

What Does the Name, Image and Likeness Movement Mean for State Associations?

2022 NFHS Summer Meeting – San Antonio, TX.



Dr. Robert Zayas

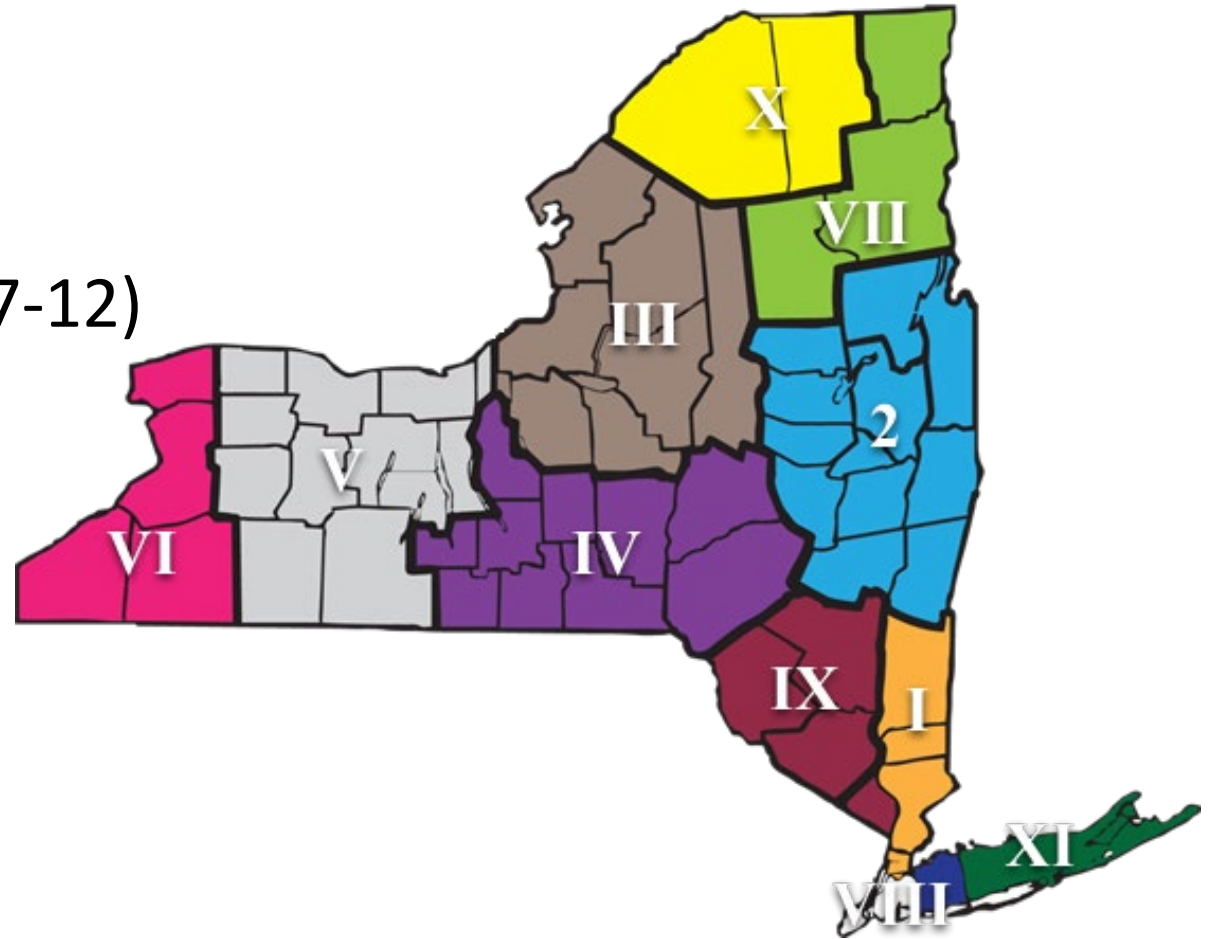
NYSPHSAA,
Executive Director



NYSPHSAA

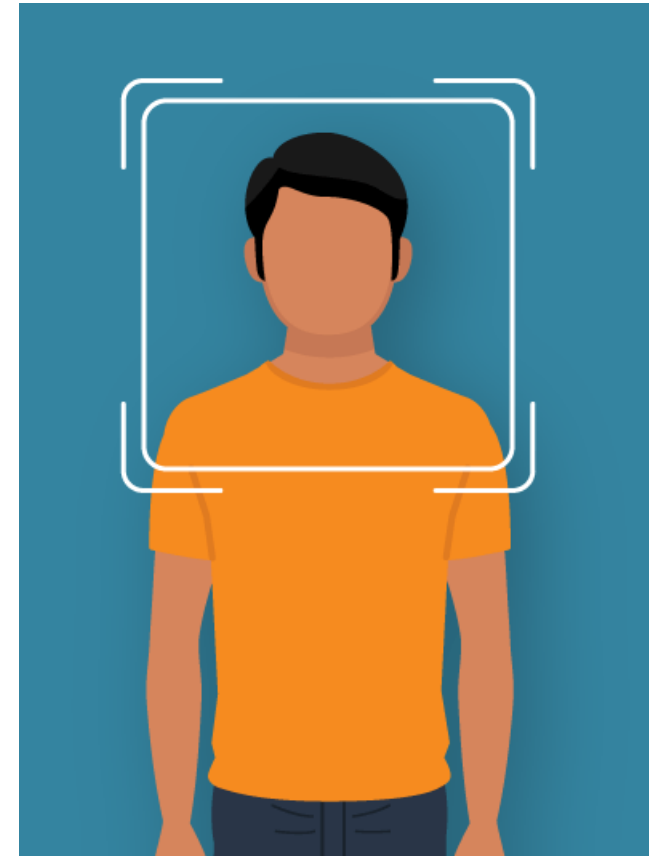


- 786 Member schools
 - No New York City Schools
- 600,000 student-athletes (grades 7-12)
- 11 Geographic Sections
- 35 State Championships



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.

NCAA Focus



- NCAA restrictions are largely limited to prohibiting pay-for-play deals and recruiting inducements.
- Further enforcement action could be construed as trying to limit compensation for athletes.
 - Litigation



Collectives



- Independent of a university
- Often founded by prominent alumni and influential supporters
- Pool funds from a wide group of donors to help create NIL opportunities.
- Create ways for athletes to monetize their brands.



Collectives



Auburn (NIL-Auburn)

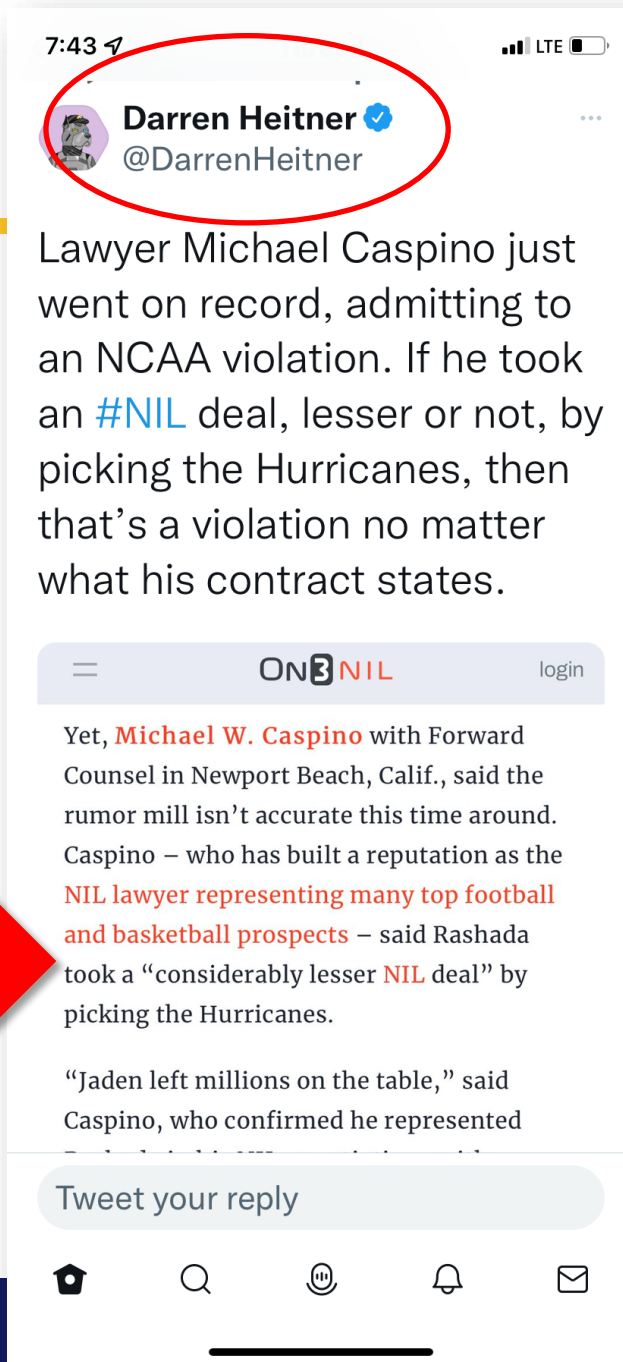
Founder: Rick Davidson, former Auburn baseball player and local attorney

The buzz: The collective enables student-athletes to earn compensation from autographed photos, personalized videos, appearances and podcast interviews.

Texas (Horns with Heart)

Founders: Co-founder Rob Blair, shipping director in The Woodlands

The buzz: Each scholarship offensive lineman will receive \$50,000 each year to promote charities and make appearances.



- Proving intent of a transaction without subpoena power.



Why NIL is impacting High School?



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





'Big Al' Delia taking Little League World Series by storm

“My name is Alfred Delia. At home they call me Big Al, and I hit dingers.”



Little league world series ...
youtube.com



LLBWS Final Four: Hawaii, Georgia Duel ...
littleleague.org



Big Al' Delia's 'I hit dingers' ...
usatodayhss.com



2019 Little League World Series - Wiki ...
en.wikipedia.org



LLWS: Venezuela kids cons ...
sl.com



Little League World Series ...
marketwatch.com



Little League World Series 2018 ...
app.com



2018 Little League World Series ...
wxyz.com



Big Al' is the hero America has be ...
mpnews.org



Little League Baseball World Series ...
littleleague.org



LLWS BIG AL Highlights 2018 HD ...
youtube.com



Little League World Series unveils 2 ...
news.sportlogos.net

Jim







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.”

The New York Times

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





Introduced by Sens. PARKER, BAILEY -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged and said bill committed to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to enacting the "New York collegiate athletic participation compensation act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Short title. This act shall be known and may be cited as
- 2 the "New York collegiate athletic participation compensation act".
- 3 § 2. The education law is amended by adding two new sections 6438-a
- 4 and 6438-b to read as follows:
- 5 § 6438-a. Student-athlete compensation. 1. (a) A college shall not
- 6 uphold any rule, requirement, standard, or other limitation that
- 7 prevents a student of that institution participating in intercollegiate
- 8 athletics from earning compensation pursuant to this section including
- 9 as a result of the use of the student's name, image, or likeness. Earn-
- 10 ing compensation as a result of the use of a student's name, image, or
- 11 likeness shall not affect the student's scholarship eligibility.
- 12 (b) An athletic association, conference, or other group or organiza-
- 13 tion with authority over intercollegiate athletics, including, but not
- 14 limited to, the National Collegiate Athletic Association (NCAA), shall
- 15 not prevent a student of a college participating in intercollegiate
- 16 athletics from earning compensation pursuant to this section including
- 17 as a result of the use of the student's name, image, or likeness.
- 18 (c) An athletic association, conference, or other group or organiza-
- 19 tion with authority over intercollegiate athletics, including, but not

State Association Rules



- Enforceable?
 - Can we defend in court?
 - Can we justify to elected officials?
- Beneficial to the students?
- Beneficial to the membership?
- Relevant?
 - Jewelry Rule
 - Transfer Rule
 - Off Season Participation





NYSPHSAA Amateur Rule

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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)

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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 youth 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 SuperDrink™" branding and "SUPERIOR HYDRATION" text. The background is a bright, slightly blurred outdoor setting. At the bottom of the advertisement, the "BODYARMOR SuperDrink™" logo is displayed in white on a red background, accompanied by the website "DRINKBODYARMOR.COM" and the Facebook page "FACEBOOK.COM/DRINKBODYARMOR".

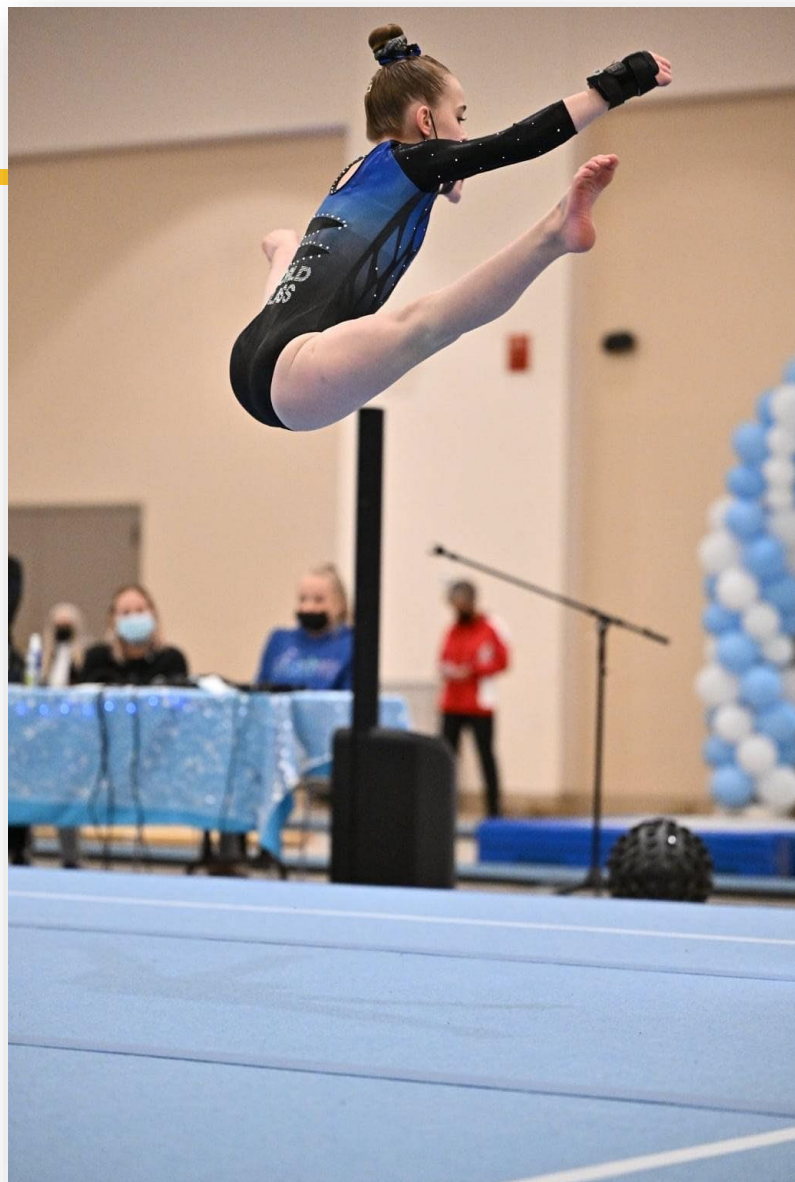


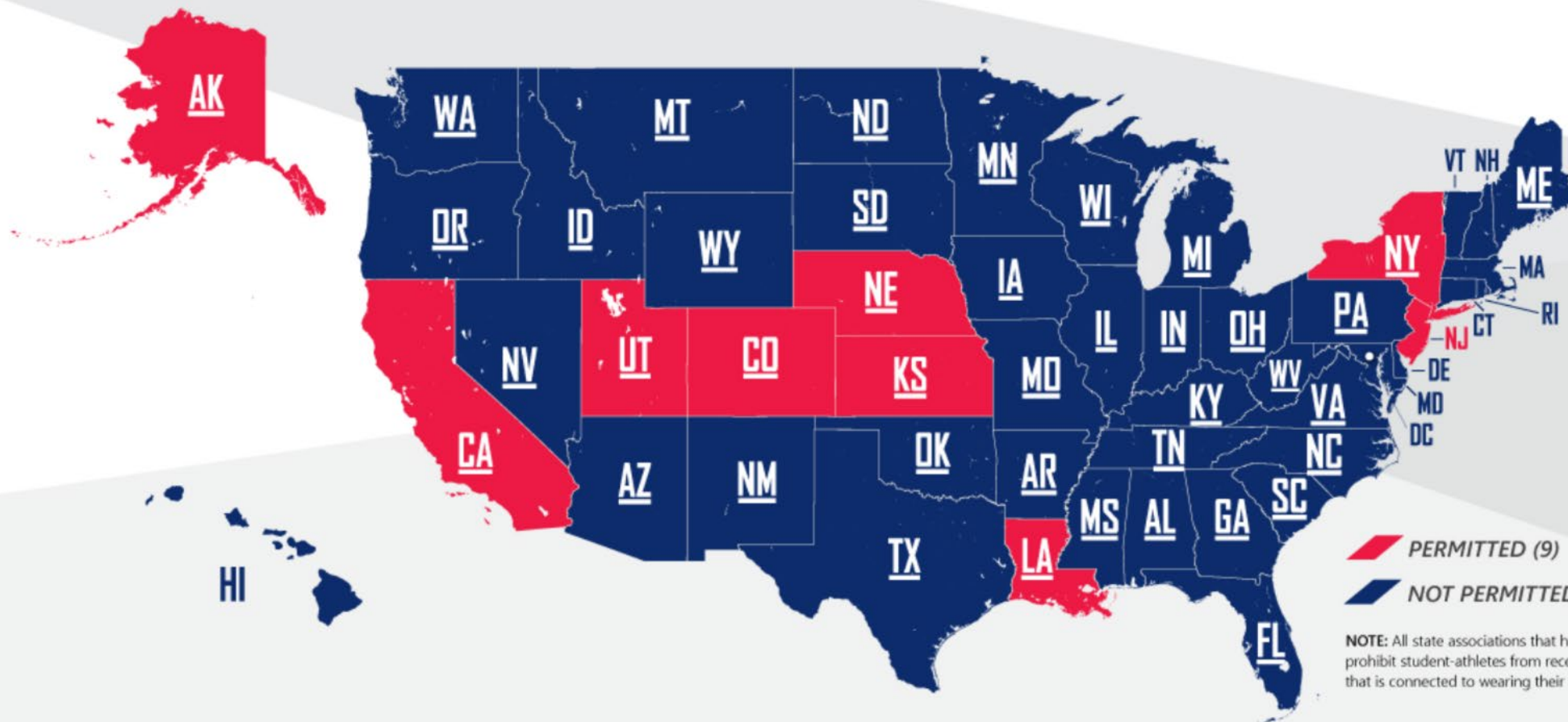
BODYARMOR



BODYARMOR







National Federation of State High School Associations STATE-BY-STATE HIGH SCHOOL NIL REGULATIONS



Colorado

- 2000.2 NAME, IMAGE & LIKENESS: Student-athletes will be prohibited from monetizing their name, image and likeness with the use of their school's uniform, equipment, logo, name, proprietary patents, products and/or copyrights associated with a CHSAA member school either in public, print or social media platforms.

D. Name, Image and Likeness. A student-athlete may profit off of the use of their own name, image and likeness (NIL). Such permissible activities include commercial endorsements, promotional activities, social media presence, product or service advertisements, and non-fungible tokens (NFTs).

No one employed by a member school, including coaches and administrators, may be involved with a student-athlete's use of their NIL.

Student-athletes are prohibited from making any reference to a member school or the NJSIAA when engaging in any NIL activity. Student-athletes may not endorse or promote any third-party entities, goods or services during team activities. Student-athletes may not wear the apparel or display the logo, insignia, or identifying mark of an NIL partner during any team activities.

Student-athletes are prohibited from engaging in any NIL activities involving the following categories of products and services:

- (1) Adult entertainment products and services;
- (2) Alcohol products;
- (3) Tobacco and nicotine-related products;
- (4) Cannabis products;
- (5) Controlled dangerous substances;
- (6) Prescription pharmaceuticals;
- (7) Casinos and gambling, including sports betting, the lottery, and betting in connection with video games, on-line games and mobile devices; and
- (8) Weapons, firearms and ammunition.

Staff interpretations of Rule 21 – reviewed and approved by Executive Board 11/17/21

A student may be compensated as an influencer or representative and/or provide an endorsement pending the following:

- There shall be no interruption of the school day for the student;
- There shall be no reference to school name, school team, school logo, nor school mascot;
- Member school uniform may not be used by the student in any endorsement;
- Member school facilities may not be used in any student endorsement;
- Member school awards or awards won by students participating in activities shall not be referenced;
- No school practice film nor game film may be used in promotional activities;
- Neither endorsements nor promotions may be used to influence attendance at a member school;
- Students are not permitted to promote or endorse activities associated with the following: tobacco, alcohol, banned athletic substances, illegal substances or activities, or wagering.





- Per Post Value:
- \$5.1K – Instagram
- \$3.1K – TikTok
- \$3.1K – Twitter

Concerns



- Details of contract negotiation
 - Editorial control of social media posts
- Long term agreements – apparel, shoes, etc.
 - \$150 for exclusivity
- No performance-based contracts
 - i.e., “\$100 for every touchdown scored”
 - i.e., “\$10 for every three-pointer scored”



Freihofer's Run for Women



To ✓ Robert Zayas

↩ Reply

↩ Reply All

→ Forward

...

Sun 6/5/2022 8:41 AM

 If there are problems with how this message is displayed, click here to view it in a web browser.

Happy Sunday!

I had two Saratoga runners in the top ten at the race. This means they won \$. It is my understanding that that can now accept that money in NY. Is that correct? Are there limits?

NEW YORK

Governing Body: New York State Public High School Athletic Association

State NIL Law: N/A

Status: Confirmed Permitted

Governance: [NYSPHSAA Rules & Regulations](#)

Applicable Language: Section 2 Amateur

Notes: On October 20, 2021, the NYSPHSAA Executive Committee took action by approving revisions to the amateur rule, allowing student-athletes to monetize their NIL. Student-athletes will be prohibited from entering into endorsement deals “in affiliation” with their school, Section, or the NYSPHSAA.

Thanks so much

Concerns



- Tax implications – “Conducting Business”
- Transfer Rule abuse
- Collectives/ Boosters
 - Undue Influence Rules
- Impact upon team dynamic
 - Locker room (jealously & tension)
 - Athletes getting paid more than coaches & administrators



Concerns



- More students leaving high school early to cash-in
- A lot of companies trying to help and provide assistance.
 - Education resource



Perspective

- Limited number of high school athletes will have the ability to benefit from their NIL.
- The rules and restrictions will continue to evolve.
- Social media is changing at rapid rate.
- Times are changing.
- Be patient!





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