

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 7 – L

DATE: April 2-3, 2025

SUBJECT

Revised BOR Policy 1.7.5 (First and Final Reading)

CONTROLLING STATUTE, RULE, OR POLICY

BOR Policy 1.7.5 – Student-Athlete Commercial Use of Name, Image, and Likeness

BACKGROUND / DISCUSSION

Student-athlete use of Name, Image, and Likeness (NIL) is a rapidly evolving area, due to litigation and administrative changes within the National Collegiate Athletic Association (NCAA). Recent litigation in the form of *House v. NCAA* has led to a pending settlement that would increase available NIL opportunities for student-athletes and increase the permissible role that institutions and their athletic departments play in NIL for schools that opt in to the settlement provisions. In order to best position BOR NCAA Division I schools to respond to the fluctuations in the NIL market at the time of settlement approval and with any corresponding changes to the NCAA NIL rules, BOR requirements around NIL need revision to better align with the direction of the NIL landscape post-*House*.

IMPACT AND RECOMMENDATIONS

BOR institutions and employees will remain obligated to comply with all other applicable BOR policies and any NIL requirements of their respective athletic conference, division, or association, as well as applicable laws. The proposed revisions to this policy instead remove prohibitions on institutional or institutional employee involvement in NIL transactions or facilitation of compensation opportunities that will become obsolete if the *House* settlement is approved and the NCAA rules in this area change. In essence, with these revisions, at the time of said change, BOR policy will not prohibit what the NCAA and applicable law would permit going forward.

Due to the time-sensitive nature of this subject matter, Board staff recommends approval of a first and final reading.

ATTACHMENTS

Attachment I – Proposed Revisions to BOR Policy 1.7.5 (Student-Athlete Commercial Use of Name, Image, and Likeness)

DRAFT MOTION 20250403:

I move to (1) waive the two-reading requirement of By-Laws Section 5.5.1, and (2) approve the first and final reading of the proposed revisions to BOR Policy 1.7.5 (Student-Athlete Commercial Use of Name, Image, and Likeness), as presented.

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Student-Athlete Commercial use of Name, Image and Likeness

NUMBER: 1.7.5

A. PURPOSE

To establish the principles and policies of the SD Board of Regents (the Board) on Student-Athlete commercial use of name, image, and likeness subject to the requirements of state and federal law, Board policy, and applicable conference provisions.

B. DEFINITIONS

1. **Institution(s):** Institution: Black Hills State University, Dakota State University, Northern State University, South Dakota School of Mines & Technology, South Dakota State University, and the University of South Dakota.
2. **Name, Image and Likeness (NIL):** Right of publicity is a personality's property interest in their name, voice, signature, photograph, image, likeness, distinctive appearance, gesture, or mannerism involving commercial situations where permission is required of a person to use their name, image, and likeness.
3. **Student-Athlete(s):** is defined by the conference applicable to the Institution as applied through Institutional policies. For purposes of the Uniform Athlete Agents Act, a Student-Athlete includes an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

C. POLICY

1. Name, Image and Likeness Rules

- 1.1. The Board and Institutions, employees, affiliates, and Student-Athletes, shall abide by all applicable NIL state and federal laws and regulations, Board policies, rules and regulations promulgated by the appropriate national and regional subdivisions or conferences of which the Institution is a member.
- 1.2. Institutions may adopt institutional policies and procedures in conformity with these governing provisions, including but not limited to the process by which Student-Athletes report NIL activities, assessment of NIL activities, and the process for monitoring the same.
- 1.3. Each Institution's Athletic Department shall adopt athletic program participation enforcement guidelines regarding NIL violations.

- 1.4. The Board and its Institutions recognize that Student-Athletes are entitled to commercial use of their NIL in conformity with these governing provisions. Subject to other applicable governing laws, policies, and procedures, Student-Athletes may externally promote their own business; promote a corporate entity (e.g., brand ambassador, social media influencer); establish their own professional-sports-service such as a camp or clinic; make appearances and receive compensation; sign autographs and receive compensation; and similar activity that does not infringe upon the Board or Institutional property rights or obligations.
- 1.4.1. Student-Athletes must comply with the governing provisions and refrain from accepting compensation in exchange for athletic performance, participation, or inducement for enrollment.
- 1.4.2. Student-Athletes may have representation by an agent for NIL purposes, but they must be registered with the State of South Dakota and follow all reporting requirements.
- ~~1.4.3. Institutional staff members shall not be involved in arranging or providing compensation in violation of conflict of interest policies, pay for play, achievement, compensation for work not performed, or impermissible inducements.~~
- ~~1.4.4.1.4.3.~~ Institutions will prohibit Student-Athletes from opportunities that violate existing institutional sponsorship agreements, are unlawful, or are not in conformity with applicable governing provisions.
- ~~1.4.5. Employees, affiliates, and boosters are prohibited from creating or facilitating compensation opportunities as a recruiting inducement, extra benefit to remain enrolled at an Institution, for play or achievement, or for work not performed.~~
- ~~1.4.6.1.4.4.~~ Express written permission of the Institution, as set forth in the Institutional policies, is required to use the Board's or an Institution's intellectual property, including but not limited to, Institution's name, jersey, uniform, marks and logos.
- ~~1.4.7.1.4.5.~~ Student-athletes may not promote any third-party or third-party branding during official Institutional events and activities without the Institution's express written consent.
- 1.5. Student-Athletes may consent in writing to the use of their NIL by Institutions in conformity with applicable provisions.
- 1.6. Institutions may support education and educational experiences in areas such as financial aid, debt management, budget information, time management, and related information.
- 1.7. Allegations of Student Conduct Code violations or grievances of misapplication or misinterpretation of policies will be handled in accordance with applicable grievance policies.

FORMS / APPENDICES:

None

SOURCE:

BOR August 2021; [BOR April 2025](#).