

# What's in Store for Name, Image and Likeness Use

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The fundamental relationship between colleges and student-athletes has, and is continuing to undergo, a rapid and transformational change. As of July 1, 2021 student-athletes are able to contract and profit from the use of their name, image and likeness without risking their NCAA athletic eligibility. The changes will impact not only the sports themselves, but also the sports media and marketing landscapes.

Below are answers to some frequently asked questions about the risks and opportunities that these changes present for those involved in sports media and marketing.

## 1. When can sponsors start entering agreements with college athletes?

**Now, in many states.** Marketers could consider July 1, 2021 opening day. Beginning July 1st, name, image and likeness (NIL) laws in Alabama, Florida, Georgia, Mississippi and New Mexico took effect; meaning college athletes attending schools in these states can start entertaining brand endorsement deals without the concern that doing so will jeopardize their collegiate eligibility. Many other states have quickly followed suit.

## 2. Will permission from the school be required?

**Yes and No.** While the fundamental purpose of state NIL laws is to prevent colleges and universities from enacting, enforcing and upholding institutional and/or NCAA regulations that restrict a college athlete's ability to profit from their NIL rights, college athletes will need to work closely with their school to ensure that brand partnerships do not conflict with school or team pre-established engagements.

For example, under Mississippi law, prior to signing an endorsement deal, college athletes will be required to disclose the potential deal to their school. In Georgia, college athletes are prohibited from entering into NIL agreements that conflict with team contracts. Further, marketers must keep in mind that team names, marks, logos (including team uniforms and colors) and other school indicia are the intellectual property of the school, and permission must be obtained from the school prior to any use in connection with college-athlete sponsored content.

## 3. Will there be product category limitations?

**Yes.** In the hours prior to the July 1st effective date, the NCAA released interim guidelines around NIL rights for its athletes. These guidelines failed to provide much information, and instead deferred regulations to the school a student attends, which conference they are in and the state where the school is located. It is expected that many universities and conferences will build guardrails to uphold their values and principles, limiting the types of products and services a college athlete can endorse. Some states have similarly factored in ethical standards in their NIL lawmaking. Alabama and Mississippi laws, for example, prohibit college athletes from sponsoring products and services in the tobacco, marijuana, alcohol, gambling and adult entertainment categories.

#### 4. Will NIL laws be the same for every school?

**Not Yet.** Until federal legislation passes, a marketer's ability to partner with a college athlete will depend on the laws of the state where the school is situated.

#### 5. What role will agents play in securing college athletes as endorsers?

College athletes will be allowed to hire agents and other professionals **to assist them with their NIL opportunities**. The NCAA's interim guidelines simply state that an "Individual can use a professional services provider for NIL activities." While specific guidance has not been developed, it is likely that school or conference clearinghouses, where athletes would be required to file how much they were being paid, who was paying them and what for, will also oversee the agents and their representation.

#### 6. Will sponsors be able to secure multiple players or entire team rosters?

**Yes (sort of).** As of now, there are no plans for group licenses of student-athlete NIL. The NCAA and others believe that, if permitted, the group licenses may be used as a new tool for improper recruiting. NIL rules are being established to help protect fair competition, and endorsements with certain companies linked to future enrollment could be seen as a form of pay-for-play. For now, any deal with multiple athletes will need to acquire the rights of each player separately. But marketers should proceed with caution. Some sponsors have begun to sign team-wide deals, but these are already under scrutiny by the NCAA.

#### 7. Are there limits on how much student athletes can be paid or for how long?

**Not Quite.** There is currently no limit on how much a student athlete may be compensated. However, legislation in several states will allow schools to implement regulations to ensure that no recruiting violations are taking place and that boosters are not paying egregious sums for insufficient services. The NCAA will also continue to monitor transactions it views as "pay-for-play," challenging transactions that are not based on the market-based value of the student-athletes' NIL rights.

#### 8. Can sponsors engage with high school athletes before they begin college?

**In some states.** The change in NCAA rules also applies to high school athletes. However, eligibility for high school athletes is still determined at the state level. Some states, such as Texas and Florida, have specifically prohibited high school athletes from exploiting their NIL rights, while California permits high school athletes to participate in this new era.