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MPSSAA Guidance for Name, Image, and Likeness Related To Interscholastic Athletics

In June 2021, the U.S. Supreme Court unanimously decided that the NCAA's rules limiting education-related benefits for student-athletes violated federal antitrust laws. *National Collegiate Athletic Association v. Alston*, 141 S.Ct. 2141 (2021). Although the Court's decision applied specifically to NCAA rules, the ruling has generated expansion of name, image, and likeness (NIL) opportunities for high school students. Thus, the Maryland Public Secondary Schools Athletic Association (MPSSAA) is issuing this guidance to members, parents, and students to clarify how student-athletes may engage in NIL activities for financial gain and still retain athletic eligibility under MPSSAA regulations.

In addition to defining key terms, this guidance illustrates what is considered permissible and prohibited conduct when carrying out NIL activities for financial gain, and highlights the consequences for violations of the amateur rules set forth in COMAR 13A.06.03.02F and .10. Most importantly, though, this guidance seeks to preserve the educational mission of Maryland public secondary school interscholastic athletics, safeguard the physical, mental, and moral welfare of students, and protect them from exploitation.

Definitions:

For purposes of this guidance, the following definitions apply:

1. **MPSSAA Amateur Rule:** Students who have not used or are not using their athletic skill as players for financial gain, or who have not competed under assumed names as players, shall be considered amateurs. Employment as an instructor, counselor, or official may not be considered a violation.
2. **Student-Athlete:** Students who are legally enrolled and attending a member MPSSAA school and are participating on an interscholastic athletic team at the member MPSSAA school.
3. **Name, Image, and Likeness (NIL):** The three elements of an individual's right to control the commercial use of their identity for financial gain. This concept is also known as the right of publicity.

4. **NIL Collective:** A group of alumni, supporters, parents, or other people who form a corporation, limited liability company, partnership, non-profit organization, foundation, or other entity to provide NIL opportunities to student-athletes of a specific school.

Permissible and Prohibited Conduct:

Student-Athlete: Student-athletes and their families may engage or work with professional service providers, such as agents and advisors, to engage in NIL activities for financial gain, except as prohibited by this guidance. The following activities are permissible for a student-athlete to financially gain from the use of their own NIL:

- Commercial endorsements;
- Promotional activities;
- Social media presence;
- Product or service advertisements; and
- Non-fungible tokens (NFTs).

Student-athletes and their families should be mindful of the Maryland Uniform Athlete Agents Act, Annotated Code of Maryland, Business Regulation Article Title 4 subtitle 4, when engaging professional services.

Student-athletes must keep their NIL activities and participation in interscholastic athletics separate. Student-athletes are prohibited from engaging in the following non-exclusive list of activities when engaging in school-based interscholastic athletics:

- Making any reference to a member school or the MPSSAA when engaging in any NIL activity;
- Wearing a school-based team jersey or otherwise displaying the school's name, mascot, logo, or any other school identifying marks when marketing a NIL product or service; and
- Endorsing or promoting goods or services of any third-party NIL partner during school-based team activities and events, including but not limited to:
 - Wearing third-party apparel;
 - Displaying a third-party logo or brand; and
 - Displaying a third-party insignia or identifying mark.

Student-athletes are prohibited from engaging in any NIL activities involving the following non-exclusive categories of products and services:

- Adult entertainment products and services;
- Alcohol products;
- Tobacco and nicotine-related products;
- Cannabis products;
- Controlled dangerous substances;
- Prescription pharmaceuticals;

- Casinos and gambling, including sports betting, the lottery, and betting in connection with video games, on-line games, and mobile devices.; and
- Weapons, firearms, and ammunition.

Member Schools and Local Educational Agencies (LEAs): Employees, contractors, and volunteers of member schools LEAs, including administrators and coaches, may not:

- Act as a representative of a student, engage in any management or agency activities, or otherwise be involved with a student-athlete's use of their NIL. A legal guardian who is also an employee of an LEA must act solely as the legal guardian and not a representative of the school;
- Promise NIL opportunities to entice student-athletes to transfer or attend their school;
- Offer or provide a student with any grant, loan, gift or financial benefit related to a student's NIL;
- Form, direct, or engage a NIL Collective or conduct any other group interactions as it relates to student-athlete NIL activities.

Violations:

Failure to conduct NIL activities for financial gain in accordance with this guidance may be a violation of COMAR 13A.06.03.02F and .10. If the LEA determines that a student-athlete has lost amateur status, the student-athlete may be deemed ineligible and have to wait 60 days before requesting reinstatement through the MPSSAA Appeals Committee pursuant to COMAR 13A.06.03.10C.

If the LEA determines a member school employee, contractor, or volunteer violates the regulations of COMAR 13A.06.03.02F and .10, the member school and either the student or the coach, or both, may be subject to the violations, penalties, and appeals procedures set forth in COMAR 13A.06.03.05.

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The Maryland Public Secondary Schools Athletic Association (MPSSAA) recently released guidance related to Name, Image, and Likeness (NIL). As explained in that guidance, a student-athlete may retain eligibility under MPSSAA regulations and engage in NIL activities for financial gain provided the student's NIL activities and participation in interscholastic athletics remain separate. Student-athletes are prohibited from making any reference to a member school, local educational agency, or the MPSSAA when engaging in any NIL activity.

This set of Frequently Asked Questions (FAQ) is intended to assist the interscholastic athletics community better understand the MPSSAA Guidance as it applies in practice so that student-athletes and their families can make informed decisions that maintain the student-athlete's amateur status.

NIL FAQ:

Will compliance with the MPSSAA Guidance ensure that I am eligible to participate in collegiate athletics?

No, the MPSSAA Guidance only addresses eligibility under MPSSAA regulations. Compliance with that guidance therefore does not ensure eligibility under the standards of other athletic organizations, including, but not limited to, the NCAA, NAIA, or NJCAA. Student-athletes are encouraged to communicate with those organizations to ensure any activity complies with their eligibility standards.

Are student-athletes able to work with professional service providers, such as agents and advisors, to engage in NIL activities?

Yes, student-athletes and their families should evaluate the professional support that may be available to them.

Are there Maryland State Laws I should be mindful of when deciding on NIL deals?

Yes, parents and families should be mindful of the [Maryland Uniform Athlete Agents Act](#), Title 4, Subtitle 4, Business Regulation Article, Annotated Code of Maryland, when obtaining any

professional service providers. While a brief description of the Act is provided below, parents and families should consult the Act directly and obtain legal advice as appropriate.

An individual must be licensed under the Maryland Uniform Athlete Agents Act to act as an athlete agent in the State. A person who wishes to be licensed as an athlete agent must submit an application, a \$25 application fee, and a \$1,000 licensing fee to the Maryland Department of Labor. Generally, an agency contract entered into by an unlicensed athlete agent is void, and any consideration received by the athlete agent must be returned.

An athlete agent may not communicate with a student athlete, directly or indirectly, with the intention of recruiting or soliciting the student athlete to enter into an agency contract, without being licensed. The contract between an athlete agent and a student athlete must contain specified information relating to payment and services and a conspicuous warning to the student athlete regarding eligibility and notification responsibilities if an agency contract is signed. The student has a statutory right to cancel a contract within 14 days of the contract being signed without penalty.

Prohibited acts for athlete agents include:

- giving false or misleading statements;
- furnishing anything of value to the student athlete before the student athlete enters into the agency contract;
- furnishing anything of value to any individual other than the student athlete or another licensed athlete agent;
- initiating contact with a student athlete unless licensed as an athlete agent;
- refusing inspection of, or failing to retain, required records;
- pre-dating or post-dating a contract;
- failing to notify the student athlete of potential ineligibility as a student athlete upon signing an agency contract; and
- receiving compensation from or splitting fees with a professional sports league, sports franchise, a representative or employee of a professional sports league or sports franchise, or an employee of an educational institution in the State.

A person who violates the Act is guilty of a misdemeanor and subject to a fine of up to \$10,000 or imprisonment for up to one year, or both. The Secretary of Labor may also assess a civil penalty of up to \$25,000 for a violation of the Act.

Could engaging in NIL activities impact my financial aid for college?

Yes, student-athletes and their families should be mindful that increased income may impact need based financial aid and grants.

What are the consequences of violating the MPSSAA NIL provision?

The Local Educational Agency (LEA) will review each instance on a case-by-case basis. If the LEA has determined, based on the MPSSAA Guidance, that amateur rules have been violated,

then the student could be determined ineligible for 60 days before requesting reinstatement through the MPSSAA Appeals Committee pursuant to COMAR 13A.06.03.10C.

Can a student-athlete appear in a television or radio commercial for a local business?

Yes, so long as the student-athlete abides by the restrictions outlined in the MPSSAA Guidance, the student-athlete may appear in television and radio commercials.

Can a student-athlete start their own business?

Yes, so long as the student-athlete abides by the restrictions outlined in the MPSSAA Guidance, the student-athlete will be able to start their own business.

Can a student-athlete get paid to run a camp, clinic, or private lesson?

Yes, so long as the student-athlete abides by the restrictions outlined in the MPSSAA Guidance, the student-athlete will be able to run a camp, clinic, or lesson.

Can a student-athlete be shown in their school uniform or use a photo from their high school competition as part of an advertising campaign?

No, there can be no association with the member school, LEA, or MPSSAA.

Can a student-athlete host a camp at their school?

No, there can be no association with the member school.

Can a student-athlete wear an accessory in a competition that is part of an NIL agreement?

No, student-athletes cannot wear anything that is part of an NIL agreement while participating in interscholastic athletic competition, including practices, games, and other school-based team activities. **NOTE:** This also applies to all-star contests in which a player was selected based on their participation as a member of the high school team, a player was contacted through their school or a representative of their school, or the contest has an affiliation, listing, or reference to the student's school, school system, or MPSSAA.

Can a student-athlete get paid to promote a product or service on social media?

Yes, so long as the student-athlete abides by the restrictions outlined in the MPSSAA Guidance, the student-athlete will be able to promote a product or service on their social media accounts.

Can a student-athlete use a highlight video from their high school events on a social media platform that incorporates a sponsor? Such social media platforms include, but are not limited to, Twitter, Instagram, YouTube, and TikTok.

No, endorsements and promotional activities cannot have any affiliation with a member school or school-based events. When a social media page is sponsored by NIL activities, the student's relationship with the member school, LEA, and MPSSAA must remain unaffiliated.

How does the MPSSAA Guidance affect the Standards of Competition for non-member schools?

The MPSSAA does not take jurisdiction over non-member schools. The MPSSAA Standards of Competition ensure equitable eligibility and amateur policies in order for MPSSAA member schools to compete against non-member schools.

The MPSSAA Guidance regarding NIL activities for financial gain provides interpretative guidance for students maintaining amateur status. Non-member schools who sign school-based NIL deals, allow students to represent the non-member school in NIL activities, or who form, direct, engage, or otherwise interact with NIL Collectives as it relates to student-athlete NIL activities are not eligible to sign the Standards of Competition as an approved non-member based on standard No. 8, which requires high school team members to maintain amateur status as defined in COMAR 13A.06.03.10.