

SOUTH DAKOTA BOARD OF REGENTS

Academic and Student Affairs

AGENDA ITEM: 7 – G
DATE: August 3-5, 2021

SUBJECT

Student-Athlete Commercial Use of Name, Image and Likeness (New Policy)

CONTROLLING STATUTE, RULE, OR POLICY

N/A

BACKGROUND / DISCUSSION

In response to a recent US Supreme Court decision ([NCAA v. Alston](#)), on June 30th, the NCAA adopted an interim name, image and likeness (“NIL”) policy. In short, the policy provides the following guidance to college athletes, recruits, their families, and member schools:

- 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.

While South Dakota has a few related laws with respect to agents, South Dakota does not have any state law specific to NIL. While the landscape in this area will certainly evolve in the months to come, the proposed policy set forth in Attachment I provides a basic framework under which our institutions and their student-athletes can operate in the interim. It is anticipated that institutions may, but wouldn’t have to, create campus specific policies to provide additional detail, parameters, process, etc. consistent with the Board’s general policy.

(Continued)

DRAFT MOTION 20210803_7-G:

I move to approve the first and final reading of the new policy as presented in Attachment I.

Name, Image and Likeness Policy

August 3-5, 2021

Page 2 of 2

IMPACT AND RECOMMENDATION

Implementation of the policy set forth in Attachment I would provide the Institutions and their student-athletes with the guidance and framework necessary to engage in NIL activities in a responsible and reasoned manner.

Staff recommends approval.

ATTACHMENTS

Attachment I – Student-Athlete Commercial Use of Name, Image and Likeness Policy
(New Policy)

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Student-Athlete Commercial use of Name, Image and Likeness

NUMBER: X:X

A. PURPOSE

To establish the principles and policies of the SD Board of Regents (the Board) on Student-Athlete commercial use of name, image, and likeness subject to the requirements of state and federal law, Board policy, and applicable conference provisions.

B. DEFINITIONS

1. **Institution(s):** Institution: Black Hills State University, Dakota State University, Northern State University, South Dakota School of Mines & Technology, South Dakota State University, and the University of South Dakota.
2. **Name, Image and Likeness (NIL):** Right of publicity is a personality's property interest in their name, voice, signature, photograph, image, likeness, distinctive appearance, gesture, or mannerism involving commercial situations where permission is required of a person to use their name, image, and likeness.
3. **Student-Athlete(s):** is defined by the conference applicable to the Institution as applied through Institutional policies. For purposes of the Uniform Athlete Agents Act, a Student-Athlete includes an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

C. POLICY

1. Name, Image and Likeness Rules

- 1.1. The Board and Institutions, employees, affiliates, and Student-Athletes, shall abide by all applicable NIL state and federal laws and regulations, Board policies, rules and regulations promulgated by the appropriate national and regional subdivisions or conferences of which the Institution is a member.
- 1.2. Institutions may adopt institutional policies and procedures in conformity with these governing provisions, including but not limited to the process by which Student-Athletes report NIL activities, assessment of NIL activities, and the process for monitoring the same.
- 1.3. Each Institution's Athletic Department shall adopt athletic program participation enforcement guidelines regarding NIL violations.

- 1.4. The Board and its Institutions recognize that Student-Athletes are entitled to commercial use of their NIL in conformity with these governing provisions. Subject to other applicable governing laws, policies, and procedures, Student-Athletes may externally promote their own business; promote a corporate entity (e.g., brand ambassador, social media influencer); establish their own professional-sports-service such as a camp or clinic; make appearances and receive compensation; sign autographs and receive compensation; and similar activity that does not infringe upon the Board or Institutional property rights or obligations.
 - 1.4.1. Student-Athletes must comply with the governing provisions and refrain from accepting compensation in exchange for athletic performance, participation, or inducement for enrollment.
 - 1.4.2. Student-Athletes may have representation by an agent for NIL purposes, but they must be registered with the State of South Dakota and follow all reporting requirements.
 - 1.4.3. Institutional staff members shall not be involved in arranging or providing compensation in violation of conflict-of-interest policies, pay-for-play, achievement, compensation for work not performed, or impermissible inducements.
 - 1.4.4. Institutions will prohibit Student-Athletes from opportunities that violate existing institutional sponsorship agreements, are unlawful, or are not in conformity with applicable governing provisions.
 - 1.4.5. Employees, affiliates, and boosters are prohibited from creating or facilitating compensation opportunities as a recruiting inducement, extra benefit to remain enrolled at an Institution, for play or achievement, or for work not performed.
 - 1.4.6. Express written permission of the Institution, as set forth in the Institutional policies, is required to use the Board's or an Institution's intellectual property, including but not limited to, Institution's name, jersey, uniform, marks and logos.
 - 1.4.7. Student-athletes may not promote any third-party or third-party branding during official Institutional events and activities without the Institution's express written consent.
- 1.5. Student-Athletes may consent in writing to the use of their NIL by Institutions in conformity with applicable provisions.
- 1.6. Institutions may support education and educational experiences in areas such as financial aid, debt management, budget information, time management, and related information.
- 1.7. Allegations of Student Conduct Code violations or grievances of misapplication or misinterpretation of policies will be handled in accordance with applicable grievance policies.

FORMS / APPENDICES:

None

SOURCE:

BOR August 2021.