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 school 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.