



Interim Name, Image and Likeness Policy Guidance Regarding Third Party Involvement

Background.

Effective July 1, 2021, the National Collegiate Athletic Association (NCAA) adopted the Interim Name, Image and Likeness (NIL) Policy allowing NCAA student-athletes the opportunity to benefit from their NIL. On May 9, 2022, Division I provided additional clarity regarding the emerging NIL environment, as it relates to the involvement of individuals and entities that promote or support a specific institution. The purpose underlying the Division I guidance was to reinforce key principles of fairness and integrity across the NCAA and maintain rules prohibiting improper recruiting inducements and pay-for-play. Division II engaged in a review as well and issued similar guidance.

The Division III Interpretations and legislation committee reviewed the guidance issued by Division I and II and discussed the applicability for Division III. The specific question the committee considered is whether Division III would benefit from additional clarity regarding the interaction of third-party entities with prospective student-athletes and current student-athletes as it relates to NIL. The committee determined that while there is greater allowance in Division III for boosters to recruit on behalf of the institution, it is important to understand that relationship in the context of NIL. Consequently, the committee agreed that additional clarity is appropriate and has issued the following guidance to assist the Division III membership.

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. 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. Additionally, 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.

- 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 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., 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 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.

Applicable NCAA Division III Legislation. A nonexhaustive list of relevant NCAA Division III legislation is provided below.

- 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. [See Bylaw 11.1.4 (Representing Individuals in Marketing Athletics Ability/Reputation)]
- Before a PSA's paid acceptance of the institution's 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. [See Bylaw 13.10 (Publicity)]
- Boosters may engage in recruiting activities, including recruiting conversations, on behalf of a school. (See Bylaws 13.02.8, 13.02.9, and 13.1. 13.1.3.)

- 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.” [See Bylaw 13.02.8 (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. [See Bylaw 13.2.1 (Offers and Inducements)]
- Athletics participation for pay and payment based on performance or given on an incentive are prohibited. [See Bylaws 12.1.3.2(a), 12.1.3.2, and 12.1.5.2(a)]
- Institutions are held responsible for any impermissible recruiting activities engaged in by a representative of athletics interest. [See Bylaw 20.15 (Institutional Control)]