

A TRUE GAME CHANGER: 5 THINGS FOR EMPLOYERS AND SCHOOLS TO DO AS FLORIDA APPROVES NIL PAY FOR HIGH SCHOOL ATHLETES

Insights
Jun 11, 2024

There has been a seismic shift in Florida high school sports as state officials just unanimously approved high school athletes to receive compensation for their name, image, and likeness (NIL). The June 3 vote by the Florida High School Athletic Association (FHSAA) means that it will soon join Georgia, Tennessee, and North Carolina, among other states, who have permitted NIL compensation for high school athletes. The ramifications of this decision could send shockwaves through high school sports across the state. While the amendment still needs to be ratified by the Florida Board of Education, it is critical for schools and businesses to stay ahead of the game in order to make sure they are in compliance with the new rules. What five things can Florida high schools and businesses do in preparation to navigate these uncharted waters?

Florida High School Officials Change the Game

The ability for high school athletes to earn NIL compensation comes as a result of the FHSAA's unanimous approval to amend Bylaw 9.9 (Amateurism) to include new provisions governing athletes' rights to compensation through NIL. Specifically, these new provisions provide a non-exhaustive list of permissible activities for high school athletes to earn compensation for their NIL. This includes commercial endorsements, promotional activities, social media presence, and product or service advertisements.

Additionally, the amendments define what constitutes an "NIL Agreement" and provides parameters for athlete endorsements and promotional opportunities. For example,

Related People



Michael E. Bonner

Partner

954.847.4726



Brett P. Owens

Partner

813.769.7512

athletes are not permitted to promote alcohol, tobacco, or cannabis products, gambling, firearms, or adult entertainment products, among other things.

Student-athletes are also prohibited from making any reference to or using any school logos/uniforms/insignia unless they receive written authorization from their school. There are also several activities that may impact a student-athlete's amateur status. This includes competing for money or other compensation, receiving awards or prizes that have not been approved by the FHSAA, signing a professional playing contract, or entering an agreement with an agent other than for purposes of NIL-related matters. Additionally, the amendments set forth penalties to schools and school employees and a student-athlete's eligibility may be in jeopardy for violating the FHSAA Bylaws.

Both High Schools and Businesses Need to Prepare for Seismic Shift

The FHSAA requires student-athletes and their parents or guardians to negotiate any NIL activities independent of their school, school district, or the FHSAA. Notwithstanding this requirement, schools need to monitor NIL activities for both their current and prospective students to make sure they are not unknowingly running afoul of FHSAA bylaws.

One significant area both schools and businesses need to be aware of is recruiting. NIL activities cannot be used to recruit a player to transfer to a certain school or to otherwise pressure, urge, or entice a student-athlete to attend a school for purposes of participating in collegiate athletics. If an athlete is found to be in violation of the FHSAA bylaws, there could be significant penalties to the schools or the student-athletes. These include monetary sanctions to violating employees, the forfeiture of games in which an illegally recruited player participated, and loss of high school eligibility for the athlete.

What Can Schools and Businesses Do to Stay Ahead of the Game?

The Florida Board of Education still needs to ratify the new rule at its next board meeting scheduled for July 24 in order for the rule to become effective. In the meantime and assuming the rule is ratified in its current form, here are five tips to prepare for this massive change.

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1. Develop NIL Policies for Student-Athletes. Schools should prepare a policy that mirrors Bylaw 9.9. Specifically, the policy should clearly set forth permissible activities that high school athletes may participate in to earn compensation for their NIL. The policy also should state what products and services student-athletes are prohibited from endorsing. Additionally, it should encourage the athletes and their families to seek legal counsel and tax advice when considering NIL activities. Student-athletes should also be required to provide a copy of any NIL agreements to a designated school employee to allow the school to ensure compliance with the FHSAA bylaws. Ultimately, the schools should work with their counsel to develop a policy that fits their specific needs.

2. Ensure FTC Compliance. Businesses contracting with high school athletes for promotional purposes should prepare a written contract to define the relationship between the brand and the student-athlete. Any such contracts should also ensure compliance with the [Fair Trade Commission \(FTC\) rules and regulations](#) for advertising products and services. The agency previously released a disclosure guide to assist with compliance for products and brands promoted on social media platforms. The rules and regulations place responsibility not only on promoters, but also on the brands that partner with them. As such, both the schools and businesses need to be sure these rules and regulations are complied with.

For example, student-athletes promoting products on social media must make it obvious when they have a material connection with a brand when making certain kinds of posts. Material connection to a brand includes a personal, family, employment relationship, or a financial relationship such as a brand paying or giving free or discounted products or services to student-athletes. Businesses should take reasonable steps to outline the student-athlete's obligations in this regard and require they agree in writing to comply with this rule. Schools should also ensure compliance on the part of their athletes as well.

3. Provide Training to Coaches and Other Employees. In this new landscape, it will be critical to train employees and coaches in particular about NIL pitfalls. There have already been multiple high-profile NIL related disputes in the past year, with more expected to come when these new changes take effect. As such, schools will want to provide their

employees with sufficient training so they do not get dragged into these types of disputes.

4. Consider Educating Your Student-Athletes. The most significant impact of this rule change will be on the student-athletes themselves because they will have the ability to earn potentially life-changing money with one NIL contract. It is important to remember that these athletes are still kids as young as 14 years old. Consider offering a course for your school's student-athletes on how to be financially responsible.

5. Avoid Recruiting Issues. As noted above, one of the biggest NIL-related issues for high school students will be recruiting. It is inevitable that third-party actors will try to entice high school students to transfer to another school or to play for a school they have an interest in. This could be extremely problematic for both the schools and student-athletes alike. As a result, schools should monitor the NIL opportunities for their student-athletes and prospective athletes to make sure there are no recruiting incentives tied to the NIL opportunities.

Conclusion

Although still in its infancy, NIL compensation for student-athletes has already proven to be an area that is evolving quickly. New rules and regulations are developing each day. Unfortunately, these developments will likely be the result of or lead to more NIL-related disputes.

If your school or business has additional questions on regarding NIL, feel free to reach out to your Fisher Phillips attorney, the authors of this Insight, another member of our [Sports Industry Group](#) or [Education Industry Group](#), or any attorney in [our Florida offices](#). We'll continue to monitor the status of developing NIL regulations and will provide updates as warranted, so [make sure you are signed up for Fisher Phillips' Insight service](#) to receive the latest news directly in your inbox.