

## WINGATE UNIVERSITY INTERIM POLICY ON NAME, IMAGE, AND LIKENESS

This document is intended to provide student-athletes with guidance and procedures regarding name, image, and likeness compensation for student-athletes. This document does not constitute legal advice and the terms are subject to change as state and national guidance changes.

**INTRODUCTION:** Effective July 1, 2021, Wingate University student-athletes may begin to receive compensation from third parties (but NOT from Wingate University) for use of their Name, Image and Likeness (“NIL”) in endorsements or business/NIL activities.

### EXECUTIVE SUMMARY:

- Student-athletes may receive compensation from third parties (but NOT Wingate University) for use of their name, image, or likeness.
- Student-athletes may use a professional services provider (agent or lawyer) ONLY for the purpose of securing compensation for the use of his or her name, image and/or likeness and NOT for future professional athletic contract negotiations.
- Compensation may NOT be provided in exchange for athletic performance or attendance at Wingate University.
- A student-athlete may NOT earn compensation for the use of NIL for the endorsement of: (1) tobacco, including e-cigarettes, (2) alcohol, (3) fire arms, (4) illegal substances or activities, (5) banned athletic substances, (6) gambling, including, but no limited to, sports betting, or (7) sexual oriented businesses.
- The use of Wingate University’s intellectual property (the Wingate name or trademarks, logos, designs, photos, etc.) for NIL activity is NOT permitted.
- The use of Wingate University facilities and uniforms for NIL activity is NOT permitted.
- Student-athletes must disclose the terms of an NIL contract to the Athletic Compliance Office before signing a contract or receiving compensation, whichever occurs first.

### DEFINITIONS:

1. **Name, Image and Likeness (NIL):** Terminology frequently used to describe a legal concept known as “right of publicity.” Right of publicity involves situations where permission is required of a person to use their name or image (*e.g.*, a picture or video) or likeness (*e.g.*, a cartoon or caricature); the requirement of permission also means that the person whose NIL is being used may demand compensation by a third party in return for use of one’s NIL.
2. **NIL Activity:** An NIL Activity is any activity in which a prospective student-athlete or student-athlete’s NIL or personal appearance is used for promotional purposes by a non-institutional entity, including for use by the individual prospective student-athlete or student-athlete, a commercial entity, or a non-institutional nonprofit or charitable entity, regardless of whether such use is compensated or uncompensated.
3. **Endorsement:** An act, either expressed or implied, that indicates one’s public approval or support of a product or service.

4. **Compensation:** Remuneration or payment in any form received for work or services performed, including cash, credit, cryptocurrency, product (both asked for and not asked for) or other benefit.
5. **Pay for Play:** Compensation provided to a student-athlete (or the student-athlete's family members or friends) in any form for performance in a sport in which the student-athlete participates at an NCAA institution.
6. **Professional Service Provider:** Individuals who provide any of the following professional services to student-athletes: (a) advice regarding NIL activities, (b) representation in contract negotiations related NIL activities, and (c) marketing of the student-athlete's NIL.
7. **Agent:** Any individual who, directly or indirectly: (a) represents or attempts to represent an individual for the purpose of marketing his or her athletics ability or reputation for financial gain as a professional athlete; or (b) seeks to obtain any type of financial gain or benefit from securing a prospective student-athlete's enrollment at an educational institution or from a student-athlete's potential earnings as a professional athlete.
8. **Representative of Athletics Interests:** Also known as "boosters," are individuals who support or promote the athletics department/specific athletic programs, assist with recruitment or have provided benefits to student-athletes or their families.
9. **Prospective Student-athlete:** A student who has started classes for the ninth grade.

#### **POLICY STATEMENTS:**

1. **Compensation for Services:** A student-athlete may receive compensation from a third party (but not from Wingate University) for NIL Activity as long as such compensation is provided in exchange for services, activities, intellectual property, appearances, or other value actually provided by the student-athlete and is NOT provided in exchange for athletic performance. Compensation that does not meet this requirement or is provided in exchange for athletic performance, could be deemed "pay for play" and may lead to a determination of ineligibility to participate in Wingate University athletics.

#### **Examples of Impermissible Compensation:**

- \$100 payment to a soccer student-athlete for each goal scored;
  - \$10,000 payment to a basketball student-athlete for Player of the Year award
  - Free use of a car by a car dealer for a student-athlete when the student-athlete does not provide anything to the car dealer in exchange.
2. **Disclosure:** Student-athletes must disclose any NIL Activity to Wingate University's Athletic Compliance office that results in compensation within seven (7) days of either the receipt of the compensation or the execution of an agreement for future compensation, whichever occurs

first. Absent disclosure, Wingate University is unable to assist a student-athlete with eligibility implications that may result from violation of current or future NCAA rules, state, or federal law. To disclose such a transaction, please use this [form](#). All information must be completed before submitting. Wingate University will maintain all documentation related to a student-athlete's NIL transaction for a period of seven (7) years.

3. **Effect on Scholarships:** Pell Grant or need based financial aid could be impacted based on compensation from NIL. Those questions should be directed to the Office of Financial Aid.
4. **Institutional Role:** Wingate University, including its employees, contractors, representatives and agents may:
  - Educate student-athletes on NIL, including but not limited to topics intended to educate student-athletes regarding rules and risks, best practices, how to engage in NIL, and how to build one's personal brand.
  - Assist student-athletes with evaluation of a professional service provider to support NIL Activity.
  - Provide student-athletes with a license to use digital content created by Wingate University or provide contact information to its vendors (*e.g.*, photos and videos) who do own the digital content. Student-athletes may only use this content for NIL activities for which he or she is not directly compensated. Note that ownership of such content shared with student-athletes remains with the University or any other owner, and not with the student-athlete.
  - Allow student-athletes to access and use institutional facilities for NIL Activity under the same rules, regulations, and fees in effect for any third-party user requesting comparable access or use.
  - Provide support to student-athletes that would be provided to any other University student, such as faculty mentoring or research grants.

Wingate University, including its employees, contractors, representatives and agents may not:

- Be involved in the development, operation or promotion of a noninstitutional NIL Activity.
  - Purchase a student-athlete's work product or service (except that a product or service developed as a part of a student-athlete's coursework is not subject to this restriction).
  - Use the promise of any NIL Activity as an inducement to attend Wingate University.
  - Contract with or otherwise knowingly allow any Wingate partner or contractor to engage in activity that is impermissible for Wingate University.
  - Pay for, provide, or facilitate a relationship between a professional service provider and any student-athlete.
5. **Professional Service Providers:** Student-athletes may utilize the services of any professional services provider for assistance with NIL Activity. However, an individual or entity who serves as a student-athlete's professional service provider for NIL Activity may not also serve as the

student-athlete's agent as defined herein. Student-athlete use of agents must be consistent with NCAA rules governing "agents." Professional Service Providers must, pursuant to N.C. Executive Order 223, comply with Article 9 of Chapter 78C of the General Statutes (North Carolina Athlete Agent Act) and applicable federal law, including the Sports Agent Responsibility and Trust Act, 15 U.S.C. § 7801.

6. **Use of Institution Name or Marks:** Student-athletes at the University may state that they "play a sport at Wingate University" or that they are a "member of a team at Wingate University" to identify themselves in connection with NIL Activity. Student-athletes may not, however, use the University's name in any other manner or any other logo, marks, or other intellectual property owned by Wingate University in connection with noninstitutional NIL Activity.
7. **Conflict with Institutional Contracts:** Student-athletes at Wingate University may enter endorsements or other NIL Activities with sponsors of the University or entities that compete with sponsors of Wingate University. However, when representing Wingate University while practicing, competing, traveling or while performing University sponsored community service projects and appearances, student-athletes are required to support University interests and endorsements (*e.g.*, Atrium Health).
8. **Conflict with NCAA or Institutional Values:** Student-athletes may not endorse or enter NIL activities in categories that conflict with NCAA legislation (*i.e.*, banned substances and sports wagering) or institutional values (*e.g.*, alcohol, tobacco, fire arms, gentleman/strip clubs, bail bonds companies, nutritional substances not controlled by the FDA, etc. ).
9. **Conflict to Commitment:** Student-athletes may not miss class or other mandatory academic requirements or required team activities to engage in NIL activities.
10. **Recruiting Inducement and Boosters:** Neither an institution nor a representative of athletics interest, often known as "boosters," can use NIL Activity or a promise related thereto in any manner that could be deemed an inducement for a prospective student-athlete to attend Wingate University, or for a current student-athlete to remain enrolled at the University.
11. **Prospective Student-athlete:** Prospective student-athletes may not engage in any NIL Activity that is impermissible for current student-athletes at Wingate University under this policy. Prospective student-athletes do not need to disclose to the University NIL transactions that will not continue during such student-athletes' enrollment at Wingate University.
12. **International Student-athletes:** International student-athletes may be limited in their ability to receive NIL compensation from a third party due to the terms of their visa or other immigration status. Please contact the Office of International Programs for additional information to ensure that you do not jeopardize your status as a student in the United States.
13. **Institutional Promotional Activities:** Student-athletes may be asked to participate in institutional promotional activities such as appearances, autograph signings, digital content

creation, photo shoots, and similar activities in accordance with existing NCAA rules, but may not be paid by Wingate University to participate in any such activity. There shall be a separation between Wingate University activity and NIL activity performed by student-athletes. Student-athletes may opt out of any such activity by notifying their head coach or the compliance office.

14. **Institutional Use of Student-athletes Name, Image and Likeness:** Per NCAA rules and regulations, Wingate University may use a student-athlete's name, image and likeness to promote and market its programs.

#### **LEGAL PROVISIONS:**

15. **Equity:** Wingate University and Athletics are committed to equity in the provision of all permissible institutional services under this policy. Student-athletes are entitled to compensation only from noninstitutional entities and not from Wingate University; Wingate University is not responsible for monitoring, overseeing, or enforcing equity in opportunities, compensation or other consideration provided by noninstitutional entities.
16. **Employment Status:** Although Wingate University student-athletes may be employed by the University in a job on campus, student-athletes are not considered employees of the University under any federal, state, or local law, regulations, or ordinance based on their status as student-athletes, regardless of whether the student-athlete receives athletics financial aid, signs a National Letter of Intent, or signs a scholarship agreement with the University. A student-athlete's receipt of NIL compensation from a noninstitutional entity does not alter the non-employee status of the student-athlete as set forth herein.
17. **Withholding, Tax and Other Obligations:** Student-athletes are solely responsible for all tax, withholding, reporting, licenses, permissions, permits, expenses, fees and any other obligations, liabilities or costs associated with NIL Activity.
18. **Disclaimer:** Wingate University is not liable or otherwise responsible to any student-athlete for an NIL Activity, any noninstitutional entity that partners with a student-athlete, professional service provider, or other entity involved with NIL Activity.
19. **Consequences:** The NCAA currently lacks clarity regarding NCAA consequences for violations of this policy. Notably, we expect that student-athletes may be subject to NCAA sanctions up to and including permanent ineligibility to participate in University athletics, for violations of this policy. In addition, student-athletes may be subject to institutional sanctions, up to and including cancellation of athletics financial aid, if they are deemed ineligible.