



Division III Webinar

Name, Image and Likeness Updates

Dan Dutcher and Jeff Myers

Agenda

- Background.
- Key Association-wide principles.
- Division III legislative definitions, bylaws and principles.
- Division III legislative concepts.
 - Work product and services.
 - Endorsements.
 - Additional considerations.
- Next steps and timeline.

Background

- In April, the BOG received the Federal and State Legislation Working Group's final report and charged each division with modernizing its rules within a collegiate framework.
- Division III will determine its best course of action.
- Early actions.
 - Created Division III NIL Oversight Group (Nov. 2019).
 - Discussed and received feedback at 2020 Division Convention Issues Forum.

Background

- Recent actions.
 - ILC discussed in February and developed NIL concepts.
 - April 1 webinar.
 - In April, SAAC, Management and Presidents Councils reviewed and endorsed the concepts.
 - In May, the Division III NIL Oversight Group discussed the proposed concepts and outlined next steps.

Background

- Next steps.
 - In early June, the Division III NIL Oversight Group will send a feedback form to presidents, ADs and commissioners.
 - June 19: Regional Rules Seminar session will include feedback results.
 - July and August SAAC and Council meetings will finalize the legislative proposals for vote at the 2021 NCAA Convention.

Key Association-Wide Principles

- BOG determined that status quo is not an option, and that the following Association wide principles should guide the divisional review:
 - Compensation to student-athletes for use of their name, image or likeness should not be pay for athletics performance or participation; nor should the payments serve as an inducement to select a particular school.

Key Association-Wide Principles (cont..)

- Regulations for the use of a student-athlete's NIL should be transparent, narrowly tailored and enforceable, and should facilitate the principle of fair competition, including the integrity of the recruiting process.
- Student-athletes should be able to use their name, image or likeness similar to other college students, unless there is a compelling reason to differentiate.

Legislative Definition

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 Current NCAA Bylaws

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

Current modeling and other non-athletically related promotional activities

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
- 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

Current 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
 - 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

Current Student-Athlete Business

Student-athletes 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*

Proposed Legislative Concepts

Key Division III NIL Principles

- Compensation to student-athletes must be consistent with the fair market rate and should not constitute pay for play.
- Student-athletes can use institutional marks to the extent students generally can use institutional marks.
- Students could use agents, advisors and professional services to help with their NIL activities.
- Institutions may not use promotional opportunities as a recruiting inducement.

Key Division III NIL Principles

- Institutions may only support a student-athlete's NIL activities to the extent they support students generally in their NIL activities.
- Specific reporting and disclosure requirements are not yet a part of these concepts, but are under discussion.

NIL Concept 1: Work Product and Service

- Concept: Allow student-athletes to use their status as athletes to promote their own work product or service.
- Why: Student-athletes should be able to use their NIL in a similar manner as college students who are not student-athletes, unless there is a compelling reason to differentiate.
- Proposed change: Student-athletes could use their status as athletes to promote their own work product or service. Institutions would only be permitted to support NIL opportunities for SAs in the same manner institutions support NIL opportunities for their students generally.

NIL Concept 1: Work Product and Service

- General work product examples: Creative and academic endeavors in acting, music, art and writing; starting and running one's own business; providing private athletics lessons; conducting one's own camp; and providing tutoring.
- Specific usage examples: Identify their status as a SA in creating social media content; advertising private lessons; advertising one's own business.
- Institutions should only be involved to the extent that they are involved with students generally.

NIL Concept 1: Work Product and Service

- Examples to consider.
 - Promotion of private lessons.
 - Promotion of their own camp or clinic.
 - Monetize social media platform(s).
 - Paid for autographs.
 - Promotion of creative and/or academic endeavors.
 - Promotion of their own business.
 - General promotion of other work product or service.

NIL Concept 2: Endorsements

- Concept: Student-athletes may use their status as athletes to endorse third party products or services provided:
 1. Payment is commensurate with the fair market rate.
 2. No institutional involvement in procuring promotional opportunities for student-athletes (except to the extent the institution is involved with assisting students generally).
 3. NIL opportunities are not part of the recruiting process.

NIL Concept 2: Endorsements

- Why: Student-athletes should be able to use their NIL in a similar manner as college students who are not student-athletes, unless there is a compelling reason to differentiate.
- Proposed change: Student-athletes may use their status as athletes to promote third party products or services, provided the noted limitations are followed.
- General promotion examples: Appearing in commercials, using social media as brand ambassadors, providing testimonials for used products and services, and promoting appearance at a commercial location.

NIL Concept 2: Endorsements

- Specific usage examples: Promote a makeup brand on their social media platform; a local business uses a student-athlete in print advertising declaring it is their favorite post-game hangout; a student-athlete appears in a commercial for the medical practice group that repaired the student-athlete's knee.
- Institutions should only be involved to the extent that they are involved with students generally.

NIL Concept 2: Endorsements

- Examples to consider.
 - Payment for appearance at a commercial establishment (e.g. car dealership, restaurant).
 - Promotion of commercial products via social media platforms (e.g. brand ambassadors).
 - Model/promote non-institutional athletics apparel and equipment.
 - Promotion of third-party products or services via traditional commercials.
 - Provide testimonials for a product or service.

Additional Considerations

- Prohibition of promoting certain types of products or services (e.g. alcohol, tobacco, sports gambling).
- Use of institutional marks (e.g. logos and slogans).
- Compliance and educational responsibilities.
- Mandatory reporting.
- Professional services (e.g. engagement of professional services, including agents).
- Pre-enrollment NIL allowances.

Next Steps and Timeline

- Seek membership feedback via survey. (early June)
- NIL webinar. (June 19)
- Additional committee review.
- Final SAAC, MC and PC review in July/August.
- Proposed legislation at 2021 NCAA Convention.

Ways You Can Help

- Discuss the concepts and other identified areas.
- Share your thoughts with campus and conference administrators via the feedback survey.
- Participate in the June 19 webinar.
- Be ready for the “final round” of information coming from the summer Council meetings.
- Prepare for the 2021 Convention vote.

Questions?

- All questions, must be submitted via your computer, using the following instructions:
 - Click on the chat icon – near the top of your screen. It will open a text box at the bottom of your computer screen.
 - Type in message and click on send.