



Division III

DISCOVER | DEVELOP | DEDICATE

DIVISION III ISSUES FORUM

Friday, January 24, 2020

Name, Image and Likeness

Presenters

- Mary Beth Cooper, Springfield College.
- Braly Keller, Nebraska Wesleyan University.
- Tori Murden-McClure, Spalding University.
- Jeff Myers, NCAA.
- Darryl Sims, University of Wisconsin-Oshkosh.

Name, Image and Likeness

Members

- Val Ackerman, Big East Conference (co-chair).
- Jill Bodensteiner, Saint Joseph's University.
- Bob Bowsby, Big 12 Conference.
- Don Bruce, University of Tennessee, Knoxville.
- Rita Cheng, Northern Arizona University.
- Mary Beth Cooper, Springfield College.

Members

- Lauren Cox*, Baylor University.
- John DeGioia, Georgetown University.
- Jackson Erdmann*, Saint John's University(MN).
- Rick George, University of Colorado, Boulder
- Carolayne Henry, Mountain West Conference.

**Student-athlete*

Members

- Glen Jones, Henderson State University.
- Scott Larson, Lubbock Christian University.
- Brandon Lee*, University of Missouri, Columbia.
- Jacqie McWilliams, Central Intercollegiate Athletic Association.
- Jere Morehead, University of Georgia.

** Student-athlete*

Members

- Darryl Sims, University of Wisconsin-Oshkosh.
- Gene Smith, The Ohio State University (co-chair).
- Tim White, California State University System.
- Carla Williams, University of Virginia.

Division III NIL Resource Page



2020 Division III Issues Forum Agenda

Marriott Anaheim — Marquis Ballroom

Friday, January 24, 2020 — 8 to 11 a. m.

Note: For more information, access the links noted below on the [Convention Resource Page](#).

1. Welcome and Overview.

2. Generational Gaps.

Haydn Shaw is a leading national speaker and author. This session will help you understand the different generations and their life stages. It also will show you how to motivate each other and create a more productive workplace.

3. Recommendations of the Board of Governor's Federal and State Working Group (Name, Image and Likeness—NIL).

During this session, delegates will receive an update on the Board of Governor's recent decision to allow student-athletes the opportunity to benefit from the use of their name, image and likeness in a manner consistent with the collegiate model, discuss potential models to affect change, and review next steps. Please review the available background materials prior to the session:

[Federal and State Working Group Report Oct., 2019](#)

[Division III NIL webinar PowerPoint](#)

[NIL Frequently Asked Questions](#)

A-Wide NIL Resource Page



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NAME, IMAGE AND LIKENESS

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THE COLLEGE ATHLETE MODEL

The NCAA is committed to allow name, image and likeness opportunities for student-athletes consistent with the college athlete model.

The college athlete model is not the professional model, meaning students will compete against other students, not professionals or employees.

The NCAA is best positioned to provide a uniform and fair name, image and likeness approach for all student-athletes on a national scale.

[Learn How We Support College Athletes](#)

ncaa.org/NIL



#whyd3

Convention

Association-wide Principles

- Payment to student-athlete for use of their name, image or likeness should not be pay for athletic performance or participation; nor should the payment serve as an inducement to select a particular school.

Association-wide Principles

- Regulation of a student-athlete's name, image or likeness use should be transparent, narrowly tailored and enforceable, and it should facilitate the principle of fair competition among schools in a division, including the integrity of the recruiting process.

Association-wide Principles

- Student-athlete should be able to use their name, image or likeness similar to college students who are not student-athletes, unless there is a compelling reason to differentiate.

Legislative Landscape

- Federal.
 - Two federal bills introduced related to NIL.
 - Several additional members of Congress and/or presidential candidates have expressed interest in NIL-related issues.
- State.
 - CA SB 206 passed into law; Effective 2023.
 - 34 additional states engaged.
- Board of Governors and working group presidents considering possible engagement with Congress.

Name, Image and Likeness (NIL)

NIL is a concept based on laws defining “rights of publicity” or when permission is required to use someone’s name, image or likeness.



NIL and NCAA Bylaws

- It is impermissible to receive preferential treatment, benefits or services because of the individual's athletics reputation or skill or pay-back potential as a professional athlete, unless specifically allowed by NCAA legislation. Bylaw 12.1.1

NIL and NCAA Bylaws

- Student-athletes may not participate in promotional activities unless specifically allowed by NCAA legislation. Bylaw 12.5.1

NIL and NCAA Bylaws

Specific exceptions allowing use of the student-athlete's NIL:

- Institutional, charitable, educational and non-profit use.
- Modeling and other non-athletically related promotional activity.
- Media activities.
- Student-athlete's own business.

Modeling and Other Non-athletically Related Promotional Activity

Can accept pay for use of NIL to promote the sale or use of a commercial product provided:

- Student-athlete became involved in activity for reasons independent of athletics ability;
- No reference is made in these activities to the student-athlete's involvement in intercollegiate athletics; and

Modeling and Other Non-athletically Related Promotional Activity

- Pay is commensurate with the student-athlete's skill and experience as a model and is not based on athletics ability or reputation.

Bylaw 12.5.1.3

Media Activities

- Student-athlete may participate in media activities (e.g. appearance on radio, television, in films or stage productions, or participate in writing projects) even when appearance/participation is related to athletics and may receive the following:
- Legitimate and normal expenses; and

Media Activities

- Compensation commensurate with the going rate.

Also,

- Student-athlete's name may be used to advertise participation, but status as a student-athlete may not be used for promotional purposes.

Bylaw 12.5.2

Student-Athlete's Business

Student-athlete may establish and promote their own business but may not use their status as a student-athlete to promote the business.



*Official Interpretation
February 1, 2007*

Prominent Division III NIL Issues

1. Crowdfunding.
2. Testimonials.
3. Brand ambassadors.
4. Private lessons.



Crowdfunding

Concerns student-athletes seeking donations for a great variety of personal expenses. Can they use their NIL to seek these donations?

Division III analysis:

- Student-athletes can crowdfund generally.

Crowdfunding

- Student-athletes can't use status as student-athlete to crowdfund for own expenses or individual athletic expenses.
- Student-athletes can't crowdfund for tuition.
- Coaches and boosters can't contribute to a student-athlete's crowdfunding campaign.

Testimonials

Can a third party use a student-athlete that has used the product or service to provide a testimonial?

Division III analysis:

- A student-athlete cannot take part in such promotions if they became involved due to their status as a student-athlete.
- A student-athlete may not use status as an athlete to promote commercial ventures.

Brand Ambassadors

Student-athletes are approached by clothing/gear/other companies to use/wear/promote different products.

Social media is a popular avenue to use for the product promotion.

Division III analysis:

- Student-athletes must have become involved in the ambassadorship for reasons other than their status as a student-athlete.

Brand Ambassadors

Division III analysis (cont.):

- The student-athlete's social media account used for the ambassadorship may not have any reference to their status as a student-athlete.

Private Lessons

Student-athletes may earn money by teaching lessons in their sport.

Division III analysis:

- Student-athlete may only be paid for work performed and only at the going rate;

Private Lessons

Division III analysis (cont.):

- Student-athlete may give lessons and be paid but may not market themselves as a student-athlete.
- Student-athletes may not conduct their own camp or clinic.

Final Thoughts

BOG Regulatory Framework Recommendations

Concept A

- Permit NIL income unrelated to athletics participation.

Concept B

- Permit NIL activities without institutional involvement.

Concept C

- Permit institutionally managed NIL activities.

Philosophical Principles and Key Questions

Division III Philosophy Statement

- A student-athlete's athletics activities should be conducted as an integral part of their educational experience.
- Athletics participants should not be treated differently from other members of the student body.

Division III Philosophy Statement

- Student-athletes should be supported in their efforts to meaningfully participate in nonathletic pursuits to enhance their overall educational experience.
- Emphasizes providing equitable athletics opportunities for males and females and giving equal emphasis to men's and women's sports.

Discussion Questions

- How would each proposed concept advance or distract from these philosophical principles?
- DIII does not permit the awarding of institutional financial aid to any student on the basis of athletics leadership, ability, participation or performance. How would the proposed concepts advance or conflict with that goal?

Discussion Questions

- What would be the most important practical challenges related to the implementation of each concept? How would those challenges best be addressed at the institutional, conference or national levels?

SAAC Perspective

Round Table Discussion

Count Down Clock 20 minutes

Feedback

Polling Question

What one word or concept do you believe Division III should keep “top of mind” during the remainder of this process?

<http://workings.group/NILFeedback>

Next Steps

- Division III Oversight Group.
- Include Federal and State Legislation Working Group members.
- Includes key committee chairs (SAAC, ILC, SAR, SLR, MC, PC).

Next Steps

- Establish timeline.
- Coordinate Division III feedback.
- Oversee communication plan.

Next Steps

- Engage membership.
 - NCAA Convention (Division III Issues Forum).
 - Regional and Conference Rules seminars (May & June).
 - DIII SIDA/NADIII/AA/NACDA (June).

Next Steps

- Final recommendations by Management and Presidents Councils. (July/Aug.)
- Final vote at 2021 NCAA Convention.