



2021 REPORT

California Community Colleges Athlete Name, Image, and Likeness Working Group

Recommendations for the Legislature and California Community College Athletic Association



California
Community
Colleges

ELOY ORTIZ OAKLEY
Chancellor

May 24, 2021

The Honorable Gavin Newsom
Governor of California
State Capitol, Suite 1173
Sacramento, CA 95814

RE: Legislative Report on California Community College Athletes Name, Image, and Likeness

Dear Governor Newsom:

On behalf of the Board of Governors for the California Community Colleges, I am pleased to present to you the enclosed report on California Community College Athletes Name, Image, and Likeness. Senate Bill 206 (Skinner, Chapter 383, Statutes of 2019) directed the Chancellor's Office to convene a working group on the issue of community college athlete name, image, and likeness (NIL). This working group, now known as the Senate Bill 206 Statutory California Community Colleges Athletes Name, Image, and Likeness Working Group (hereinafter "Working Group"), was provided the following charge under SB 206:

- Review existing California Community College Athletic Association (CCCAA) bylaws; state/federal laws; and national athletic association bylaws regarding a college athlete's use of the athlete's name, image, and likeness for compensation; and
- On or before July 1, 2021, to submit a report to the CCCAA and the Legislature containing its findings and policy recommendations in connection with its review described above.

The working group provided broad input from the constituent groups of the California Community College System and conducted an in-depth review of information prepared by external experts in policy and economics, as well as reports and studies conducted by Chancellor Office. Focusing on student centric Vision for Success, research was conducted to determine any transfer impact for student athletes. The results indicated that the student athlete's use of their name, image and likeness, provided financial and scholastic benefits for the student.

Chancellor's Office

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The recommendations included in this report specifically support our California Community College system's goals related to graduation, transfer, equity, and regional parity. The ability to benefit from their name, image, and likeness contributes to the student athlete's success and ultimately to California's success.

The recommendations and the conclusions of the Working Group align with the direction of California community colleges and, if implemented, will result in equity and economic opportunity for the 24,000 athletes in the system.

Thank you for your support of the California Community Colleges and the students they serve.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eloy Ortiz Oakley', with a stylized, cursive script.

Eloy Ortiz Oakley, Chancellor

Enclosure: Report

Cc: Honorable Erika Contreras, Secretary of the Senate
Cc: Honorable Sue Parker, Chief Clerk of the California State Assembly
Cc: Ms. Jennifer Cardone, Interim Executive Director

CALIFORNIA COMMUNITY COLLEGES ATHLETE NAME, IMAGE, AND LIKENESS WORKING GROUP

Recommendations for the Legislature and California
Community College Athletic Association

Prepared By

California Community Colleges Chancellor's Office

California Community Colleges Athlete Name, Image, and Likeness Working Group

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SECTION 1 – EXECUTIVE SUMMARY

California Community Colleges comprise 116 two-year institutions of higher education serving about 2.1 million students annually. California Community Colleges represent one of three parts of the public postsecondary education system in California. One hundred nine of the 116 community college institutions contain an athletics program which provides sport participation opportunities for approximately 24,000 athletes annually. As authorized by the State Legislature, the Education Code provides the California Community College Athletic Association (CCCCAA) with the authority to establish rules and regulations to administer the intercollegiate athletic activities for the California Community Colleges.

The Fair Pay to Play Act, Senate Bill (SB) 206 Skinner, signed by Governor Newsom in 2019, directed the Chancellor of the California Community Colleges to convene a community college athlete name, image, and likeness (NIL) working group. This SB 206 Working Group was provided the following charge under SB206:

- To reviewing existing California Community College Athletic Association (CCCCAA) bylaws; state/federal laws; and national athletic association bylaws regarding a college athlete's use of the athlete's name, image, and likeness for compensation; and
- On or before July 1, 2021, to submit a report to the California Community College Athletic Association and the Legislature containing its findings and policy recommendations in connection with its review described above.

To fulfill its charge the Working Group conducted and participated in eight public meetings and five public hearings convened pursuant to the Bagley-Keene Open Meeting Act between July 2020 and February 2021. The Working Group heard and considered statements and commentary from thirty invited speakers including law, business, and policy experts; athletes; athletic administrators; coaches; and other interested parties regarding the impact of SB206 on California Community College athletes. The Working Group was supported by Chancellor's Office staff and a consulting team who provided research and information related to the NIL landscape including: (a) expert reports summarizing state NIL legislation and athletic association policy development activities; (b) research report tracking transfer patterns of community college athletes; (c) research report analyzing market valuation of NIL activities on social media for California community college athletes; and (d) survey results of California Community Colleges stakeholder attitudes toward athlete engagement in NIL activities.

A participatory consensus-building process provided an opportunity for incorporating the perspectives of group members into recommendations unanimously approved by the Working Group. The Working Group developed and approved five recommendations for the Legislature (Legislative Recommendations) and nine recommendations for the CCCCCAA (CCCCAA Policy Recommendations). The recommendations, background, and rationales are presented in Section Four, on pages 49 through 56.

Two conclusions reached by the SB206 Working Group were integral to the development of the detailed legislative and policy recommendations and are instrumental to achieving implementation of the Legislative and CCCCCAA Policy Recommendations:

1. Athletes in California Community Colleges should not be excluded from the protections afforded athletes attending 4-year degree granting institutions pursuant to SB206; and
2. California Community Colleges will need additional resources to provide targeted educational programming for colleges and athletes for the development and management of name, image, and likeness activities and that funding from the Legislature for such educational programming is appropriate and necessary to support these efforts.

The recommendations of the SB206 Working Group also are closely aligned and supportive of the Goals for the *Vision for Success* of the California Community Colleges and will aid in degree completion, transfers to 4-year colleges, and reduce equity gaps among California Community Colleges' athletes as reflected in Section Two of the Final Report.

SECTION 2 – OVERVIEW OF SB206 CALIFORNIA COMMUNITY COLLEGES ATHLETES NAME, IMAGE, AND LIKENESS WORKING GROUP

WORKING GROUP PARTICIPANTS

Susan Armenta

Academic Senate for California Community Colleges (ASCCC) Representative

Jennifer Cardone

California Community College Athletic Association (CCCAA) Representative

Taylor DeBenedictis

Community College Student Athlete (Track and Field)

Rob Dewar

Community College Athletic Coach Representative

Dr. Erika Endrijonas

California Community College Athletic Association (CCCAA) Representative

Brian Harper

Community College Student Athlete (Football)

Hayley Hodson

Senate Rules Committee Appointment

Joycie Kaliangara

Community College Student Athlete (Volleyball)

Stephen Kodur

Student Senate for California Community Colleges (SSCCC) Representative

Juliana Garcia Man

Community College Student Athlete (Women's Basketball)

Randy Totorp

Community College Athletic Administrator Representative

Genaro Trejo

Speaker of the Assembly Appointment

Dr. LeBaron Woodyard, Chair

California Community Colleges Chancellor's Office (CCCCO) Representative



April 1, 2021

Honorable Erika Contreras, Secretary of the Senate
California State Senate
1315 10th St
State Capitol, Room 3044
Sacramento, CA 95814

Honorable Sue Parker, Chief Clerk of the California State Assembly
California State Assembly
1010 L St, Sacramento, CA 95814

Ms. Jennifer Cardone, Interim Executive Director
California Community College Athletic Association
2017 O Street
Sacramento CA 95811-5211

Message from the Senate Bill 206 (Skinner-D, 2019) Statutory California Community Colleges Athletes Name, Image, and Likeness Working Group

SB 206 directed the Chancellor of the California Community Colleges to convene a community college athlete name, image, and likeness (NIL) working group. This working group, now known as the Senate Bill 206 (Skinner-D, 2019) Statutory California Community Colleges Athletes Name, Image, and Likeness Working Group (hereinafter "Working Group"), was provided the following charge under SB 206:

- To reviewing existing California Community College Athletic Association (CCCAA) bylaws; state/federal laws; and national athletic association bylaws regarding a college athlete's use of the athletes name, image, and likeness for compensation; and
- On or before July 1, 2021, to submit a report to the California Community College Athletic Association and the Legislature containing its findings and policy recommendations in connection with its review described above.



To fulfill its charge the Working Group conducted and participated in eight public meetings and five public hearings beginning in July 2020 through February 2021. The Working Group heard and considered statements and commentary from numerous expert witnesses, stakeholders, and students as well as expert presentations regarding legal and policy implications, economic and marketing implications of name, image, and likeness activities, and the experiences of athletes, administrators, and coaches in California community colleges.

Based on this information, the Working Group has expressed its support to remove or limit restrictions on California Community Colleges athletes' use of their publicity rights known as name, image, and likeness rights for compensation. This position is supported and furthered through both Legislative Recommendations and CCCAA Policy Recommendations related to the following issues impacting California Community Colleges. The relevant supporting information and rationale for each of the recommendations is further detailed in the Final Report herein.

Legislative Recommendations

- Issue 1: Applicability of SB 206 to California Community Colleges
- Issue 2: Recognition of Nature/Scope of Athlete's Right of Publicity
- Issue 3: Limiting Compensation Based on Athletic Ability or Performance
- Issue 4: Limitations on Nature or Character of Permitted Promotional Activities
- Issue 5: Educational Programming to Support Athlete NIL Activities

CCCAA Policy Recommendations

- Issue 1: Notification/Reporting Requirements
- Issue 2: Use of Institutional Marks/Intellectual Property
- Issue 3: Athletic Status, Team Uniforms, and Sales of Merchandise
- Issue 4: Use of Institutional Facilities
- Issue 5: Crowdfunding
- Issue 6: Professional Service Providers (PSPs)
- Issue 7: Institutional Involvement Related to NIL Activities
- Issue 8: Institutional Employees as PSPs

Our acknowledgement of these recommendations is indicated by our signatures.

Susan Armenta

Susan Armenta
Academic Senate for California Community
Colleges (ASCCC) Representative

Jennifer Cardone

Jennifer Cardone
California Community College Athletic
Association (CCCAA) Representative

Taylor DeBenedictis

Taylor DeBenedictis (Apr 2, 2021 07:51 PDT)

Taylor DeBenedictis
Community College Student Athlete
(Track and Field)

Rob Dewar

Rob Dewar (Apr 6, 2021 12:11 PDT)

Rob Dewar
Community College Athletic Coach
Representative

Erika Endrijonas

Dr. Erika Endrijonas
California Community College Athletic
Association (CCCAA) Representative

Brian Harper

Brian Harper (Apr 7, 2021 08:32 PDT)

Brian Harper
Community College Student Athlete (Football)

Hayley Hodson

Hayley Hodson
Senate Rules Committee Appointment

Joycie Kaliangara

Joycie Kaliangara (Apr 7, 2021 16:53 PDT)

Joycie Kaliangara
Community College Student Athlete
(Volleyball)

Stephen Kodur

Stephen Kodur (Apr 12, 2021 14:05 PDT)

Stephen Kodur
Student Senate for California Community
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Juliana Garcia Man

Juliana Garcia Man (Apr 20, 2021 17:25 PDT)

Juliana Garcia Man
Community College Student Athlete (Women's
Basketball)

Randy Totorp

Randy Totorp (Apr 22, 2021 11:57 PDT)

Randy Totorp
Community College Athletic Administrator
Representative

12/02/20

Genaro Trejo
Speaker of the Assembly Appointment

LeBaron Woodyard

LeBaron Woodyard (Apr 28, 2021 14:21 PDT)

Dr. LeBaron Woodyard, Chair
California Community Colleges Chancellor's
Office (CCCCO) Representative

INTRODUCTION TO NAME, IMAGE, AND LIKENESS IN THE COLLEGE ATHLETICS ENVIRONMENT AND IMPACT OF SB206

On September 30, 2019, California became the first state to introduce and enact legislation to prohibit institutions of higher education (IHEs), amateur athletic associations and athletic conferences, and any other organization with authority over intercollegiate athletics from preventing student athletes from earning compensation in connection with the use of the athlete's name, image, and likeness. California began what has become a nationwide conversation and initiative to address primarily National Collegiate Athletic Association (NCAA) bylaws that have historically prohibited student athletes from using or permitting others to use their name, image, or likeness to earn compensation or to promote the athlete's athletic skills and abilities.

What is Name, Image, and Likeness?

The popular phrasing - *name, image, and likeness* (NIL) - refers to what are legally defined as "publicity rights." Publicity rights are the property rights associated with the personality and identity of an individual. These rights enable an individual to control the commercial use of his or her identity. The public image of a famous celebrity or athlete is of immense value and can produce significant amounts of money for the individual celebrity or athlete. The State of California protects publicity rights both through statute and common law. California Civil Code § 3344 protects a person's name, image, signature, photograph, and likeness. California courts tend to use a "readily identifiable" test to determine if some characteristic or indicia of identity would fall into one of these five categories. Thus, if an individual is readily identifiable by the user's representation of identity, it would be subject to the provisions of § 3344. California jurisprudence on publicity rights is well-developed and frequently relied upon and cited by courts outside the State of California. Similarly, California has been at the center of recent challenges to NCAA bylaws restricting NIL activities.

Relationship of California Community Colleges Athletes Name, Image, and Likeness Working Group and the California Community Colleges *Vision for Success* Goals

Over the last three years, the California Community Colleges have focused on six goals designed to ensure all students succeed in reaching their goals. The Working Group's process and product reflect a commitment to central elements of the *Vision for Success*. There are four goals in the *Vision for Success* (goals 1, 2, 5, and 6) that align with community college athlete's ability to be compensated for their NIL.

Goal #1

Increase by at least 20 percent the number of California Community College students annually who acquire associate degrees, credentials, certificates, or specific skill sets that prepare them for an in-demand job.

Allowing California Community College students to be included in the rights provided by SB 206 may enhance timely degree completion. California community college athletes could use additional funds derived from NIL or other business activities to support their education and

personal living expenses, which may include food, housing, transportation, tuition, books, or supporting family members. Additional income could mean the difference between being able to complete a program, or dropping out. Additionally, students would gain professional knowledge about profiting from one's NIL. These skills would help athletes learn how to maneuver the world of business after graduation and advance in various career paths.

Goal #2

Increase by 35 percent the number of California Community College students transferring annually to a UC or CSU.

As mentioned above, research for this project found that 48.12% of California community college student athlete transfer to a 4-year California college or an out-of-state school. Athletes transferring in-state to a 4-year college will benefit from SB 206 NIL legislative regulations when transferring. With the expansion of NIL rights to community college athletes, these students would potentially be better prepared to utilize additional opportunities from their NIL when transferring to a 4-year college.

Goal #5

Reduce equity gaps across all of the above measures through faster improvements among traditionally underrepresented student groups

By allowing California community college student athletes the same rights as all California community college students, athletes would be able to use their NIL to generate additional financial resources. Student athletes who are members of traditionally underrepresented student groups and those from disadvantaged socioeconomic backgrounds would have an opportunity to gain additional skills, while potentially reducing financial burdens.

Goal #6

Reduce regional achievement gaps across all of the above measures through faster improvements among colleges located in regions with the lowest educational attainment of adults.

The ability of California community college student athletes to profit from their NIL rights can also serve to equalize the regional gap that may be associated with rural, versus larger urban college athletic programs. Student athletes can simplify their academic costs by earning additional money to support themselves no matter what region they are in within the California Community College system. For example, rural communities have smaller population density, so the college athlete has greater name recognition with which they can profit from their NIL than college athletes in urban regions, where there are greater marketing options.

Background on Legal Challenges to NCAA Name, Image, and Likeness Bylaws

NCAA bylaws relating to athlete's NIL activities first came under legal scrutiny as early as 2002 in *Bloom v. NCAA*¹ when Jeremy Bloom challenged NCAA bylaws restricting endorsement and media appearances. Bloom was recruited to play football at the University of Colorado (CU). However, before enrolling he competed in Olympic and professional World Cup skiing events, becoming a World Cup champion in freestyle moguls. Following the Olympics, Bloom was offered various paid entertainment opportunities including a show on Nickelodeon. He also agreed to endorse certain ski equipment and modeled clothing for Tommy Hilfiger. CU requested a waiver of NCAA rules to preserve his eligibility to play football at CU. The NCAA denied the waiver. The trial court's decision to uphold the waiver was affirmed on appeal due to the substantial deference the courts extended to the decision-making authority of amateur athletic associations. The Colorado court of appeals held that the bylaws have "a rational basis in economic necessity" and also relied on prior court decisions holding that NCAA decisions promoting amateurism related to student-athletes are entitled to "considerable deference" and "voluntary athletic associations should be allowed to paddle their own canoe without unwarranted interference from the courts"²

It is against the backdrop of Jeremy Bloom's initial legal challenge in the early 2000s that reflects the rapid evolution of attitudes toward student athlete NIL rights and potential legal remedies for unfair restrictions on those rights. Beginning in 2009, a trilogy of lawsuits³ were filed against the NCAA which would pose new legal challenges to NCAA bylaws based on both state-based right of publicity laws and federal anti-trust laws. In this trilogy of cases, *Hart* (2013) and *Keller* (2013) would ultimately hold that the NCAA and its licensees, CLC and EA Sports, could be liable for publicity rights violations due to the use of student athlete's NIL featured as avatars in EA Sports *NCAA Basketball* video game. The parties settled that case for \$60 million. *O'Bannon* held that the restraints preventing member institutions from compensating student athletes for the use of their NIL were a violation of federal anti-trust laws. One of the more significant outcomes of the trilogy of cases, and especially the *O'Bannon* (2015) case, was the court's refusal to extend deference to the NCAA's rule making related to preserving amateurism alone. At least for purposes of anti-trust analysis, the court held if NCAA rules prohibiting athlete compensation derived from NIL activities have an anti-competitive effect on the market, the burden of proof is on the NCAA to demonstrate that the rules were more pro-competitive than anti-competitive. Additionally, the court rejected the NCAA's argument that amateurism is a pro-competitive justification in and of itself. Rather, proof of amateurism as a pro-competitive effect requires actual evidence of economic benefits in the marketplace, not just perceived benefits.

The history of these continuing legal challenges to the NCAA bylaws is an important foundation to framing the underlying principles espoused in SB206.⁴ Just six years after the

¹*Bloom v. NCAA*, 93 P.3d 621 (Colo. App. 2004).

²*Bloom v. NCAA*, 93 P.3d at 627.

³See, *Hart v. Electronic Arts, Inc.*, 717 F.3d 141 (3rd Cir. 2013); *Keller v. Electronic Arts, Inc.*, 724 F.3d 1268 (9th Cir.), and *O'Bannon v. NCAA*, 802 F.3d 1049 (9th Cir. 2015).

⁴A more recent antitrust challenge to NCAA amateurism rules related to limits on grant-in-aid awards is currently

Ninth Circuit Court of Appeals affirmed the District Court's decision in *O'Bannon* (2015), six states have enacted legislation similar to SB206 and Congress currently has six bills pending to create a federal regulatory framework for college athlete name, image and likeness rights.

The Working Group began its work to examine the impact of SB206 on California Community Colleges with an understanding and appreciation of the history and purpose of SB206 to recognize athletic talent that an athlete's name, image, and likeness have value and that athletes deserve to share in that value while they are participating in intercollegiate athletics. Indeed, for most athletes, especially community college athletes, who will likely not pursue professional athletic careers, NIL opportunities may be at their peak while they are participating in intercollegiate athletics.

pending in the United States Supreme Court. Oral arguments were held on March 31, 2021 and a ruling is expected in May or June, 2021. Although not directly related to the work of the Working Group, the outcome of the Supreme Court's decision could impact other pending anti-trust litigation against the NCAA challenging its name, image, and likeness restrictions and should be monitored by those involved in the development of name, image, and likeness policies. (See *NCAA v. Alston*, Case Nos. 20-520 and 20-512, Supreme Court of the United States). Docket accessible here: <https://www.supremecourt.gov/docket/docketfiles/html/public/20-512.html>.

SECTION 3 – SCOPE OF WORK AND FINDINGS OF THE SB206 WORKING GROUP

INTRODUCTION AND TIMELINE OF WORKING GROUP PROCESS

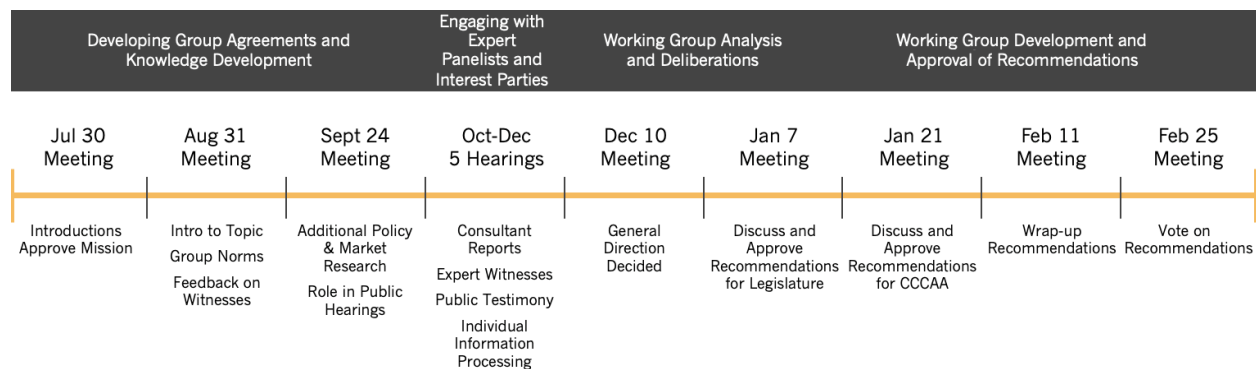
The Working Group began its work on July 30, 2020 and concluded its final meeting on February 25, 2021. All meetings were organized and conducted pursuant to the requirements set forth in the Bagley-Keene Open Meeting Act. At their initial meeting, the Working Group adopted a Mission Statement as follows:

“The California Community Colleges Athletes Name, Image, and Likeness Working Group members will develop recommendations for California state legislation on compensation for California Community College athletes’ name, image, and likeness that are equitable and provide them fair market value for their use.”

The Chancellor’s Office engaged the services of Githens and Associates LLC to provide expertise in participatory group decision-making and to serve as a facilitator for all Working Group meetings. Githens and Associates also, as part of its facilitation support, provided the services of expert consultants in sport law and sport economics to support the committee in the research, review, and analysis of (a) state and federal name, image, and likeness laws; (b) bylaws and policies of relevant amateur athletic associations; and (c) economic impact arguments and market analysis for name, image, and likeness activities. The expert consultants also advised the Working Group on the organization of expert witnesses and invited speakers for Public Hearings to provide the Working Group with knowledgeable and diverse perspectives related to the impact of name, image, and likeness initiatives for the California Community Colleges. Lastly, the expert consultants assisted in the development of recommendations for consideration and deliberation of the Working Group; and assisted with the preparation of this Final Report.⁵

The charge of the Working Group was primarily conducted and fulfilled in four stages as presented in the Figure 1 and described below.

Figure 1. Working Group Participatory Recommendation Process



⁵The consultants’ professional information and facilitation goals are contained in Appendix A.

Developing Group Agreements and Knowledge Development

First, the Working Group developed a process for group decision-making and engaged in preliminary knowledge development surrounding legal and economic issues associated with name, image, and likeness (August-September, 2020).

From a process perspective, *the starting assumption was that the group would strive for consensus throughout the process and for the recommendations.* The group identified agreements for how they would work in regard to

- Attempting to be inclusive despite various levels of positional power on the group,
- A future focus for discussions in which group consensus and decisions would be honored from one meeting to the next,
- Respecting various points of view and perspectives, and
- Assuming a positive intent among each member of the group.

Engaging with Expert Panelists and Interest Parties

Second, the Working Group developed a topical structure around which to conduct a series of Public Hearings on name, image, and likeness (October-December). The Working Group conducted five Public Hearings between October 20, 2020 and December 8, 2020.⁶ These Public Hearings provided the Working Group with detailed expert and interested party testimony from 30 invited witnesses⁷ in the following areas:

- NIL-based Marketing and Business Opportunities for Community College Athletes
 - Entrepreneurship and building a personal brand for college athletes;
 - College athletes as social media influencers and micro-influencers;
 - Monetization of college athlete NIL through social media; and
 - Projected valuations of social media profiles for college athletes.
- Legal Issues Associated with Maintaining Restrictions on NIL Compensation for Community College Athletes
 - Application of anti-trust law to California community colleges;
 - Employment law and the college athlete;
 - NIL as an economic right for college athletes; and

⁶Public Hearings were held on October 20 and 22; November 10 and 12; and December 8, 2020. All Public Hearing Notices; Agenda; Speakers and Speaker Bios; Recorded Videos; and Additional Documents provided to the Working Group are available at the Working Group website: <https://www.cccco.edu/About-Us/Chancellors-Office/Divisions/Educational-Services-and-Support/sb-206-nil-working-group>

⁷A list of all expert witnesses and invited speakers and descriptions of topics discussed is included in Appendix E.

- Group licensing opportunities for college athletes.
- Administrative and Operational Issues for Athletic Administrators at California Community Colleges
 - Challenges and opportunities associated with NIL activities for community college athletes and athletic departments.
- Administrative and Operational Issues for California-Based Athletic Conferences and Governing Associations
 - Challenges and opportunities to modernize CCCAA rules and bylaws; and
 - Current administrative actions and planning for NIL activities for California based NCAA Division II universities.
- Issues Associated with Compliance and Oversight of NIL Activities in College Athletics
 - Current reporting/disclosure frameworks for NCAA, NJCAA, and NAIA; and
 - The role of a third-party administrator in reporting and compliance.
- NIL Policy Development Efforts of National and Regional Governing Bodies for College Athletics
 - Current planning and proposals for NIL activity for NCAA, NJCAA, and NAIA.
- Updates on Economic and Legal Perspectives Related to Name, Image and Likeness
 - Current market valuation methodologies of college athlete NIL activities;
 - Impact of pending Florida state legislation on NIL activities and NCAA policy development efforts; and
 - Impact of NIL policies and permissive activities on Title IX compliance.
- Report of Market Analysis of NIL Valuations for California Community College Athletes
- College Athlete Presentations Relating to SB206 Legislation Regarding NIL Activities
 - Personal impact stories from current and former California Community Colleges athletes related to economic and financial challenges;
 - Necessary educational support services for athletes to navigate name, image and likeness rules; and
 - Importance of continuing educational opportunities and athletic eligibility after completion of community college.

Working Group Analysis, Deliberations, and Development of Key Findings

Third, following the Public Hearings, the Working Group began a series of Public Meetings to deliberate, discuss and analyze the statements, information and research provided to the Working Group. The Working Group conducted five Public Meetings between December 10, 2020 and February 25, 2021.⁸

Working Group Development and Approval of Recommendations

Fourth, the Working Group developed detailed Findings and Recommendations which are included in Section Four of this *Final Report of the SB206 Working Group*. As part of a thorough deliberation process, recommendations were developed, reviewed and revised through a collaborative policy development process. At the conclusion of this process the Working Group unanimously approved the final set of specific recommendations on February 25, 2021.

SUMMARY OF FINDINGS RELATED TO STATE AND FEDERAL LEGISLATION AND AMATEUR ATHLETIC ASSOCIATION NAME, IMAGE AND LIKENESS POLICIES

Review and Analysis of State and Federal Name, Image, and Likeness Legislation

California has advanced the conversation around athlete compensation. Since the enactment of SB206 and as of the date of preparation on this report, six additional states have enacted state legislation related to college athletes' ability to receive compensation for the use of their name, image and likeness (NIL).⁹ In addition, six current bills are pending in Congress which would create a federal regulatory landscape for college athlete name, image, and likeness activities, but no federal legislation has been enacted to date.¹⁰ The expert consultants prepared an initial state and federal legislation summary and overview for the Working Group and presented that information at the September 24, 2020 and updated the legislation summary on December 10, 2020. The December 10, 2020, descriptive overview of state and federal legislation is attached as Appendix B. This initial legislative overview identified several consistent and/or similar aspects in the legislation related to athlete name, image, and likeness activities. These similarities include:

⁸Following the completion of the Public Hearings, Public Meetings of the Working Group were held on December 10, January 7 and 21, February 11 and 25. All Public Meeting Notices, Minutes, Agenda, Recorded Videos, and any Additional Documents are available on the Chancellors' Office SB206 Working Group website: <https://www.cccco.edu/About-Us/Chancellors-Office/Divisions/Educational-Services-and-Support/sb-206-nil-working-group>

⁹When the Working Group began its work in August, 2020, only Colorado, Nebraska and Florida had enacted name, image, and likeness legislation. New Jersey enacted its legislation in September, 2020. Michigan enacted its legislation in December, 2020. All legislation enacted during the Working Groups timeline was incorporated into the Working Group's analysis. However, on March 26, 2021, Mississippi enacted name, image and likeness legislation and was not a part of the Working Groups analysis. At least 13 other states have legislation actively under consideration during the 2021 legislative cycle.

¹⁰None of the federal legislation has been passed out of Committee as of the preparation of this report. Ms. Julie Sommer, Esq. actively monitors the federal legislation for the Drake Group (an advocacy group which studies over-commercialization of college sports), and her latest analysis of the pending federal legislation is available here: <https://www.thedrakegroup.org/2021/02/12/federal-nil-legislation-chart/>

1. Recognition of an athlete's right to receive compensation from NIL;
2. Protection for athletes from penalties (by educational institution or athletic associations) related to eligibility, grant-in-aid, and scholarships due to receipt of NIL compensation;
3. Prohibiting post-secondary institutions from enforcing any Athletic Association(s) rules in violation of the Act(s);
4. Protection for post-secondary institutions from penalties by Association(s) for an athletes' receipt of compensation from NIL;
5. Permission for athletes to engage advisors, registered agents, and licensed attorneys to negotiate and solicit contracts related to the use of NIL;
6. Requiring athletes to provide notice and disclose terms of any agreement for the use of NIL; and
7. Prohibiting athletes from entering into NIL agreements that are in conflict with University and/or Team contracts.

While state and proposed federal legislation contain similar or common over-arching themes, there are a number of distinctive differences between SB206 and other state NIL legislation. These differences are also detailed in Appendix B. The primary differences include:

- SB206 originally excluded community colleges from its protections, but of the six other enacted state laws, only one is not applicable to community colleges.
- SB206 did not contain express enforcement language. Two state NIL statutes include specific and express enforcement provisions and/or permit a private right of action by the university, the athlete, or both for violations. SB 26 is proposed California legislation introduced December 5, 2020 which currently proposes to add enforcement provisions and a private right of action to the California NIL statute. SB 26 also proposes to move the implementation date of provisions of SB 206 to either August 1, 2021 or January 1, 2022 as oppose to January 1, 2023.
- All of the state statutes contain notification and disclosure requirements for athletes related to their NIL agreements, but the method and timing of providing notice and the scope of what must be disclosed varies across all six state laws.
- Generally, the state statutes permit an institution to prohibit an athlete from entering into an NIL agreement that would be in conflict with an existing university or team contract. However, only one statute actually defines "team contract."
- Lastly, treatment of current athletes and prospective athletes varies among states. Some states only prohibit a post-secondary education institution from providing a prospective student athlete with compensation in relation to NIL. There are two states

which do prohibit the post-secondary institution from providing compensation to either current or prospective student athletes.¹¹

To gain a richer understanding of the similarities and differences between the varied legislative approaches, the expert consultants prepared a detailed Legislative Summary Comparison Table of the six (now seven) enacted state statutes.¹² This comparison enabled the expert consultants to determine specifically how SB206 addressed areas commonly included in other legislative models and to identify primary issues for discussion for the Working Group to understand SB206’s application in the community college context. The effective dates for the states’ statutes reviewed and analyzed are as follows:

Table 1. Effective Dates of State Statutes

State	Effective Date	Notes
Florida and Mississippi	July 1, 2021	-
Michigan	August, 2021	2021-22 Academic Year
California and Colorado	January 1, 2023	SB26 proposes to accelerate California effective date to earlier of NCAA adoption of new NIL rules or January 1, 2022
Nebraska	No later than July 1, 2023	Each IHE shall decide, presumably Nebraska IHE’s could approve NIL currently
New Jersey	August, 2025	5th academic year following effective date of September, 2020

The analysis yielded several broad categories where key operational provisions across all state legislation were compiled for comparison. Eight of those categories were deemed most relevant to the Working Group, and were reviewed and discussed at the January and February, 2021 public meetings. Each of the eight categories reviewed by the Working Group are summarized below accompanied by compact issue tables with illustrative legislative provisions for comparison. The complete detailed state legislative comparison table is included in Appendix C.

Educational Institutions Covered by the Statute

This comparison examined whether community colleges were included in the protections of other states’ legislation, and revealed that New Jersey was the only other state to exclude community colleges. While the statutory language varied considerably, five of seven states include all public and private institutions of higher education in the NIL statute.

¹¹The reason for only prohibiting compensation to prospective student athletes is not expressed, however, it is possible that prospective student athletes are considered more vulnerable to impermissible inducements during the recruiting process. It is also possible that growing interest and advocacy for group licensing opportunities or revenue sharing for current college athletes have prompted state legislatures to not restrict these activities at this time.

¹²Mississippi enacted name, image, and likeness legislation on March 27, 2021. The Legislative Summary Comparison Table was updated accordingly to reflect the most up-to-date comparison available.

Table 2. Educational Institutions

Illustrative Provisions	SB206	Other States with Provision
Four Year Public and Private Institutions of Higher Education (IHE) (e.g., excludes community colleges)	Yes	New Jersey
All Public and Private Institutions of Higher Education as defined by relevant education code provisions (e.g., public or private institutions, institutions in state university system, or private colleges or university, public or private receiving state or federal funding; or all public and private operating in the state; or any institutions of higher education offering degrees or course of study beyond 12th grade.)	No	Colorado, Florida, Michigan Mississippi (expressly includes community colleges) Nebraska

Scope of Rights Recognized/Acknowledged

This comparison examined whether the protected activity identified in the statute was limited to name, image, and likeness activities or whether it also extended to marketing or commercial agreements related to “athletic reputation.” Only one state currently protects activities related to athletic reputation.

Table 3. Rights Included

Illustrative Provisions	SB206	Other States with Provision
Name, Image, and Likeness	Yes	Colorado, Florida, Nebraska, New Jersey, Michigan, Mississippi
Athlete Reputation	No (SB26 Yes)	Nebraska

Provisions Preventing Restraints on Athletic Compensation and Participation Rights

This comparison examined whether the statute’s provisions prohibiting restraints on earning compensation for name, image, and likeness activities applied to both educational institutions and amateur athletic associations. This comparison also examined whether the statutes also protected athletes from rules which would attempt to prevent athletes who had earned compensation from name, image, and likeness from participating in intercollegiate athletics. The language on these issues varied considerably between the different states.

Table 4. Earning NIL Compensation and Participation Rights

Illustrative Provisions	SB206	Other States with Provision
IHE shall not prevent (or adopt/ uphold any rule preventing) student from earning compensation as a result of NIL	Yes	New Jersey Florida (or unduly restricts) Mississippi
IHE shall not uphold any rule that prevents athlete from participating because athlete earns compensation from NIL	No	Nebraska, Michigan
Athletic association (e.g., NCAA/CCCAA) shall not prevent athlete from earning compensation as a result of NIL	Yes	Colorado Mississippi Nebraska (or penalize)
Athletic association (e.g., NCAA/CCCAA) shall not prevent IHE from participating in intercollegiate athletics as a result of compensation of athlete for use of NIL	Yes	Colorado Michigan, Mississippi Nebraska (or penalize)

Provisions Prohibiting Compensation to Athletes

This comparison examined whether educational institutions, amateur athletic associations, and boosters were either prohibited from or permitted to provide compensation to college athletes in relation to the use of the name, image and likeness; and whether those provisions treated prospective athletes differently than current athletes. All states consistently prohibit an educational institution or an amateur athletic association from providing compensation to prospective student athletes. However, the treatment of current student athletes varied.

Table 5. Prohibited Compensation

Illustrative Provisions	SB206	Other States with Provision
IHE shall not provide prospective student athlete compensation in relation to NIL	Yes	Colorado, Florida, New Jersey, Michigan, Mississippi
IHE shall not provide current student athlete compensation in relation to NIL	No	Colorado, Florida, Mississippi
IHE shall not provide prospective student athlete remuneration for athletic ability or performance	No	Colorado, Florida

Illustrative Provisions	SB206	Other States with Provision
Athletic Association (e.g., NCAA/CCCAA) shall not provide prospective student athlete compensation in relation to NIL	Yes	Colorado, Florida, Michigan
Athletic Association (e.g., NCAA/CCCAA) shall not provide current student athlete compensation in relation to NIL	No	Colorado, Florida
“Booster” shall not compensate current or prospective athlete for use of NIL	No	Florida, New Jersey, Mississippi

Provisions Permitting Professional Representation and Regulating Agents

This comparison examined whether the legislation prevents educational institutions and amateur athletic associations from restricting college athletes’ rights to engage professional representation (agents) in relation to name, image, and likeness contracts or legal matters. This is an area where the states uniformly prevented such restrictions; and six of the seven states further require any professional representatives to be licensed in the state.

Table 6. Professional Representation and Agents

Illustrative Provisions	SB206	Other States with Provision
Illustrative Provisions	SB206	Other States with Provision
IHE shall not prevent student from obtaining professional representation in relation to contracts or legal matters (agents and attorneys)	Yes	Colorado Florida (or unduly restrict) Michigan, Mississippi Nebraska (or penalize) New Jersey
Athletic Association (e.g., NCAA/CCCAA) shall not prevent student from obtaining professional representation in relation to contracts or legal matters (agents and attorneys)	Yes	Michigan, Mississippi, Nebraska
Professional representation shall be persons licenses by the state (agents and attorneys)	Yes	Colorado, Florida, Michigan, Mississippi, New Jersey

Disclosure and Conflict Provisions

This comparison examined whether athletes were required to disclose name, image and likeness activities to their respective institutions and whether institutions could prohibit certain name, image and likeness activities that were in conflict with existing team contracts. All the states’ legislation contains general provisions that are quite consistent across the seven states requiring athletes to disclose their NIL agreements. However, the notification process and timelines; definition of what constitutes a “conflict”; and disclosure requirements related to a conflict vary considerably and are addressed in a supplemental memo prepared for the Chancellor’s Office attached as Appendix G. Only one state defines “team contract.” In other states it is not clear whether “team contract” refers solely to sponsorship agreements between the athletics department and a third-party sponsor, or whether other institutional agreements are included in the definition of “team contract.” Additionally, none of the states have provided for procedures for resolving disputes between athletes and universities regarding whether an athlete NIL agreement is in conflict with a “team contract.”

Table 7. Disclosure and Conflicts

Illustrative Provisions	SB206	Other States with Provision
Athlete shall not enter into NIL contract in conflict with team contract and shall disclose NIL contract to an official of the institution	Yes	Colorado, Florida, Mississippi, Nebraska, New Jersey
Institution asserting conflict shall disclose relevant contractual provisions to athlete or athlete’s legal representative	Yes	Colorado, Florida, Mississippi, Nebraska (must disclose entire contract) New Jersey
Team Contract shall not prevent athlete from using NIL for commercial purposes when not engaged in team activities	Yes	Colorado, Michigan, Nebraska, New Jersey

Restrictions on Certain Types of Commercial or Promotional Activities

This comparison examined whether the legislation permitted educational institutions to prohibit certain types of name, image, and likeness activities which may be deemed objectionable to the institutions. New Jersey is the only state preventing athletes from engaging in specific types of NIL agreements, thus, presumably educational institutions would be able to prohibit such activities as well. Two states have enabled educational institutions to prevent athletes from displaying sponsor advertising during team activities.

Table 8. Permitted Restrictions on NIL Activity

Illustrative Provisions	SB206	Other States with Provision
Adult Entertainment Products or Services	No	Mississippi, New Jersey
Alcohol Products	No	Mississippi, New Jersey
Casinos/Gambling/Sports Betting, Lottery, and Betting in connection with video games, online games, and mobile devices	No	Mississippi, New Jersey
Tobacco/E-smoking products, and devices	No	Mississippi, New Jersey
Marijuana	No	Mississippi
Performance Enhancing Supplements	No	Mississippi
Prescription Pharmaceuticals	No	New Jersey
Controlled Dangerous Substance	No	New Jersey
Weapons, Firearms, Ammunition	No	New Jersey
IHE may impose reasonable limits on dates/time student athlete may participate in NIL activities	No	Mississippi
Athlete may not enter NIL agreement before enrollment at IHE or that conflict with values or mission of IHE	No	Mississippi
Athlete may not enter contract that requires athlete to display sponsor’s apparel or otherwise advertise during official team activities	No	Michigan, Nebraska

Educational Services Provisions

This comparison examined whether educational institutions were provided specific authority or requirements to provide educational services for athletes related to name, image and likeness activities. Only two states’ legislation expressly addressed the ability or expectation of educational institutions to provide educational services for athletes, and those services pertained to obtaining professional representation and providing financial literacy education.

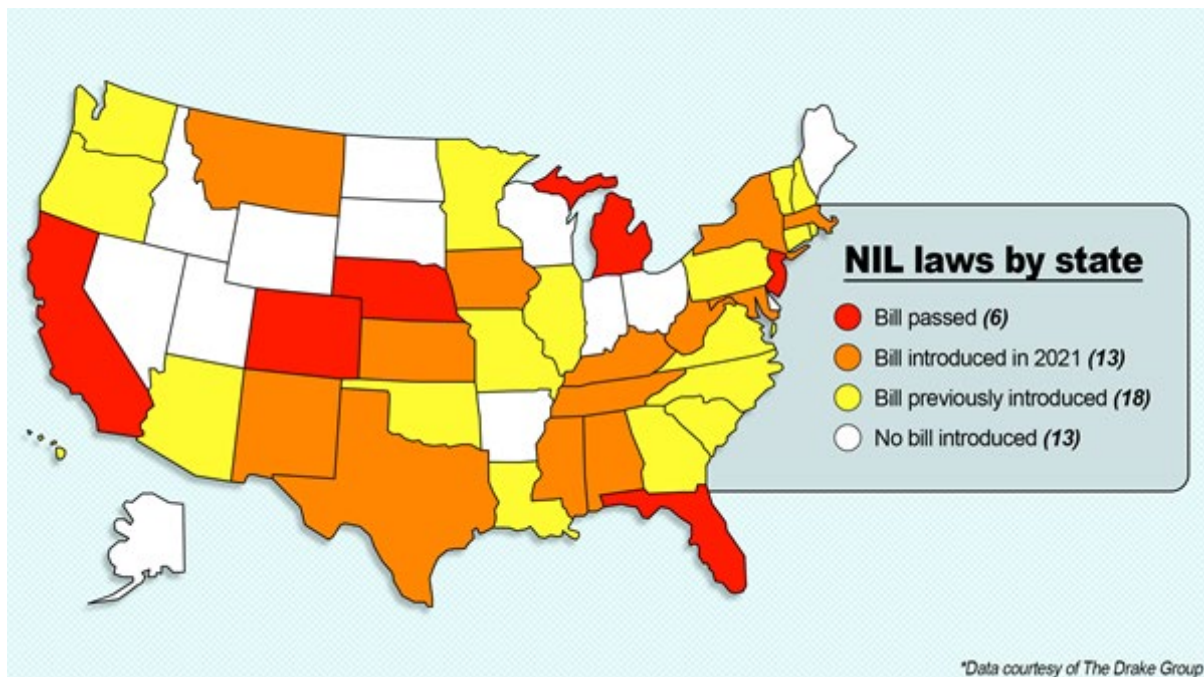
Table 9. Educational Support Services

Illustrative Provisions	SB206	Other States with Provision
IHE may sponsor on campus interviews at which athlete agent may discuss representation of marketing athlete’s athletic ability or reputation;	No	Colorado
IHE Governing Board may adopt rules regarding scheduling, duration, and location of on campus interviews with agents	No	Colorado
IHE shall conduct financial literacy and life skills workshop for a minimum of 5 hours at the beginning of 1st and 3rd academic years (including info about financial aid, debt management, recommended budget for athletes based on cost of attendance (COA), and time management skills)	No	Florida
Financial literacy workshops may not include any marketing, advertising, referral, or solicitation by providers of financial products and services.	No	Florida

The state legislative landscape is still highly active and more states are likely to enact NIL legislation in the coming months. Sports Illustrated updated the following graph on March 4, 2021.¹³ Shortly thereafter, Mississippi became the seventh state to enact NIL legislation.

¹³See, Dellenger, R. (2021, March 4). With recruiting in mind, States jockey to one-up each other in chaotic race for NIL laws. *Sports Illustrated*. <https://www.si.com/college/2021/03/04/name-image-likeness-state-laws-congress-ncaa>

Figure 2. Name, Image, and Likeness Legislation by State



NIL Law Status	Number of States with Status	States
Bill passed	6	California, Colorado, Nebraska, Michigan, Florida, New Jersey
Bill introduced in 2021	13	Montana, New Mexico, Texas, Kansas, Iowa, Mississippi, Alabama, Tennessee, Kentucky, West Virginia, New York, Massachusetts, Maryland
Bill previously introduced	18	Washington, Oregon, Arizona, Minnesota, Missouri, Oklahoma, Louisiana, Illinois, Georgia, South Carolina, North Carolina, Virginia, Pennsylvania, Connecticut, Rhode Island, New Hampshire, Vermont, Hawaii
No bill introduced	13	Alaska, Nevada, Idaho, Utah, Wyoming, North Dakota, South Dakota, Arkansas, Wisconsin, Indiana, Ohio, Maine

The previous compact issue tables highlighted illustrative provisions in the eight categories discussed and deliberated by the Working Group which formed the basis of the Working Group’s Legislative Recommendations contained in Section Four of this Report.

Review and Analysis of Amateur Athletic Association NIL Policies and Policy Proposals

History and Background of Policy Changes and Proposals among Amateur Athletic Associations

Beginning in the summer of 2019 the National Collegiate Athletic Association (NCAA) and the National Intercollegiate Athletics Association (NAIA) began efforts to authorize changes to policies and bylaws to permit student athletes to receive compensation related to their name, image, and likeness. The NCAA formed a Federal and State Legislative Working Group (FSLWG) for Name, Image, and Likeness on May 14, 2019. The NCAA FSLWG conducted an extensive evaluation of its current rules, the historic distinction between permitted and prohibited activities, and member concerns about abuse of NIL commercialization. Concurrently with the efforts of the FSLWG, each of the three NCAA Divisions formed committees to provide input to the FSLWG.¹⁴ The NCAA Division I committee (Division I Name, Image, and Likeness Legislative Solutions Group) separated their efforts into three sub-groups organized around anticipated NIL activities: group licensing; individual licensing, and student-athlete work product. NCAA Divisions II and III each formed a committee as follows: The Division II Legislation Committee; and the Division III Oversight Group to Implement Recommendations of Federal and State Legislation.

The FSLWG produced its Final Report and Recommendations (April 2020 Report) on April 17, 2020 in which it recommended that each NCAA division be encouraged to continue consideration of appropriate revisions to their bylaws to permit student-athlete NIL activities.¹⁵ The April 2020 Report identified two broad categories in which NIL rules should be modernized: (1) compensation for third-party endorsements; and (2) compensation for student-athlete work product or business activities. All of the divisional working groups convened and conducted additional proceedings between April 2020 through December 2020 to initiate the drafting and implementation of modernized NIL rules. By December 2020 each of the three NCAA divisions had developed NIL legislative proposals planned for adoption by their respective memberships at their annual conventions scheduled for January 12-15, 2021. A vote on the legislative proposals was tabled on January 11, 2021 by the Division I Council. The NCAA issued a statement attributing the delay to “several external factors, including recent correspondence with the U.S. Department of Justice.” NCAA President Mark Emmert also indicated that judicial, political, and enforcement issues all contributed to the decisions to delay a January vote on the proposals.¹⁶ Divisions II and III similarly withdrew their pending NIL legislative proposals on January 12, 2021.¹⁷ As of the date of this report, NCAA NIL policy

¹⁴See, NCAA Member Resources tracking NIL policy development activities available at this link <https://www.ncaa.org/governance/membership-resources-name-image-and-likeness>

¹⁵See, NCAA Federal and State Legislation Working Group, April 20, 2019 Final Report is available in its entirety at this link https://ncaaorg.s3.amazonaws.com/committees/ncaa/wrkgrps/fslwg/Apr2020FSLWG_Report.pdf

¹⁶See, NCAA media release announcing that NIL proposals tabled for Division I. <https://www.ncaa.org/about/resources/media-center/news/division-i-council-tables-proposals-name-image-likeness-and-transfers>

¹⁷See, NCAA Division II and Division III Statements confirming withdrawal of NIL proposals - Division II Statement: <https://www.ncaa.org/about/resources/media-center/news/dii-presidents-council-votes-withdraw-nil-proposal> and Division III Statement <https://www.ncaa.org/about/resources/media-center/news/diii-management->

proposals have yet to be presented to the NCAA membership for approval. For purposes of developing policy recommendations for the California Community Colleges, the Working Group relied upon the most current version of the proposals as they were proposed for consideration of their respective NCAA memberships for Divisions I, II, and III at the January annual meeting.¹⁸

The NAIA was the first intercollegiate athletic association to draft and implement new NIL rules for student athletes. In its announcement on October, 2020, the NAIA expressly acknowledged the influence the California Fair Pay to Play Act (SB206) had on its decision to modernize its NIL rules.¹⁹ The NAIA National Coordinating Committee and the Association for Student-Athletes began its review of NIL rights in March 2019 based on the principle that student athletes should have the same opportunities that already exist for other students with specific talents that help to pay for their education. The NAIA proposed NIL legislation passed overwhelmingly on October 6, 2020. The NAIA legislation allows a student athlete to receive compensation for promoting any commercial product, enterprise, or for any public or media appearance. It further allows for a student-athlete to reference their intercollegiate athletic participation in promotions or appearances. One factor contributing to the NAIA's decision to implement new NIL rules was that NAIA student-athletes can already receive financial assistance from family, friends, and institutional donors/boosters. NIL would further this opportunity by allowing them to utilize their collegiate athlete status to get paid to promote an event or goods, (e.g., pitching lessons from the star college pitcher, social media influencer referencing his or her school athletics items).

The SB206 Working Group not only actively monitored the policy developments occurring in the NCAA and the NAIA, but it also reviewed and analyzed a detailed comparison of the proposed rules changes contained in each of the NCAA three divisions and the NAIA. The detailed NCAA/NAIA Policy Issues Comparison Table is attached as Appendix D. This comparative analysis revealed several areas of consensus among the amateur athletic associations' policies and also helped to illuminate some noticeable differences between the policies proposed across all three Divisions of the NCAA and the NAIA. The expert consultants prepared various policy recommendations for eight issues for which the detailed policy analysis revealed were most consistently and frequently included among the policy proposals of other amateur athletic associations. The eight issues presented to the SB206 Working Group are as follows:

Issue 1: Notification and Reporting Requirements

Issue 2: Use of Institutional Marks/Intellectual Property

[council-recommends-name-image-likeness-legislation-delay](#)

¹⁸Before completion and submission of this Report, NCAA policy proposals could undergo further consideration. For example, one or more of the NCAA divisions could adopt the proposals in their current form before July 1; one or more NCAA divisions could amend the existing proposals in a substantive manner; or one or more NCAA divisions may not enact any of the NIL proposals. However, the current proposals are reflective of current approaches being used to modernize NIL policies

¹⁹See, NAIA statement announcing removal of NIL restraints on NAIA athletes: <https://www.naia.org/membership/name-image-likeness>

Issue 3: Use of Athletic Status or Team Uniforms/Merchandise in NIL Activities

Issue 4: Use of Institutional Facilities

Issue 5: Athlete Crowdfunding Activities

Issue 6: Professional Service Providers

Issue 7: Institutional Involvement with NIL Activities

Issue 8: Institutional Employees as Professional Service Providers

The Working Group discussed and deliberated how each of these issues would impact athletes and institutions in the California Community Colleges, reviewed the comparative policy language adopted or proposed by the NCAA and NAIA, and approved recommendations for consideration of the CCCAA on February 25, 2021. The detailed CCCAA policy recommendations are presented in Section Four of this Report.

SUMMARY OF RESEARCH PREPARED FOR THE SB206 WORKING GROUP

The Working Group also commissioned or conducted, by and through, the Chancellor's Office three separate research projects to gain a broader understanding of the impact name, image, and likeness activities would have on California Community Colleges and its athletes. The first study was a market analysis report to provide an estimate of fair market value for community college athlete name, image, and likeness.²⁰ The second study assessed attitudes of stakeholders within the California Community Colleges toward lifting prohibitions on name, image, and likeness activities for athletes. The final study examined transfer patterns among California Community College athletes to assess the magnitude of potential concerns about community college athletes' ability and eligibility to transfer to a four-year institution in a state or athletic division that was subject to different name, image, and likeness rules. Brief summaries of the findings and significance of the three research projects is included below.

Market Analysis Report – CCCAA Athletes' Social Media Profiles

The mission statement adopted by the SB206 Working Group stated that the Working Group “will develop recommendations for California state legislation on compensation for California Community College athletes' name, image, and likeness *that are equitable and provide them fair market value for their use*” (italics added). Equity concerns were raised with the Working Group relative to whether name, image, and likeness activities would create disparities among institutions in the California Community Colleges based on gender, sport, or geographical location (urban, suburban, rural). To better understand issues of equity among California Community College athletes in regard to name, image, and likeness earnings potential and provide an estimate of fair market value for community college athlete publicity rights, the Working Group commissioned a name, image, and likeness market analysis study. The Market Analysis Report with name, image, and likeness value estimates was presented to the Working Group during the November 12, 2020 public hearing session and is summarized below.²¹

Purpose

The purpose of this analysis was to provide an objective and valid examination of the name, image, and likeness earnings potential for California Community College athletes by treating athletes as potential social media marketing influencers and applying standard influencer marketing rates to estimate earnings potential. Additionally, this analysis sought to investigate the equitable earnings potential of these name, image, and likeness earnings estimates through an examination of the data broken down by athlete sport, gender, and conference.

²⁰The Market Analysis Report was designed and conducted by Dr. Adam Cocco, Assistant Professor, University of Louisville. Dr. Cocco is one of the expert consultants for the Working Group. Dr. Cocco presented his complete findings and results to the Working Group on November 12, 2020. The Working Group extends its acknowledgement and appreciation to the students from the University of Louisville Sport Administration Student Association for their contributions to this project.

²¹The complete Report of the California Community College Athlete NIL Market Analysis is attached as Appendix F.

Method

To begin this analysis, the California Community College Athletic Association provided a list of all athletes competing in sports governed by the athletic association during the 2019-2020 athletic season. The 2019-2020 athletic season represented the most recent availability of roster data. This list contained 23,248 unique athletes and included the athlete's name, sport, gender, and institution. After initial data cleaning, a group of research assistants at the University of Louisville searched for Instagram profiles related to each athlete. Instagram was chosen as the social media platform for this analysis due to its use by athletes across a variety of sports to engage audiences, promote and develop their brand, and monetize their brand through sponsorships.²² Additionally, Instagram use is more prevalent among college-aged individuals relative to other established social media platforms such as Facebook and Twitter.²³

Research assistants were instructed to collect data on Instagram usernames and follower counts for profiles that indicated a clear and reasonable match with a community college athlete. In total, research assistants found 4,601 Instagram profiles which provided a clear and reasonable match to a California Community College athlete (19.79% of all athletes).

Following this initial data collection effort, a research team located within the Sport Industry Research Center at Temple University utilized a custom web scraper program to systematically extract engagement data (likes and comments) related to each athlete's identified Instagram profile.²⁴ Data analysis was conducted on the engagement data to ascertain name, image, and likeness value estimates for athletes with Instagram profiles containing 1,000 or more followers. This follower threshold matches industry standards regarding the minimum number of followers to be considered a "micro-influencer" on social media.²⁵

In total, 1,168 community college athlete Instagram profiles (25.38% of identified Instagram profiles) contained publicly available engagement data; met the micro-influencer threshold; and were included in the sample used for name, image, and likeness value estimates. Industry research on social media influencer value utilizes a hybrid approach whereby an individual's reach and engagement on social media combine to form valid estimates

²²See, Doyle, J.P., Su, Y., & Kunkel, T. (2020). Athlete branding via social media: An examination of the content that drives fan engagement on Instagram. *European Sport Management Quarterly*. <https://doi.org/10.1080/16184742.2020.1806897>

²³See, Jaschik, S. (2019, September 23). Instagram on the rise. *Inside Higher Ed*. <https://www.insidehighered.com/admissions/article/2019/09/23/prospective-students-social-media-preferences-have-changed-two-years>

²⁴The Working Group extends its acknowledgement and appreciation to Dr. Thilo Kunkel and the Sport Industry Research Center at Temple University for their assistance with this project.

²⁵See, Dosh, K. (2020, October 20). Name, image, and likeness for community college student athletes. *Business of College Sports*. <https://businessofcollegesports.com/legal/name-image-and-likeness-for-community-college-student-athletes/>

of social media brand value.²⁶ This analysis followed a similar approach.²⁷ Within this formula, an athlete's *reach* on social media was approximated by their number of Instagram followers. This analysis also chose to utilize a relatively conservative CPM (cost per thousand impressions) estimate of \$10 per thousand impressions.²⁸ *Posts* refers to the number of annual sponsored posts generated by a social media influencer. Industry standards generally estimate one sponsored post per week.²⁹ This estimate was also utilized in this analysis. The term *E* refers to the average number of engagements from the last 12 publicly available posts on an athlete's Instagram profile. Likes and comments provided two separate engagement metrics for this analysis. Finally, the term *C* refers to the cost per engagement. Consistent with industry standards³⁰, a *cost per like* metric of \$0.20 and a *cost per comment* metric of \$0.70 were used in this analysis.³¹ The following section outlines key findings from this analysis.

Key Findings & Conclusions

The market analysis of the name, image, and likeness earnings potential for California Community College athletes via social media influencer marketing on the Instagram platform produced valid and reliable evidence of equitable earnings opportunities for all athletes and realistic estimates of fair market value. The complete Market Analysis Report is included in Appendix F. Approximately 5.0% of both men's and women's community college athletes possess a social media profile sizeable enough to create some form of name, image, and likeness earnings potential. Men's sport athletes demonstrated a higher overall earnings potential, with the top men's sport athlete projected to earn \$57,558 annually via social media influencer marketing compared to \$44,837 for the top women's sport athlete. However, the average women's sport athlete (\$2,675) projected to earn more annually compared to the average men's sport athlete (\$2,450). This finding resulted from women's sport athletes generally experiencing higher reach and engagement metrics across the analyzed social media platform. The following figures present average annual NIL earnings estimates for men's sport athletes and women's sport athletes.

²⁶See, Kunkel, T., Baker, B., Baker, T., & Doyle, J. (2021). There is no nil in NIL: Examining the social media value of student-athletes' names, images, and likeness. *Sport Management Review*; and Weber, S. (2020, May 13). NIL earning potential of Ohio State football student-athletes. *Opendorse*. <https://opendorse.com/blog/nil-earning-potential-of-ohio-state-football-student-athletes/>

²⁷The formula utilized in this analysis to generate name, image, and likeness annual value estimates pertaining to community college athlete Instagram profiles was:

$$\text{Annual Value} = 0.5[\text{Reach} \times \text{CPM} \times \text{Posts}]/1000 + 0.5[\Sigma(\text{E} \times \text{C}) \times \text{Posts}]$$

²⁸The metric CPM refers to "cost per thousand impressions" and approximates the marketing cost of reaching 1,000 potential consumers. Industry research on social media influencer marketing utilize a range of CPM estimates, from \$6 per thousand impressions to \$20 per thousand impressions.

²⁹See, Weber, S. (2017, February 7). Sponsored social in sports: How athletes, teams, and leagues stack up. *Opendorse*. <https://opendorse.com/blog/sponsored-tweets/>

³⁰See, Henderson, G. (2019, January 14). How much does it cost to advertise on Instagram? *Digital Marketing*. <https://www.digitalmarketing.org/blog/how-much-does-it-cost-to-advertise-on-instagram>

³¹The cost per comment rate is higher than the cost per like rate due to comments representing a deeper form of engagement on a social media post.

Figure 3. Average Annual Earnings Estimate for Men’s Sport Athletes

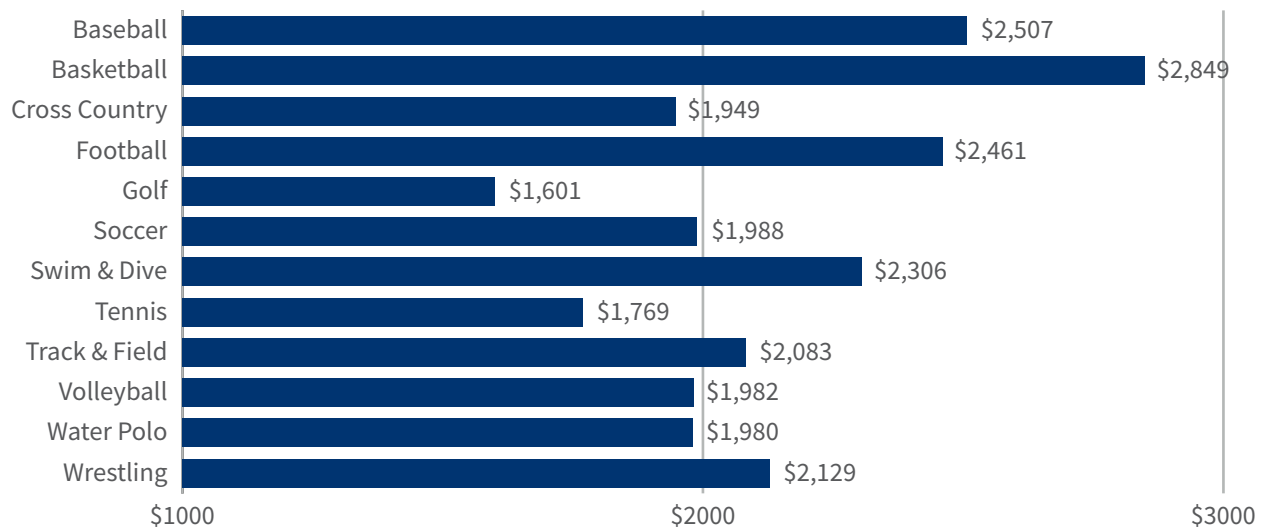
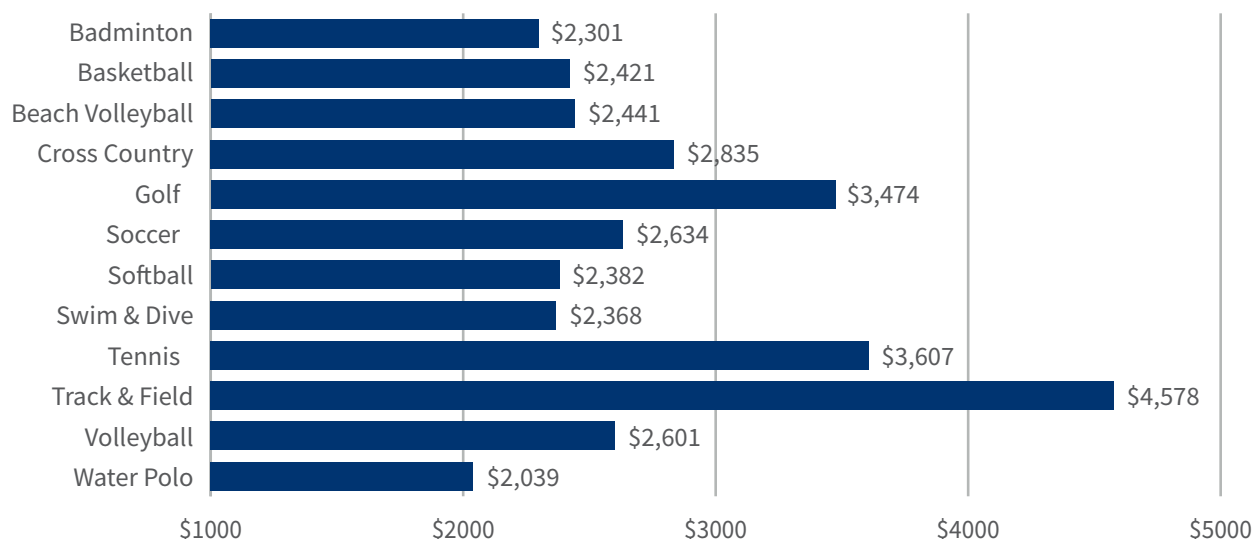


Figure 4. Average Annual Earnings Estimate for Women’s Sport Athletes

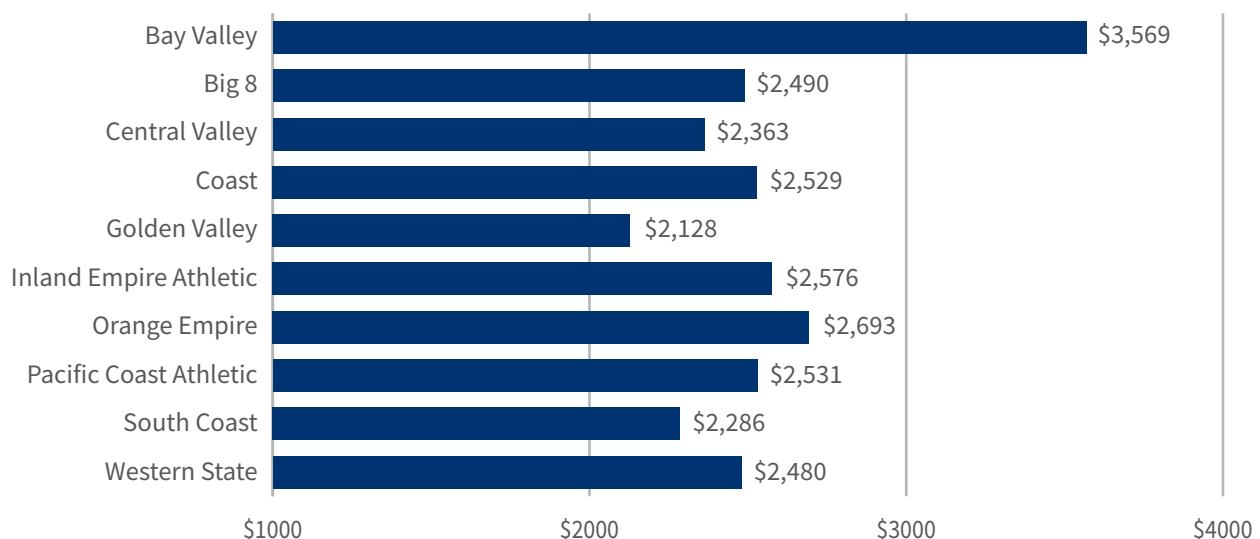


Although it is interesting to note the high earnings potential of several athletes, the reality of this analysis shows that the vast majority of California Community College athletes with a monetizable social media presence would earn between \$1,000 and \$5,000 per year if they chose to place sponsored product advertisements on their Instagram profile (micro-influencers). Out of the 1,168 athlete Instagram profiles included in this analysis, 92.72% fell into the \$1,000 - \$5,000 annual monetizable value range. A complete analysis of earnings potential by value range, broken down by sport, gender, and conference, can be found in the complete Market Analysis Report included in Appendix F.

In addition to a name, image, and likeness market analysis by sport and gender, an analysis was conducted by California Community College Athletic Association conference to determine potential disparities in earnings estimates based on geographic location of institutions. Average annual earnings estimates for athletes by conference revealed values

ranging from \$2,128 per year (Golden Valley Conference) to \$3,569 (Bay Valley Conference). The figure below presents annual athlete name, image, and likeness earnings estimates broken down by each conference competing within the California Community College Athletic Association. The analysis of athlete earnings estimates across California Community College Athletic Association conferences found relatively equal earnings potential regardless of institutional location. The outlier in this analysis came from the Bay Valley Conference with an average athlete earnings potential of \$3,569 per year. This result occurred due to the presence of Laney College in the Bay Valley Conference. Given that the Laney College football program was featured on the Netflix documentary “Last Chance U,” several of their football athletes were able to grow sizeable social media followings, thereby skewing the results from this conference

Figure 5. Average Annual Athlete Earnings Estimate by Conference



Application to California Community College Athletes

This analysis reflects a baseline average for earnings opportunity via social media influencer marketing for California Community College athletes. Real opportunities will differ from these estimates. Additionally, it is important to note that opportunity does not mean actual occurrence. Just because a community college athlete is provided with an opportunity to monetize their brand via their social media profile does not mean they will do so. Athletes will decline these opportunities for a variety of reasons, such as being offered opportunities to promote products which they do not support or which do not align with their personal brand strategy and development.

Additionally, this study only examined earnings estimates from one social media site (Instagram). Other social media sites, such as Snapchat, TikTok, and YouTube, provide additional realistic outlets for athletes to monetize their personal brand via social media influencer marketing. Furthermore, social media influencer marketing is only one method by which an athlete can monetize their personal brand. Additional compensation opportunities related to traditional media advertising, promotional appearances, camps, clinics, and entrepreneurial activities, among others, provide a wide variety of avenues for athletes to monetize their name, image, and likeness rights. Finally, several student-athletes partaking in

the SB206 Working Group meetings mentioned that many athletic programs place restrictions on the social media activity of college athletes. Therefore, these restrictions may limit the social media reach and engagement potential of college athletes, thereby undervaluing their true monetization potential on social media.

In summary, this name, image, and likeness market analysis study should be looked at as a baseline estimate that begins the conversation on earnings potential and fair market value for California Community College athletes. The complexity of marketing deals and the variety of monetization avenues for an athlete’s name, image, and likeness rights create an opportunity for vast fluctuations in the actual earnings of California Community College athletes compared to those represented in this market analysis.

Survey Report of California Community Colleges Stakeholders

The Working Group requested a survey of California Community College stakeholders to better understand the attitude toward lifting prohibitions on community college athlete compensation for the use of their name, image, and likeness rights.³² The survey targeted six main stakeholder groups related to California Community Colleges, namely: administrators, faculty, classified staff members, students, community members, and other stakeholders. A total of 578 completed surveys were received as part of this data collection effort. The table below outlines the composition of stakeholder groups who completed the survey.

Table 11. California Community College name, image, and likeness survey completion by stakeholder group

Stakeholder Group	Number of Completed Surveys	Percent of Total Completed Surveys
Administrator	109	18.8%
Faculty	307	53.1%
Classified Staff Member	68	11.7%
Student	84	14.5%
Community Member	17	3.0%
Other	28	4.9%
Grand Total	613	106.0%

Due to respondents being able to identify as a member of more than one stakeholder group (e.g., identifying as both an Administrator and Faculty member), the total number of surveys completed by stakeholder group (613) is larger than the total number of actual completed surveys (578). Administrator job roles indicated by respondents included vice-chancellor, president, vice-president, dean, assistant or associate dean, athletic director, and program director. Faculty member job roles indicated by respondents included full-time and adjunct

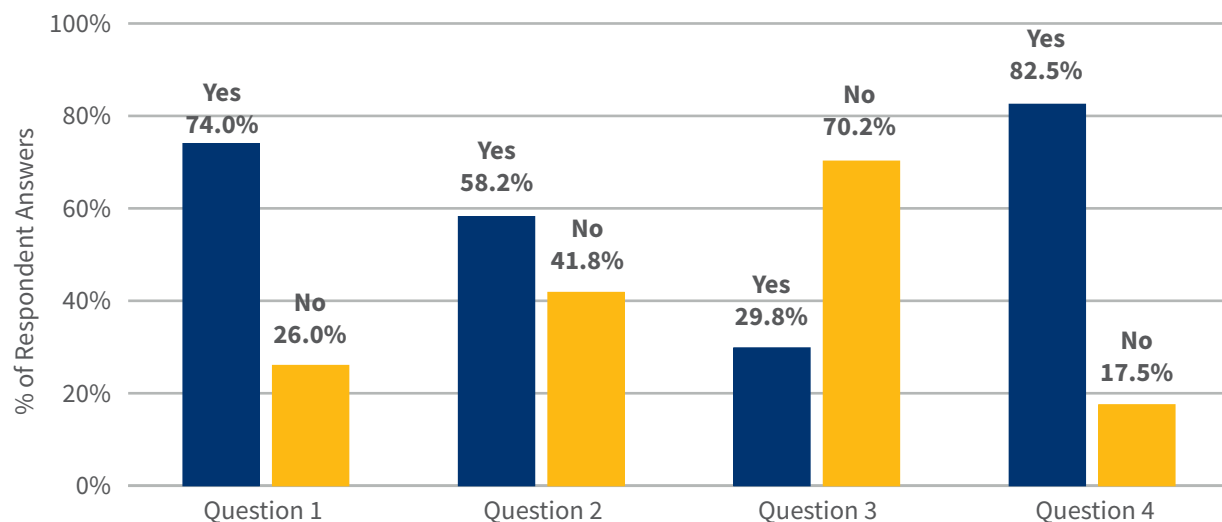
³²The Stakeholder survey was created by the Working Group’s Chairman, Dr. LeBaron Woodyard, and distributed through the Chancellor’s Office in November 2020. Complete results from the survey were presented to the Working Group on December 10, 2020 and is available on the Working Group website.

faculty, athletic coach, and assistant athletic coach. Student respondents were asked if they were currently or formerly an athlete at a California community college. Approximately 54% of student respondents indicated they were currently or previously a community college athlete.

A demographic breakdown of respondents indicated relative gender equality, with approximately 46% of respondents (266) identifying as male, 43% of respondents (248) identifying as female, and the other 64 respondents identifying as non-binary, unknown, or they declined to respond to the question. Almost half of respondents (269) indicated their race/ethnicity as White, with a further 13.3% of respondents (77) indicating their race/ethnicity as Black or African-American and 11.6% of respondents (67) indicating their race/ethnicity as Hispanic or Latino. The remaining respondents identified their race/ethnicity as: Mexican, Mexican-American, or Chicano; Filipino; American Indian or Alaska Native; Other; or they declined to respond to the question on race/ethnicity.

Four questions were posed to participants to help understand their attitudes toward name, image, and likeness rights for California Community College athletes.³³ The figure below presents respondent answers to these four survey questions.

Figure 6. California Community College Name, Image, and Likeness Stakeholder Survey Results



Survey results for Question 1 (“Should California Community College athletes be allowed to be remunerated for the use of their name, image, and likeness?”) suggested overwhelming support for removing name, image, and likeness prohibitions on community college athletes among stakeholders. Almost 3 out of every 4 respondents indicated that community college athletes should be allowed to be remunerated for the use of their name, image, and likeness.

³³Question 1 asked: “Should California Community College athletes be allowed to be remunerated for the use of their name, image, and likeness?” Question 2 asked: “Should California Community College athletes be allowed to be remunerated for the use of their name, image, and likeness for any products or services?” Question 3 asked: “Should California Community College athletes be allowed to be remunerated for the use of their name, image, and likeness for products or services like alcohol, gambling, etc.?” Question 4 asked: “Should the existing SB206 law go into effect on January 1, 2023; or should California move its implementation date up to 2021 instead of 2023?”

Similarly, a majority of stakeholder respondents (58.2%) indicated agreement with Question 2 (“Should California Community College athletes be allowed to be remunerated for the use of their name, image, and likeness for any products or services?”).

However, on Question 3 (“Should California Community College athletes be allowed to be remunerated for the use of their name, image, and likeness for products or services like alcohol, gambling, etc.?”), 7 out of 10 stakeholders responded “no.” This discrepancy may indicate that, on the surface, stakeholders support a free market for community college athlete compensation for the use of their name, image, and likeness rights, but when presented with a specific controversial product or service, such as gambling or alcohol, they are less likely to support a completely free market for community college athlete promotion of a product or service. Therefore, it appears California Community College stakeholders support the ability for athletes to earn compensation from the use of their name, image, and likeness rights, but they also favor the ability to place certain or specific restrictions on the types of products or services that can be promoted by athletes.

Finally, an overwhelming majority of stakeholder responses (82.5%) indicated support for an earlier implementation date in 2021 in response to Question 4 (“The existing SB 206 law goes into effect on January 1, 2023. Other entities, i.e. states, conferences, associations etc. are implementing NIL legislation to become effective in 2021. Should California also move its implementation date up to 2021 instead of 2023?”).

Report and Analysis of California Community Colleges’ Athlete Transfer Patterns and Impact

A key principle surrounding Working Group discussions on California Community College athletes’ use of their name, image, and likeness rights was the criticality of preserving the transfer eligibility of community college athletes. Community college athletes that transfer to four-year institutions may be subject to different name, image, and likeness policies depending upon the state and athletic association governing body of the institution to which they transfer. Therefore, activities which result in a community college athlete receiving compensation for the use of their name, image, and likeness could impact their transfer eligibility if the institution of intended transfer is governed by athletic association or state policy that continues to prohibit compensation for the use of a college athlete’s name, image, and likeness.

Purpose of the Study

To better understand the transfer patterns of California Community College athletes and the potential impact of such patterns on effective implementation of name, image, and likeness legal and policy requirements, the Chancellor’s Office conducted a report and analysis of California Community College athlete transfer patterns which was presented to the Working Group during the February 25, 2021 public hearing session.

Method

The California Community College Athletic Association provided lists of all sport rosters for community college athletes competing during the 2016-2017 and 2017-2018 academic years. This initial data set yielded 51,323 athletes. To remove duplicates created by multi-sport athletes and/or athletes competing in both the 2016-2017 and 2017-2018 academic years, a scan of the data identified records that contained an exact match on date of birth and California Community College ID number. After identifying and removing duplicates from the initial data set, 41,740 unique athletes remained included for further analysis.

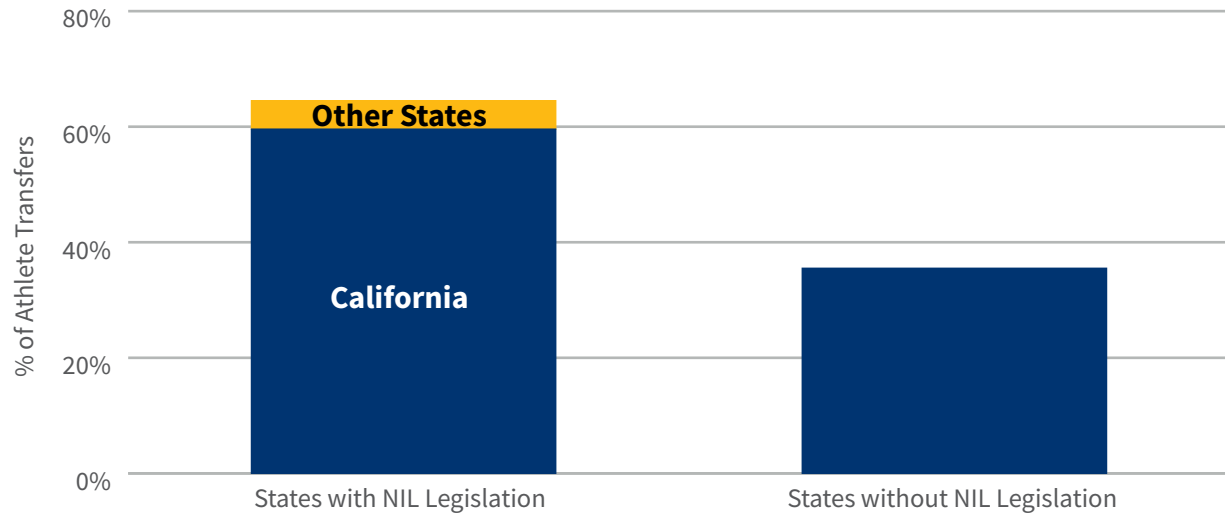
The California Community College Chancellor's Office queried the National Student Clearinghouse Research Center database to identify transfer matches among the community college athletes included in this analysis. This database query tracked the transfer of athletes through the 2019-2020 academic year. Therefore, any transfer from a California Community College to another institution of higher education that occurred between 2016-2017 and 2019-2020 was identified during this step of the analysis. When a transfer match was found, the transfer institution, the geographic location of the transfer institution, and the date of transfer were extracted from the clearinghouse database. A separate process appended the athletic association governing body of the institution of transfer to the data set. A total of 18,525 community college athletes competing in either the 2016-2017 or 2017-2018 athletic season (48.12% of all unique athletes in the data set) transferred to another institution by the 2019-2020 academic year. Of the 18,525 community college athletes, 17,101 transferred to institutions with athletic programs; there were 1,424 community college athletes who transferred to colleges with no athletic program.³⁴

Key Findings

A main purpose of this exploration was to understand the geographic dispersion of California Community College athlete transfers among states that may have differences in name, image, and likeness legislation or policy. Therefore, an analysis of athlete transfer frequency to states with and without enacted name, image, and likeness policy was performed. The figure below contains the results of that analysis.

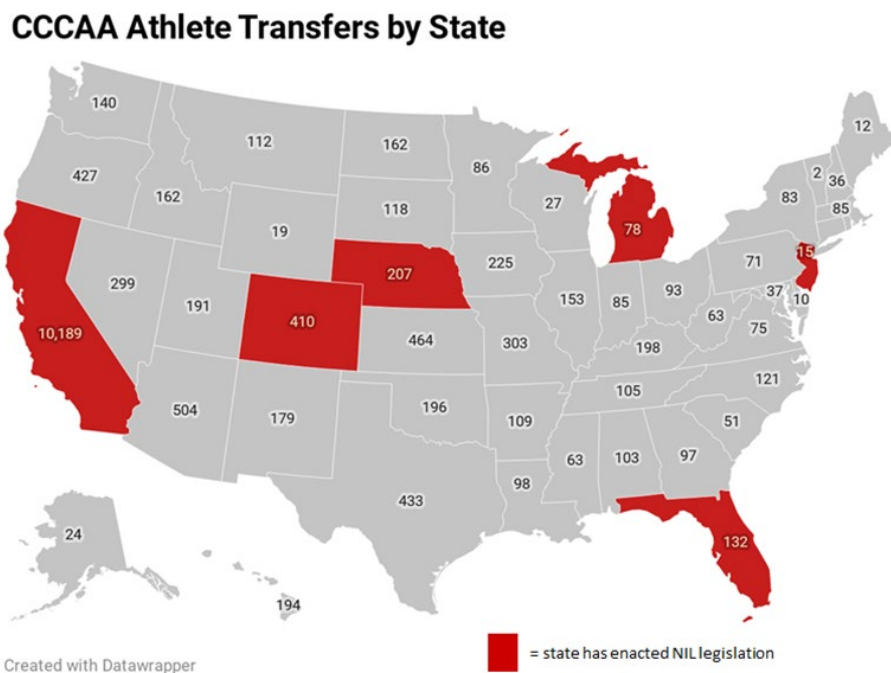
³⁴Data analysis was performed by the expert consultant, Dr. Adam Cocco, Assistant Professor, University of Louisville. The findings and conclusions were presented to the Working Group at the February 25, 2021 public meeting. A final report of the findings of the transfer study is included in Appendix XXX. The Working Group extends its acknowledgement and appreciation to the staff in the Chancellor's Office and the California Community College Athletic Association for their exceptional assistance with data identification and collection segment of this study.

Figure 7. Frequency of community college athlete transfers by state NIL policy designation



Overall, 11,031 of the 17,101 community college athletes transferring to another institution (64.50%) completed a transfer to an institution located in a state with enacted name, image, and likeness legislation. The majority of all community college athlete transfers (59.58%) matriculated to a four-year institution within the state of California while an additional 4.92% of community college athlete transfers occurred to a four-year institution in another state with enacted name, image, and likeness legislation (Colorado, Nebraska, Florida, Michigan, or New Jersey). A full geographic visual of California Community College athlete transfers is provided in the figure below.

Figure 8. California Community College Athlete Transfers by State

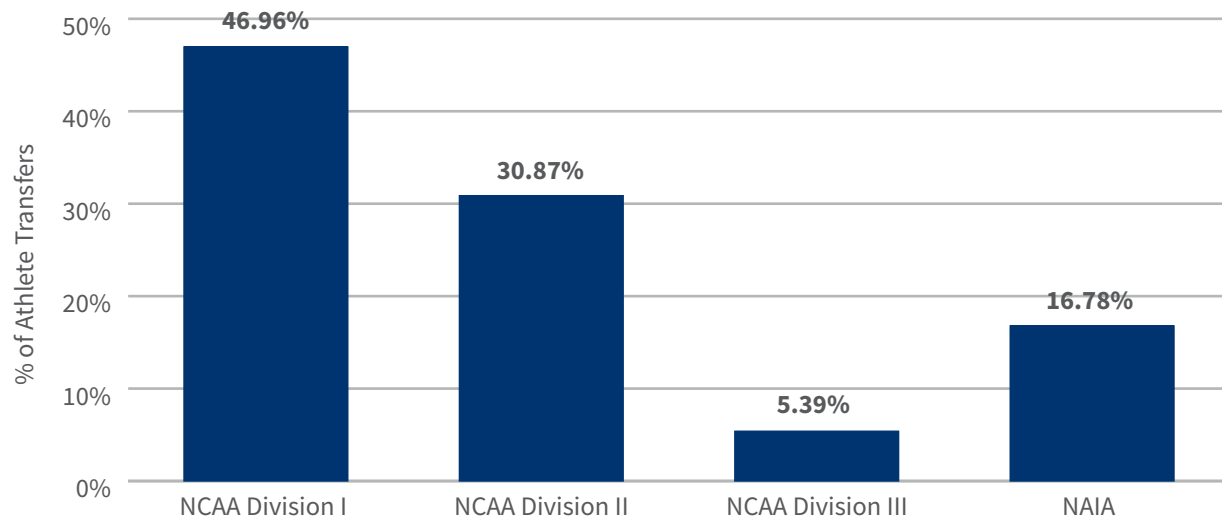


State	Number of CCCAA Athlete Transfers	NIL Legislation Enacted
Alabama	103	No
Alaska	24	No
Arizona	504	No
Arkansas	109	No
California	10,189	Yes
Colorado	410	Yes
Connecticut	-	No
Delaware	10	No
Florida	132	Yes
Georgia	97	No
Hawaii	194	No
Idaho	162	No
Illinois	153	No
Indiana	85	No
Iowa	225	No
Kansas	464	No
Kentucky	198	No
Louisiana	98	No
Maine	12	No
Maryland	37	No
Massachusetts	85	No
Michigan	78	Yes
Minnesota	86	No
Mississippi	63	No
Missouri	303	No
Montana	112	No
Nebraska	207	Yes
Nevada	299	No
New Hampshire	36	No

State	Number of CCCAA Athlete Transfers	NIL Legislation Enacted
New Jersey	15	Yes
New Mexico	179	No
New York	83	No
North Carolina	121	No
North Dakota	162	No
Ohio	93	No
Oklahoma	196	No
Oregon	427	No
Pennsylvania	71	No
Rhode Island	-	No
South Carolina	51	No
South Dakota	118	No
Tennessee	105	No
Texas	433	No
Utah	191	No
Vermont	2	No
Virginia	75	No
Washington	140	No
West Virginia	63	No
Wisconsin	27	No
Wyoming	19	No

In addition to the geographic location of athlete transfers, the disparity in name, image, and likeness policies among athletic association governing bodies necessitated an analysis of athlete transfers to institutions competing at the NCAA Division I, Division II, Division III, and NAIA levels. The following figure provides an analysis of athlete transfers to institutions broken down by athletic association governing body.

Figure 9. Frequency of community college athlete transfers by athletic association



The NAIA is the only athletic association governing body with current policies allowing for college athletes to receive compensation for the use of their name, image, and likeness rights. 16.78% of athletes (2,869) transferred to an NAIA institution. The remaining 83.22% of athletes transferred to an institution governed by NCAA bylaws, which currently prohibit athletes from receiving compensation for the use of their name, image, and likeness rights. Specifically, 46.96% of athletes (8,031) transferred to an institution competing at the NCAA Division I level, 30.87% of athletes (5,279) transferred to an institution competing at the NCAA Division II level, and 5.39% of athletes (922) transferred to an institution competing at the NCAA Division III level. Proposed policies removing restrictions across the three NCAA divisions do differ substantively in some areas as discussed in Appendix D. Division III proposed policies are the least restrictive of the NCAA divisions, and the division with the least California Community College athlete transfers. With more than 75% community college athlete transfers taking place to NCAA Division I and II, the importance of understanding whether those transfers are to schools in states with or without currently enacted name, image, and likeness protections is needed to adequately assess the potential impact and challenge for the California Community Colleges to counsel and guide their athletes through the transfer process.

Thus, an analysis was conducted to understand the frequency of community college athlete transfers to an institution either in a state with enacted name, image, and likeness legislation or that competes within an athletic association with unrestrictive name, image, and likeness policies (i.e., NAIA). The table below demonstrates that 75.75% of community college athletes transferring under existing rules and policies would transfer to a state with enacted name, image, and likeness legislation or to an institution competing at the NAIA level, which currently allows athletes to receive compensation for the use of their name, image, and likeness. This includes 64.50% of athletes (11,031) transferring to a state with enacted name, image, and likeness legislation and 11.24% of athletes (1,923) transferring to an NAIA institution in a state without enacted name, image, and likeness legislation.

Table 12. Community college athlete transfers by state and by athletic association

Division	State w/ NIL Legislation	State w/o NIL Legislation	Grand Total
NCAA Division I	5,659	2,372	8,031
NCAA Division II	3,898	1,381	5,279
NCAA Division III	528	394	922
NAIA	946	1,923	2,869
Grand Total	11,031	6,070	17,101

Conclusion

The analysis of California Community College athlete transfers patterns and impact for athletes transferring between 2016-2017 and 2019-2020 found that the majority of athletes transferred to an institution with some type of name, image, and likeness policy or legislation protections. A majority of transferring athletes (59.58%; 10,189) moved to another institution located in the state of California. A further 4.92% of athletes (842) transferred to an institution in another state with enacted name, image, and likeness legislation. An additional 11.24% of athletes (1,923) transferred to an institution governed by an athletic association (NAIA) that has removed restrictions on name, image, and likeness activities even though the state does not have enacted name, image, and likeness legislation. In total, 75.75% of California Community College athletes would transfer to an institution with either state legislative or athletic association governing body name, image, and likeness protections.

Due to resource constraints, it was not possible to verify the number of transferring athletes that continued to play a sport at their new institution. Therefore, this analysis cannot conclude the actual number of athletes that may have had their athletic eligibility compromised by transferring to an NCAA institution outside the state of California after receiving compensation for their name, image, and likeness while attending a California Community College institution. However, this report does serve as a baseline for assessing the impact of name, image, and likeness legislation on the transfer eligibility of community college athletes. Due to the large sample size included in this analysis, these results are likely generalizable across different scales of athlete transfer data. There is no reason to suspect the timeframe examined in this analysis is unique to any other timeframe for community college athlete transfers.

SECTION 4: LEGISLATIVE AND CCCAA POLICY RECOMMENDATIONS AND RATIONALES

INTRODUCTION

The previous section detailed the process, deliberations, research, and findings of the SB206 Working Group consistent with its charge under SB206:

- To reviewing existing California Community College Athletic Association (CCCAA) bylaws; state/federal laws; and national athletic association bylaws regarding a college athlete's use of the athletes' name, image, and likeness for compensation; and
- On or before July 1, 2021, to submit a report to the California Community College Athletic Association and the Legislature containing its findings and policy recommendations in connection with its review described above.

Based upon the deliberations and findings reflected herein, the Working Group has developed policy recommendations for the California Community College Athletic Association and the Legislature. The Working Group first focused on the review of state/federal laws relative to SB206 and the impact of SB206 on California Community Colleges. Based on that review, five recommendations for legislative actions were developed and approved by the Working Group. Next, the Working Group reviewed CCCAA bylaws and national athletic association bylaws regarding athletes' use of name, image, and likeness for compensation. Based on that review, nine CCCAA policy recommendations were developed and approved by the Working Group including recommended revisions to existing CCCAA Bylaws.

The Legislative and CCCAA Policy Recommendations were developed over multiple Working Group public meetings held between December 2020 and February 2021. Expert consultants proposed initial draft recommendations and evidentiary summaries which were reviewed, discussed, and approved by the Working Group. The Working Group had a quorum at all Public Meetings of the Working Group. Additionally, all Working Group discussions, deliberations, consensus building activities, and decisions were conducted publicly and recorded. Proposed Legislative and CCCAA Policy Recommendations were revised based on the Working Group feedback, discussions and deliberations. The Legislative Recommendations and CCCAA Policy Recommendations are discussed in detail below.

LEGISLATIVE RECOMMENDATIONS

The Legislative Recommendations, discussed in detail below, were reviewed and approved by the Working Group on February 25, 2021. These recommendations specifically address the applicability of SB206 to California Community Colleges, the need for funding for the California Community Colleges to support additional educational programming related to name, image, and likeness, expanded recognition of personal attributes associated with athlete reputation, limiting compensation to athletes based on athletic ability or skill, and identifying types of promotional activities subject to restraints for students attending California Community Colleges. The background and rationale for each recommendation is discussed below.

Applicability of SB 206 to California Community Colleges

Background and Rationale

California Community Colleges comprise two-year institutions of higher education and serve as one of three parts of public postsecondary education in California. The California community college system has 109 institutions with athletics programs providing participation opportunities for approximately 24,000 athletes. As authorized by the State Legislature, the Education Code provides the CCCAA the opportunity and authority to establish the rules and regulations to administer the intercollegiate athletic activities for the California Community Colleges. The Working Group concluded that athletes in California Community Colleges should not be excluded from the protections afforded athletes attending 4-year degree granting institutions pursuant to SB 206. Of those states enacting name, image, and likeness legislation, only California and New Jersey have excluded community colleges.

The Working Group was further concerned with the accelerated implementation timeline for SB 206 currently proposed in SB 26. The Working Group recognized that institutions in the California Community Colleges and the CCCAA had not had a meaningful opportunity to begin reviewing and revising name, image, and likeness (NIL) governing policies and procedures and were currently still expending significant administrative efforts to respond to the Covid-19 pandemic. While the stakeholder survey administered by the Chancellor's Office indicated a strong preference for implementing an earlier implementation date in 2021, the SB 206 Working Group believed the California Community College System would be better served by adhering to the original operative date rather than the proposed accelerated date in SB 26. Therefore, the original operative date for SB 206 of January 1, 2023 was determined to be in the best interests of the California Community Colleges.

Legislative Recommendation No. 1:

The Working Group recommends the following additions to SB26, to amend SB206 as follows:

Section 1.: Delete Section 1(c) in SB206 [which excludes California Community Colleges]

Section 2.: Add sub-section (l) to pending SB26 which would amend §67456(2) as follows: (l) This section shall become operative for California Community Colleges on January 1, 2023.

*Initial approval January 7, 2021;
Revised per February 11, 2021 discussions;
Final approval February 25, 2021*

Educational Programming to Support Athlete NIL Activities

Background and Rationale

The Working Group recognized that assisting athletes in navigating reporting and disclosure requirements, financial and tax implications, vetting of agents and marketing services, learning how to build a personal brand, and managing NIL or other entrepreneurial activities will involve significant administrative resources among California Community College institutions and the CCCAA. Of particular concern to institutions in the California Community Colleges is the impact on a community college athlete's ability to retain athletic eligibility to attend a 4-year institution and compete in intercollegiate athletics. The Working Group concluded that the California Community Colleges ability to provide these necessary and valuable compliance and educational support services related to NIL activities would require additional resources over and above current resources allocated to maintain and operate athletics programs in the California Community Colleges. The Chancellor's Office has conducted inquiries to obtain estimates for the likely cost to the California Community Colleges to secure centralized support services for education for colleges and students; and for monitoring the reporting and disclosure of NIL activities. These costs are estimated at \$5,000,000 per year on-going. The services would establish a baseline and foundation for colleges and student compliance with NIL activities for California community college athletes.

Legislative Recommendation No. 2:

The California Legislature should authorize and appropriate necessary funding for the Board of Governors to provide targeted educational programming to support California community college athletes in understanding the development and management of their NIL.

Initial approval January 7, 2021;

Final approval February 25, 2021

Recognition of Nature/Scope of Athlete's Right of Publicity

Background and Rationale

The Working Group was aware of proposed language in SB26 which would enable college athletes to earn compensation from their athletic reputation in addition to their name, image, and likeness. Based on the Working Group's research and analysis of the proposed and enacted policies of various amateur athletic associations, adding "athletic reputation" to the statute may eliminate restrictions on college athletes that could be imposed by amateur athletic associations to prevent athletes from identifying themselves as an athlete during name, image, and likeness activities, or engaging in their own work product activities involving athletic recognition such as camps and clinics. Currently only Nebraska has included "athletic reputation" in its legislation. The Working Group supports this proposed amendment as follows:

Legislative Recommendation No. 3:

The Working Group supports current language proposed in Senate Bill 26, Introduced by Senators Skinner and Bradford (Coauthor: Senator Wilk) amending Section 67456(a)(1) to permit student athletes to earn compensation as a result of the use of their athletic reputation.

Initial approval February 11, 2021;

Final approval February 25, 2021

Limiting Compensation Based on Athletic Ability or Performance

Background and Rationale

SB206 added Section 67456(b) to the Education Code to provide:

“A postsecondary educational institution, athletic association, conference, or other group or organization with authority over intercollegiate athletics shall not provide a prospective student athlete with compensation in relation to the athlete’s name, image, or likeness.”

This section does not address whether an educational institution, et al. may provide compensation to a current student athlete in relation to name, image and likeness. California Community Colleges have specific and unique regulations restricting scholarships, payments in dollars or products for athletic participation, and recruiting activities of coaches. Thus, to comply with these regulations and maintain the separation between amateur and professional sports at the community college level, the Working Group recommends that institutions in the California Community Colleges be prohibited from providing both prospective and current student athletes compensation in relation to the athlete’s name, image, and likeness. The Working Group recommends the following legislative adjustments.

Legislative Recommendation No. 4:

The Working Group recommends that Section 67456(b) be amended to add the following section, §67456(b)(2), addressing California Community Colleges specifically:

Section 67456(b)(2): “A postsecondary educational institution, athletic association, or conference in the California Community Colleges shall not provide a prospective or current student athlete with compensation in relation to the athlete’s name, image, likeness, or athletic reputation”

Initial approval February 11, 2021;

Final approval February 25, 2021

Limitations on Nature or Character of Permitted Promotional Activities

Background and Rationale

Under current language contained in SB206, the only name, image and likeness agreements, which may be prohibited, are athlete agreements that conflict with an existing team contract.³⁵ The Working Group has interpreted the phrase “athlete’s team contract” to refer to an existing sponsorship agreement between an institution’s athletic department and a third-party sponsor or partner.³⁶ Based on this interpretation, it is the Working Group’s understanding that once SB206 becomes operative, an educational institution or amateur athletic association (e.g., CCCAA) would be prohibited from implementing or enforcing any rules or regulations restraining promotional activities of college athletes other than the team contract conflict described above. Therefore, the Working Group recommends SB26 include new language, which would provide authority for institutions to implement rules or regulations containing limited restraints on athlete name, image and likeness agreements. The Working Group has approved and recommends the following authority be included in revised legislative language.

Legislative Recommendation No. 5:

“An institution in the California Community Colleges may prohibit athlete name, image, and likeness activity if such activity would be prohibited under the general policies of the institution that apply to all students at the institution and the institution is also prohibited from engaging in the activity.”

Initial approval February 11, 2021

Final approval February 25, 2021

CALIFORNIA COMMUNITY COLLEGE ATHLETIC ASSOCIATION (CCCAA) POLICY RECOMMENDATIONS

The Working Group evaluated and discussed name, image, and likeness policy proposals originally scheduled for consideration and adoption in January 2021 for NCAA Divisions I, II, and III. The Working Group heard testimony from the CEO of the National Intercollegiate Athletic Association (NAIA), Mr. Jim Carr, discussing the adoption of new name, image and likeness policies by the NAIA that took effect in October 2020. The Working Group also heard testimony from Mr. Jeff White, the Vice President for Legal, Diversity, IT, & Resources of the National Junior College Athletic Association (NJCAA), confirming its expectation to enact name, image, and likeness policies and ongoing efforts to develop those policies consistent with a multi-state regulatory framework. The Working Group performed a

³⁵See, SB206 adding § 67456(e)(1): “A student athlete shall not enter into a contract providing compensation to the athlete for use of the athlete’s name, image or likeness if a provision of the contract is in conflict with a provision of the athlete’s team contract.”

³⁶See, Memo prepared for SB206 Working Group Chairman by expert consultant, Anita M. Moorman, Professor, University of Louisville. The Memo is attached as Appendix G.

detailed comparison of the name, image and likeness policies across these amateur athletic associations and solicited additional testimony and input from athletic administrators and coaches in the California Community Colleges, CCCAA and NCAA athletic conferences and institutions taking place during public hearing sessions between October and December, 2020.

Based upon this information, the Working Group identified eight issues in which there was either broad consensus among the policy proposals of the various amateur athletic associations or in which a policy proposal represented a less restrictive approach to regulating athlete name, image, and likeness activities while still enabling the CCCAA and the California Community Colleges to monitor impermissible recruiting activities or impermissible compensation related to athletic performance.

The result of this analysis and evaluation produced the following recommendations to guide and assist the CCCAA in updating CCCAA bylaws governing athletic participation and athlete name, image, and likeness activities. Additionally, the Working Group identified and proposed revisions to existing provisions contained in CCCAA Bylaws that may be in conflict with the anticipated requirements of SB206 once SB206 becomes operative as to the California Community Colleges.

These recommendations are intended as instructive for the CCCAA, with final drafting and implementation of any name, image, and likeness bylaws or policies to be determined and approved by the CCCAA. Recommendations for CCCAA as approved by the SB206 Working Group on February 25, 2021 are presented below.

CCCAA Policy Recommendation No. 1. Notification/Reporting Requirements

Current athletes should be required to disclose name, image, and likeness activities to their Athletic Director (or a designee of the Athletic Director's choosing) prior to receiving compensation or entering into a name, image, and likeness arrangement or agreement; and prospective athletes should be required to disclose all name, image and likeness activities for which he/she received compensation prior to attending their current institution.

CCCAA Policy Recommendation No. 2. Use of Institutional Marks/Intellectual Property

Current athletes should be permitted to use institutional marks with institutional approval as allowed by the general student population at individual institutions in the California Community Colleges.

CCCAA Policy Recommendation(s) No. 3. Referencing Athletic Status in NIL, Selling Team Related Merchandise, and Wearing Team Uniforms

3(a): Current athletes should be permitted to reference both (a) their athletic involvement and (b) their institution, in name, image, and likeness activities to the same extent non-athletes in the general student population are permitted to reference their student status and institutions.

3(b): Current athletes should be permitted to sell their personal team-related merchandise

(equipment/apparel/shoes) provided to them by their institution if such merchandise is normally retained by the athlete and not to be reused by the institution.

3(c): Institutions should be permitted to prohibit athletes from wearing official team uniforms in the athlete's name, image, and likeness promotional activities.

CCCAA Policy Recommendation No. 4. Use of Institutional Facilities

Current athletes should be permitted to use institutional facilities subject to all applicable institutional processes for facility usage or rentals in a manner consistent for members of the general student population and the general public.

CCCAA Policy Recommendation No. 5. Crowdfunding

Current and prospective athletes should be permitted to participate in crowdfunding and/or fundraising activities for the purpose of financing their own business; raising money for a nonprofit or charitable entity; or under extenuating circumstances beyond the student's control for necessary educational and personal expenses, or family emergencies.

CCCAA Policy Recommendation(s) No. 6. Professional Service Providers

6(a): Current and prospective athletes should be permitted to hire professional service providers to advise and represent athletes in developing and managing name, image, and likeness opportunities.

6(b): Current and prospective athletes should continue to be prohibited from hiring agents or other professional service providers for the purpose of securing a professional sport contract or opportunity.

CCCAA Policy Recommendation(s) No. 7. Institutional Involvement Related to Name, Image, and Likeness Activities

7a: Direct institutional involvement in the development, operation, promotion, or facilitation of current or prospective athlete name, image, and likeness promotional arrangements, agreements or activities should be prohibited.

7b: Institutions should be permitted to provide educational programming to help current athletes with name, image, and likeness rules compliance; reporting of name, image and likeness activities; and vetting of professional service providers.

CCCAA Policy Recommendation No. 8. Institutional Employees as Professional Service Providers

Institutional employees should be prohibited from arranging for, or serving as, a professional service provider for a current or prospective athlete; and institutions and institutional employees should only be permitted to assist in the vetting of professional service providers.

CCCAA Policy Recommendation No. 9. Recommendations to Revise Existing CCCAA Bylaws to Resolve Potential Conflicts with SB206

Background and Current Policy Potentially in Conflict with SB206

The CCCAA currently enforces Bylaw 1.1.3 defining activities which would jeopardize an athlete's amateur athletic eligibility. Bylaw 1.1.3 provides:

“Students shall not represent a college in any athletic competition unless they are an amateur athlete in the sport(s) in which they compete. Students shall be deemed professional and ineligible to participate in that sport if any one (1) of the following exists—If the student.”.

(E): Has agreed to be represented by an agent of an organization in the marketing of his/her athletic ability.

Exception: A prospect may allow a scouting service or agent to distribute personal information (e.g., high-school academic and athletic records, physical statistics), to member institutions without jeopardizing his or her eligibility, provided the fee paid to such an agent is not based on placing the prospect in a collegiate institution as a recipient of institutional financial aid. *(Adopted 3/29/18 effective 7/1/18)*

(F): Subsequent to becoming an athlete at the collegiate level, has accepted any remuneration for or permitted use of his/her name or likeness to advertise or endorse a product or service of any kind.

Policy Revisions Recommended

- Delete sub-section (E) and sub-section (F) of Bylaw 1.1.3.
- Move the following deleted language from 1.1.3(E) to become new sub-section (I) in Bylaw 1.1.2:

Bylaw 1.1.2.(I): A prospect may allow a scouting service or agent to distribute personal information (e.g., high-school academic and athletic records, physical statistics), to member institutions without jeopardizing his or her eligibility, provided the fee paid to such an agent is not based on placing the prospect in a collegiate institution as a recipient of institutional financial aid. *(Adopted 3/29/18 effective 7/1/18)*

Explanation

This section was adopted in 2018 and included as an “exception” to restraints contained in Bylaw 1.1.3 which prohibited athletes from obtaining representation to market his/her athletic ability. Since we are proposing to delete Bylaw 1.1.3, we needed to preserve this exception, and determined moving it into Bylaw 1.1.2 would be a suitable location.

SECTION 5 – CONCLUSIONS AND RELATIONSHIP OF RECOMMENDATIONS TO GOALS FOR THE *VISION FOR SUCCESS* OF THE CALIFORNIA COMMUNITY COLLEGES

SUMMARY

The SB 206 Working Group was constituted by the chancellor of the California Community Colleges in accordance with California Education Code 67457(a)(1) to make recommendations to the California Legislature and the California Community College Athletic Association. The composition of the working group was established by the same Education Code section. The chancellor expanded the composition by increasing representation of the CCCAA from one to two members and student athletes from two to five members. In addition the Chancellor added a representative from the Statewide Academic Senate. The expanded working group provided broad input from the constituent groups of the California Community Colleges.

The working group agreed on a set of meeting principles and conducted formal hearings to obtain information from a wide range of witnesses representing policy makers, administrators, faculty, coaches, economists, legal scholars, athletic associations and community college athletes. The working group conducted a total of 13 meetings that were available for access by the public in accordance with the Bagley-Keene Open Meeting Act of 1994. All meetings were recorded and are available to the public on the Chancellor's Office website.¹

The working group reviewed information prepared by external experts in policy and economics as well as reports and studies conducted by Chancellor Office staff including a market analysis to determine the valuation baseline of California community college athletes and a transfer impact study to determine athlete transfer patterns to other states and athletic associations.

Based on these activities and reviews the working group in accordance with its charge and responsibilities made 5 recommendations to the California Legislature and 8 recommendations to the California Community College Athletic Association. The inclusion of the California community college athlete in the Education Code enabling them to benefit financially from their name, image and likeness furthers the student centric focus of the California community college's *Vision for Success* and specifically supports for of its goals related to graduation, transfer, equity, and regional parity. The ability to benefit from their name, image, and likeness contributes to their success and ultimately to California's success. The recommendations and the conclusions of the Working Group align with the direction of California community colleges and, if implemented, will result in equity and economic opportunity for the 24,000 athletes in the system.

¹<https://www.cccco.edu/About-Us/Chancellors-Office/Divisions/Educational-Services-and-Support/sb-206-nil-working-group>

SECTION 6: APPENDICES

- A. Expert Consultants and Facilitators**
- B. State and Federal NIL Legislation Descriptive Overview**
- C. SB206 Working Group State Legislation Comparison Table**
- D. NCAA/NAIA Policy Comparison Compact Issue Tables**
- E. Expert Witnesses and Invited Speakers from SB206 Working Group Public Hearings**
- F. CCCAA Student Athlete NIL Market Analysis - Complete Report**
- G. Memorandum about Athlete NIL Agreements (prepared for Dr. LeBaron Woodyard, Chair, SB206 NIL Working Group with analysis of SB206 provisions related to athlete NIL agreements that “conflict” with “Team Contracts”)**

APPENDIX A: EXPERT CONSULTANTS AND FACILITATORS

SB 206 identified funding for consultants to support the development policy expertise and facilitate the development of a cohesive set of recommendations to the Legislature and California Community College Athletic Association.

GOALS

The consultant group worked to ensure that a highly-engaged working group would set the direction for well-informed policy analysis and recommendations to be submitted to the California Community College Athletic Association (CCCCAA) and the Legislature. Specifically, the support provided the SB 206 Working Group with neutral facilitation, policy analysis expertise, and data-informed insights by...

- Facilitating virtual working group meetings in a highly engaging way.
- Developing policy expertise among working group members in their role as consumers of information and, ultimately, decision-makers sending forth recommendations.
- Designing and facilitating a process that results in a set of recommendations from the working group.
- Overseeing the three project teams supporting the working group (i.e., facilitation services, policy analysis, market analysis).
- Conducting analysis related to name, image, and likeness (NIL) and endorsements.
- Designing, implementing, conducting, and reporting a data-informed market analysis of the potential value of the NIL for student-athletes in the California Community Colleges.
- Draft, edit, and review proposed or model language for recommendations in connection with an amendments or revisions to SB 206 related to the CCAA, based on group consensus.
- Preparing a draft final report draft detailing the facilitation process, research, and outcome of the working group.

CONSULTANT INFORMATION

About *Githens and Associates LLC* – specialties lie in working with leaders who face challenges, need a skilled neutral facilitator for a critical process, or want to accelerate their organizations in achieving results. In addition to providing direct outcome-oriented facilitation, they train facilitators and leaders across the country in applying methods such as innovation tools, consensus building, goal setting, and action planning. Since 2011, their consulting work has ranged from half-day engagements up to a 2-year systemwide engagement with a 40-location regional healthcare system.

Rod Githens, Ph.D. (Project Director) – Rod is the Alexandra Greene Ottesen Endowed Chair at University of the Pacific, Benerd College, where his teaching includes classes in group facilitation, data-informed inquiry, and program evaluation. He has extensive experience in organization development efforts, strategic planning, group consensus building, and research/evaluation. This experience includes work for community college settings, serving as Director of the Online Workforce Development Project, a federally-funded project with community colleges at the National Research Center for Career and Technical Education. He has published over 30 research articles, including in *Community College Review*, *Journal of Diversity in Higher Education*, *Career and Technical Education Research*, and *Community College Journal of Research and Practice*. Additionally, he has served in higher education as Associate Dean for Academic Programs and Innovation, Assistant Dean, Program Director, and Program Coordinator. Rod’s work has also resulted in interviews and quotes in *The New York Times*, *Wall Street Journal*, *CNN Business*, among others.

Anita M. Moorman, J.D. (Lead Policy Expert, Attorney) – Anita serves as a Professor of Sport Administration at the University of Louisville, where she teaches Sport Law and Legal Aspects of Sport. Anita is licensed to practice law in the State of Oklahoma and was admitted to practice before the U.S. Supreme Court, when she served as co-counsel for nine disability sport organizations on an amicus curiae brief in the landmark Americans with Disabilities Act case involving the professional golfer, Casey Martin (*Martin v. PGA Tour*, 2001). Her research interests include the unique impact numerous Supreme Court decisions have had in the sport industry, focusing on disability rights issues in sport. She also examines the interplay between sport law and marketing. Professor Moorman has served or is currently serving on the Editorial Boards of the *Journal of Sport Management*, *Journal of Legal Aspects of Sport*, and the *Sport Marketing Quarterly*. She has published more than 40 articles in academic journals.

Adam Cocco, Ph.D. (Sport Economics and Data Analytics Expert) - Adam is an Assistant Professor of Sport Administration at the University of Louisville, where he teaches Sport Finance and Sport Analytics. He worked as a data analyst in the financial industry for seven years and has conducted economic impact studies for local, regional, and national sporting events. His research interests include the socioeconomic impact of sport, sport analytics, and sport consumer motivations and behaviors. He has published articles in academic journals such as *Sport Marketing Quarterly* and the *Sport Management Education Journal*. He has presented research at national conferences such as the Applied Sport Management Conference and the Sport Marketing Association Conference.

Nileen Verbeten, MSW, MBA (Facilitator) – Nileen works as a full-time professional facilitator in both face-to-face and virtual environments to help organizations align their efforts to create the future they desire. Her consulting focuses on government agencies, community development, healthcare, and nonprofits. She helps her clients improve operations, develop and implement strategic plans, and facilitate discussions around complex issues. A Technology of Participation (ToP) Mentor Trainer, she recently chaired the ToP Network National Association of Trainers and Facilitators. She has worked with geographically distributed teams since 2010. Since 2015, she has taught an online course in virtual facilitation, with participants spanning 11 time zones.

APPENDIX B: STATE AND FEDERAL NIL LEGISLATION DESCRIPTIVE OVERVIEW

NIL LEGISLATION UPDATED OVERVIEW

Comparison Table

State Legislation	Athlete Terminology	Educational Institutions Covered	Notice Requirements	Rights Defined; Team Contract Conflicts; Disclosures; Restricted Activities	Enforcement
California (SB 206) Effective January 1, 2023	“Student” and “Student Athlete”	Institutions of higher education (IHE) (except community colleges) are any campus of University of California or the California State University, independent institution of higher education; or a private IHE	Athlete shall disclose contract to an official of the institution, to be designated by the institution	<p>Name, Image, and Likeness Rights</p> <p>Athlete shall not enter into contract if a provision of the contract is in conflict with provision of athlete’s team contract.</p> <p>Institution asserting a conflict shall disclose the relevant contractual provisions that are in conflict.</p> <p>Team contract shall not prevent athlete from using NIL for commercial purposes when the athlete is not engaged in team activities.</p>	No Express Remedies or Enforcement Mechanisms.
Colorado Effective January 1, 2023	“Student Athlete”	All Public and Private Educational Institutions in Colorado	Contract must be disclosed to AD within 72 hours or before next scheduled event, whichever is earlier (UAAA)	<p>Name, Image and Likeness Rights</p> <p>Athlete may not enter into contract in conflict with Team Contract</p> <p>IHE must disclose relevant contractual provisions of the Team Contract in instances of claimed conflict</p> <p>Team Contract may not prohibit athlete from using NIL for commercial purposes when not engaged in official team activities</p>	Athletes may seek injunctive relief for violations of the Act

State Legislation	Athlete Terminology	Educational Institutions Covered	Notice Requirements	Rights Defined; Team Contract Conflicts; Disclosures; Restricted Activities	Enforcement
Florida Effective July 1, 2021	“Intercollegiate Athlete”	All public universities, Colleges in Florida System, and private universities receiving financial aid	Contract must be disclosed in the manner designated by the university	<p><i>Name, Image, and Likeness Rights</i></p> <p>Athlete may not enter into contract in conflict with Team Contract; IHE must disclose relevant terms of the Team Contract in instances of claimed conflict</p> <p>IHE shall conduct financial literacy and life skills workshop for a minimum of 5 hours at the beginning of athlete’s first and third academic years. Workshop may not include any marketing, advertising, referral, or solicitation by providers of financial products or services.</p>	<p>No Express Remedies or Enforcement Mechanisms.</p> <p>Remedies contained in Uniform Athlete Agent Act may apply</p> <p>However, no athlete contract can extend beyond the duration of participation</p> <p>Board of Governors and the State Board of Education shall adopt regulations and rules to implement this section.</p>
Nebraska Effective July 1, 2023	“Student-Athlete”	All IHEs located in Nebraska	<p>Contract must be disclosed to IHE</p> <p>IHE must designate person to whom disclosure is to be made</p> <p>IHE may not disclose the terms of such athlete contract deemed to be trade secret or otherwise undisclosed</p>	<p><i>Name, Image, and Likeness Rights or Athletic Reputation</i></p> <p>Athlete may not enter into contract in conflict with Team Contract</p> <p>IHE must disclose entire Team Contract in instances of claimed conflict. Athlete may not disclose Team Contract terms deemed trade secrets or otherwise undisclosed.</p> <p>Athlete may not enter into sponsor contract if it provides compensation for NIL or athletic reputation for display of sponsor’s apparel or otherwise advertise during official team activities</p> <p>No Team Contract shall prevent athlete from receiving compensation for NIL or athletic reputation when athlete is not engaged in team activities.</p>	<p>Private Right of Action for both athlete and IHE including</p> <p>(1) Damages; (2) Equitable and Declaratory Relief and (3) Attorneys’ Fees</p>

State Legislation	Athlete Terminology	Educational Institutions Covered	Notice Requirements	Rights Defined; Team Contract Conflicts; Disclosures; Restricted Activities	Enforcement
<p>New Jersey</p> <p>Effective immediately and applicable in the fifth academic year following enactment date of September 14, 2020.</p>	<p>“Student-Athlete”</p>	<p>Four-year institution of higher education</p>	<p>Contract shall be disclosed to an official of the institution, designated by the institution</p>	<p>Name, Image, and Likeness Rights</p> <p>Athlete may not enter into contract in conflict with Team Contract.</p> <p>IHE asserting a conflict shall disclose relevant contractual provisions in conflict.</p> <p>Shall not restrict activities when athlete is not engaged in official team activities.</p> <p>Athlete is prohibited from earning compensation in connection with adult entertainment p & s; alcohol products; casinos/gambling, sports betting, lottery, betting in connection with video games, on-line games, and mobile devices; tobacco and e-smoking products/devices; prescription Rx; controlled substances; and weapons, firearms, & ammunition</p>	<p>No Express Remedies or Enforcement Mechanisms.</p>
<p>California SB26 Supplement to SB206 (pending)</p> <p>January 1, 2022 or when rule changes are adopted by the NCAA, whichever occurs first</p>	<p>“Student-Athlete”</p>	<p>Post-secondary institution means any campus of UC or CSU, or a private postsecondary educational institution, and an independent institution of higher education</p>		<p>Adds “Athletic Reputation” to NIL activities.</p> <p>Prohibit team contract conflict from preventing athlete from using athletic reputation when not engaged in official team activities</p> <p>IHE shall not deny athlete any rights provided to other college students, except in relation to recruitment</p>	<p>Adds New Enforcement Mechanisms</p> <p>Athlete who prevails in an action brought against institution for violations may recover reasonable atty’s fees, court costs, damages or equitable relief against the institution</p>

Federal Legislation	Athlete Terminology	Educational Institutions Covered	Restricted and Unlawful Activities	Enforcement
HR 8382 Student Athlete Level Playing Field Act (bipartisan bill introduced in House of Representatives) (pending)	"Student Athlete"	Covered Athletic Organization or IHE	<p>Covered Athletic Organization or IHE may not prohibit endorsement contracts except</p> <ul style="list-style-type: none"> • Tobacco company or brand including vaping, e-cigs • Alcohol company or brand • Seller or dispensary of controlled substance, including marijuana • Adult entertainment business • Casino or entities that sponsor or promote gambling <p>Athlete may be prohibited from wearing any item of clothing or gear with an insignia of any entity during athletic competition or university-sponsored event</p> <p>Unlawful for a booster to provide funds or thing of value as an inducement to enroll or remain at IHE or group of IHE</p>	<p>Violations shall be treated as unfair or deceptive trade practice under FTC regulation.</p> <p>FTC has power to enforce this section.</p> <p>Violations subject to penalties under FTC Act.</p>

Summary Takeaways

All currently enacted legislation contains consistent and/or similar protections and/or prohibitions regarding

1. Athletes' rights to receive compensation from the use of their name, image, or likeness (NIL);
2. Protection for athletes from penalties (by educational institutions or athletic associations) related to eligibility, grant-in-aid, and scholarships due to receipt of compensation from NIL;
3. Post-secondary institutions prohibited from enforcing any athletic association(s) rules in violation of the act(s);
4. Post-secondary institutions protected from penalties by association(s) for athletes' receipt of compensation from NIL;
5. Athletes permitted to engage advisors, registered agents, and licensed attorneys to negotiate and solicit contracts related to the use of NIL;
6. Athletes must provide notice and disclose terms of any agreement for the use of NIL;
7. Athletes are prohibited from entering into endorsement agreements or agreement for the use of their NIL that are in conflict with university team contracts.
8. University team contracts may not prohibit an athlete from use NIL for commercial purposes when athlete is not engaged in official team activities.

Primary Differences Between SB 206 and Other Similar State Legislation

1. Three enacted state laws do not exempt community colleges; however, at least one version of current proposed federal legislation and New Jersey state legislation is limited to 4-year degree-granting institutions.
2. Enforcement mechanisms and/or legal actions based on violations are only expressly provided in two enacted state laws; and one pending amendment to SB206.
3. Notice and disclosure by an athlete of entering into a contract for compensation based on NIL is required under all models. Method and timing of providing notice varies across all four state laws. Non-disclosure of contracts terms is prohibited in some models.
4. Athlete and Team Contract conflicts are prohibited, but method for resolving conflicts is not specified.
5. Treatment of current athletes and prospective athletes varies among states. Some states prohibit a post-secondary education institution from providing a prospective athlete with compensation concerning NIL. Other states prohibit the post-secondary institution from providing compensation to **both** current and prospective athletes.

Federal Legislation – only one bipartisan bill introduced to date

1. Creates 13 member Covered Athletic Organization Commission (with sunset provisions) to make recommendations (1) on NIL rules; (2) on processes to certify agents; (3) for establishment of independent dispute resolution process for any dispute between athlete and covered athletic organization or IHE; and (4) for additional categories of prohibited endorsements.
2. Commission should reflect diversity in gender, race, sport, and divisions/conferences of covered athletic organizations.
3. 3. Bill includes additional provisions including (1) revisions to SPARTA (2) preemption of state law, (3) nothing shall affect rights under Title IX, (4) no cause of action under Sherman Act, and (5) nothing shall affect employment status of student athletes

Prepared by
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Githens and Associates LLC
For the Athlete Name, Image, and Likeness Working Group
Distributed during meeting on August 31, 2020
Updated, December 9, 2020 (amm)

APPENDIX C: SB206 WORKING GROUP STATE LEGISLATION COMPARISON TABLE

SB206 WORKING GROUP STATE LEGISLATION COMPARISON TABLE

Effective Dates of State Statutes in the Comparison Table

State	Effective Date	Notes
Florida and Mississippi	July 1, 2021	-
Michigan	August, 2021	2021-22 Academic Year
California and Colorado	January 1, 2023	SB26 proposes to accelerate California effective date to earlier of NCAA adoption of new NIL rules or January 1, 2022
Nebraska	No later than July 1, 2023	Each IHE shall decide, presumably Nebraska IHE's could approve NIL currently
New Jersey	August, 2025	5th academic year following effective date of September, 2020

Table 1: Athletic Organizations Subject to the Act

State Legislative Language	California SB 206 Coverage	States with Same or Similar Language
Athletic Associations, Conferences, or other groups with authority over Intercollegiate Athletics (AA)	Yes	All

Table 2: Educational Institutions Subject to the Act

State Legislative Language	California SB 206 Coverage	States with Same or Similar Language
Four Year Public and Private Institutions of Higher Education (IHE) Only (e.g. excludes community colleges)	Yes	New Jersey
All Public and Private IHE as defined by relevant education code provisions (e.g. public or private institutions, institutions in state university system, or private colleges or university, public or private receiving state or federal funding; or all public and private operating in the state; or any institutions of higher education offering degrees or course of study beyond 12th grade.)	No	Colorado, Florida, Michigan Mississippi (only statute that expressly includes community colleges) Nebraska

Table 3: Rights Recognized/Acknowledged

State Legislative Language	California SB 206 Coverage	States with Same or Similar Language
Declaration of Right to be compensated for use of publicity rights (NIL)	No	Colorado, Florida
Affirmation that student athlete may earn compensation for NIL	No	Florida, Mississippi
Requirement that NIL compensation be commensurate with the fair market value of authorized use of athlete’s NIL	No	Florida, Mississippi
Participation in athletics should not infringe upon athletes’ ability to earn compensation for NIL. Athletes should have equal opportunity to control and profit from commercial use of NIL and be protected from unauthorized appropriation and commercial exploitation	No SB206 does express intent to ensure protections to avoid exploitation of athletes, colleges, and universities	Florida
Declaration that Athlete may not be Compelled to Forfeit Rights in order to Participate in Athletics	No	Colorado
IHI shall not deny an athlete any rights provided to other college students at IHE, except in relation to recruitment	No SB26 would extend language to include	-

Table 4: Rights Defined As . . .

State Legislative Language	California SB 206 Coverage	States with Same or Similar Language
“Name, Image, and Likeness	Yes	Colorado, Michigan, Mississippi, Nebraska, New Jersey
“Athlete Reputation”	No SB26 would extend language to include	Nebraska

Table 5: Preventing IHE and AA Restraints on Athlete Compensation and Participation Rights

State Legislative Language	California SB 206 Coverage	States with Same or Similar Language
IHE shall not prevent (or adopt/ uphold any rule preventing) student from earning compensation as a result of NIL	Yes	Florida (or unduly restricts); Mississippi; New Jersey
IHE shall not uphold any rule that prevents athlete from participating because athlete earns compensation from NIL	No	Michigan, Nebraska
AA et al shall not prevent athlete from earning compensation as a result of NIL	Yes	Colorado, Mississippi, Nebraska (or penalize)
AA et al shall not prevent athlete from fully participating based upon earning compensation as a result of NIL	No	Michigan, Nebraska
AA et all shall not prevent IHE from participating in intercollegiate athletics as a result of compensation of athlete for use of NIL or athlete use of NIL rights	Yes	Colorado, Michigan, Mississippi, Nebraska (or penalize)

Table 6: Prohibiting Compensation to Athletes from IHE, AA, or Boosters

State Legislative Language	California SB 206 Coverage	States with Same or Similar Language
AA shall not provide prospective student athlete compensation in relation to NIL	Yes	Colorado, Florida, Michigan
AA shall not provide current student athlete compensation in relation to NIL	No	Colorado, Florida
IHE shall not provide prospective student athlete compensation in relation to NIL	Yes	Colorado, Florida, Michigan, Mississippi, New Jersey
IHE shall not provide current student athlete compensation in relation to NIL	No	Colorado, Mississippi
IHE shall not provide prospective student athlete remuneration for athletic ability or performance	No	Colorado
“Booster” shall not compensate current or prospective athlete for use of NIL	No	New Jersey, Florida, Mississippi
Student athlete may not earn compensation for athletic ability or participation in intercollegiate athletics or sports competition	No	Mississippi
To maintain separation between amateur and professional sports, compensation may not be provided for athletic performance or attendance; and may only be provided by a third party unaffiliated with IHE	No	Florida

Table 7: Prohibited and Permitted Representation

State Legislative Language	California SB 206 Coverage	States with Same or Similar Language
IHE shall not prevent student from obtaining professional representation in relation to contracts or legal matters (agents and attorneys)	Yes	Colorado, Florida (or unduly restrict); Michigan, Mississippi Nebraska (or penalize); New Jersey
AA shall not prevent student from obtaining professional representation in relation to contracts or legal matters (agents and attorneys)	Yes	Nebraska, Michigan, Mississippi
Professional representation shall be persons licensed by the state (agents and attorneys)	Yes	Colorado, Florida, Michigan, Mississippi, New Jersey

Table 8: Impact on Scholarships

State Legislative Language	California SB 206 Coverage	States with Same or Similar Language
Earning compensation shall not affect scholarship eligibility	Yes	All
Scholarship that provides cost of attendance (COA) is not compensation under this section	Yes	Florida, Michigan, New Jersey
Scholarship shall not be revoked as a result of earning compensation or obtaining legal representation pursuant to this section	Yes	Colorado, Florida (or reduced), Mississippi, New Jersey
Earning compensation in violation of Act shall result in revocation of scholarship	No	New Jersey
Compensation earned may be used in calculating need-based financial aid	No	Nebraska

Table 9: Disclosure and Conflict Provisions

State Legislative Language	California SB 206 Coverage	States with Same or Similar Language
Athlete shall disclose a NIL contract to an official of institution	Yes	All
Athlete shall not enter into NIL contract in conflict with team contract	Yes	Colorado, Florida, Mississippi, Nebraska, New Jersey
Athletes shall not enter into NIL contract that conflicts with provision of a contract, rule, regulation, standard or other requirement of the IHE	No	Mississippi
Athlete shall not enter into apparel contracting providing compensation for use of NIL that requires student to display sponsor's apparel, or otherwise advertise for sponsor during official team activities if the provision is in conflict with team contract	No	Michigan
Institution asserting conflict shall disclose relevant contractual provisions to athlete or athlete's legal representative	Yes	Colorado, Florida, Michigan (shall communicate conflict so athlete can negotiate a revision to avoid conflict) Nebraska (entire contract must be disclosed), New Jersey
Team Contract shall not prevent athlete from using NIL for commercial purposes when not engaged in team activities	Yes	Colorado, Michigan, Nebraska, New Jersey
Team Contract shall allow IHE, AA to use athlete's NIL without additional compensation to athlete	No	New Jersey
Person designated shall be disclosed in writing to athlete; and IHE prohibited from disclosing terms of such contract	No	Nebraska
Athlete under age of 18 must have K approved under state §§	No	Florida

Table 10: Restrictions on Certain Types of Commercial or Promotional Activities

State Legislative Language	California SB 206 Coverage	States with Same or Similar Language
Adult Entertainment Products/Services	No	Mississippi, New Jersey
Alcohol Products	No	Mississippi, New Jersey
Casinos/Gambling/Sports Betting, Lottery, and Betting in connection with video games, online games, and mobile devices	No	New Jersey, Mississippi
Tobacco/E-smoking products and devices	No	Mississippi, New Jersey
Marijuana	No	Mississippi
Performance Enhancing Supplements	No	Mississippi
Prescription Pharmaceuticals	No	New Jersey
Controlled Dangerous Substance	No	New Jersey
Weapons, Firearms, Ammunition	No	New Jersey
IHE may impose reasonable limits on dates/time student athlete may participate in NIL activities	No	Mississippi
Athlete may not enter NIL agreements before enrollment at IHE or that conflict with values or missions of IHE	No	Mississippi
Athlete may not enter contract that requires athlete to display sponsor's apparel or otherwise advertise during official team activities	No	Michigan, Nebraska

Table 11: Applicability and Enforcement

State Legislative Language	California SB 206 Coverage	States with Same or Similar Language
Conflict provisions only apply to Team Contracts entered into, modified, or renewed on or after enactment	Yes	Colorado, Nebraska
Act does not limit IHE right to establish and enforce academic standards, team rules of conduct, standards or policies regarding governance or operation of athletics, or disciplinary rules generally applicable to all students	No	Michigan
Duration of Contract with Athlete for use of NIL may not extend beyond participation at IHE	No	Florida
A student athlete shall not be deemed an employee or independent contractor of an AA or IHE based on participation in intercollegiate athletics	No	Mississippi
Nothing in Act shall modify requirements under Title IX	No	Mississippi
IHE or AA policy in conflict with statute is void and unenforceable	No	Colorado
IHE, AA, or Conference shall not be subject to private cause of action for damages related to adoption of rules in compliance with this act	No	Mississippi
IHE, AA, or Conference shall not be subject to private cause of action for unfair trade or competition or tortious interference.	No	Mississippi

State Legislative Language	California SB 206 Coverage	States with Same or Similar Language
Student Athlete May Sue for Injunctive Relief against IHE and AA	No SB26 would extend this coverage for athlete to sue IHE, not AA	Colorado, Nebraska
Student Athlete May Sue IHE and AA for Damages/Attorneys Fees	No SB26 would extend this coverage for athlete to sue IHE, not AA	Nebraska (public IHE only to the extent permitted by various state “claims” acts; one year statute of limitation)
IHE may sue AA for injunctive relief, damages, attorney fees	No	Nebraska

Table 12: Educational Services Provisions

State Legislative Language	California SB 206 Coverage	States with Same or Similar Language
IHE may sponsor on campus interviews at which athlete agent may discuss representation of marketing athletes’ athletic ability or reputation	No	Colorado
IHE Governing Board may adopt rules regarding scheduling, duration, and location of interviews	No	Colorado
IHE shall conduct financial literacy and life skills workshop for a minimum of 5 hours at the beginning of 1st and 3rd academic years (including info about financial aid, debt management, recommended budget for athletes based on cost of attendance (COA), and time management skills)	No	Florida
Workshops may not include any marketing, advertising, referral, or solicitation by providers of financial products and services.	No	Florida
Board of Governors/Board of Education shall adopt regulations/ rules to implement this section	No	Florida

Prepared by

Anita M. Moorman, J.D.

Githens and Associates LLC

For the Athlete Name, Image, and Likeness Working Group

Distributed during meeting on August 31, 2020; Revised, December 9, 2020; Updated, March 28, 2021.

APPENDIX D: NCAA/NAIA POLICY ISSUES COMPARISON TABLE

REVISED CCCAA RECOMMENDATIONS FEBRUARY 11, 2021

General Intent/Purpose of SB206 NIL Working Group Recommendations

To acknowledge that SB206 should apply to California community college student-athletes and that community college student-athletes should be able to receive compensation for the use of their NIL (a) to promote their own work product or service, or (b) to promote third-party commercial products or services consistent with the policy recommendations provided below.

Draft Recommendations for CCCAA to use in the development of NIL Policies

Issue 1: Notification/Reporting Requirements

Current athletes should be required to disclose NIL activities to their Athletic Director (or a designee of the Athletic Director's choosing) prior to receiving compensation or entering into a NIL arrangement or agreement; and prospective athletes should be required to disclose all NIL activities for which he/she received compensation prior to attending their current institution.

Issue	NAIA	NCAA D-III	NCAA D-II	NCAA D-I
Issue 1: Reporting Requirements	Athlete must notify their Athletic Director in writing of any compensation received due to NIL activities.	Currently, reporting requirements not included in proposal	Athlete must report NIL activities to athletics department on an annual basis (institution may require more frequent reporting)	Athlete must report all NIL activities to independent third-party administrator. Athlete shall disclose agreements to promote commercial products and services in advance.

Issue 2: Use of Institutional Marks/Intellectual Property

Athletes should be permitted to use institutional marks with institutional approval as allowed by the general student population at individual institutions in California Community Colleges.

Issue	NAIA	NCAA D-III	NCAA D-II	NCAA D-I
Issue 2: Use of Institutional Marks in Promotional Activities	Yes, with institutional approval as allowed for general student population	Yes, with institutional approval as allowed for general student population	Yes, for promotion of student-athlete business activities (with institutional approval as allowed for general public use). No for promotion of commercial product/service	No, student may not use; and institution may not permit IP use

Issue 3: Athletic Status and Team Uniforms/Merchandise

Issue 3(a): References to Athletic Status in NIL Activities

Current athletes should be permitted to reference both (a) their athletic involvement and (b) their institution in NIL activities to the same extent non-athletes in the general student population are permitted to reference their student status and institutions.

Issue 3(b): Selling Team Related Merchandise

Current athletes should be permitted to sell their personal team-related merchandise (equipment/apparel/shoes) provided to them by their institution if such merchandise is normally retained by the athlete and not to be reused by the institution.

Issue 3(c): Wearing Team Uniforms in NIL Activities

Institutions should be permitted to prohibit athletes from wearing official team uniforms in the athlete’s NIL promotional activities.

Issue	NAIA	NCAA D-III	NCAA D-II	NCAA D-I
Issue 3(a): Athlete Allowed to Refer to their Athletic Status and Institution in NIL activities	Yes, with institutional approval as allowed for general student population	Yes, may reference athletic involvement and institution consistent with institutional policies applicable to any student	Yes, may reference athletic involvement and institution consistent with institutional policies applicable to any student	Yes, reference to institution permitted consistent with policies applicable to general student population
Issue 3(b): Athlete Allowed to Wear Official Team Uniform, Gear in Promotions?	Yes	Not specifically addressed in proposed policies, but likely covered under IP policy. FAQs say “No.”	Not specifically addressed, but FAQs say not permitted for promotion of commercial product or service. IP policy may permit for student promoting their own work product or service with institutional approval	Not specifically addressed in proposed policies, but likely prohibited under IP policy
Issue 3(c): Sales of Merchandise provided to Athlete by School Allowed?	Yes	Not currently addressed in proposed policies	Yes, athlete may sell at any time: awards, equipment, and apparel retained by athlete that institution will not reuse	Yes, athlete may sell after athlete exhausts athletic eligibility or becomes permanently ineligible

Issue 4: Use of Institutional Facilities

Current athletes should be permitted to use institutional facilities to the same extent non-athlete students are permitted to use institutional facilities, subject to all applicable institutional processes for facility usage and rentals in a manner consistent for members of the general student population and the general public.

Issue	NAIA	NCAA D-III	NCAA D-II	NCAA D-I
Issue 4: Athlete Can Use School Facilities to Conduct Lessons, Clinics, etc.?	Yes, with institutional approval	Yes, with institutional approval and on same terms applicable to general student population	Yes, with institutional approval and on same terms applicable to general public	Yes, with institutional approval and on same terms applicable to general student population

Issue 5: Crowdfunding

Current and prospective athletes should be permitted to participate in crowdfunding and/or fundraising activities for the purpose of financing their own business; raising money for a nonprofit or charitable entity; or under extenuating circumstances for necessary educational and personal expenses, or family emergencies.

Issue	NAIA	NCAA D-III	NCAA D-II	NCAA D-I
Issue 5: Crowdfunding/ Fundraising Allowed?	Currently not addressed in policy	Yes, as a means of financing a business	Only for extreme circumstances beyond athlete’s control, as defined by an institution	Allowed for: educational expenses not included in cost of attendance; specific charitable purpose; actual and necessary expenses

Issue 6: Professional Service Providers (PSPs)

Issue 6(a): Use of PSPs Permitted for NIL Activity

Current and prospective athletes should be permitted to hire PSPs to advise and represent athletes in developing and managing NIL opportunities.

Issue 6(b): Agents/PSPs Prohibited for Professional Sports Opportunities

Current and prospective athletes should continue to be prohibited from hiring agents or other PSP’s for the purpose of securing a professional sport contract.

Issue	NAIA	NCAA D-III	NCAA D-II	NCAA D-I
Issue 6: Athlete Allowed to Hire PSPs (agents)?	Yes, except agent may not help athlete secure a pro sports contract	Yes, except PSP may not assist with marketing athletic ability or reputation to secure a professional sport opportunity	Yes, except PSP may not assist with marketing athletic ability or reputation to secure a professional sport opportunity	Yes, except PSP may not assist with marketing athletic ability or reputation to secure a professional sport opportunity

Issue 7: Institutional Involvement with NIL Activities

Issue 7(a): Institutional Involvement in NIL activities

Direct institutional involvement in the development, operation, promotion, or facilitation of current or prospective athlete NIL promotional arrangements, agreements, or activities should be prohibited.

Issue 7(b): Institutional Involvement in Educational Programming

Institutions should be permitted to provide educational programming to help current athletes with compliance, reporting, and vetting of PSPs.

Issue	NAIA	NCAA D-III	NCAA D-II	NCAA D-I
Issue 7(a): Institutional Involvement in Development, Operation, Promotion, or Facilitation of Athlete Work Product/Service Allowed?	Probably, currently not addressed in policy	No	No	No
Issue 7(b): Institutional Involvement Allowed for Educational Programming related to NIL	Probably, currently not addressed in policy	Yes; Assistance with evaluating opportunities (including compliance); Assistance with reporting; Assistance with evaluation of PSPs	Yes; Assistance with evaluating opportunities (including compliance); Assistance with reporting; Assistance with evaluation of PSPs	Yes; Assistance with evaluating opportunities (including compliance); Assistance with reporting; Assistance with evaluation of PSPs

Issue 8: Institutional Employees as PSPs

Institutional employees should be prohibited from arranging for or serving as a PSP for a current or prospective athlete; and institutions and institutional employees should only be permitted to assist in the vetting of PSPs.

Issue	NAIA	NCAA D-III	NCAA D-II	NCAA D-I
Issue 8: Institutional Involvement in Identifying, Selecting, or Arranging PSP for Athlete Allowed?	Currently not addressed in policy	No. However, institution can help athlete vet PSPs	No. However, institution can help athlete vet PSPs	No. However, institution can help athlete vet PSPs
Issue 8: Institutional Staff Member Allowed to Serve as PSP for Prospective Athlete?	Currently not addressed in policy	No	No	No employee or independent contractor of university may be PSP
Issue 8: Institutional Staff Member Allowed to Serve as PSP for Current Athlete?	Currently not addressed in policy	Unclear, rule appears to only limit as to prospective athletes	Unclear, but appears to be permitted so long as the serviced are not provided by Athletics Dept. or an individual athletics staff member	No employee or independent contractor of university may be PSP

Recommendations to Change Existing CCCAA Bylaws

CCCAA should amend BYLAW 1 as follows:

Bylaw 1.1.2.

Move deleted language from 1.1.3(E) to become new sub-section (I): A prospect may allow a scouting service or agent to distribute personal information (e.g., high-school academic and athletic records, physical statistics), to member institutions without jeopardizing his or her eligibility, provided the fee paid to such an agent is not based on placing the prospect in a collegiate institution as a recipient of institutional financial aid. *(Adopted 3/29/18 effective 7/1/18)*

Bylaw 1.1.3.

“Students shall not represent a college in any athletic competition unless they are an amateur athlete in the sport(s) in which they compete. Students shall be deemed professional and ineligible to participate in that sport if any one (1) of the following exists—if the student”..

Delete sub-section (E): Has agreed to be represented by an agent of an organization in the marketing of his/her athletic ability. ~~Exception: A prospect may allow a scouting service or agent to distribute personal information (e.g., high-school academic and athletic records, physical statistics), to member institutions without jeopardizing his or her eligibility, provided the fee paid to such an agent is not based on placing the prospect in a collegiate institution as a recipient of institutional financial aid. *(Adopted 3/29/18 effective 7/1/18)*~~

Delete sub-section (F): ~~Subsequent to becoming an athlete at the collegiate level, has accepted any remuneration for or permitted use of his/her name or likeness to advertise or endorse a product or service of any kind.~~

(Approved January 21, 2021)

Additional Policy Comparisons

Restrictions on NIL Activities by Division

Issue	NAIA	NCAA D-III	NCAA D-II	NCAA D-I
Pay for Play Prohibited?	Yes	Yes	Yes	Yes
Recruiting Inducements/ Inducements for Enrollment Prohibited?	Yes	Yes	Yes	Yes
Restrictions on Nature or Character of Promotional Activities?	No. However, schools/ conference can create own restrictions	Yes, shall not engage in promotional activities that are specifically prohibited by NCAA policies during NCAA championships. Institutions may prohibit at its discretion to the same extent as general student population	Yes, cannot promote products prohibited by NCAA or prohibited by institution as it applies to all students	Yes, athlete cannot engage in promotional activities in conflict with NCAA legislation. Institutions may prohibit other activities but must have policies setting forth restrictions
Restrictions on Promotions that Conflict with School Contracts?	Institutions may prohibit this activity	Institutions may prohibit at its discretion to the same extent as general student population	Institutions can implement policies to restrict this activity. Institution would need to disclose restrictions to athlete prior to signing or during recruitment	Institutions may prohibit agreements that conflict with existing institutional arrangements
NIL Agreements with Boosters Allowed for Current Athletes?	Yes	Yes	Yes	Yes, but subject to extra benefit review
NIL Agreements with Boosters Allowed for Prospective Athletes?	No	No	No	No

Transfers by Division

Issue	NAIA	NCAA D-III	NCAA D-II	NCAA D-I
Transfer Considerations	Unclear	Unclear	An athlete that engages in activity consistent with NIL legislation of his/her division does not need to seek reinstatement if such activity is later deemed inconsistent with D-II legislation	Unclear
Policies Apply to Prospective Athletes?	Currently not addressed in policy	Yes	Yes	Yes

Emergency Powers by Division

Issue	NAIA	NCAA D-III	NCAA D-II	NCAA D-I
Emergency Executive Powers to Amend NIL Policies As Needed?	Yes	No	No	No

Prepared by
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Githens and Associates LLC
For the Athlete Name, Image, and Likeness Working Group
Updated February 9, 2021

APPENDIX E: EXPERT WITNESSES AND INVITED SPEAKERS FROM SB206 WORKING GROUP PUBLIC HEARINGS

PUBLIC HEARING 1 OCTOBER 20, 2020

Session 1 – Name, Image, and Likeness-Based Marketing and Business Opportunities for Community College Athletes

This item provided the SB 206 Working Group with presentations from panelists who are expert witnesses on the topic of name, image, and likeness (NIL)-based marketing and business opportunities for community college athletes.

- Kristi Dosh is a professional writer, speaker, sports business analyst, attorney, and author. Her work has appeared in various media outlets, such as Forbes, ESPN, and SportsBusiness Journal. She is an expert on sport business and issues related to licensing, group licensing, and business opportunities for college athletes.
- Blake Lawrence is the Co-founder and CEO of Opendorse, an athlete marketing platform specializing in connecting athletes with endorsement opportunities through social media influencer marketing. Since 2012, Opendorse has helped more than 20,000 athletes maximize their NIL rights value on social media.
- Krystal Beachum is the founder of Student-Athletes Unite, an organization designed to provide college athletes with the skills and knowledge needed to create businesses and career opportunities. Student-Athletes Unite educates and inspires college athletes to create entrepreneurial ventures.

Session 2 – Legal Issues Associated with Maintaining Restrictions on Name, Image, and Likeness Compensation for Community College Athletes

This item provided the SB 206 Working Group with presentations from panelists who are expert witnesses on the topic of legal issues associated with name, image, and likeness (NIL) compensation for community college athletes.

- Marc Edelman is a tenured Professor of Law at the Zicklin School of Business, Baruch College, City University of New York, where he writes and teaches on sports law, antitrust law, intellectual property law, and gaming / fantasy sports law. He also provides legal consulting and expert witness services to businesses in the commercial sports, entertainment and online gaming industries.
- Alicia Jessop is an Associate Professor at Pepperdine University and a licensed attorney in California and Colorado. Her legal practice focuses on the intersection of sport, business media, and the law. Her research expertise includes federal and state labor law in the sport industry, with a particular focus on sport agents and athlete protection mechanisms.

- Ramogi Huma is the Executive Director of the National College Players Association (NCPA), a non-profit organization that advocates for college athlete rights. Mr. Huma is a former college athlete and founded one of the first student groups to advocate for athletes' rights. Mr. Huma provides expert testimony to state legislative bodies, the United States Congress, and countless media outlets on name, image, and likeness rights of college athletes.

PUBLIC HEARING 2 OCTOBER 22, 2020

Session 1 – Administrative and Operational Issues for Athletic Administrators at California Community Colleges

This item provided the SB 206 Working Group with presentations from panelists who are practitioners representing the topic of administrative and operational issues from the context of athletic administrators at California Community Colleges.

- Christine Worsley is the Dean and Athletic Director at Diablo Valley College, home of Viking Athletics. She began her current position in 2009. Prior to Diablo College, Director Worsley was the associate athletic director of athletics and senior women's administrator at the Division III school, Rochester Institute of Technology in New York.
- Ms. Kim Duyst retired in 2018 from Stanislaus State. She served Stanislaus State for 32 years beginning as the men's and women's cross-country track and field coach serving in that capacity for 21 years. She led Warriors' athletes to over 60 All-American titles and 9 individual national champion performances. She concluded her career Sr. Associate Athletics Director for Stanislaus State Athletics
- Mitch Campbell is the Dean of Kinesiology, Health, and Athletics at Sacramento City College. He is also the Athletic Director for Panther Athletics. Dr. Campbell completed his doctoral studies at Oregon State and has served as Athletic Director since 2007. He also coached college basketball at several colleges in California and Washington over his career.

Session 2 – Administrative and Operational Issues for California-Based Athletic Conferences and Governing Associations

This item provided the SB 206 Working Group with presentations from panelists who are practitioners representing the topic of administrative and operational issues from the context of California-based athletic conferences and governing associations.

- Keith Shackelford is the Dean of Kinesiology, Health and Athletics at Irvine Valley College. He also serves as Athletics Director for Irvine Valley College, home of Lasers Athletics.
- John Woods is the Commissioner of the Pacific Coast Athletic Conference in San Diego, California. The Pacific Coast Athletic Conference (PCAC) is an intercollegiate athletic conference governed by the [California Community College Athletic Association \(CCCCAA\)](#). The PCAC is comprised of nine community colleges all of which offer a wide variety of athletic competition.
- Carol Rivera is in her 12th year with the California Collegiate Athletic Association and currently serves as the Associate Commissioner for Compliance and Internal Operations. She monitors CCAA and NCAA compliance for member institutions,

administers National and CCAA Letter of Intent programs, organizes professional development activities for faculty athletics representatives, senior women administrators and athletics directors, and oversees the day-to-day office operations of the CCAA. Rivera joined the CCAA from UC Irvine where she was compliance coordinator for two years.

PUBLIC HEARING 3 NOVEMBER 10, 2020

Session 1 – Issues Associated with Compliance and Oversight of Name, Image, and Likeness Activities in College Athletics

This item provided the SB 206 Working Group with presentations from panelists who are legal and policy experts on the topic of compliance implications associated with name, image, and likeness (NIL) compensation for community college athletes.

- Ellen J. Staurowsky, Ed.D., is a full professor in sports media in the Roy H. Park School of Communications at Ithaca College. She is a fellow of both the North American Society for Sport Management (NASSM) and the AAHPERD Research Consortium. Dr. Staurowsky is internationally recognized as an expert on social justice issues in sport which include gender equity and Title IX, pay equity and equal employment opportunity, college athletes' rights and the exploitation of college athletes. She is co-author of the book, *College Athletes for Hire: The Evolution and Legacy of the NCAA Amateur Myth* and editor and author of *Women and Sport: A Continuing Journey from Liberation to Celebration*.
- Matt Banker is the Associate Athletic Director for Compliance at the University of Louisville, a position he has held since 2013. Prior to joining the University of Louisville, he served as the Assistant Commissioner for the Ohio Valley Conference. He has served in multiple positions within the NCAA including serving as a member of the NCAA Division 1 Legislative Council and in Membership Services and the NCAA Eligibility Center. Mr. Banker also served as the Assistant Dean for Student Affairs at the Indiana University School of Law in Indianapolis from 2008-2009. Banker received his Bachelor of Arts degree in journalism from the University of St. Thomas (MN) and his J.D. from Marquette University Law School.
- Dr. Daniel Rascher is a Professor and Director of Academic Programs for the Sport Management Program at the University of San Francisco. Dr. Rascher teaches sport economics, finance, and business research methods. He holds a PhD in Economics from the University of California, Berkeley. Dr. Rascher is also the President of a consultancy firm, SportsEconomics where he provides consulting services to many organizations within the sport industry including major league professional sport teams, sports media firms, local sport commissions, and various government agencies. Dr. Rascher has provided expert witness testimony in numerous federal court trials, including those involving anti-trust suits against the NCAA.

Session 2 – Name, Image, and Likeness Policy Development Efforts of National and Regional Governing Bodies for College Athletics

This item provided the SB 206 Working Group with presentations from panelists who are leaders and practitioners in college athletics on the topic of policy development and

implementation for name, image, and likeness (NIL) association rules for college athletes.

- Jeff White serves as the Vice President for Legal, Diversity, IT, & Resources at the NJCAA National Office in Charlotte, North Carolina. As the association's in-house legal counsel, White works with NJCAA National Office staff and Board of Regents members to review contracts, assist regions in legal needs, create and revise internal processes, manage association policies and procedures, and monitor Title IX compliance. Prior to joining the NJCAA National Office in February 2019, White spent three years as the Vice President of Student Experience and Human Resources and Director of Athletics at Hocking College, an NJCAA member school in Region XII. Mr. White also serves as the Executive Director for NJCAA Esports, a new national governing body for two-year college esports programs.
- Jim Carr is the President and CEO of the National Association of Intercollegiate Athletics (NAIA) headquartered in Kansas City, Missouri. Prior to becoming President/CEO he served as Managing Director and General Counsel, and also as Chief Operating Officer. He also practiced law in Birmingham, Alabama in the areas of public finance and intellectual property. During his time as President and CEO, the NAIA has adopted landmark legislation to allow college athletes to be compensated for the use of their NIL rights. Mr. Carr hold an M.S. degree in sports management from the University of Massachusetts and a J.D. degree from Duke University.
- Jay Jones is the Commissioner of the Heartland Collegiate Athletic Conference, an NCAA Division III Athletic Conference located in Carmel, Indiana. He has previously served as an administrator at the National Collegiate Athletic Association (NCAA), serving as both the Associate Director of Division III Governance and a Director of Academic and Membership Affairs. Mr. Jones earned his bachelor's degree in Sport Management from the University of Tennessee; and his MBA and JD degrees from Stetson University, in St. Petersburg, Florida. Jones also serves as an adjunct professor of Sports Law at IUPUI – Indiana University/Purdue University -- Indianapolis.

PUBLIC HEARING 4 NOVEMBER 12, 2020

Session 1: Updates on Economic and Legal Perspectives Related to Name, Image, and Likeness Opportunities for Community College Athletes

This item provided the SB 206 Working Group with presentations from panelists who are economic and legislative experts on the topic of economic implications associated with name, image, and likeness (NIL) compensation for community college athletes and the impact of related state-based legislation.

- Professor Dionne Koller is the Associate Dean for Academic Affairs and Professor of Law and Director at the Center for Sport and the Law at the University of Baltimore. Professor Koller’s scholarly focus is Olympic and amateur sports law and she is a frequent media commentator and consultant to state and federal legislatures on issues related to sports and the law. She recently testified before the U.S. Senate Committee on Commerce, Science and Transportation regarding NIL rights of college athletes.
- Dr. Thilo Kunkel is an Associate Professor of Marketing and Sport Management and the Director of the Sport Industry Research Center at Temple University, Philadelphia, Pennsylvania. His research is on the intersection of strategic management and marketing. He also serves as a business consultant for organizations seeking to build their brand, engage consumers, activate sponsorships and foster consumer loyalty. He received his PhD in Sport Management from Griffith University.
- Darren Heitner is the Founder of Heitner Legal, a law firm with practice areas in sports law and contract law. Heitner has taught Sport Agency Management as an Adjunct Professor at Indiana University Bloomington. Mr. Heitner graduated from the University of Florida with a Bachelors of Arts in Political Science and received a Juris Doctorate from the University of Florida Levin College of Law. He has appeared on ESPN, CNBC, CBS News and other television stations to speak on sports business and sports law topics.

Session 2 – Report of Name, Image and Likeness Market Analysis and Valuations for California Community College Athletes

Dr. Adam Cocco is an Assistant Professor of Sport Administration and Director of the Sport Analytics Certificate Program at the University of Louisville. Dr. Cocco teaches Sport Finance and Sport Analytics. He received his PhD in Sport Administration from the University of Louisville. Prior to that, he completed an M.A. in Economics from the University of Akron and a B.S. in Business Administration from Youngstown State University. Dr. Cocco worked as a data analyst in the financial industry for several years and has conducted economic impact studies for local, regional, and national sporting events.

PUBLIC HEARING 5 DECEMBER 8, 2020

Session 1 – College Athletes presentations relating to the SB 206 legislation regarding Name, Image, and Likeness Activities in College Athletics

This item provided the SB 206 Working Group with presentations from college athlete panelists who will share their perspective related to remuneration for name, image, and likeness (NIL) for community college athletes.

- Karlee Hodges-Soccer
- Marshal Brose-Football
- Cole Brooks-Football
- Karvin Li-Cross-Country Team

Session 2 – College Athletes presentations relating to the SB 206 legislation regarding Name, Image, and Likeness Activities in College Athletics.

This item provided the SB 206 Working Group with presentations from college athlete panelists who will share their perspective related to remuneration for name, image, and likeness (NIL) for community college athletes.

- Tayvian Cunningham-Football/Track
- Dupree Allen-Basketball
- Kamil Jones-Track and Field
- Julian Lafond-Tennis
- Connor Obrien-Golf

APPENDIX F: CCCAA STUDENT ATHLETE NIL MARKET ANALYSIS – COMPLETE REPORT

MARKET ANALYSIS OF CCCAA ATHLETE NIL SOCIAL MEDIA PROFILES²

Purpose

The mission statement adopted by the SB206 Working Group mentions that the Working Group “will develop recommendations for California state legislation on compensation for California Community College athletes’ name, image, and likeness that are equitable and provide them fair market value for their use” (italics added). To better understand issues of equity among California Community College athletes regarding name, image, and likeness earnings potential and provide an estimate of fair market value for community college athlete publicity rights, the Working Group commissioned a name, image, and likeness market analysis study. The purpose of this analysis was to provide an objective and valid examination of the name, image, and likeness earnings potential for California Community College athletes by treating athletes as potential social media marketing influencers and applying standard influencer marketing rates to estimate earnings potential. Additionally, this analysis sought to investigate the equitable earnings potential of these name, image, and likeness value estimates through an examination of the data broken down by athlete sport, gender, and conference.

Method

To begin this analysis, the California Community College Athletic Association provided a list of all athletes competing in sports governed by the athletic association during the 2019-2020 athletic season. The 2019-2020 athletic season represented the most recent availability of roster data. This list contained 23,248 unique athletes and included the athlete’s name, sport, gender, and institution. After initial data cleaning, a group of research assistants at the University of Louisville searched for Instagram profiles related to each athlete. Instagram was chosen as the social media platform for this analysis due to its use by athletes across a variety of sports to engage audiences, promote and develop their brand, and monetize their brand through sponsorships.³ Additionally, Instagram use is more prevalent among college-aged individuals relative to other established social media platforms such as Facebook and Twitter.⁴

²Prepared by expert consultant Dr. Adam Cocco, Assistant Professor, University of Louisville Sport Administration Program. Thanks and appreciation to members of the University of Louisville, Sport Administration Student Association who assisted with data collection; and Dr. Thilo Kunkel and the Sport Industry Research Center at Temple University who assisted with data analysis.

³Doyle, J.P., Su, Y., & Kunkel, T. (2020). Athlete branding via social media: An examination of the content that drives fan engagement on Instagram. *European Sport Management Quarterly*. <https://doi.org/10.1080/16184742.2020.1806897>.

⁴Jaschik, S. (2019, September 23). Instagram on the rise. *Inside Higher Ed*. <https://www.insidehighered.com/admissions/article/2019/09/23/prospective-students-social-media-preferences-have-changed-two-years>

Research assistants were instructed to collect data on Instagram usernames and follower counts for profiles that indicated a clear and reasonable match with a community college athlete. Several factors influenced the determination of a clear and reasonable Instagram profile match. These included pictures posted on an Instagram profile showing the athlete competing in their sport; a mention of the athlete's sport and/or institution in their Instagram bio; and/or relevant mentions of the athlete's Instagram profile by other Instagram accounts, such as the institution's athletic department or sport program. In total, research assistants found 4,601 Instagram profiles (19.79% of all athletes) which provided a clear and reasonable match to a California Community College athlete.

Following this initial data collection effort, a research team located within the Sport Industry Research Center at Temple University utilized a custom web scraper program to systematically extract engagement data (likes and comments) related to each athlete's identified Instagram profile. An Instagram profile needed to be marked as "Public" for engagement data to be extracted. After the collection of engagement data for publicly available Instagram profiles of community college athletes, data analysis was conducted to ascertain name, image, and likeness value estimates for athletes with Instagram profiles containing 1,000 or more followers. This follower threshold matches industry standards regarding the minimum number of followers to be considered a "micro-influencer" on social media.⁵ In total, 1,168 community college athlete Instagram profiles (25.38% of identified Instagram profiles) contained publicly available engagement data and met the micro-influencer threshold. Therefore, this was the sample used for name, image, and likeness value estimates.

Industry research on social media influencer value utilizes a hybrid approach whereby an individual's reach and engagement on social media combine to form valid estimates of social media brand value.⁶ This analysis followed a similar approach. The formula utilized in this analysis to generate name, image, and likeness annual value estimates pertaining to community college athlete Instagram profiles was:

$$\text{Annual Value} = 0.5[\text{Reach} \times \text{CPM} \times \text{Posts}]/1000 + 0.5[\sum(\text{E} \times \text{C}) \times \text{Posts}]$$

Within this formula, an athlete's reach on social media was approximated by their number of Instagram followers. The metric CPM refers to "cost per thousand impressions" and approximates the marketing cost of reaching 1,000 potential consumers. Industry research on social media influencer marketing utilizes a range of CPM estimates, from \$6 per thousand impressions to \$20 per thousand impressions. This analysis chose to utilize a relatively conservative CPM estimate of \$10 per thousand impressions. Posts refers to the number of annual sponsored posts generated by a social media influencer. Industry standards generally

⁵Dosh, K. (2020, October 20). Name, image, and likeness for community college student athletes. *Business of College Sports*. <https://businessofcollegesports.com/legal/name-image-and-likeness-for-community-college-student-athletes/>

⁶Kunkel, T., Baker, B., Baker, T., & Doyle, J. (2021). There is no nil in NIL: Examining the social media value of student-athletes' names, images, and likeness. *Sport Management Review*.

Weber, S. (2020, May 13). NIL earning potential of Ohio State football student-athletes. *Opendorse*. <https://opendorse.com/blog/nil-earning-potential-of-ohio-state-football-student-athletes/>

estimate one sponsored post per week.⁷ This estimate was also utilized in this analysis. The term E refers to the average number of engagements from the last 12 publicly available posts on an athlete’s Instagram profile. Likes and comments provided two separate engagement metrics for his analysis. Finally, the term C refers to the cost per engagement. Consistent with industry standards⁸, a cost per like metric of \$0.20 and a cost per comment metric of \$0.70 were used in this analysis. The cost per comment rate is higher than the cost per like rate due to comments representing a deeper form of engagement on a social media post. Name, image, and likeness value estimates were presented to the Working Group during the November 12, 2020 public hearing session. The following section outlines key findings from this analysis.

Key Findings

Prior to calculating the name, image, and likeness earnings potential for California Community College athletes, descriptive statistics provided an overview of followers and engagement data. Follower data represents information for all identified Instagram accounts while engagement data is reported for the 1,168 Instagram profiles considered for name, image, and likeness value analysis. Table 1 below presents descriptive statistics for men’s sport athletes and Table 2 presents descriptive statistic data for women’s sport athletes.

Table 1
Instagram statistics for men’s community college athletes

Sport	# of Accounts	% of Total	Max. Followers	Avg. Followers	Avg. Likes	Avg. Comments
Baseball	128	16.64%	23,100	919	343	13
Basketball	129	16.78%	14,500	1,288	354	24
Cross Country	6	0.78%	1,357	521	273	13
Football	359	46.68%	55,700	1,192	308	15
Golf	3	0.39%	7,103	704	117	9
Soccer	53	6.89%	5,372	837	256	15
Swim & Dive	15	1.95%	1,791	662	322	15
Tennis	3	0.39%	1,437	526	235	10
Track & Field	40	5.20%	5,706	757	282	13
Volleyball	11	1.43%	4,333	874	250	14
Water Polo	9	1.17%	2,071	737	277	11
Wrestling	13	1.69%	4,596	854	280	13
Overall	769	100.0%	55,700	1,012	314	16

⁷Weber, S. (2017, February 7). Sponsored social in sports: How athletes, teams, and leagues stack up. *Opendorse*. <https://opendorse.com/blog/sponsored-tweets/>

⁸Henderson, G. (2019, January 14). How much does it cost to advertise on Instagram? *Digital Marketing*. <https://www.digitalmarketing.org/blog/how-much-does-it-cost-to-advertise-on-instagram>

Table 2
Instagram statistics for women’s community college athletes

Sport	# of Accounts	% of Total	Max. Followers	Avg. Followers	Avg. Likes	Avg. Comments
Badminton	2	0.50%	1,818	591	17	13
Basketball	54	13.53%	4,262	1,054	19	24
Beach Volleyball	42	10.53%	7,847	1,187	17	
Cross Country	4	1.00%	4,322	904	15	13
Golf	6	1.50%	5,365	1,129	14	9
Soccer	97	24.31%	4,970	1,137	21	15
Softball	69	17.29%	6,471	1,051	18	
Swim & Dive	23	5.76%	9,755	986	19	15
Tennis	3	0.75%	3,477	658	22	10
Track & Field	31	7.77%	44,300	1,845	25	13
Volleyball	56	14.04%	5,842	989	18	14
Water Polo	12	3.01%	1,957	845	14	11
Overall	399	100.0%	44,300	1,113	19	16

The data in Table 1 and Table 2 demonstrate that the majority of identified Instagram profiles with monetizable opportunity through social media influencer marketing came from men’s sport athletes (65.84% of the 1,168 Instagram profiles considered for analysis). Additionally, the Instagram profile with the largest reach came from a men’s football player with 55,700 followers. However, women’s sport athletes displayed a higher average reach than men’s sport athletes, accounting for approximately 100 more followers on average. Additionally, women’s sport athletes demonstrated higher average engagement levels compared to men’s sport athletes for both engagement metrics measured (likes and comments).

Following a comparison of reach and engagement across sport and gender, name, image, and likeness earnings estimates were calculated utilizing the process detailed in the *Method* section above. The following tables present name, image, and likeness earnings estimates on both a per post and annual basis for men’s sport athletes and women’s sport athletes.

Table 3**Name, image, and likeness per post and annual earnings estimates for men's community college athletes on Instagram**

Sport	N	Per Post Max	Per Post Avg.	Per Post Min.	Annual Max.	Annual Avg.	Annual Min.
Baseball	128	\$375	\$48	\$16	\$19,478	\$2,507	\$838
Basketball	129	\$365	\$55	\$14	\$18,975	\$2,849	\$706
Cross Country	6	\$53	\$37	\$23	\$2,734	\$1,949	\$1,190
Football	359	\$1,107	\$47	\$10	\$57,558	\$2,461	\$497
Golf	3	\$50	\$31	\$20	\$2,593	\$1,601	\$1,024
Soccer	53	\$77	\$38	\$14	\$3,978	\$1,988	\$753
Swim & Dive	15	\$65	\$44	\$23	\$3,377	\$2,306	\$1,197
Tennis	3	\$37	\$34	\$29	\$1,909	\$1,769	\$1,499
Track & Field	40	\$177	\$40	\$8	\$9,203	\$2,083	\$403
Volleyball	11	\$62	\$38	\$27	\$3,248	\$1,982	\$1,397
Water Polo	9	\$67	\$38	\$24	\$3,460	\$1,980	\$1,271
Wrestling	13	\$84	\$41	\$23	\$4,638	\$2,129	\$1,222
Overall	769	\$1,107	\$47	\$8	\$57,558	\$2,450	\$403
CCCAA Athletes	15,194	-	-	-	-	-	-
% of All Athletes	5.1%	-	-	-	-	-	-

Table 4**Name, image, and likeness per post and annual earnings estimates for women's community college athletes on Instagram**

Sport	N	Per Post Max	Per Post Avg.	Per Post Min.	Annual Max.	Annual Avg.	Annual Min.
Badminton	2	\$61	\$44	\$28	\$3,164	\$2,301	\$1,438
Basketball	54	\$88	\$47	\$13	\$4,569	\$2,421	\$691
Beach Volleyball	42	\$114	\$47	\$17	\$5,918	\$2,441	\$859
Cross Country	4	\$82	\$55	\$22	\$4,283	\$2,835	\$1,166
Golf	6	\$139	\$67	\$23	\$7,207	\$3,474	\$1,221
Soccer	97	\$132	\$51	\$14	\$6,843	\$2,634	\$735
Softball	69	\$95	\$46	\$15	\$4,943	\$2,382	\$805
Swim & Dive	23	\$100	\$46	\$13	\$5,200	\$2,368	\$685
Overall	399	\$862	\$51	\$13	\$44,837	\$2,675	\$685
CCCAA Athletes	8,054	-	-	-	-	-	-
% of All Athletes	5.0%	-	-	-	-	-	-

Sport	N	Per Post Max	Per Post Avg.	Per Post Min.	Annual Max.	Annual Avg.	Annual Min.
Tennis	3	\$107	\$69	\$25	\$5,557	\$3,607	\$1,297
Track & Field	31	\$862	\$88	\$16	\$44,837	\$4,578	\$853
Volleyball	56	\$149	\$50	\$17	\$7,742	\$2,601	\$895
Water Polo	12	\$63	\$39	\$24	\$3,281	\$2,039	\$1,239
Overall	399	\$862	\$51	\$13	\$44,837	\$2,675	\$685
CCCAA Athletes	8,054	-	-	-	-	-	-
% of All Athletes	5.0%	-	-	-	-	-	-

The results from this analysis suggest several interesting findings. First, although a higher number of men’s sport athletes demonstrate name, image, and likeness earnings potential on social media compared to women’s sport athletes, the percentage of all men’s and women’s sport athletes demonstrating earnings potential is relatively equal. The larger number of men’s sport athletes with earnings potential is due to 15,194 of the 23,248 (65.36%) total California Community College athletes competing in men’s sports. When assessed relative to the total number of California Community College athletes by gender, approximately 5.0% of men’s and women’s sport athletes could benefit from some form of earnings via social media influencer marketing.

Second, men’s sport athletes do possess a higher ceiling for name, image, and likeness earnings potential on social media as evidenced by the maximum per post value for men’s sport athletes (\$1,107) being larger than that for women’s sport athletes (\$862). Converting these per post values to annual metrics shows that the top men’s sport athlete (football) could generate \$57,558 per year via social media influencer marketing while the top women’s sport athlete (track and field) could generate \$44,837 per year via social media influencer marketing. However, women’s sport athletes display higher average earnings potential on a per post and annual basis compared to men’s sport athletes. The average women’s sport athlete with a monetizable social media brand could earn \$51 per post (annual value of \$2,675) while the average men’s sport athlete is estimated to earn \$47 per post (annual value of \$2,450).

To contextualize the name, image, and likeness earnings potential of California Community College athletes, an analysis was performed to examine the frequency of annual value estimates within specific monetary categories. The categories created for this analysis included: annual value of name, image, and likeness rights under \$1,000; between \$1,000 and \$5,000; between \$5,000 and \$10,000; and over \$10,000 per year. The table below presents the results of this analysis.

Table 5**Name, image, and likeness annual value estimates for by sport, gender, and monetary categories**

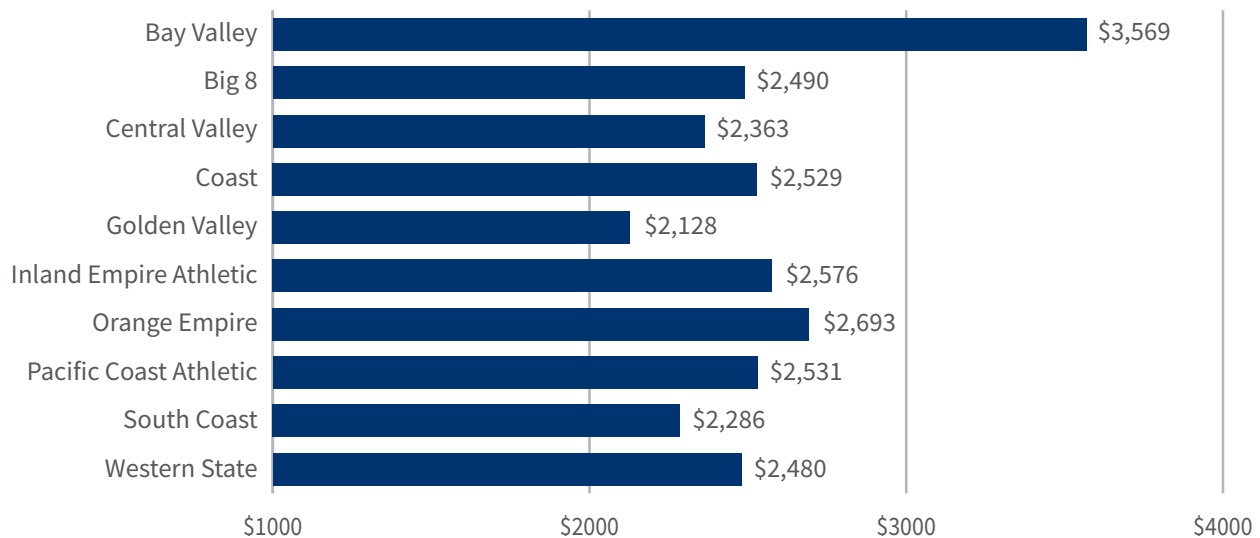
Sport	< \$1K	\$1K - \$5K	\$5k - \$10K	> \$10K	Total
Men's Baseball	1	121	3	3	128
Men's Basketball	4	116	7	2	129
Men's Cross Country	-	6	-	=	6
Men's Football	17	328	10	4	359
Men's Golf	-	3	-	-	3
Men's Soccer	1	52	-	-	53
Men's Swim & Dive	-	15	-	-	15
Men's Tennis	-	3	-	-	3
Men's Track & Field	4	34	2	-	40
Men's Volleyball	-	11	-	-	11
Men's Water Polo	-	9	-	-	9
Men's Wrestling	-	13	-	-	13
Women's Badminton	-	2	-	-	2
Women's Basketball	2	52	-	-	54
Women's Beach Volleyball	1	39	2	-	42
Women's Cross Country	-	4	-	-	4
Women's Golf	-	5	1	-	6
Women's Soccer	2	88	7	-	97
Women's Softball	1	68	-	-	69
Women's Swim & Dive	1	21	1	-	23
Women's Tennis	-	2	1	-	3
Women's Track & Field	1	28	-	2	31
Women's Volleyball	1	51	4	-	56
Women's Water Polo	-	12	-	-	12
Men's Total	27	711	22	9	769
Women's Total	9	372	16	2	399
Total	36	1,083	38	11	1,168
% of Grand Total	3.08%	92.72%	3.25%	0.94%	-

The results of this analysis suggest the overwhelming majority (92.72%) of California Community College athletes with identifiable and monetizable Instagram profiles could earn between \$1,000 and \$5,000 annually through social media influencer marketing. Only 11 athletes (nine men's sport athletes from baseball, basketball, or football and two women's

track & field athletes) included in this analysis were found to have a monetizable social media profile with an annual value over \$10,000.

In addition to a name, image, and likeness market analysis by sport and gender, an analysis was conducted by California Community College Athletic Association conference to determine potential disparities in earnings estimates based on geographic location of institutions. Average annual earnings estimates for athletes by conference revealed values ranging from \$2,128 per year (Golden Valley Conference) to \$3,569 (Bay Valley Conference). The figure below presents annual athlete name, image, and likeness earnings estimates broken down by each conferences competing within the California Community College Athletic Association.

Figure 1
Average annual athlete earnings estimate by conference



Conclusion

A market analysis of the name, image, and likeness earnings potential for California Community College athletes via social media influencer marketing on the Instagram platform produced valid and reliable evidence of equitable earnings opportunities for athletes and realistic estimates of fair market value. Approximately 5.0% of both men’s and women’s community college athletes possess a social media profile sizeable enough to create some form of name, image, and likeness earnings potential. Men’s sport athletes demonstrated a higher overall earnings potential, with the top men’s sport athlete projected to earn \$57,558 annually via social media influencer marketing compared to \$44,837 for the top women’s sport athlete. However, the average women’s sport athlete (\$2,675) projected to earn more annually compared to the average men’s sport athlete (\$2,450). This finding resulted from women’s sport athletes generally benefiting from higher reach and engagement metrics across the analyzed social media platform. Additionally, an analysis of athlete earnings estimates across California Community College Athletic Association conferences found relatively equal earnings potential regardless of institutional location. The outlier in this analysis came from the Bay Valley Conference with an average athlete earnings potential of \$3,569 per year. This result occurred due to the presence of Laney College in the Bay Valley Conference. Given that the Laney College football program was featured on the Netflix documentary “Last Chance U,” several of their football athletes were able to grow sizeable

social media followings, thereby skewing the results from this conference.

Although it is interesting to note the high earnings potential of several athletes, the reality of this analysis shows that the vast majority of California Community College athletes with a monetizable social media presence would earn between \$1,000 and \$5,000 per year if they chose to place sponsored product advertisements on their Instagram profile. Out of the 1,168 athlete Instagram profiles included in this analysis, 92.72% fall into the \$1,000 - \$5,000 annual monetizable value range.

Several assumptions and limitations guided this study and should be acknowledged. First, as mentioned in the *Method* section, assumptions related to cost per impression, cost per engagement, and number of sponsored posts per year directly influenced these name, image, and likeness earnings estimates. Athletes attempting to monetize their social media profiles would likely be faced with a range of opportunities containing a variety of cost per impression, cost per engagement, and number of sponsored posts per year offers. This analysis reflects a baseline average for earnings opportunity via social media influencer marketing for community college athletes. Real opportunities will differ from these estimates. Additionally, it is important to note that opportunity does not mean actual occurrence. Just because a community college athlete is provided with an opportunity to monetize their brand via their social media profile does not mean they will do so. Athletes will decline these opportunities for a variety of reasons, such as being offered opportunities to promote products which they do not support, or which do not align with their personal brand strategy and development.

Additionally, this study only examined earnings estimates from one social media site (Instagram). Other social media sites, such as Snapchat, TikTok, and YouTube, provide additional realistic outlets for athletes to monetize their personal brand via social media influencer marketing. Furthermore, social media influencer marketing is only one method by which an athlete can monetize their personal brand. Additional compensation opportunities related to traditional media advertising, promotional appearances, camps, clinics, and entrepreneurial activities, among others, provide a wide variety of avenues for athletes to monetize their name, image, and likeness rights. Finally, several student-athletes partaking in the SB206 Working Group meetings mentioned that many athletic programs place restrictions on the social media activity of college athletes. Therefore, these restrictions may limit the social media reach and engagement potential of college athletes, thereby undervaluing their true monetization potential on social media.

In summary, this name, image, and likeness market analysis study should be looked at as a baseline estimate that begins the conversation on earnings potential and fair market value for California Community College athletes. The complexity of marketing deals and the variety of monetization avenues for an athlete's name, image, and likeness rights create an opportunity for vast fluctuations in the actual earnings of California Community College athletes compared to those represented in this market analysis.

APPENDIX G: MEMORANDUM ABOUT CONFLICTS BETWEEN ATHLETE NIL AGREEMENTS AND TEAM CONTRACTS

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MEMORANDUM SB206 NIL WORKING GROUP

To: Dr. LeBaron Woodyard
From: Anita Moorman
Date: January 31, 2021
Re: Analysis of SB206 provisions related to athlete NIL agreements that “conflict” with “Team Contracts”.

Upon your request, I reviewed the legislative language for each of the six states with enacted NIL legislation containing provisions prohibiting athletes from entering into agreements that conflict with Team or Institutional agreements. Table 1 below provides a summary comparison of the statutory language. I have also reviewed the current NCAA NIL proposals for any language restricting athlete NIL activities with current Team sponsors. Appendix A contains the relevant statutory language from each of the six states. Appendix B provides sample language from a college apparel agreement, an athlete endorsement agreement, and a social media influencer agreement.

Question Posed: What is the anticipated interpretation of language contained in state NIL legislation, which provides that a student athlete may not enter into a NIL contract if the contract would conflict with an existing Team Contract.

Short Answer: The statutory provisions prevent student athletes from entering into contracts providing compensation for the use of their NIL if those contracts conflict with specified and identifiable provisions contained in existing team agreements. While the term “conflict” is not expressly defined, the statutes require the institution asserting the existence of a conflict to identify and disclose specific “relevant contractual provisions” in an existing Team or Institutional agreement that is in conflict with the athlete’s proposed NIL agreement. This disclosure requirement would appear to narrow the scope of the term “conflict” to a comparison of specific contractual provisions in the two agreements for the purposes of determining whether the proposed athlete NIL agreement would interfere with the express performance obligations of the Team or Institution in their existing agreements. If the proposed NIL contract would create such a conflict, the athlete would not be permitted to enter into the proposed NIL contract.

However, each proposed NIL contract would need to be evaluated for conflicts on a case-by-case basis depending upon the specific language contained in the Team or Institutional agreement. Another important consideration is that the statutes prohibit institutions from including any provisions in new, renewed, or modified Team or Institutional agreements that would restrict athlete NIL activities other than when they are engaged in official team activities. Thus, a University would not be permitted to subvert athlete NIL activities authorized by SB206 by adding language in future team contracts with third party sponsors to create a “conflict” in proposed athlete NIL agreements.

Discussion

The specific statutory language for each of the six states is provided in Appendix A and the pertinent provisions are summarized in Table 1 below.

Table 1: Comparisons of Conflict Provisions in NIL Legislation

Conflict Provisions	SB206	Other States
Athlete shall not enter into “NIL contract” in conflict with Team Contract	Yes	Colorado, New Jersey, Florida, Nebraska (apparel + conflicts), Michigan (apparel contracts only?)
Institution asserting conflict shall disclose “relevant contractual provisions” to athlete or athlete’s legal representative	Yes	Colorado, New Jersey, Florida, Nebraska (shall disclose entire K), Michigan (shall communicate that a conflict exists)
Team Contract shall not prevent athlete from using NIL for commercial purposes when not engaged in team activities	Yes	Colorado, Nebraska, New Jersey, Michigan

As Table 1 indicates, each of the states’ legislation contains some version of language restricting athletes from entering into “contracts providing compensation for the use of name, image, and likeness” (NIL contract) if a provision of the contract is in conflict with a provision of the athlete’s team contract. While the language varies slightly in California, Colorado, New Jersey, and Florida – those differences do not appear to be significant substantive differences. Nebraska and Michigan contain the same general restrictions but also include a few substantive variations noted in the discussion below.

Prohibited Agreements

Generally, student athletes are not be permitted to enter into contracts providing compensation to the athletes for the use of the athletes *name, image, or likeness* (and “*athletic reputation*” in Nebraska) if those contracts are in conflict with existing Team Contracts. SB26 in California also proposes to add “*athletic reputation*” to SB206. SB206, Colorado, New Jersey and Florida all use similar language that appears to generally prohibit agreements in “conflict” with existing team agreements. But as discussed below, neither “Team Contract” or “conflict” are expressly defined in SB206.

Nebraska prohibits both (a) “conflicts” and (b) any agreements that would require an athlete to wear a sponsor’s apparel or display their logos during official team activities. The Nebraska legislation includes the same general restriction on “conflicts” seen in California, Colorado, New Jersey and Florida, but also appears to recognize that almost all D-I institutions, and many other institutions will have agreements in place with apparel companies that prohibit the display of competitors’ logos during official team activities and/or provide a number of exclusive marketing rights to the apparel sponsor.

Michigan’s statute may be interpreted the most narrowly to only prohibit “apparel contracts” that require an athlete to display a sponsor’s apparel or that would conflict with the team’s apparel agreement during official team activities. It is not at all clear whether the underlying proposed NIL agreement is only prohibited if it is with an apparel company/manufacturer, or whether proposed NIL agreements with any companies that require the student to display a logo on his/her apparel are included in the restricted activity.

“Conflict” defined

SB206 does not define the term “conflict”. While the term “conflict” is not expressly defined, the statutes require the institution asserting the existence of a conflict to identify and disclose specific “relevant contractual provisions” in an existing Team or Institutional agreement that is in conflict with the athlete’s proposed NIL agreement. This disclosure requirement would appear to narrow the scope of the term “conflict” to a comparison of specific contractual provisions in the two agreements for the purposes of

determining whether the proposed athlete NIL agreement would interfere with the express performance obligations of the Team or Institution in their existing agreements. Thus, an argument that athlete NIL activities may reduce the overall value of Team Contracts or create a more saturated sponsorship landscape making it more difficult for institutions to secure sponsorships would seem to be beyond the scope of how the term “conflict” is used in the statutes.

“Team Contract” Defined

SB206 also does not define “Team Contract”. Colorado and Nebraska are the only two states that specifically define the term “Team Contract”. Colorado and New Jersey include both Institutional agreements and Athletic Department agreements within the definition of Team Contract. The other states are less clear whether a Team Contract would only include agreements between the University’s Athletics Department and third party sponsors, or would also include any institutional agreements with sponsors. Thus, for SB206 an ordinary interpretation of the term, Team Contract, would likely be an agreement between the athletic department and a third-party sponsor.

Official Team Activities

Five of the six states (excluding Florida) prohibit a Team Contract from containing any provisions preventing an athlete from using NIL for commercial purposes when not engaged in “official team activities”. None of the statutes define what are “official team activities”. However, as explained below, many sponsorship agreements with athletic departments may define team activities or team functions very broadly to include practices, games, clinics, camps, workouts, training sessions, official community service events, media appearances, etc.

NIL Conflict Scenarios

In order to illustrate how a “conflict” might be resolved under the current statutory framework, we have included a few scenarios below. Note, that the complexity and specificity of the illustrated sponsorship and endorsement agreements would be expected to vary significantly from the D-I level to the California Community Colleges level. The analysis below is not intended as legal advice, but only to illustrate possible interpretations and analytical approaches to applying the statutory language in its current form to a representative D-I college apparel agreement. This analysis also does not take into account any future or pending regulatory actions that may be taken in these states to further interpret or enforce the statutes. At least one state (Florida), has directed its Board of Governors and State Board of Education to adopt rules and regulations to implement the new NIL statute.

These scenarios will all relate to a situation in which University A has an existing apparel agreement with Adidas establishing Adidas as the exclusive apparel and equipment provider for University A athletics program. The apparel agreement includes the following language:

The University shall require that each Team wear and use exclusively adidas products **whenever participating in Team activities** including practices, games, clinics, and other University functions for which the University ordinarily and usually supplies products to the Team. At all such functions, the University shall prohibit the Team members from wearing products manufactured by companies other than adidas, or any such products which have been altered to resemble adidas products.

University agrees that it shall not permit the trade name, trademark, logo, or any other identification of any person, company, or business entity other than adidas **to appear on adidas products worn or used by coaches, staff, or Team members.**

University shall not enter into or approve any endorsement contract between a member of the **Athletic Program Staff** and a competitor of adidas, and shall exercise its best efforts to prevent any member of the Athletic Program Staff from entering into such a contract.

Team means the group of students that comprises the personnel of each University Athletic Program. Athletic Program Staff means all individuals employed by or directed to act on behalf of the University Athletic Program including staff, coaches, trainers, and strength and conditioning employees.

Scenario One: Athlete is offered a NIL contract from Nike that requires her to wear Nike gear during voluntary, off-campus workouts and post images of herself on her social media platforms wearing Nike provided gear.

No Conflict: So long as the athlete does not wear Nike gear during any official team activities, this agreement is probably not in conflict with the Team Adidas Agreement. The Team Adidas Agreement only requires the University to exclusively use adidas products *during team activities* including practices, games, clinics, and other University functions for which the University ordinarily and usually supplies products to the teams. If the University ordinarily and usually supplies product for all workouts and training activities, an argument could be made that even a voluntary, off-campus workout might fall under this umbrella of the agreement, but such a broad interpretation would not be guaranteed. Similarly, the provisions in the Team Adidas Agreement prohibiting endorsement agreements with competitors only applies to Athletic Program Staff, not athletes (Team Members).

Scenario Two: Athlete is offered a NIL contract from adidas which requires him to exclusively wear adidas gear during all athletic workouts, practices, games, events, exhibitions, media appearances where it is appropriate to wear such products, as well as during voluntary, off-campus workouts; and promote the brand via his social media channels.

No Conflict: The athlete wearing adidas gear during official team activities is not in conflict with the Team Adidas Agreement, but instead is expected under the agreement. Arguably, if individual athletes were to negotiate NIL agreements with existing Team sponsors, one could argue that it might devalue the team contract (a common ambush marketing argument), but there does not appear to be any provision in the team contract that prohibits an individual athlete from entering into NIL contracts with the team sponsor independent of the team contract. Thus, there would be no “conflict” as envisioned in the statutory language. However, one caveat would be that if the gear worn by the athlete during non-official activities also bears the marks or logos of the University, this would likely infringe on the University’s protected intellectual property and trigger a review of provisions limiting the use of University IP.

Scenario Three: Athlete is offered a NIL contract from adidas, Nike, or another company to exclusively wear the specified branded gear during voluntary, off-campus workouts and post images of himself on his social media platforms wearing the company’s branded gear.

No Conflict: Similar to the previous scenario, nothing in the Team Adidas Agreement prohibits an athlete from also wearing adidas gear at times other than official team activities or being compensated by adidas for that use so long as the gear does not also bear the protected IP of the University.

Similarly, a contract with Nike or another third party sponsor would not conflict with the terms of the Team Adidas Agreement because (1) it would not apply to voluntary, off-campus workouts or activities as outside the defined “official team activities”; (2) the restriction on endorsement contracts with competitors only applies to coaches and athletic staff, not athletes; and (3) even if the restriction on endorsement contracts with competitors applied to athletes, most apparel agreements include a list of exceptions for apparel or equipment for which adidas does not make an equivalent product (e.g. golf clubs, tennis balls, field hockey sticks, football helmets, swim caps, etc.). Lastly, the restriction on endorsement contracts with competitors in the Team Adidas Agreement may be a good example of a provision that could not be added in future or renewed agreements to include “Team Members” (athletes) for the purpose of creating a “conflict” under SB206.

Scenario Four: Athlete is offered a NIL contract from Nike which requires him to wear Nike gear during all athletic workouts, practices, games, events, exhibitions, media appearances where it is appropriate to wear such products.

Conflict: This activity would be a direct conflict with the Team Adidas Agreement that requires coaches, staff, and athletes to exclusively wear adidas branded products during all official team activities.

Scenario Five: Athlete is offered a NIL contract from a local Dick’s Sporting Goods to make a series of public appearances at sponsored events at the retail store and to appear in a television commercial to be shot inside the store displaying numerous trademarks and logos from multiple athletic clothing brands.

No Conflict: Even though logos of adidas competitors may be displayed during these commercial activities, the Team Adidas Contract only prohibits the display of non-adidas logos on the adidas products worn or used by the coaches, staff, or team members during team activities. Since the athlete is (a) not wearing official adidas gear; and (b) not displaying any marks or logos other than adidas on official adidas gear, this activity does not conflict with the Team Adidas Agreement. Additionally, this is not an official team activity, thus, the athlete is not required to wear adidas gear. However, the athlete would not be permitted to wear University branded gear during these activities without approval.

Scenario Six: Athlete is offered a NIL contract with a company that produces organically, handmade soaps and lotions to promote its products and brand using the athlete’s social media channels

No Conflict: This activity does not conflict with the Team Adidas Agreement since this is not an official team activity. The athlete would not be permitted to wear adidas or University branded gear during these activities without approval.

Appendix A

California (SB206)

(e) (1) A student athlete shall not enter into a **contract providing compensation to the athlete for use of the athlete's name, image, or likeness*** if a provision of the contract is in conflict with a provision of the athlete's team contract.

(3) An institution asserting a conflict described in paragraph (1) shall disclose to the athlete or the athlete's legal representation the **relevant contractual provisions** that are in conflict.

(f) A team contract of a postsecondary educational institution's athletic program shall not prevent a student athlete from using the athlete's name, image, or likeness for a commercial purpose when the athlete is not engaged in **official team activities**. It is the intent of the Legislature that this prohibition shall apply only to contracts entered into, modified, or renewed on or after the enactment of this section.

*Note: SB26 would add "athletic reputation" to subsection (e)(1)

Colorado

Definitions

Team Contract: Means a contract between an institution and another entity or between an intercollegiate athletic team of an institution and another entity, which contract relates to the activities of an athletic team of the institution.

(3)(a) A student athlete shall not enter into a **contract providing compensation to the student athlete** if the contract conflicts with a team contract of the team for which the student athlete competes.

(c) An Institution asserting a conflict described in subsection (3)(a) of this section shall disclose to the student athlete or to the student athlete's professional or legal representation the **relevant contractual provisions** that are in conflict.

(d) A Team Contract of an Institution's athletic program entered into, modified, or renewed on or after the effective date of this section may not prohibit a student athlete from using the student athlete's name, image, or likeness for a commercial purpose when the student athlete is not engaged in **official team activities**.

Florida

(h) An intercollegiate athlete may not enter into a **contract for compensation for the use of her or his name, image, or likeness** if a term of the contract conflicts with a term of the intercollegiate athlete's team contract. A postsecondary educational institution asserting a conflict under this paragraph must disclose **each relevant contract term** that conflicts with the team contract to the intercollegiate athlete or her or his representative.

New Jersey

b. A student-athlete shall not enter into a **contract providing compensation to the student-athlete for use of his name, image, or likeness** if a provision of the contract:

(1) conflicts with a provision of the student-athlete's team contract;

c. An institutional team contract shall not prevent a student-athlete from using the athlete's name, image, or likeness for a commercial purpose when the athlete is not engaged in **official team activities**.

d. An institutional team contract shall allow the institution, athletic association, conference, or other group or organization with authority over intercollegiate athletics to use the athlete's name, image, or likeness for advertising and marketing purposes without additional compensation paid to the student-athlete.

e. An institution asserting a conflict pursuant to subsection b. of this section shall disclose to the student-athlete and to the student-athlete's professional representation the **relevant contractual provisions** that are in conflict.

Nebraska

Definitions

(7) Sponsor means an individual or organization that pays money or provides goods or services in exchange for advertising rights;

(9) Team contract means a contract between a postsecondary institution or a postsecondary institution's athletic department and a sponsor.

Sec. 5.

(1) No student-athlete shall enter into a **contract with a sponsor that provides compensation to the student-athlete for use of the student athlete's name, image, and likeness rights or athletic reputation** if (a) such contract requires such student-athlete to display such sponsor's apparel or to otherwise advertise for the sponsor during official team activities and (b) compliance with such contract requirement would conflict with a team contract.

Any postsecondary institution asserting such conflict shall disclose to the student-athlete and the student-athlete's professional representation, if applicable, the **full team contract** that is asserted to be in conflict. The student-athlete and the student-athlete's professional representation,

(2) No team contract shall prevent a student-athlete from receiving compensation for the use of such student-athlete's name, image, and likeness rights or athletic reputation when the student-athlete is not engaged in **official team activities**.

Michigan

Sec. 6. A student shall not enter into an **apparel contract providing compensation to the student for use of his or her name, image, or likeness rights** that requires the student to display a sponsor's apparel, or otherwise advertise for a sponsor, during official team activities if the provision is in conflict with a provision of the student's postsecondary educational institution's team contract.

(2) If the postsecondary educational institution described in subsection (1) identifies a conflict between the student's proposed opportunity or contract and any existing agreements of the postsecondary educational institution, the postsecondary educational institution **shall communicate that conflict** to the student so that the student may negotiate a revision of the opportunity or contract to avoid the conflict and that revision is subject to additional review and approval by the postsecondary educational institution in accordance with this section.

(3) A team contract of a postsecondary educational institution's athletic program shall not prevent a student from receiving compensation for using his or her name, image, or likeness rights for a commercial purpose when the student is not engaged in **official team activities**.

(4) This section does not apply to a contract entered into, modified, or renewed on or before the effective date of this act.

Appendix B

Sample Provisions from a University Apparel Agreement with Adidas

6. Use of Adidas Products

A. University shall make available to each Team the Products supplied by adidas, and shall require that each Team wear and /or use exclusively such adidas products whenever participating in Team activities, including practices, games, clinics, and other University functions for which University ordinarily and usually supplies Product to the Teams. At all such functions, University shall prohibit the Team members from wearing Products manufactured by companies other than adidas, or any such Products which have been altered to resemble adidas products. University acknowledges that University's obligation that each Team exclusively wear and/or use adidas Products, as identified by adidas, shall be a material term of this Agreement. adidas acknowledges that Teams may be required to wear Competitor headwear and t-shirts during NCAA or conference championship locker room celebration moments ("Celebration Products") and such wearing Celebration Products shall not be a breach of this Agreement.

E. University agrees that it shall not permit the trade name, trademark, logo, or any other identification of any person, company, or business entity other than adidas, the University, or, subject to adidas's reasonable right of approval, any recognized governing athletic conference of which University is a member, to appear on adidas Products worn or used by Coaches, Staff or Team members. University agrees that in no event shall the trade name, trademark, log, or other identification of any manufacturer or sell or Products other than adidas be permitted to appear on any such adidas Products.

Sample Exclusivity Provisions from Individual Endorsement Agreement

3.1 **Exclusive Use:** Athlete warrants that he uses Reebok Products and agrees to use Reebok Products exclusively during all athletic workouts, practices, tournaments, games, events, exhibitions, media interviews and during all public activities where it is appropriate to wear Products ("Public Activities"). Athlete will use, in the same condition as received from Reebok, with all Reebok trademarks visible, and with no other trademarks affixed thereto, such models of Reebok Products as Reebok may request while participating in any and all Public Activities. Athlete acknowledges that he has tested and worn Reebok Products and that Reebok Products are satisfactory for his use in professional competition and training. Athlete agrees that he will advise Reebok in writing if he experiences any difficulty with the fit, durability or comfort of Reebok Products and acknowledges that his failure to so advise Reebok will constitute an ongoing affirmation of his satisfaction with Reebok Products. Reebok agrees to provide sufficient quantities of Reebok Products for Athlete's professional use at no cost to Athlete.

Sample Social Media Influencer Engagement Agreement

1. ENGAGEMENT. Company hereby engages Influencer from the date of execution of this Agreement through and including the date(s) of performance ("the Term") for the limited purpose of promoting certain brands and brand content, through Influencer's social media outlets. The nature of the brand content to be promoted and the specific details and requirements of the promotion is outlined in the attached Schedule A. During the Term, Influencer agrees to be engaged for the purpose of promoting the brand content and to be bound by the guidelines as attached as Schedule B ("Guidelines"). Company hereby appoints Influencer as its representative on a non-exclusive, non-employee basis to endorse and promote its services to the target audience.

Front cover photo: Santa Monica College

Photo at right: American River College

Back cover photo: Cuyamaca College



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Hello College, It's Me Lupita!
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