

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1090
Ways and Means

(Delegate Amprey)

Public High Schools - Student Athletes - Compensation for Name, Image, and Likeness

This bill forbids the State Superintendent of Schools, a local board of education, or public high school from establishing any rule, requirement, standard, or other limitation that prevents a student athlete from earning compensation from the use of the student athlete's name, image, or likeness (NIL). The bill also prohibits a public high school, athletic association, or any other group or organization with authority over public high school athletics from (1) providing a student athlete with compensation in relation to the student athlete's NIL or (2) preventing a student athlete from obtaining representation in relation to contracts or legal matters. The bill further specifies ways in which an athletic program contract of a public high school may not limit or condition the use of a student athlete's NIL, but it may limit a student athlete from engaging in in-person advertising during official team activities. **The bill takes effect July 1, 2023.**

Fiscal Summary

State Effect: Maryland Public Secondary Schools Athletic Association (MPSSAA) can alter guidance regarding NIL as necessary using existing resources. Revenues are not affected.

Local Effect: Local boards of education can adjust policies as necessary using existing resources. Revenues are not affected.

Small Business Effect: Potential minimal, as discussed below.

Analysis

Bill Summary: An athletic association or any other group or organization with authority over public high school athletes, including MPSSAA may not (1) prevent a student athlete from earning compensation as a result of the use of the student athlete's NIL or (2) prevent a public high school from participating in high school athletics as a result of the compensation of a student athlete for the use of the student athlete's NIL.

The bill further specifies that an athletic program contract of a public high school may not prevent a student athlete from using the student athlete's NIL for a commercial purpose when the athlete is not engaging in official team activities. However, a contract may prohibit a student athlete from engaging in in-person advertising for a third-party sponsor during official and mandatory team activities without prior approval from the public high school's athletic department. A student athlete may enter into a contract providing compensation for the student athlete's NIL only if the provisions of the contract are not in conflict with the provisions of the student athlete's program contract and the student athlete's parent or guardian cosigns the contract.

The bill may not be construed to grant a student athlete a right to make commercial use of names, trademarks, logos, or other intellectual property owned or controlled by a public high school.

Current Law: The Code of Maryland Regulations (COMAR), as adopted by the State Superintendent of Schools, governs the athletic program for all high school students in Maryland public secondary schools that are members of MPSSAA. Local school systems may adopt rules governing their athletic programs that are more restrictive than those of MPSSAA; less restrictive rules may not be adopted.

Regulations (COMAR 13A.06.03.10 Amateur Rules) generally state that a student loses amateur status in a particular sport if the student signs a professional contract in that sport. NIL is not addressed in COMAR.

MPSSAA issued updated guidance on NIL in December 2022, which was unanimously approved by the 24 local boards of education. The [MPSSAA NIL Guidance](#) was designed in response to the June 2021 U.S. Supreme Court decision that the National Collegiate Athletic Association's (NCAA) rules limiting education-related benefits for student athletes violated federal antitrust laws. Although the Court's decision applied specifically to NCAA rules, the ruling has generated expansion of NIL opportunities for high school students. The MPSSAA guidance to member schools, parents, and students clarifies how student athletes may engage in NIL activities for financial gain and still retain athletic eligibility under MPSSAA.

The MPSSAA guidance allows for student athletes to engage in NIL activities for financial gain while protecting the intellectual property of the member school, local board of education, and MPSSAA. In addition, the guidance limits NIL activities that do not align with educational programming, such as NIL activities related to alcohol and tobacco products. The guidance further specifies that student athletes must generally keep their NIL activities and participation in interscholastic athletics separate. In addition, the guidance bars employees, contractors, and volunteers of member schools, including administrators and coaches, from promising NIL opportunities, offering students financial benefits associated with NIL activities, or from directing or engaging in group activities related to student athlete NIL activities.

Small Business Impact: To the extent small businesses were not previously able to contract with student athletes for their NIL, small businesses may benefit from new student athlete sponsorships, endorsements, and partnerships.

Additional Comments: MSDE advises that the bill requires MPSSAA to rescind previously approved guidance that clarifies how student athletes may engage in NIL activities for financial gain and still retain athletic eligibility under COMAR 13A.06.03.10 Amateur Rules.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1431 of 2022.

Designated Cross File: None.

Information Source(s): Maryland State Department of Education; Baltimore City Public Schools; Anne Arundel County Public Schools; Department of Legislative Services

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