

WEBINAR #1 - FOLLOW-UP QUESTIONS AND ANSWERS
The Brave New World of College Athlete Compensation – The Experts Speak
(August 19, 2021)

The Drake Group Webinar Series – Critical Issues in College Athletics
Hosted by LRT Sports

A regular feature of our webinar series is “Follow-Up Notes” which provides answers to questions from the audience that panelists did not have the time to address.

UNADDRESSED QUESTIONS FROM THE AUDIENCE

Every question is important, but the panelists are never able to get to all of them given time constraints. So, following each webinar, Drake Group experts respond to each of the unanswered questions. “NIL” is an acronym for name, image, and likeness.

Q: It seems to me that shoe deals are, at its core, all about NILs. Do the esteemed panelists think college athletes should or should not receive financial benefits from these deals?

DRAKE: While the panelists did not address the specific area of athletic department shoe sponsorships, they did express concern regarding the line between institutions providing “pay for play” and “outside employment compensation”. It appears that the panelists were in agreement that institutional payments should be limited to “educationally tethered expenses” (the current NCAA standard) as opposed to cash payments reflecting any share of sponsorship deals, gate receipts, TV media revenues, etc. In states where name, image, likeness legislation has already been adopted, those laws may specifically prohibit the institution from sharing any such revenues. To access the Drake database on NIL state legislation, [click here](#).

Q: Why is the distinction appropriate where the institution can't pay athlete for NIL, but outside organizations can? Other students can be paid by the school for use of their NIL (if they want to). I understand that schools may want to use NIL as a form of payment for athletes playing their sport, but that doesn't mean that it's wrong to allow a school to pay an athlete (or student) for use of their NIL.

DRAKE: The issue surrounding this question is whether the non-profit educational institution should maintain its educator/student relationship and focus on its educational mission or enter into an employer/employee relationship in which it steps outside its mission and into the world of business partnerships with students in the area of product sales or, like professional sports, pay students to play for the college team. To date, colleges and universities appear to have established a “pay for play” line in the sand – athletics financial aid limited to educationally related expenses maintain the educator/student relationship. For a more expansive discussion of these issues, you may wish to read [Compensation of College Athletes Including Revenues Earned from Commercial Use of Their Names, Images, and Likenesses and Outside Employment](#), a Drake position statement. On a very practical level, the question of whether schools should be allowed to pay college athletes for their NILs comes down to the members of an athletics governance organization voting to permit or prohibit its members doing so and whether state or

federal legislatures have enacted laws that take precedence over athletic governance organization rules.

Q: There is some disagreement about whether some types of participation by college athletes in events outside of the college setting constitute “pay for play” if they receive prize money—e.g., swimmers competing in noncollege meets sponsored by companies like Arena, TYR, etc. And how does this kind of participation differ from college athlete Olympic participation for which they may receive money for winning medals? Are events where prize money is awarded violations of amateurism if the college athletes involved accept that money?

DRAKE: There is little disagreement that NCAA amateur status rules are and have been inconsistent. Drake only opines that the NCAA appears to equate individual sport athletes competing for prize money with team sport athletes earning money for playing on professional sports teams. The NCAA rule permitting athletes to accept national sport governing body (i.e., USA Swimming, USA Basketball, etc.) payments to athletes winning Olympic medals represents a specific and very limited exception to the general NCAA rule that prohibits athletes from accepting prize money beyond actual expenses for competing in a sport event. “Amateurism” is a term defined by the NCAA, USA Swimming, or other sport governance organizations that is used to determine eligibility for the respective organization’s own events. There is no “universal” definition applicable to all organizations and all events.

Q: In attempting to tame the Wild West, are there protections for student-athletes from unscrupulous attorneys, agents, etc.? I'm sure the intention isn't to transition from NCAA abuses to Free Market abuses.

DRAKE: College athletes are entering a new space – being able to employ agents and financial advisors to assist them in the pursuit of NIL deals. In the past, athletes would lose their collegiate eligibility if they employed or entered into agreements with agents. Some states that have adopted NIL legislation and many of the proposed state and federal NIL bills are also requiring agent certification. On June 30, 2021, the [NCAA issued interim guidance](#), effective July 1, 2021 that included the following:

- *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. [Subject to the institution publishing its requirements]*
- *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.*

With regard to “agents” and other advisors, the NCAA has issued a [Q&A document](#) on NILs that does address “professional service providers:”

6. Who is a professional service provider?

A professional service provider is an individual who provides third-party services to a

prospective or current student-athlete. It includes, but is not limited to, an agent, tax advisor, marketing consultant, attorney, brand management company or anyone who is employed or associated with such persons.

7. Does the NIL interim policy permit individuals to use professional service providers in connection with their name, image and likeness activities?

Use of a professional services provider for NIL activities is permissible.

Q: Can student-athletes negotiate use of school trademarks/logos as part of their "compensation"?

DRAKE: While it appears that the NCAA will not allow this, these types of questions should be addressed to the college athlete's athletic department compliance officer or the NCAA for a definitive ruling. The above-mentioned NCAA [Q&A document](#) on NILs does include the following guidance:

8. Are institutions permitted to arrange NIL opportunities for student-athletes?

A number of factors are relevant when institutions consider their possible involvement in arranging NIL transactions. During the interim NIL policy, the expectation is that schools and student-athletes will not use NIL transactions to compensate for athletic participation or achievement or as an improper inducement. Beyond NCAA principles related to pay-for-play and impermissible inducements, such involvement may also raise other issues—including potential application of state NIL laws, claims for contractual non-performance, Title IX issues, and employment issues—as to which campus compliance, Title IX, and general counsel staff can be consulted.

11. What is prohibited under the new policy?

Subject to state law, the following is prohibited under the new interim policy:

- NIL agreement without quid pro quo (i.e., compensation for work not performed).*
- NIL compensation contingent upon enrollment at a particular school.*
- Compensation for athletic participation or achievement. Athletic performance may enhance a student-athlete's NIL value, but athletic performance may not be the "consideration" for NIL compensation.*
- Institutions providing compensation in exchange for the use of a student-athlete's name, image or likeness.*

The NCAA has issued a number of other [NIL guidance materials](#).

A: Given the growing concern for athlete mental health, what safeguards might be considered to help keep student-athletes from over-extending themselves in the pursuit of NIL-related opportunities?

DRAKE: The Drake Group has taken the position that the only appropriate time restraint on the outside employment of a college athlete is a prohibition that such obligations not result in missed classes or examinations. In addition, The Drake Group believes that the current NCAA rule that limits the number of hours per week that an athlete may participate in athletics-related activities is woefully inadequate with regard to leaving athletes with enough time to fulfill academic

responsibilities and get enough sleep. See the Drake position statement: [*Excessive Athletics Time Demands Undermine College Athletes' Health and Education and Require Immediate Reform*](#). With regard to college athlete mental health issues generally, see the Drake position statement: [*College Athlete Health and Protection from Physical and Psychological Harm*](#).

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