

What Does the NIL Movement Mean for High School Sports and Athletes?

2021 National Athletic Directors Conference



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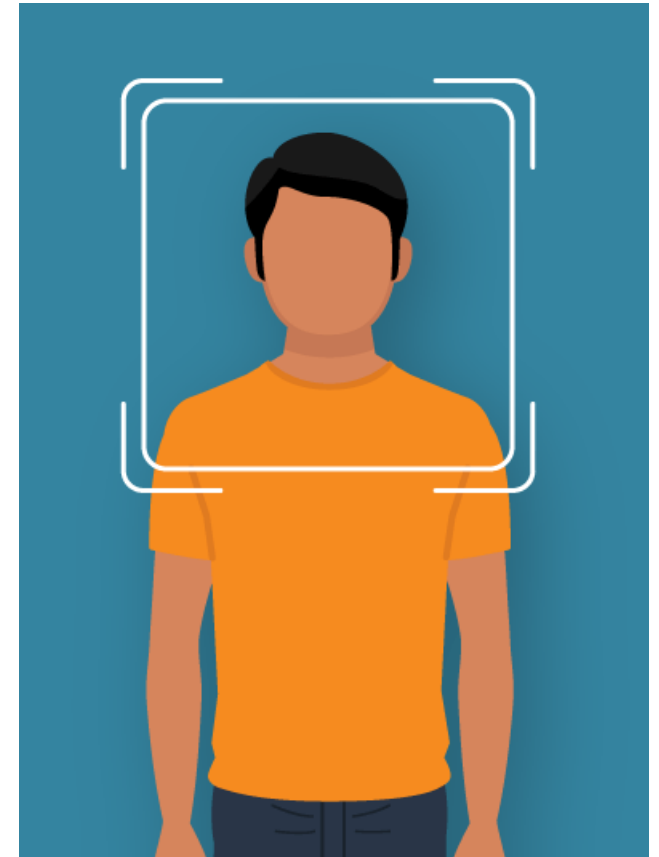
Dr. Robert Zayas

Executive Director



Name, Image & Likeness

- Name, image and likeness (or NIL) are the **three elements that make up “right of publicity”**, a legal concept used to prevent or allow the use of an individual to promote a product or service.



NCAA – Interim Policy (July 1, 2021)



- Individuals can engage in NIL activities that are consistent with the law of the state where the school is located. Colleges and universities may be a resource for state law questions.
- College athletes who attend a school in a state without an NIL law can engage in this type of activity without violating NCAA rules related to name, image and likeness.
- Individuals can use a professional services provider for NIL activities.
- Student-athletes should report NIL activities consistent with state law or school and conference requirements to their school.

Why NIL is impacting High School?



- Trickle down effect; natural trend today (equipment, uniforms, rules, video review, etc.)











NYSPHSAA Amateur Rule

2. AMATEUR:

a. A student who represents a school in an interscholastic sport shall be an amateur in that sport. An amateur is one who engages in athletic competition solely for the pleasure of the activity and for the physical, mental, and social benefits derived from participation. When competing in non-NYSPHSAA sponsored events, an athlete forfeits amateur status in a sport by:

1. Accepting money or other compensation, including gift cards and gift certificates is prohibited (allowable entry fees, travel, meals, and lodging expenses is permitted.) (Feb.

3. Capitalizing on athletic fame by receiving money or gifts of monetary value (scholarships to institutes of higher learning are specifically exempted).

Education are encouraged to approve limited awards that are appropriate to high school level competition. (May 2019)



3. Capitalizing on athletic fame by receiving money or gifts of monetary value (scholarships to institutes of higher learning are specifically exempted).

4. Signing a professional playing contract in that sport.

b. Instructing, supervising, or officiating in any organized youth sports program, recreation, playground, or camp activities will not jeopardize amateur standing. Receiving compensation for officiating shall not affect amateur standing.

c. A student who violates the above rule may apply to the league or to the designated body within that section for reinstatement one year from the date of the latest violation.

Reporting Procedure: All violations shall be reported to the League and Section.

Athletic Fame



- *“Capitalizing on athletic fame”*
 - 1980
 - State Associations



1983





In Texas, one of three states that specifically prohibit high school athletes from signing endorsement deals, [state lawmakers have already signaled a willingness to revisit a ban that went into effect on July 1](#), given the unintended consequence of a star athlete like Ewers skipping his senior year.

All states will likely reassess their rules, experts say, in light of what Robert Zayas, the executive director of the New York State Public High School Athletic Association, describes as increasing difficulty of differentiating “between a student capitalizing on their athletic fame and being a social media influencer.”

A proposed revision by the New York state association, similar to a California rule, would allow high school athletes to profit off their name, image and likeness as long as it was not done in association with a school, team, uniform or logo.

“If a student-athlete is able on weekends or during the summer to work at a car dealership and make \$15 an hour washing cars, why is it that same student wouldn’t be able to entice people to purchase a car from that same dealership and make \$1,500?” Zayas said.

The customary notions of amateurism have become dated. The Olympics dropped their ban on professionals in the late 1980s. The gold medalist in women’s street skateboarding at the recently concluded Tokyo Games, [13-year-old Momiji Nishiya](#) of Japan, lists more than a half dozen corporate sponsors on her Instagram

Approach



- Litigation
- Legislation
 - Mississippi, Texas, Illinois



State Association Rules



- Enforceable?
 - Can we defend in court?
 - Can we justify to elected officials?
- Beneficial to the students?
- Beneficial to the membership?
- Relevant?



2. AMATEUR:

1. A student who represents a school in an interscholastic sport shall be an amateur in that sport. An amateur is one who engages in athletic competition solely for the pleasure of the activity and for the physical, mental, and social benefits derived from participation.



2. When competing in non-NYSPHSAA sponsored events, an athlete forfeits amateur status in a sport by:

a. Accepting money or other compensation, including gift cards and gift certificates is prohibited. (Oct. 2021)

c. An athlete forfeits amateur status in a sport by capitalizing on athletic fame by receiving money, compensation, endorsements or gifts of monetary value in affiliation or connection with activities involving the student's school team, school, Section or NYSPHSAA (scholarships to institutions of higher learning are specifically exempted). (Oct. 2021)

level competition. (May 2019)

c. An athlete forfeits amateur status in a sport by capitalizing on athletic fame by receiving money, compensation, endorsements or gifts of monetary value in affiliation or connection with activities involving the student's school team, school, Section or NYSPHSAA (scholarships to institutions of higher learning are specifically exempted). (Oct. 2021)

1. This provision is not intended to restrict the right of any student to participate in a commercial endorsement provided there is no school team, school, Section or NYSPHSAA affiliation.

2. The student does not appear in the uniform of the student's school and does not utilize the marks, logos, etc. of the school, section, or NYSPHSAA as part of any endorsement.

RETHINK YOUR SPORTS DRINK™

A group of diverse young athletes, including boys and girls of various ethnicities, are smiling and holding up several bottles of BodyArmor SuperDrink. The bottles are in various flavors, including Fruit Punch and Orange Mango. In the foreground, two large bottles are prominently displayed: one labeled "Fruit Punch" and the other "Orange Mango". Both bottles feature the BodyArmor logo and the text "SUPERIOR HYDRATION" and "SuperDrink™". The background is a bright, slightly blurred outdoor setting.

BODYARMOR 
SuperDrink™

 DRINKBODYARMOR.COM  FACEBOOK.COM/DRINKBODYARMOR



BODYARMOR



BODYARMOR





JOE_BURROW10 Posts Follow

joe_burrow10

Joe Burrow

NIL VALUE PER POST

Twitter - \$11,403

Instagram - \$38,212



Concerns



- No performance based contracts
 - i.e., “\$100 for every touchdown scored”
 - i.e., “\$10 for every three pointer scored”
- Long term agreements – apparel, shoes, etc.
- Details of contract negotiation
 - Editorial control of social media posts



Concerns



- Tax implications – “Conducting Business”
- Impact upon team dynamic
 - Locker room
 - Athletes getting paid more than coaches & administrators
- A lot of companies trying to help and provide assistance







Name, Image, Likeness

Tom Dolan

Associate Director

Virginia High School League, Inc.





Name, Image, Likeness

In preparation to address this issue our staff looked at two critical areas:

- The current VHSL rule.
- Other similar VHSL Rule Codes.





Name, Image, Likeness

The Current VHSL Amateur Rule (28B-2-1) States:

A student who represents a school in an interscholastic sport shall be an amateur in the sport.





Name, Image, Likeness

VHSL Interpretation 28B-2-3(1) states:

An individual loses amateur status and thus shall not be eligible for interscholastic competition in a particular sport if the individual:





Name, Image, Likeness

- (a) Uses his/her athletics skill (directly or indirectly) for pay in any form in that sport.
- (b) Accepts a promise of pay for participation in that sport even if such pay is to be received following completion of interscholastic athletics participation.





Name, Image, Likeness

Other VHSL rule codes that might have standing relative to this issue:

Out of Season Practice Rule – 27-7-1

All Star Participation Rule – 28B-1-1

Awards Rule – 28B-4-1

Independent Team Rule – 28B-6-1





Name, Image, Likeness

All of these rule codes have their basis and application in VHSL school affiliated activities. Additionally several of these codes were re-written as a result of judges warning the VHSL not to overstep.





Name, Image, Likeness

All of this background led us to the following interpretation:

Relative to name, image and likeness the VHSL Amateur Rule remains in effect and pertains only to those situations that are part of VHSL school recognition.





Name, Image, Likeness

Examples of violations as we interpret the rule:

1. School quarterback, in a school uniform, receiving money for doing a commercial.
2. In a school setting, the leader of the basketball team receiving money for the same type of commercial and obvious that his status creates the desire for him to be involved.





Name, Image, Likeness

Examples of situations where the VHSL would be at best a stretch of authority.

1. A golfer, as part of Mid-Atlantic PGA events, is paid by a prominent national sports company to be a spokesperson.





Name, Image, Likeness

General Concerns of an Old-Timer

1. Losing high school sports as the last of education based amateurism
2. Athletes earning more than their coaches
3. Transfer Abuses





Name, Image, Likeness

4. More of our students leaving early to cash-in
5. Challenges associated with monitoring those inside the program
6. Influence of outside people who don't have the best interest of the individual or school program at heart
7. Tension and jealousy amongst teammates





Name, Image, Likeness

Example of the Jealousy Concern

A soccer player receives money for name, image and likeness; flaunts the fact; irritates his teammates who then conveniently run their sets around him. This can create team and coach issues that destroy a season and program.





Name, Image, Likeness

Additional concerns for the VHSL that may be relevant, include:

1. Incoming transfers from non-VHSL schools.
2. Bona-Fide student.
3. Performance enhancing products.





Name, Image, Likeness

Incoming Transfers

The VHSL has an exception that allows a student immediate eligibility when they transfer from a non-member to a member school.

How will a transfer from an entity that allows compensation across the board affect that exception?





Name, Image, Likeness

This has arbitrary and capricious implications regardless of where an eligibility decision lands.





Name, Image, Likeness

Bona-Fide Student – Schools determine if a student is in good standing.

I anticipate significant negative conversation when school A determines a student to be a bona-fide student and their archrival disagrees.





Name, Image, Likeness

Performance Enhancing Products - Example

A golfer as part of an NIL deal outside the school setting receives the latest, not yet on the market, USGA compliant clubs and brings those into their high school season.





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