

Colby College Name-Image-Likeness (NIL) POLICY

Approved By:	Harold Alfond Director of Athletics
Responsible Office:	Athletics
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References:	NCAA Policy , Office of the General Counsel

I. Introduction and Philosophy

Colby College is committed to the holistic development of its student-athletes, consistent with the NCAA Division III philosophy. This policy is designed to provide guidance for student-athletes pursuing opportunities related to their Name, Image, and Likeness (NIL) while maintaining their NCAA eligibility and prioritizing their academic and athletic commitments. The foundational principle of this policy is that compensation must be for work performed, not for athletic participation or achievements.

II. Policy Statement

Effective July 1, 2021, the NCAA issued guidance allowing student-athletes to use their name, image, and/or likeness (“NIL”) for commercial or promotional purposes. In alignment with these guidelines, the College has established this policy to set forth the framework under which Colby student-athletes can engage in NIL activity.

The policy takes into consideration a number of factors:

- The rules established by the NCAA on NIL activity by student-athletes.
- The College’s long-established interest in preserving its intellectual property rights, including use of the Colby name, logos, and facilities.
- The College’s interest in protecting its reputation in the community, as well as locally, nationally and internationally.
- The significant visibility of Colby’s student-athletes as high-profile representatives of the College.
- The potential attention generated by student-athlete NIL activity among the Colby community, as well as the public in general; and
- The unique privileges and benefits enjoyed by Colby student-athletes, together with the responsibilities that are attendant to those privileges and benefits.

The policy also describes a process for the review of any proposed NIL activity by student-athletes. Finally, it sets forth a set of considerations that go beyond the review process for

student-athletes to consider if they are approached by a party, including an agent, seeking to use their name, image or likeness.

III. NIL Activity

There are three independent grounds that define permissible NIL activity. The first is the NCAA's NIL Rule, which sets the national standards for maintaining eligibility. The second is a set of limits based on the College's existing policies, which protect our intellectual property rights, existing College agreements, and institutional values, while recognizing the unique status of Colby student-athletes. The third is Maine state law, which grants student-athletes the legal right to engage in NIL activities and receive compensation.

A. NCAA NIL Rule, Eligibility, and Prohibited Conduct

The NCAA allows students to engage in NIL activity without impacting their eligibility, effective July 1, 2021. However, NIL activity may not be used as a recruiting inducement or as a way to avoid "pay-for-play" prohibitions. This means NIL compensation cannot be made contingent on enrollment or recruitment at Colby and cannot be based on athletic participation or achievements (e.g., "pay-for-play" or compensation based on points scored or other milestones). Compensation must be structured so that it is truly provided in exchange for services, activities, appearances or other value that does not include actual athletic performance.

More information about the NCAA policy can be found [here](#).

B. Limits on NIL Activity by Colby Student-Athletes

This section outlines limits on NIL activities and relationships by Colby student-athletes under this policy.

1. Conduct

- a.** Student-athletes may not use Colby's name, logos, marks, facilities, and equipment in NIL advertisements or endorsements without the written consent of the College. This is consistent with the College's protections of its brand, as set forth in other College policies. Student-athletes engaging in NIL activity may state that they play a certain sport at Colby or are a member of certain team at Colby, without using its marks or brands. Questions about obtaining consent should be directed to the Director of Athletics and the Office of General Counsel.
- b.** Student-athletes may not engage in NIL activity during games, practices, and other official Colby activities, including classes.
- c.** Student-athletes may not sell team-issued apparel or equipment as part of their NIL activity.
- d.** Student-athletes may not involve or identify other students in their NIL activities without their consent. NIL activity that involves audio or video recordings must comply with the College's Recording Policy.
- e.** Students must disclose pre-existing agreements (before attending Colby) by no later than 30 days of the start of a semester.

- f. Student-athletes may be required to terminate agreements that violate Colby policy, institutional agreements, or contracts.

2. Commercial Relationships

Student-athletes may not engage in NIL activity with certain types of businesses given the visibility of Colby's student-athletes as high profile representatives of the College, the unique privileges, benefits and responsibilities enjoyed by Colby student-athletes, as well as Colby's interest in protecting its reputation in the community and living up to its mission and values, as embodied in its policies. These include:

- a. Vendors or providers of substances or activities prohibited by the NCAA.
- b. Any illegal or unlawful businesses or vendors.
- c. NIL activity that conflicts with pre-existing Colby relationships or contracts, such as game equipment providers.

Violations of this policy can result in sanctions from the NCAA, NESCAC, and from the Colby Athletic Department. Violations of the policy are also a violation of the Student Code of Conduct.

IV. Colby Athletic Director Review

Before commencing any NIL activity, Colby student-athletes must present their proposed NIL arrangement to the Colby College Harold Alfond Director of Athletics or that director's designee for review. As part of this process, the student-athlete should present all relevant documentation, including the agreement and other supporting materials (flyers, brochures, advertisements, etc.). The Athletic Director or that person's designee will require a meeting with the student-athlete. If there is a determination that the proposed arrangement violates this policy, the student-athlete will be informed of the basis of the violation and will be given an opportunity to revise the arrangement to comply with this policy.

Review by the Athletic Director or that person's designee will be limited only to determining compliance with this policy. **Colby student-athletes undertake NIL activity at their own risk and Colby has no responsibility for any claims, injuries, or damages that result from a student-athlete's NIL activity.** Although Colby may monitor NIL activity, it is not required to do so and is not responsible for ensuring equity in NIL opportunities among student-athletes.

Moreover, students engaging in NIL activity on campus may be considered to be operating a "student business" as governed by the Student Handbook. If the NIL activity could constitute an on-campus student business, the student-athlete will be referred to the director of campus life and director of risk management for a review pursuant to the terms of the Student Handbook.

V. Prohibited NIL Activity by Colby Faculty and Staff

Because of the potential for conflicts of interest, Colby, as an institution, and its coaches, faculty, and staff, may not engage in the following:

- a. Involvement in the development, operation, or promotion of a student-athlete's NIL activity.
- b. Purchase of, or profit from, a student-athlete's NIL work product or service. This includes paying for a service or good through a student-athlete engaging in NIL activity or purchasing a service or good in a manner that will financially benefit the student-athlete (e.g., purchases that will trigger commissions or profit-sharing for the student-athlete). Likewise, faculty or

staff should not engage in a manner where they themselves profit from a student-athlete's NIL activity.

- c. Using the promise or potential of NIL activity as an inducement to attend Colby.
- d. Using a student-athlete to promote a Colby employee's non-Colby business ventures.

VI. International Student Athletes

International student-athletes face specific challenges regarding NIL activities due to federal laws governing their visa status. Most NIL activities are considered employment, which may be prohibited under the terms of a student visa (e.g., F-1). Engaging in impermissible NIL activities could jeopardize a student-athlete's immigration status. International student-athletes should consult with Colby's Office of Global Engagement *before* pursuing any NIL.

Guidance for Colby Student-Athletes Considering NIL Arrangements

In accordance with Maine state Law §12972, student-athletes have the right to obtain professional representation at their own cost, such as an agent or an attorney, for the purpose of securing and managing NIL opportunities. Colby cannot represent student-athletes in negotiations or legal review of agreements with NIL companies. If you need assistance locating an attorney to assist you, please contact **Colby's Office of the General Counsel**, which may be able to arrange for a referral. Additionally, Colby strongly recommends that student-athletes consider the following principles and questions before signing any agreements or otherwise entering into an arrangement:

- Review the proposed agreement carefully and completely. Make sure you understand all of the terms of the arrangement. You are required to share the agreement with the Athletic Director or that person's designee, but we also encourage you to share it with a parent/guardian or other trusted advisor before signing.
- Review the provisions of the agreement to determine your level of commitment. Can you sustain the commitment, along with all of the other commitments and plans you've made as a Colby student? If the commitment is unclear/not defined, be sure you have it clearly defined.
- Review your ability to terminate the agreement and the consequences if you terminate (or the company seeking your assistance terminates). For example, if you no longer want to participate in the engagement, can you immediately walk away, or are you committed for a long term? Is there a penalty or other adverse consequence against you for termination?
- Have you conducted a thorough review of the company? What's the reputation of this company? Have you spoken with other student-athletes who are engaging in the work you will be doing? Can you find NIL pieces produced by others on behalf of the company?
- Does the arrangement violate any laws or rules governing your status as a Colby student? Does the arrangement violate any rules or policies, including the NCAA NIL rule, which jeopardize your eligibility as an athlete?
- Does the arrangement require you to make statements that may be untrue? If so, there may be personal liability and risk to you. Will the company protect you if you relied on the company to make these statements? What other protections will the company provide you?

- Does the company have an unlimited, irrevocable ability to use your NIL – whether now or in the future and with anything it may come to “do” in the future? Are you comfortable with the company’s rights to use your NIL?
- Do you fully understand how you will be paid/compensated? Is there any financial risk to you in this arrangement?
- How does such compensation impact your tax situation (or your family’s tax situation if you are claimed as a dependent)? Have you considered asking the Office of Financial Services about the possible impact of NIL compensation on your financial aid? Does the arrangement violate any federal or state laws?
- If you are in the United States on a visa, will the arrangements in the agreement violate the terms of your visa?