

NCAA Division I Board of Directors Reviews Name, Image, and Likeness Concepts; NCAA Division II Advances Legislative Proposals

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On August 5, the NCAA Division I Board of Directors reviewed name, image, and likeness ("NIL") concepts that were also sent to Division I members for review and response. On the same day, the NCAA Division II Presidents Council voted to advance several legislative proposals to the 2021 NCAA Convention that were recommended by the NCAA Division II Legislative Committee on June 23.

NCAA Division I Board of Directors Review Concepts

As the NCAA Division I Board of Directors reviewed NIL concepts and potential rule changes, Division I membership received a survey about potential NIL rule changes and are expected to review and provide a response. The changes being considered would enable student-athletes to use their NIL to, among other things, promote camps and clinics, provide private lessons in exchange for compensation, promote personal and commercial products and services, and receive compensation for autographs and appearances. The NCAA seeks to implement such changes while ensuring that NIL payments are not a disguised form of "pay for play."

Board members noted that the flexibility being proposed is consistent with a number of changes Division I has made in the past several years to support student-athletes, including guaranteed scholarships and cost of attendance. Eli Capilouto, Kentucky President and Chair of the Division I Board of Directors, said, "I believe these concepts reflect the evolution of the Division I membership. It is important for institutions of higher learning to support the whole student — academically, athletically, and in pursuits outside the classroom and fields of play. We also understand we can't do this alone. We need assistance from the federal government to make sure modifications provide a uniform national standard and appropriately tailored protections."

Capilouto stated that "membership feedback is crucial to ensure we create the best framework to benefit student-athletes." Division I members must provide feedback to the NIL concepts by August 28, at which point the Legislative Solutions Group will finalize recommended legislative changes. The Division I Council will introduce legislation into the 2021-21 legislative cycle by November 1. A vote is expected to take place at the 2021 NCAA Convention in January.

NCAA Division II Advanced NIL Proposals

The Division II proposals that are being advanced include concepts that would enable student-athletes to be compensated for their NIL. The proposals fall into two categories: 1) activities related to student-athlete businesses or student-athlete work product (i.e., writing and publishing a book, hosting a sports camp, giving private lessons, signing autographs, etc.); and 2) the promotion/endorsement of third-party products and services (i.e., making an appearance at a business or agency, appearing in an advertisement on behalf of a business or agency, or using a social media account to promote a business or agency). A summary of the proposals can be reviewed here.

Sandra Jordan, Chancellor at South Carolina Aiken and Chair of the Division II Presidents Council, stated: “We believe these opportunities can occur in a manner that is consistent with the NCAA’s core values, mission and principles, while prioritizing student-athlete well-being and ensuring that students also continue to focus on completing a degree. The recommended administrative framework for these changes ensures that the legislation will be transparent and enforceable, which falls in line with the Board of Governors’ principles.”

The fate of the proposals will ultimately be decided at the 2021 NCAA Convention via NCAA Division II’s one-institution, one-vote legislative process, whereby each NCAA Division II member institution is entitled to cast a single vote on each legislative proposal. Any legislative proposals that are passed will take effect on August 1, 2021.

The authors of this article, Curry Sexton and Greg Whiston, are members of Seigfreid Bingham’s Sports and Entertainment Group and routinely represent clients in collegiate athletics. If you or your organization have questions about the impact of the NCAA’s most recent announcement, please contact either author at 816-421-4460.

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