

## Navigating the Uncertain Terrain of NIL Deals for Student Athletes

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On July 1, 2021, the NCAA adopted an interim policy that allows any college athlete the opportunity to license their name, image and likeness (NIL), so long as they abide by applicable state law and other NCAA rules. This decision has, for the first time, allowed these students to derive profit from the name recognition they may have developed as elite athletes.

Already, many companies have impressive contracts with top athletes. For example:

- Ga'Quincy "Kool-Aid" McKinstry, a defensive back for the University of Alabama, has made a deal with Kool-Aid to promote the beverage;
- Hanna and Haley Cavinder, Fresno State basketball players and social media stars, have signed a deal with Boost Mobile;
- Degree deodorant has signed 14 different college athletes across a variety of sports, backgrounds and universities; and
- Dozens of other players have signed deals to promote various local businesses.

Numerous organizations and individuals have emerged to "help" student athletes monetize their NIL. However, there are a huge number of potential pitfalls awaiting both students and athletic programs as they navigate this new world of marketing deals.

As a foundational issue, student athletes must first abide by the laws of the state where they live and attend school – these states may have wildly different laws governing NIL licensing, from very little oversight to an outright ban. In North Carolina, for example, students are permitted to license their name, image and likeness, so long as payment is not a direct inducement to enroll or remain at a specific institution (*i.e.* no "pay-to-play"). However, schools are also free to limit and/or prohibit the practice among their own athletes.

In fact, universities themselves are often walking a tightrope when navigating NIL deals and their athletes' interest in them. The NCAA still prohibits institutions from paying student athletes in any way, including for their NIL, but schools remain interested in protecting their athletes from predatory agents and others who may seek to take advantage of their inexperience. Moreover, universities must protect their own intellectual property rights in school logos and other trademarks. Many schools have developed policies and programs designed to address these concerns. Often, student athletes have to notify the school of any engagements, and are not allowed to promote substances that are not aligned with university values or that are banned by

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the NCAA, such as alcohol, tobacco products or gambling. Most schools also do not allow students to miss classes, assignments, or team obligations to fulfill their NIL deals. In most cases, athletes are prohibited from using their university's trademarks in any appearances. While most institutions have avoided direct involvement in organizing or facilitating student NIL deals, it has become quite common for schools to offer or require athletes to participate in informational seminars or one-on-one counseling with coaches or advisors to help them navigate the many legal and practical issues involved.

Assuming students have navigated the rules and regulations of their state and institution, licensing agreements can vary widely in the compensation being offered and the rights being given up. Each agreement is unique in this area. Athletes could license every aspect of their NIL or a specific piece, like a single photograph. A license may or may not be exclusive, meaning the athlete could not use or license their NIL for any other project. Agreements may vary in duration, with some long-term contracts limiting the athlete's options for years to come. Additional legal requirements may also arise if the athlete is a minor. For all these reasons, students should seek out knowledgeable representation to help them understand the ramifications of any agreement before they sign.

Students must ensure they take all the proper steps when reviewing any contracts before they sign. Are they allowed to use university logos? Will they be asked to go against school policies or state law? Will they retain the right to license their NIL for other opportunities? Are they being paid a fair market rate? The payments themselves may also raise potential risk. NCAA policy still bans pay-to-play and performance-based payments, so any NIL deals athletes sign cannot be tied directly to their performance as an athlete. Financial aid recipients should also be aware that income from NIL deals could impact any need-based aid they receive.

Finally, athletes evaluating an NIL deal should bear in mind that rules can, and quite likely will, change as more states address the issue and the NCAA revisits its policies. For student athletes, the freedom to license their NIL is an exciting development, but experienced legal representation and advice is essential to help navigate the complicated issues surrounding any opportunities. Students need to be aware of their rights and what they may forfeit by entering a contract—having counsel in the early stages of these negotiations can save significant time, energy, and money down the road.

### PEOPLE

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### SERVICES

Intellectual Property