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## What Every Student-Athlete Needs to Know: Six Key Issues for Name, Image, and Likeness Deals

By: Jaron M. Bentley (Senior Associate) Intellectual Property Practice Group and Mary Cebula (Associate) Business Practice Group

In a policy reversal many years in the making, the NCAA now allows student-athletes (“SAs”) to benefit from the use of their name, image, and “likeness,” such as their nickname or voice (“NIL”). The policy change includes not just current collegiate athletes, but also SAs in high school and younger, and opens the door to a variety of business opportunities for SAs. But it isn’t as simple as finding a match and getting paid. A bad NIL deal will impact the long-term value of a SA’s personal brand, and potentially the SA’s eligibility to play for NCAA college institutions. Here, we provide an introduction to the most important issues that SAs and companies must keep in mind for NIL deals. Keep an eye out for further discussions on each of these issues in our upcoming series on NIL topics.

### 1. Applicable laws vary from state-to-state and institution-to-institution.

The NCAA’s policy toward NIL deals changed, and in response, school and state laws are changing too. Each state also has its own body of law to cover NIL rights more generally. SAs and their advisers have to stay up to speed on these changing regulations and make sure that any deal will comply with the right set of regulations. Check back for a future article on Michigan-specific laws affecting NIL.

### 2. Not every deal is allowable.

NIL deals aren’t as simple as putting into writing whatever terms the SA and a sponsor agree on. All the regulations mentioned above will affect the terms, and schools in particular will seek to protect their interests. As an example, some schools can require modifications to a SA’s deal if they sense a conflict between the proposal and an existing agreement with a university sponsor. Any deal with a company that might harm the school’s reputation is also prohibited. SAs (and their sponsors) must be careful to identify and satisfy all applicable regulations.

**3. Deal terms can affect eligibility.**

Perhaps most importantly, deal terms can still affect a SA's NCAA eligibility as an amateur. For example, "pay to play" deals that provide bonuses for meeting certain performance benchmarks (like points scored) or deals that require enrollment at a particular institution will cost SAs their NCAA eligibility. These and other examples will be discussed in future installments of this series.

**4. A Student-Athlete's rights aren't the only ones involved.**

A NIL deal must account for not only the SA's and sponsor's rights, but the rights of third parties. The latest highlight-reel play might go viral on social media, but can a SA's sponsor use that footage as part of its NIL deal? The SA was wearing a school uniform, and a third-party captured the footage. Did the school give permission to use its trademarks? Who owns the rights to the footage? Did any teammates with their own NIL deals appear in the content? Which party has to clear these rights? These are among the questions that SAs and companies must ask before posting content, and for which a contract must provide a clear game plan.

**5. Student-Athletes must keep the long-term future in mind.**

Endorsement deals have the power to create long-lasting, popular associations between a SA and a brand. Both sides of the deal have to think about the implications of a deal five, ten, and twenty years from now. For example, what happens if one party to a deal becomes the subject of significant negative publicity? Will a SA's affiliation with a company affect their post-athletic career? These are considerations beyond the immediate monetary value that both parties to a deal must keep in mind when signing a contract.

**6. NIL money can affect student aid.**

NIL income can be a great financial tool for otherwise busy SAs. But, these deals can have larger financial implications. Compensation for a SA's NIL is excluded from NCAA financial aid limitations, but increased income can reduce the amount of need-based aid a SA receives. SAs must be careful to ensure that any deal they enter won't cost them more than it's worth.

The rapidly developing legal environment surrounding NIL deals - and the potential ramifications of a badly constructed contract - are compelling reasons to seek competent professional advice before accepting an endorsement deal. If you are considering entering into a deal, Bodman attorneys are available to advise you based on the unique facts of your proposed contract.

For more information, contact any member of our NIL Working Group. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

<b>Bodman's NIL Working Group</b>	<b>Jaron M. Bentley</b> Tel: 734-930-1612 jbentleybodmanlaw.com	<b>Alexander J. Burrige</b> Tel: 313-393-7560 aburridge@bodmanlaw.com	<b>Mary E. Cebula</b> Tel: 734-930-2486 mcebula@bodmanlaw.com
	<b>Joseph R. Morrison, Jr.</b> Tel: 734-930-2492 jmorrison@bodmanlaw.com	<b>Alexis A. Smith-Scott</b> Tel: 313-392-1068 asmith-scott@bodmanlaw.com	