

Office/Contact: Intercollegiate Athletics Department

Source: SDCL Chs. 59-10 and 21-64; SDBOR Policies 1.7.5 and 4.9.1; NCAA Bylaws and Constitution

Link: https://sdlegislature.gov/Statutes/Codified_Laws;

<https://public.powerdms.com/SDRegents/documents/1729416>;

<https://public.powerdms.com/SDRegents/documents/1726707>; <https://web3.ncaa.org/lstdbi>

SOUTH DAKOTA STATE UNIVERSITY

Policy and Procedure Manual

SUBJECT: Student-Athlete Use and Commercialization of Name, Image, and Likeness

NUMBER: 9:5

1. Purpose

This policy provides guidance for University Student-Athletes, coaches, and staff regarding the use of a Student-Athlete's Name, Image, and Likeness (NIL) for commercial purposes in compliance with South Dakota law, SDBOR Policies, and intercollegiate athletic conference requirements.

2. Definitions

- a. Agent: as set forth by the Uniform Athlete Agents Act, an individual who enters into an agency contract with a Student-Athlete or, directly or indirectly, recruits or solicits a Student-Athlete to enter into an agency contract. The term does not include a spouse, parent, sibling, grandparent, or guardian of the Student-Athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.
- b. Name, Image, and Likeness (NIL): the three elements that make up an individual's right to publicity; 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.
- c. Student-Athlete: as set forth by the Uniform Athlete Agents Act, 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.

3. Policy

- a. The University abides by all applicable NIL state and federal laws and regulations, SDBOR policies, and rules and regulations promulgated by the NCAA and other national or regional subdivisions or conferences of which the University is a member. The University recognizes that Student-Athletes are entitled to commercial use of their NIL in conformity with these governing provisions.

- b. The University is not responsible for providing or procuring NIL opportunities, nor is it liable for any tax liabilities or other costs that a Student-Athlete could receive by engaging in NIL business opportunities.
- c. 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 University's property rights or obligations.
 - i. Student-Athletes must comply with the governing provisions and refrain from accepting compensation in exchange for athletic performance, participation, or inducement for enrollment.
 - ii. 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.
 - iii. University staff members will 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.
 - iv. The University will prohibit Student-Athletes from opportunities that violate existing institutional sponsorship agreements, are unlawful, or are not in conformity with applicable governing provisions.
 - v. Employees, affiliates, and boosters are prohibited from creating or facilitating compensation opportunities as a recruiting inducement, extra benefit to remain enrolled at the University, for play or achievement, or for work not performed.
 - vi. Express written permission of the University is required to use the SDBOR's or University's intellectual property, including, but not limited to the University's name, jersey, uniform, marks, and logos.
 - vii. Student-Athletes may not promote any third-party or third-party branding during official University events and activities without the University's express written consent.
- d. Student-Athletes may consent in writing to the use of their NIL by the University in conformity with applicable provisions.
- e. The University may support education and educational experiences in areas such as financial aid, debt management, budget information, time management, and related information.

- f. If a Student-Athlete enters into a relationship in a Prohibited Sponsorship Category, the Student-Athlete will be required to terminate such relationship immediately. Prohibited Sponsorship Categories are identified as being in direct conflict with the University mission; damaging to the name, image, or reputation of the University; conflicting with current or contemplated future University relationships; or for any other reason determined in good faith by the University.
- g. Allegations of Student Conduct Code violations or grievances of misapplication or misinterpretation of policies will be handled in accordance with applicable grievance policies.

4. Procedures

- a. All Student-Athletes will receive NIL education each fall from the University's Athletics Compliance department.
- b. Student-Athletes who enter into a contract, agreement, or transaction for compensation for the use of their NIL are required to disclose the activity to the University's Athletics Compliance department within three (3) business days of signing the contract or agreement. Student-Athletes are strongly encouraged to have the activity approved by the Athletics Compliance department in advance to avoid an NCAA or institutional violation.
- c. New Student-Athletes at the University will be required to disclose existing contracts for compensation related to NIL that were previously entered into prior to enrollment.
- d. Failure by a Student-Athlete to disclose any contracts fully and accurately (i.e., oral, written, implicit) will subject the Student-Athlete to disciplinary action, up to and including loss of Grant-In-Aid and/or expulsion.

5. Responsible Administrator

The Director of Athletics, or designee, is responsible for annual and ad hoc review of this policy and procedures. The University President is responsible for policy approval.

SOURCE: Approved by President on 08/12/2021. Revised 02/01/2024 (clerical).