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Name, Image, and Likeness: What Colleges and Universities Need to Know

For years advocates for collegiate athletes' rights have argued that there should be compensation allowed for their participation in intercollegiate athletics. At the very least these advocates have insisted that the athletes should be able to benefit from the use of their name, image, and likeness (NIL). In September 2019, California enacted the first law granting NIL rights to collegiate athletes with an effective date of July 1, 2021. A month later the NCAA Board of Governors unanimously agreed it was time to address its NIL regulations. Subsequently, 27 states have joined in enacting NIL legislation, including 15 that have become effective since July 1. The remaining dozen will become effective between now and 2023. Three other states have pending bills with a similar focus.

During the last two years, the NCAA has waffled and been virtually impotent. Ultimately, on June 30 it issued a general temporary waiver of its amateurism rules for NIL activity. Congress has several bills pending, but passage anytime soon is unlikely.

Since July 1, it has been a wild west environment for athletes, agents, compliance officers, boosters, and business entities. There are published reports of a few significant deals for some high-profile athletes and many smaller opportunities for others. In this context, "high-profile" has multiple meanings; it would include both highly talented and accomplished athletes and athletes with significant social media influence.

It is important to understand that there are opportunities throughout collegiate sports, not just for athletes at Power 5 schools (NAIA athletes were granted NIL rights nearly a year ago). While there are reports of many schools adding staff to deal with

NIL, Division II and III schools will face unique challenges with NIL because they typically have fewer resources, particularly in compliance. The compliance and reporting requirements of the various state statutes do not differentiate between Division I schools and the others. Each state law has its own nuances, but there are some common threads. Most states require disclosure of contracts entered into by the athletes; thus, record keeping will be essential. Most of the states prohibit deals with entities related to the gambling industry, alcohol or tobacco products, adult entertainment, performance enhancement supplements, and controlled substances. Some of the laws protect schools by barring deals, which would conflict with existing sponsorship contracts.

There are decisions that the schools will need to make related to NIL. Will financial literacy education be provided; some of the state laws require such education. Will an athlete be allowed to appear wearing or using the school logo or school colors? What will the impact of contracts be on an individual athlete's financial aid and what is the school's responsibility for counseling? What role does the school want to play in assisting the athletes to procure opportunities? What added level of booster monitoring will be required, even at Division II and III schools?

The NIL landscape is in its infancy and will undoubtedly be very volatile for the next year or so. There are likely to be many questions and compliance issues that are not even on the horizon at this point. It is clear from media reports that there are already some deals and relationships that are skirting the edges of both state law and NCAA regulations. Where those will go remains to be seen. Colleges and universities are well advised to give careful consideration to the policies to be developed internally, the resources to commit, and the responsibilities they have to their athletes.

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