

Interim Name, Image and Likeness Policy

Guidance Regarding Third Party Involvement

Background.

Effective July 1, 2021, the National Collegiate Athletic Association adopted the Interim Name, Image and Likeness (NIL) Policy allowing NCAA student-athletes the opportunity to benefit from their NIL. The NCAA Division II Presidents Council and Management Council recognize that many student-athletes are benefiting positively from NIL opportunities consistent with the Interim NIL Policy. The councils believe over a year into the new NIL environment is an appropriate time to review the emerging NIL environment and whether NIL activities are impacting school choice and transfer, particularly relating to the involvement of individuals and entities that promote or support a specific institution.

The expectation of the membership and representatives of their athletics interests is that they are abiding by current NCAA rules regarding recruiting and pay-for-play. In order to reinforce key principles of fairness and integrity across the NCAA and maintain rules prohibiting improper recruiting inducements and pay-for-play, the councils offer the guidance below on how current NCAA legislation applies to the NIL environment, specifically to third parties involved in the recruiting process.

Third Parties Defined as Boosters.

As a starting point, it is important to understand how a representative of athletics interests (booster) is defined by NCAA legislation. A **booster** is, in part, defined as an individual, independent agency, corporate entity (e.g., apparel or equipment manufacturer) or other organization who is known (or who should have been known) by a member of the institution's executive or athletics administration to have participated in or to be a member of an agency or organization promoting the institution's intercollegiate athletics program or to assist or to have assisted in providing benefits to enrolled student-athletes or their family members.

It appears that the overall mission of many, if not all, of the above-referenced third-party entities is to promote and support a specific NCAA institution by making available NIL opportunities to prospective student-athletes (PSA) and student-athletes (SAs) of a particular institution, thereby triggering the definition of a booster.

With this in mind, NCAA rules related to the involvement of boosters in recruiting activities remain relevant to the Interim NIL Policy. Specifically, NCAA rules preclude boosters from engaging in recruiting activities, including recruiting conversations, on behalf of a school. Further, NCAA recruiting rules preclude boosters from providing benefits to PSAs and preclude institutional staff members from being involved, directly or indirectly, with the provision of benefits to a PSA. Finally, it is important to note that existing NCAA prohibitions related to pay-for-play have not changed as a result of the Interim NIL Policy.

Guidance Related to Prospective Student-Athletes.

- Recruiting conversations between an individual or entity that has triggered booster status ("booster/NIL entity") and a PSA are **not** permissible.

- Booster/NIL entity may **not** communicate (e.g., call, text, direct message) with a PSA, a PSA's family, or others affiliated with the PSA for a recruiting purpose or to encourage the PSA's enrollment at a particular institution.
- An NIL agreement between a PSA and a booster/NIL entity may **not** be guaranteed or promised contingent on initial or continuing enrollment at a particular institution.
- Institutional coaches and staff may **not** organize, facilitate or arrange a meeting between a booster/NIL entity and a PSA (e.g., provide the individual or entity with a recruiting list or watch list, including the NCAA Transfer Portal).
- Institutional coaches and staff may **not** communicate directly or indirectly with a PSA on behalf of a booster/NIL entity.
- *NIL agreements **must** be based on an independent, case-by-case analysis of the value that each athlete brings to an NIL agreement as opposed to providing compensation or incentives for enrollment decisions (e.g., signing a letter of intent or transferring), athletic performance (e.g., points scored, minutes played, winning a contest), achievement (e.g., starting position, award winner) or membership on a team (e.g., being on roster).*

Guidance Related to Current Student-Athletes.

- An NIL agreement between a SA and a booster/NIL entity may **not** be guaranteed or promised contingent on initial or continuing enrollment at a particular institution.
- *NIL agreements **must** be based on an independent, case-by-case analysis of the value that each student-athlete brings to an NIL agreement as opposed to providing compensation or incentives for enrollment decisions (e.g., signing a letter of intent or transferring), athletics performance (e.g., points scored, minutes played, winning a contest), achievement (e.g., starting position, award winner) or membership on a team.*

A nonexhaustive list of relevant NCAA Division II legislation is provided.

Applicable NCAA Division II Legislation.

- Athletics department staff members are prohibited from representing a prospective student-athlete (PSA) or enrolled student-athlete (SA) in marketing their athletics ability or reputation. (NCAA Bylaw 11.1.4 – Representing Individuals in Marketing Athletics Ability/Reputation)
- Before a PSA signs a National Letter of Intent or written offer of admission and/or financial aid or before the institution receives a financial deposit, an institution may comment

publicly only to the extent of confirming its recruitment of the PSA. (Bylaw 13.10 – Publicity)

- Boosters may not engage in recruiting activities, including recruiting conversations, on behalf of a school. (Bylaw 13.1.2.1 – Permissible Recruiters)
- Recruiting is defined as “any solicitation of a PSA or a PSA’s family members by an institutional staff member or by a booster for the purpose of securing the PSA’s enrollment and ultimate participation in the institution’s intercollegiate athletics program.” (Bylaw 13.02.10 – Definition of Recruiting)
- Boosters may not be involved in making arrangements for or giving or offering to give any financial aid or other benefits to a PSA. Receipt of a benefit by a PSA is not a violation if the same benefit is generally available to the institution’s prospective students. (Bylaw 13.2.1 – Offers and Inducements)
- Athletics participation for pay and payment based on performance or given on an incentive basis are prohibited. (Bylaws 12.1.4 – Impermissible -- Following Initial Full-Time Collegiate Enrollment)
- Institutions are held responsible for any impermissible recruiting activities engaged in by a representative of athletics interest. (Bylaw 13.01.2 – Institutional Responsibility)

*Disclaimer: This guidance is subject to state NIL laws or executive actions with the force of law in effect.