

# Key Considerations in NIL Transactions for Sponsors and Teams

SEPTEMBER 13, 2021

[RICHARD L. BRAND](#), [PAMELA M. DEESE](#)

**Share This Page** [EMAIL](#) [LINKEDIN](#) [X](#) [FACEBOOK](#)

Name, Image and Likeness (NIL) rights for college and high school athletes remains a hot topic as we enter the start of the academic year. Many sponsors and professional teams see a number of intriguing reasons to partner with student athletes. These reasons range from expanding long-standing support for a university community to drawing on a student athlete's social media power to building a rapport with college students for pro sports.



Listen to this article now

Powered by **Trinity Audio**

00:00



1.0x

05:43

There are a number of key considerations that sponsors/teams should consider when entering NIL agreements.

## 1. Navigating the Landscape in States without NIL Legislation / Schools without Policies

The NIL regulatory landscape is still evolving. To date, the NCAA and the athletic conferences are deferring to state legislatures and individual schools to develop policies and procedures. Given that most states and schools have not yet implemented regulations, any agreement with a student athlete needs to both anticipate the ultimate regulatory language and build in flexibility such that the agreement can be easily modified to incorporate any future requirements. Most existing policies include obligations such as compliance with school reporting requirements, making sure student athlete sponsor commitments do not conflict with team or school obligations, and confirming that the NIL agreement did not influence a student athlete's decision to attend the university.

## 2. Social Media Specific Language

The biggest driver of most agreements with student athletes will be their social media presence. As such, NIL agreements will borrow heavily from social media influencer agreements. These NIL agreements must include belt and suspenders language setting forth content specifications, approval processes, trademark and copyright usage standards, compliance with FTC guidelines, and protections to ensure that appropriate clearances are secured. Further, some student athletes will lack the maturity and business sophistication to which sponsors may be accustomed. Accordingly, not only should requirements be clearly delineated, but sponsors are also advised to ensure appropriate monitoring protocols are in place, especially on "long-form" streaming platforms, such as Twitch, YouTube, and Discord, where the potential for much more intimate, unfiltered, and real-time interactions with followers exists. Along these lines, sponsors must be deliberate in balancing authenticity with appropriate levels of brand protection. A

sponsor's message is much more likely to resonate with a young influencer's followers if delivered in a manner that is authentic to the influencer and his or her follower base. Sponsors will need to determine their "authenticity tolerance" with each unique influencer and moderate accordingly. As such, and to the extent a NIL deal is expected to draw heavily on social media content, sponsors should be prepared to treat deals more as an ongoing process rather than a one-time transaction.

### 3. Non-Financial Benefits

No doubt financial remuneration will remain the primary driver of most NIL agreements, but sponsors should not lose sight of the fact that they are dealing with students. Sponsors may wish to be thoughtful in providing other benefits to entice student athletes to partner with them. For example, providing student athletes the opportunity to secure an internship, perform community service or gain meaningful financial or branding education or mentoring may be equally appealing to the student athlete, their parents and even the university. These supplemental benefits may also help achieve a stronger connection between student athlete and sponsor and lead to a more compelling narrative and set the stage for an ongoing relationship with future student athletes from the same school and team.

### 4. Managing the School and Agents Relationships

Whether a sponsor uses a NIL agreement to enhance a broader school partnership or simply chooses to only partner with a student athlete, the sponsor should consider how best to remain in the school's good graces. In all cases, the schools will want to make sure that their student athletes are not being taken advantage of and that no action by the student athlete is jeopardizing her/his eligibility or immigration status. To this end, it may make sense to open a dialogue with the school to let them know how you plan to operate with the student athlete and to clarify any rules around use of the school marks. Of course, any discussion has to be carefully monitored to ensure that there is no appearance of the sponsor acting on behalf of the school in discussions with the student athlete.

Along those same lines, sponsors may wish to be extra diligent when dealing with agents. While agents may represent students in NIL transactions, they may not represent the student athlete for the purpose of future representation in professional sports. Should an agent relationship jeopardize a student athlete's eligibility, the sponsor's brand may also be negatively impacted. Although ordinarily, a sponsor would only worry about its side of a transaction, it is worth considering whether a sponsor should act a bit more paternal when dealing with a student athlete. This can probably be achieved by ensuring that the student athlete remains an informed part of the process.

### Conclusion

While we are in uncharted territory, a savvy sponsor can strategically partner with student athletes and appropriately anticipate certain concerns that will ultimately impact NIL agreements.