

Change to NCAA Policy Creates New Group of Influencers

Gonzalo E. Mon

September 20, 2021

This summer, the NCAA suspended its long-standing policy that restricted student-athletes from being able to generate income from their name, image, and likeness (commonly referred to as “NIL”). It didn’t take brands long to take advantage of the new opportunities. In the short time since the NCAA made its announcement, a number of companies and student-athletes have announced endorsement and influencer deals. We’re likely to see a lot more as the school year kicks off.

If your company is thinking of engaging a student athlete, you should keep in mind that there are some unique considerations in this area. This post includes some of the highlights.

NCAA’s policy states that “individuals can engage in NIL activities that are consistent with the law of the state where the school is located.” Almost 20 states have enacted laws in this space (with more on the way), and those should be your first stop. Note that although the laws are very permissive, they do contain some boundaries. For example, many laws prohibit student athletes from entering into deals that conflict with their school’s sponsorship deals. Some also require specific disclosures in contracts.

Keep in mind that schools may have their own rules, as well. For example, some schools may need to review the agreements to make sure that there aren’t any conflicts. Some schools may also prohibit certain types of deals they think could harm the school’s reputation. (Think gambling, alcohol, or tobacco, for example.) Also note that a sponsorship deal with an athlete isn’t going to get you access to the school’s logos or other trademarks.

Although there is something unique about students athletes, keep in mind that the new NIL rules aren’t the only things you need to worry about. We’ve written extensively about other requirements that apply to influencer marketing – including, for example, the requirement that influencers clearly disclose their relationship to the brands they promote – and those will apply here. Monitoring compliance will be especially important.

If all goes well, a lot of people will be watching your campaign. Keep in mind, though, that your audience may not just include friendly spectators – it could also include regulators and competitors closely watching for any fouls.