



Athletics Committee
March 22, 2022
3:30 p.m.

Information Item

ATH-4 NCAA Compliance Review

Background Information

Materials for the Committee's information compiled by Brian Mackin, Director of Intercollegiate Athletics, Jerry Blakemore, General Counsel, Jody Smith, Executive Associate Athletic Director and Senior Woman Administrator, and Kristen Bonatz, Deputy General Counsel, related to National Collegiate Athletic Association (NCAA) compliance, consistent with the Committee's Work Plan as adopted at the September 28, 2021, meeting.

Attachments (see below)

- 4.1 Name, Image and Likeness (NIL) Update
- 4.2 NCAA Compliance Update



**UNC
GREENSBORO**
Office of General Counsel

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To: UNC Greensboro Compliance, Audit, Risk Management and Legal Affairs Committee
UNC Greensboro Athletics Committee

cc: Franklin D. Gilliam, Jr., Chancellor
Jerry D. Blakemore, General Counsel
Brian Mackin, Director of Intercollegiate Athletics
Robert J. Shea, Jr., Vice Chancellor for Finance and Administration
Waiyi Tse, Chief of Staff
Curtis Canty, Assistant Athletic Director for Compliance
Zachary R. Smith, Assistant Vice Chancellor for Emergency and Risk Management
Name, Image, and Likeness Working Group:

Maria Anastasiou, Associate Provost for International Programs
Jennifer Kelley, International Student and Scholar Services Lead
Brett Carter, Associate Vice Chancellor and Dean of Students
Paul Forte, Interim Associate Vice Chancellor for Finance
Murphie Chappell, Title IX Coordinator
John Lucas, Interim Director of Financial Aid
Scott Milman, Associate Vice Chancellor, Campus Enterprises and Real Estate
Kimberly Osborne, Senior Director for Integrated Marketing Communications

FROM: *Name, Image, and Likeness Working Group Co-Chairs:*
Kristen S. Bonatz, Deputy General Counsel
Jody Smith, Executive Associate Athletic Director and SWA

DATE: March 9, 2022

RE: Activities of the University's Name, Image, and Likeness (NIL) Working Group

I. Executive Summary

The purpose of this memorandum is to provide you with an overview of the University's activities related to compliance issues associated with student-athletes' ability to market their "Name, Image, and Likeness" (NIL).

When the United States Supreme Court ruled in *Alston v. NCAA* in June of 2021, the NCAA suspended the enforcement of certain rules related to impermissible benefits and approved an interim policy permitting college athletes to benefit from their name, image, and likeness. Some examples of this include starting a business and using one's name to advertise it, posting ads on social media, providing athletic lessons, and signing autographs.

The Chancellor charged a working group -- co-chaired by Jody Smith, Executive Associate Athletic Director and Senior Woman Administrator, and Kristen Bonatz, Deputy General Counsel, and including membership from a wide variety of campus constituents -- to

assess this issue and make recommendations for UNC Greensboro's practices in this evolving area.

The Working Group reported to the Chancellor's Council on July 26, 2021, August 6, 2021, and November 3, 2021, and anticipates making a final report at the end of this academic year. The Working Group has recommended guidelines for the Athletics Department to implement. (The most recent version of those Guidelines is attached hereto as Appendix 1.) As you may be aware, we reported to the Board of Trustees' Athletics Committee at its September 28, 2021, meeting. A copy of that presentation is available [here](#).

Based on a review of the policies or statements from other institutions, as well UNC Greensboro's existing policies and agreements, the Working Group answered key questions and formulated recommendations. Below is a brief summary of these discussions.

II. Working Group Key Questions and Answers

- A. *Should UNC Greensboro adopt its own definition of "education-related benefits" to provide student-athletes benefits that were previously prohibited?***Working Group Answer:** No, UNC Greensboro does not need to adopt its own definition of "education-related benefits" at this time. An expanded definition of education-related benefits would likely require additional resources that are not currently available. The Athletics Department plans to continue to monitor this issue.
- B. *Should UNC Greensboro limit or prohibit student-athletes' use of UNC Greensboro marks related to NIL?*
Working Group Answer: No, student-athletes should be allowed to use UNC Greensboro marks related to NIL, subject to existing policies applicable to anyone who wishes to use/license UNC Greensboro marks.
- C. *Should UNC Greensboro regulate student organizations' use in similar ways? In other words, should the scope of NIL be limited to student-athletes?*
Working Group Answer: Student-athletes and students generally should be treated the same, and they will be by virtue of our existing processes.
- D. *What, if any, impact does this have on e-Sports?*
Working Group Answer: For now, there is no expected impact on e-Sports, as they will be treated the same as any other student organization. The Working Group noted that this is an area that will need continuing evaluation, particularly due to both correlations and differences between e-Sports and student-athletes and student organizations. The Working Group acknowledges that this will need to be considered as the e-Sports program evolves. In addition, Working Group member and Dean of Students, Brett Carter, has been working with both the Campus Recreation and Wellness Staff and Athletics to assess and coordinate these efforts. Campus Recreation and Wellness, Student Affairs, and Athletics Staff are

collaborating on more general guidelines to facilitate the use of University marks by students who participate in other University-sponsored activities.

III. Next Steps and Conclusion

The Working Group has addressed each of the items outlined in the charge from the Chancellor. Specifically, the Working Group has recommended revisions to the licensing process, the Advertising Policy, and the Social Media Standards, and has determined that at the present time, no other policies or procedures need to be updated. In addition, the Working Group developed guidelines to implement the new policies related to student-athletes' use of their name, image, and likeness. Finally, the Working Group was provided the opportunity to present these revisions to the Chancellor's Council, and received their input in the final development of these proposed policy revisions and guidelines.

The Office of General Counsel and the Athletics Compliance Office will take the lead on monitoring state and federal activities, including litigation, related to NIL policy implementation.

UNC Greensboro Department of Athletics
Name, Image and Likeness (NIL) – Interim Guidelines (as of 3.1.22)

Effective July 1, 2021, student-athletes are permitted to engage in activities where they can benefit financially or non-financially (e.g., receive cash, product or other benefit) by using their name, image and/or likeness for promotional purposes.

- [See NCAA Interim Policy.](#)
- [See North Carolina Executive Order.](#)

Definition of Name, Image, and Likeness (NIL)

A name, image and likeness (“NIL”) activity is any activity in which a prospective or current student-athlete’s name, image, likeness or personal appearance is used for promotional purposes by a **noninstitutional** entity, including the individual prospective or current student-athlete, or a commercial, noninstitutional nonprofit or charitable entity. Such use may be compensated (e.g., cash, product or other benefit) or uncompensated.

****NOTE:** Student-Athletes are still permitted to grant permission to UNC Greensboro to use their name, picture or appearance to promote UNC Greensboro and the Department of Athletics (e.g., games, banquets, etc.) (NCAA Bylaw 12.5.1).*

Student-Athletes MAY:

- Receive compensation for NIL activities.
- Refer to themselves as a “UNC Greensboro ‘sport’ Student-Athlete” (e.g., UNC Greensboro Golf Student-Athlete).
- Use UNC Greensboro facilities, consistent with the “Requirements for Facilities Use” outlined in “Additional Guidelines” below.
- Retain professional representation/financial advisor to arrange their NIL opportunities.
****NOTE:** Professional representation for NIL purposes is subject to North Carolina and federal laws, including the Sports Agent Responsibility and Trust Act, 15 U.S.C. 7801 et seq. and the North Carolina Athlete Agent Act, Article 9 of Chapter 78C of the North Carolina General Statutes.*
- Use UNC Greensboro marks or logos to promote NIL activities (e.g., photo of student-athlete in uniform, profile photo on social media), consistent with “Additional Information Regarding Use of UNCG Marks,” below.
- Enter into agreements with sponsors that are currently UNC Greensboro’s partners, consistent with the terms of UNC Greensboro’s licensing process.

Student-Athletes MUST:

- Seek compensation based on fair market value.
- Disclose all NIL activities to UNC Greensboro Department of Athletics through the INFLCR APP.
- Participate in required educational sessions/modules regarding NIL.
- Review and acknowledge by signature understanding of these interim guidelines.

Examples of permissible NIL Activities:

- Owning or promoting own personal business;
- Serving as a spokesperson for a local, regional or national business;
- Selling of merchandise with NIL (**not** including UNC Greensboro apparel/equipment);
- Social media endorsements (posting advertisements);
- Giving athletic lessons using individual's name to advertise;
- Writing a book;
- Creating music, art, photographs, etc.; or
- Participating in an autograph session **not** directed or established by the UNC Greensboro Department of Athletics.

**NOTE: These sessions may not occur during official team activities or institution-sponsored events.*

Student-Athletes CANNOT:

- Receive NIL compensation contingent on enrollment at UNC Greensboro or on athletic participation or achievement.
- Receive compensation for work not performed.
- Participate in NIL activities that conflict with UNC Greensboro athletic or academic commitments.
- Wear UNC Greensboro apparel, uniforms or equipment during any NIL activity or promotion.
- Enter into agreements with sponsors that are UNC Greensboro's partners' competitors.
- Sell UNC Greensboro issued apparel, equipment, awards, etc. (even if it will not be re-used), until they have exhausted their competition eligibility (NCAA Bylaw 16.11.2.4).

Student-Athletes CANNOT engage in NIL activities that promote activities in the following categories:

- Gambling (including casinos);
- Tobacco, including alternative nicotine products;
- Alcohol, firearms and associated accessories;
- Illegal and NCAA banned substances;
- Adult entertainment; or
- Any other category that may not align with UNC Greensboro values.

**NOTE: [See UNC Greensboro Advertising Policy](#).*

Additional Guidelines:

- UNC Greensboro institutional staff members (coaches, staff, administrators, faculty or other University personnel) cannot refer student-athletes to any third parties for NIL opportunities or be otherwise involved (coordination, organization, promotion).
- NCAA legislation **prohibits** pay-for-play, improper recruiting inducements, extra benefits and sports wagering. **These also apply to all NIL activities.**
- Institutional staff members may be general consumers of NIL products or services at fair market value in accordance with institutional policies, state law and NCAA legislation.

- UNC Greensboro Department of Athletics cannot reduce or revoke athletics aid because a student-athlete earned compensation for NIL activities.
- Prospective student-athletes may not receive any compensation in exchange for committing to or signing a National Letter of Intent with UNC Greensboro.
- Prospective student-athletes will be required to disclose all past NIL activities once signed.
- Requirements for **Facilities Use**:
 - Student-athletes may not participate in NIL activities in an athletics facility (including fields and other venues) without express permission from Senior Associate Athletics Director for Internal Operations.
 - Student-athletes must pay the applicable university rental rate, and may also be asked to sign related agreements, provide liability insurance, etc.
 - Student-athletes may not participate in NIL activities in athletics areas that are un-rentable (e.g., locker rooms, medical/athletic training areas, team meeting rooms/lounges, hallways, etc.).
 - Student-athletes may not participate in NIL activities in other UNCG facilities without express permission from the [EUC Reservations Office](#) and must pay any applicable university rental rate. Student-athletes may also be asked to sign related agreements, provide liability insurance, etc. to use these spaces.

Other Reminders:

- Income and tax implications associated with all NIL activities are the responsibility of the student-athlete.
- Student-athletes' need-based financial aid (e.g., Pell Grant) may be impacted based on compensation from NIL.
- Student-athletes who are not United States citizens and attending UNC Greensboro on a F-1 Visa or any other non-immigrant visa category are not permitted to earn NIL compensation.
- UNC Greensboro reserves the right to modify these NIL Interim Guidelines at any time due to institutional, conference, NCAA, State of North Carolina or federal legislation.

Additional Information Regarding Use of UNCG Marks:

- Student-athletes **may** use photos or videos containing UNC Greensboro trademarks, logos, service marks, symbols, or other intellectual property for their personal brand building on social media, but not in any NIL activity.
- Student-athletes **may** say, in connection with NIL activities, that they are a student-athlete at UNC Greensboro and list personal academic or athletic accolades. Student-athletes **may not** imply, *directly or indirectly*, that UNC Greensboro is endorsing their NIL activities or any products or services associated with their NIL activities.
- Student-athletes **may not** use photos or videos containing UNC Greensboro trademarks, logos, service marks, symbols, or other intellectual property in their NIL activities without prior written approval from Senior Associate Athletics Director for Business Operations, regardless of how the photo or video was obtained.

- Student-athletes may not enter into an NIL agreement if the agreement conflicts with a UNC Greensboro agreement. It is possible that a conflict will exist if the proposed NIL agreement requires the student-athlete to do the following:
 - Wear products that are not the same brand as those of the team sport during team activities – e.g., practices, competitions, media, team travel, community service, photo sessions, team-building activities, etc. (For instance, if your UNC Greensboro gear is provided by Under Armour, you cannot agree to work with Puma if it requires you to post a photo from a team workout in Puma t-shirts.)
 - Promote beverages outside of those available as listed [here](#) and [here](#).
 - Sell merchandise that competes with merchandise sold in the campus bookstore without thorough consultation and approval with the Associate Vice Chancellor for Campus Enterprises and Real Estate.



NCAA Compliance Update

Board of Trustees

Compliance, Audit, Risk Management and Legal Affairs Committee

March 22, 2022



Agenda

- Athletics Vision
- Educational Efforts
- NCAA v. Alston and Name, Image, and Likeness
- NCAA Constitutional Updates
- Questions



Athletics Vision

Core Values

- Academic Excellence
- Competitive Excellence
- Student-Athlete Well-Being
- Integrity & Compliance
- Fiscal Responsibility



Find your way here

Educational Efforts

- Proactive Education
 - Monthly Department/Coaches Meetings
 - Daily Email Reminders
 - Social Media – Twitter Reminders
 - Sport-Specific Meetings (Student-Athletes & Staff)
 - Spartan Club (Donors) - Pregame Functions, etc.
 - Other Avenues



NCAA v. Alston and Name Image and Likeness

- U.S. Supreme Court ruled (9-0) that restrictions on member institutions providing “education-related benefits” to student-athletes violated federal antitrust laws.
- Justice Kavanaugh's concurring opinion suggested perhaps paying student athlete's share of revenue generated by collegiate sports

IMPACT at UNCG:

- Established a working group to review and recommended revised policies on issues identified by case and aftermath



NCAA Constitution

- July 2021 committee charged with proposing changes designed to “reimagining aspects of college sports so the Association can more effectively meet the needs of current and future college athletes”
- January 2022 Phase One: NCAA membership from all three divisions approved the new constitution - provides significant authority to the three divisions to reorganize and restructure, including a potential bigger role for conferences enforcing rules and procedures
- Added student-athlete representation on governance bodies
- More divisional autonomy – Examine issues such as enforcement, revenue distribution, recruiting calendars and numerous others within NCAA Manual
- Divisions/Institutions to maintain policies related to Name, Image, and Likeness
- Changes go into effect August 1, 2022

IMPACT for UNCG: Too early to know

Find your
way *here*



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