

1 **KNEEDLER COMMENTS ON NIL DRAFT (FOR MAY 13, 2021 MEETING)**

2
3 **SUBSTANTIVE ISSUES:**

4
5 **Comment #1. Section 2(2) ("Booster") (page 1 line 17):***

6
7 **a. The Comment:**

8 "~~Booster~~" means a person who is a representative of an institution's ~~athletic intercollegiate sports~~
9 program, ~~including person because that person:~~

10 (A) ~~provides a donation to obtain a season ticket for a sport at the institution;~~

11 ~~(B) participates in, or is a member of an organization promoting all or part of the institution's~~
12 ~~intercollegiate sports program, or makes a financial contribution to such an organization, the institution,~~
13 ~~or all or part of an institution's athletic intercollegiate sports program or to an organization promoting~~
14 ~~the institution's athletic program; to obtain a season ticket or for some other purpose relating to all or~~
15 ~~part of the institution's intercollegiate sports program;~~

16 ~~(C) assists or is requested by the institution's staff to assist in inducement;~~

17 ~~(D) assists in providing a benefit, other than name, image and likeness compensation or a~~
18 ~~name, image, or likeness agreement, to a college student athlete at the institution or to the athlete's~~
19 ~~family spouse, fiancé or fiancée, parent or [guardian], child, sibling, grandparent, domestic partner, or~~
20 ~~any individual whose relationship or close association with the athlete is the practical equivalent of a~~
21 ~~spouse or other family relationship;~~

22 ~~(E) arrangeds for or provideds employment , other than name, image, and likeness activity, for~~
23 ~~enrolled a college student-athletes at the institution or to the athlete's spouse, fiancé or fiancée,~~
24 ~~parent or [guardian], child, sibling, grandparent, domestic partner, or any individual whose relationship~~
25 ~~of close association with the athlete is the practical equivalent of a spouse or other family relationship;~~

26 or

27 ~~(F) is otherwise involved in promoting all or part of the institution's athletic intercollegiate~~
28 ~~sports program.~~

29 The term includes a person that has engaged in any of these activities anytime in the past.

Commented [LK1]: The definition in the redlined draft, and this version, both are based on the all N CAA definition, which uses "representative of an institution's athletic program" rather than "booster". For your reference, I have included the NCAA definition below.

Commented [LK2]: "Including" implies that there are factors other than the ones listed. Doesn't the last factor listed eliminate the need for "including"?

Commented [LK3]: My concern goes beyond making a donation to obtain a season ticket, for example, to obtain g a ticket to a particular event, or to an event sponsored by a conference (e.g., a conference basketball tournament). So I have combined subsections A and B.

Commented [LK4]: The organization could be one supporting only one or several of the institution's intercollegiate sports (e.g., the football booster club, or the men's and women's basketball club).

Commented [LK5]: This is a combination of the NCAA's definitions of "family member" and "significant other". I could not find an NCAA definition of "domestic partner", but I think the proposed definition is sufficient. For your reference, I have included the NCAA definition below.

Commented [LK6]: Again, this is a combination of the NCAA's definitions of "family member" and "significant other". I could not find an NCAA definition of "domestic partner", but I think the proposed definition is sufficient. . For your reference, I have included the NCAA definition below. Is there any way to hire a student athlete without becoming a booster?

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31
* Page references are to the redlined version of the draft.

32 **b. The NCAA Division I Bylaws Definitions (“Recruiting – General”, and Elsewhere in the**
33 **Division I Manual):**

34 13.02.15 Representative of Athletics Interests. A "representative of the institution's athletics interests"
35 is an individual, independent agency, corporate entity (e.g., apparel or equipment manufacturer) or
36 other organization who is known (or who should have been known) by a member of the institution's
37 executive or athletics administration to: (Revised: 2/16/00, 4/25/18) (a) Have participated in or to be a
38 member of an agency or organization promoting the institution's intercollegiate athletics program; (b)
39 Have made financial contributions to the athletics department or to an athletics booster organization of
40 that institution; (c) Be assisting or to have been requested (by the athletics department staff) to assist in
41 the recruitment of prospective student athletes; (d) Be assisting or to have assisted in providing benefits
42 to enrolled student-athletes or their family members; or (e) Have been involved otherwise in promoting
43 the institution's athletics program

44 13.02.8 Family Member. A family member is an individual with any of the following relationships to the
45 prospective student-athlete: spouse, parent or legal guardian, child, sibling, grandparent, domestic
46 partner or any individual whose close association with the prospective student-athlete is the practical
47 equivalent of a family relationship. (Adopted: 1/15/16 effective 8/1/16, Revised: 4/25/18)

48 13.02.16 Significant Other. A significant other is a spouse, fiancé or fiancée, domestic partner, or any
49 individual whose relationship to an identified individual (e.g., prospective student-athlete, coach,
50 student-athlete) is the practical equivalent of a spouse. (Adopted: 4/25/18)

51
52 **Comment #2. Section 2(11) (“Name, Image and Likeness Agent”) (page 3 line 5):**

53
54)“Name, image, and likeness agent” means an individual who directly or indirectly recruits or solicits a
55 college student athlete or another person with the athlete’s consent, or, if the athlete is a minor, the
56 college student athlete’s parent or guardian, to enter into an agency contract for representation to
57 obtain name, image, and likeness compensation or a name, image, and likeness agreement, enters into
58 such an agency contract with a college student athlete for name, image, and likeness compensation, or
59 offers, promises, attempts, or negotiates to obtain name, image, and likeness compensation or a name,
60 image, and likeness agreement, or, if the athlete is a minor, directly or indirectly recruits or solicits the
61 athlete’s parent or [guardian] to permit the athlete or other person to do so..

Commented [LK7]: NIL compensation and an NIL agreement are two separate things. An agent can obtain NIL compensation for an athlete without there being an NIL agreement. We should cover both concepts here.

62
63 **Comment #3. Section 6(e) (new) (Same Restrictions Should Apply to “Other Persons” as Apply to the**
64 **Student Athlete) (page 7 line 8, after hat determination”):**

65
66 (e) The restrictions in this Section that apply to a college student athlete also apply to any other
67 person that has received the consent of the athlete, or if the athlete is a minor, the consent of

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68 ~~athlete's parent or [guardian], to receive all or part of the athlete's name, image, and likeness~~
69 ~~compensation, obtain the services of a name, image, an likeness agent to receive such~~
70 ~~compensation, enter into a name, image, and likeness agreement to receive such compensation,~~
71 ~~or engage in name, image, an likeness activity.~~

Commented [LK8]: These other persons should be restricted to the same extent that the student athlete is restricted, shouldn't they?

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76 **REPHRASING FOR CLARIFICATION COMMENTS:**

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79 **Comment #4, Section 8(a)(1) and (2) , (c) and (e)(mistakenly still labeled as “f”) (Required**
80 **Disclosure) (page 9 lines 5 and 9, page 10 line 9, and page 11 line 2):**

81
82 (a)(1) ~~a copy of any any amount of~~ name, image, and likeness ~~agreements compensation that provides~~
83 ~~or to be provided to that athlete, as part of, in combination with, or separate from any~~ name, image,
84 and likeness ~~compensation agreement, is~~ greater than \$[300] ~~in a calendar year, or, if no such copy~~
85 ~~exists, the amount of name, image, and likeness compensation provided if greater than [300] and a~~
86 ~~copy of any name, image, and likeness agreement providing any or all of that compensation; and~~

87 (a)(2) ~~a copy of all name image, and likeness agreements if and when once~~ the aggregate amount of
88 name, image, and likeness compensation ~~provided or to be provided to the athlete, as part of, in~~
89 ~~combination with, or separate from any name, image, or likeness agreement~~ exceeds \$[2,000] in a
90 calendar year, ~~the amount of any additional such compensation provided to the athlete that calendar~~
91 ~~year, as it is provided, and a copy of any name image, and likeness agreement providing any or all of that~~
92 ~~additional or, if no such copies exist, the amount of name, image, and likeness compensation provided~~
93 ~~in excess of [2,000] in a calendar year;~~

94 * * *

95 (c) A college student athlete shall provide the information required by subsection (a) ~~(1) and (2)~~ before
96 ~~receiving any name, image, an likeness compensation required to be disclosed, entering into any name,~~
97 ~~image, and likeness agreement required to be disclosed, or~~ engaging in ~~any~~ name, image, and likeness
98 activity and provide an update after a change in the information not later than [10] days after the earlier
99 of the change or the next scheduled athletic event in which the student athlete may participate.

100 * * *

101 (e) When a name, image, and likeness agreement is entered into, the college student athlete, ~~any other~~
102 ~~person who entered into the agreement with the required consent, any person whose consent was~~
103 ~~required or, if the athlete is a minor, the parent or guardian of the minor entity, the~~ third party, and, if a
104 name, image, and likeness agent assisted with the agreement, the agent, shall certify to the official
105 designated in subsection (b) ~~at the institution at which the athlete is enrolled~~ that the agreement
106 contains the sole, complete and final agreement between the parties.

* Page references are to the redlined version of the draft.

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108 **Comment #5. Section 9(c) (Name, Image, and Likeness Agent) (page 11 line 19):**

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110 (c) ~~{A name, image, and likeness agreement must have a fee arrangement that is consistent with norms~~
111 ~~for the agent's industry and otherwise comply with is a contract under the~~ [cite to Uniform Athlete
112 Agents Act, ~~or Revised Uniform Athlete Agents Act, or other comparable law~~].

113

114 **Comment #6. Section 10(a)and (c) (Third Party Registration and Additional Disclosure) (page 12 lines 8**
115 **and 17):**

116

117 (a) A person that provides ~~or has agreed to provide name, image, and likeness compensation in a~~
118 ~~calendar year, (i) more than -greater than \$[300] for an individual to an individual college student~~
119 ~~athlete at an institution in this state name, image, and likeness, as part of, in combination with, or~~
120 ~~separate from any name, image, and likeness agreement or (ii) more than \$[2,000] in the aggregate in a~~
121 ~~calendar year for - all name, image, and likeness compensation provided to college student athletes in~~
122 ~~this state, as part of, in combination with, or separate from any name, image, and likeness agreements,~~
123 is required to register under this [act] as a third party.

124

* * *

125 (c) A college student athlete or, if the athlete is a minor, the parent or [guardian] of the athlete may void
126 a name image and likeness agreement that was ~~entered into without the required consent or with a~~
127 ~~third party required to be registered or disclosed by a third party under this section but was not~~
128 properly registered or ~~that was not properly~~ disclosed.

129

130 **Comment #7. Section 15(1) and (3) (Third Party Prohibited Conduct) (page 16 line17 and page 17**
131 **line2)):**

132

133 (1) give materially false or misleading information or make a materially false -promise or representation
134 with the intent to influence ~~the~~ college student athlete, ~~parent, or [guardian]~~ or another person ~~with~~
135 ~~the consent of the athlete,~~ to enter into a name, image, and likeness agreement, receive name, image,
136 and likeness compensation, or engage in name, image, and likeness activity ~~or, if the athlete is a minor,~~
137 ~~with the intent to influence the athlete's parent or [guardian] to permit the athlete or other person to~~
138 ~~do so;~~

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* Page references are to the redlined version of the draft.

140 (3) ~~unless registered under this [act], initiate contact, directly or indirectly, with a college student~~
141 ~~athlete or, another person with the athlete's consent, if the athlete is a minor, a parent or [guardian] of~~
142 ~~the athlete,~~ to recruit or solicit the athlete, parent, or [guardian] or another person to enter a name,
143 image, and likeness agreement, receive name, image, and likeness compensation, or engage in name,
144 image, and likeness activity or, if the athlete is a minor, to recruit or solicit the athlete's parent or
145 [guardian] to permit the athlete or other person to do so;

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