g., tickets, suite) to NIL entity under sponsorship agreement provided access to assets are available to an on the same terms, as other sponsors. • Request donor to provide funds to NIL entity (without directing funds be used for a specific sport or SA). • Provide donor information or facilitate meetings between donors and NIL entity. 	<ul style="list-style-type: none"> • Subscribes to the entity and donates cash to the entity (regardless of whether funds are earmarked for a specific sport or SA). • Provide assets (e.g., ticket, suite) to a donor as an incentive for providing funds to the NIL entity. • Athletics department staff member employed by NIL entity.

NEGOTIATING, REVENUE SHARING AND COMPENSATING

<i>Impermissible under NCAA Division II rules</i>
<ul style="list-style-type: none"> • Athletics department staff member (or company owned by staff member) representing enrolled SAs for NIL deals, including securing and negotiating deals on behalf of the SA. • Any individual or entity acting on behalf of the athletics department (e.g., third party rights holders, third party agents) representing enrolled SAs for NIL deals, including securing and negotiating deals on behalf of the SA. • Institution entering into a contract with SA for the sale of product related to SA's NIL. • Conference and SA revenue sharing: Broadcast revenue, NIL revenue. • Staff members who own businesses separate from the institution, providing NIL deal with a SA. • Institutional coach compensating SA to promote coach's camp. • SAs receiving compensation directly or indirectly for promoting an athletics competition in which they participate.

***This is a non-exhaustive list of permissible and impermissible institutional involvement in a current student-athlete's NIL activities. The guidance in this document is subject to state laws or executive actions with the force of law in effect.**