



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

<i>Permissible under NCAA Division II rules</i>
<ul style="list-style-type: none">• 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. <p>*No impermissible activities identified at this time; additional circumstances to be considered, as appropriate.</p>

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.**