

NIL Presumption Educational Resource

Background.

At the direction of the NCAA Division I Board of Directors, the NCAA Division I Council formed a working group in April 2022 to evaluate the impact of name, image and likeness (NIL) on student-athletes, recruiting and transfers. The working group on NIL met regularly and developed recommendations for the board, which included (among other items) adopting emergency legislation establishing a new standard of review for violations related to NIL. The working group was concerned that violations could not be substantiated when parties simply denied wrongdoing. Because a rebuttable presumption is not novel in NCAA proceedings, the working group recommended it as a way to enhance effectiveness of the infractions process. In October 2022, the board approved the working group's recommendations.

NIL Presumption Legislation and Application.

Effective January 1, 2023, the legislation states:

NCAA Bylaw 19.7.3 Violations Presumed in Select Cases. In cases involving name, image and likeness offers, agreements and/or activities in which related communications and conduct are subject to NCAA regulation, the infractions process (including interpretive requests) shall presume a violation occurred if circumstantial information suggests that one or more parties engaged in impermissible conduct. The enforcement staff may make a formal allegation based on the presumption. The hearing panel shall conclude a violation occurred unless the institution or involved individual clearly demonstrates with credible and sufficient information that all communications and conduct surrounding the name, image and likeness activity complied with NCAA legislation.

With this legislation, the NCAA national office staff and the NCAA Division I Committee on Infractions (Committee on Infractions) must presume a violation occurred if there is information (including circumstantial information) indicating impermissible conduct related to or surrounding NIL (e.g., contacts, offers, inducements). However, the institution and any involved individuals have the opportunity to rebut this presumption at every stage of an infractions case by clearly demonstrating with credible and sufficient evidence that a violation did not occur.

The NCAA enforcement staff will develop additional information by conducting an investigation or issuing a letter of inquiry to the institution. At the conclusion of the investigation and during the charging phase of a case, the burden shifts to the institution and involved individuals (if any) to clearly demonstrate that a violation did not occur.

If the enforcement staff believes the parties failed to rebut the presumption and the violations are Level I and/or II in nature, the case will be adjudicated through the normal infractions process. This includes the ability to negotiate a resolution if the enforcement staff and participating parties can reach agreement on the violations, level, classification and penalties. In a contested case, the Committee on Infractions must conclude a violation occurred if information suggests that one or more parties engaged in impermissible conduct. However, the institution and/or involved individuals again have the opportunity to rebut that presumption by clearly demonstrating to the Committee on Infractions with credible and sufficient evidence that a violation did not occur.