



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: State Board of Education

2. Rule citation & name: 6 NCAC 06E .0201; 16 NCAC 06E .0208; 16 NCAC 06E .0211

3. Action: ☒ Adoption ☐ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: November 7, 2024
- b. Proposed Temporary Rule published on the OAH website: November 14, 2024
- c. Public Hearing date: December 6, 2024
- d. Comment Period: November 15, 2024, to December 10, 2024.
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): November 15, 2024
- f. Adoption by agency on: January 9, 2025
- g. Proposed effective date of temporary rule if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite:
Effective date:
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☒ A recent court order.
Cite order: *Brandon v. State Board of Education*, Order Granting Motion for Preliminary Injunction (24CV026975-910)
(Wake County Superior Court)
- ☐ Other:

Explain:

On October 3, 2023, the General Assembly enacted S.L. 2023-133, which required the State Board of Education to adopt new rules governing interscholastic athletics conducted by public school units. Among the rules the SBE was required to adopt were rules "related to the use of a student's name, image, and likeness," more commonly known as NIL. In compliance with that legislation, the SBE adopted a temporary rule, codified 16 NCAC 06E .0208(a), that prohibited students-athletes from entering NIL deals for the 2024-2025 school year. The Rules Review Commission approved the rule on March 27, 2024, and the rule took effect on July 1, 2024. On August 23, 2024, a complaint was filed in Wake County Superior Court seeking a declaratory ruling that the SBE had exceeded its authority in adopting the NIL prohibition as well as a preliminary injunction to prohibit the SBE from enforcing the temporary rule. On September 5, 2024, the SBE proposed a permanent rule that would allow student-athletes to enter NIL agreements, subject to certain restrictions and reporting requirements, beginning with the 2025-2026 school year. The SBE noticed the rule for public comment on October 1, 2024.

On October 14, 2024, following a hearing held on October 1, 2024, Judge Graham Shirley entered an order granting the preliminary injunction. Judge Shirley's order directed the SBE not to enforce the temporary rule and instead to enforce the proposed permanent rule until such time as a new temporary or permanent rule could be adopted. A copy of the order is included with this form.

In accordance with the authority granted by Judge Shirley's order, the SBE is proposing three temporary rules. Proposed Rule .0211 establishes the various restrictions and reporting requirements for NIL agreements, consistent with the permanent rule that was proposed on September 5, 2024. Proposed Rule .0201 will replace the existing temporary rule of the same citation; it is identical to the existing temporary rule but adds a definition for "immediate family member," which is used repeatedly in Proposed Rule .0211. Proposed Rule .0208 will replace the existing temporary rule of the same citation; it removes the language prohibiting NIL agreements but adding language stating that a student-athlete who enters an NIL deal will lose eligibility of the student-athlete fails to abide by Proposed Rule .0211

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

In its preliminary injunction in *Brandon v. State Board of Education*, court ordered the SBE to enforce the proposed permanent rule until such time as a new temporary or permanent rule could be adopted. The temporary rule is required to assure compliance with the court order, to reduce confusion in the high school athletic community, and promote consistent implementation of the court order and the SBE's rules regarding NIL across the State.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Ryan M. Collins

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10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Eric C. Davis

Title: Chairman, State Board of Education

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RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

1 16 NCAC 06E .0201 is proposed for adoption under temporary procedures as follows:
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3 **SECTION .0200 – INTERSCHOLASTIC ATHLETICS**
4

5 **16 NCAC 06E .0201 DEFINITIONS**

6 As used in this Section, the following definitions apply:

- 7 (1) "Administering organization" is defined in G.S. 115C-407.50(1).
8 (2) "Aggrieved party" means a student, coach, participating school, PSU, or other party that is directly
9 and adversely affected by a final decision of an administering organization that applies or enforces
10 the rules established by this Section, including a determination of ineligibility under Rule .0207 of
11 this Section, a penalty imposed under Rule .0209 of this Section, or a finding of undue influence or
12 a recruiting violation under Rule .0210 of this Section. If a student is affected, the student's parent
13 shall be allowed to appeal the final decision pursuant to Rule .0215 of this Section.
14 (3) "Bona fide purpose" means for a purpose not primarily related to participation in interscholastic
15 athletics.
16 (4) "High school" means a public school offering education in Grades 9 through 12 or 10 through 12.
17 (5) "Immediate family member" means a spouse, parent, legal guardian or custodian, grandparent,
18 child, grandchild, brother, sister, half-sibling, or step-sibling. The term applies to any such
19 relationship whether by blood, adoption, or marriage.
20 (6) "Initial entry" means:
21 (A) a student's first day of attendance at a participating school in which the student is enrolled
22 as recorded by that school; or
23 (B) the first day on which a student practices or otherwise participates as a member of an
24 interscholastic athletics team at a participating school.
25 (7) "Interscholastic athletics" or "interscholastic athletic activity" means any extracurricular athletic
26 activity that:
27 (A) involves students in any Grades 6 through 12;
28 (B) is sponsored by an individual school, PSU, or administering organization; and
29 (C) includes students from more than one school or PSU.
30 (8) "Junior high school" means a public school offering education in Grades 7 through 9.
31 (9) "Local superintendent" means the superintendent of a local school administrative unit, as provided
32 in Chapter 115C, Article 18 of the General Statutes, or the staff member with the highest decision-
33 making authority for a PSU, if there is no superintendent.
34 (10) "Middle school" means a public school offering education in Grades 6 through 8.
35 (11) "Parent" is defined in G.S. 115C-407.50(6).
36 (12) "Participating school" means a middle school, junior high school, or high school that elects to
37 participate in interscholastic athletic activities.

1 (13) "Principal" means a school administrator employed as the principal of a school, as provided in
2 Chapter 115C, Article 19 of the General Statutes, or the staff member with the highest decision-
3 making authority at a school, if there is no principal.

4 (14) "Public school unit" or "PSU" is defined in G.S. 115C-5(7a).

5 (15) "Student" means a person enrolled in Grade 6 through 12 in any public school.

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7 *History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50; 115C-407.55; 115C-407.60;*
8 *115C-407.65; 116-235(b);*
9 *Eff. July 1, 1986;*
10 *Exp. Eff. June 1, 2022 pursuant to G.S. 150B-21.3A.*
11 *Temporary Adoption Eff. July 1, 2024.*
12 *Temporary Adoption Eff.*

1 16 NCAC 06E .0208 is proposed for adoption as follows:

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3 **16 NCAC 06E .0208 AMATEUR RULES**

4 (a) A student shall not participate in interscholastic athletics after any of the following:

5 (1) Graduation, except that the student may continue to participate in playoff and state championship
6 contests in spring sports after graduation.

7 (2) Signing a professional athletic contract, except that the student may continue to participate in any
8 sport for which the student has not signed a professional contract.

9 (3) Receiving remuneration as a participant in an athletic contest, except that the student may accept a
10 gift, merchandise, or other thing of value, provided that:

11 (A) The value does not exceed two hundred-fifty dollars (\$250.00) per student per season;

12 (B) The item is totally consumable and nontransferable, or labeled in a permanent manner (e.g.,
13 an engraved or monogrammed item); and

14 (C) The item is approved by the principal of the student's school and the local superintendent.

15 (4) Participating on an all-star team or in all-star game or bowl game that is not sanctioned by the
16 administering organization of which the student's school is a member, provided that the student
17 shall be ineligible only for that sport.

18 (5) Entering into an NIL agreement, unless the student has complied with the requirements of Rule
19 .0211 of this Section.

20 (b) A student shall not be deemed ineligible under this Rule for payment by an administering organization, PSU, or
21 athletic booster club affiliated with the student's school or PSU for essential expenses arising from a specific
22 interscholastic athletic contest in which the student participates. Essential expenses shall include the reasonable cost
23 of meals, lodging, and transportation.

24 (c) A student shall not be deemed ineligible under this Rule for receipt of a nominal, standard fee or salary for
25 instructing, supervising, or officiating an organized youth sports program, recreational activities, playground, or camp,
26 whether or not affiliated with a PSU.

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28 *History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50; 115C-407.55; 115C-407.60;*
29 *115C-407.65; 116-235(b)*

30 *Temporary Rule Eff. July 1, 2024;*

31 *Temporary Adoption Eff.*

1 16 NCAC 06E .0211 is proposed for adoption under temporary procedures as follows:

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3 **16 NCAC 06E .0211 NAME, IMAGE, AND LIKENESS**

4 (a) As used in this Section, the phrase “name, image, or likeness” or “NIL” shall refer to the use of a student’s name,
5 image, or likeness for commercial purposes and in exchange for compensation to the student or an immediate family
6 member of the student. Compensation is defined as anything of value to the student or an immediate family member
7 of the student, including cash, in-kind gifts, discounts, and other tangible benefits.

8 (b) A student participating in interscholastic athletics may enter an agreement to use the student’s name, image, or
9 likeness (hereinafter “NIL agreement”) subject to the following restrictions:

10 (1) The NIL agreement shall not condition the receipt, type, or extent of any compensation to the student
11 on the extent or quality of the student’s athletic performance.

12 (2) If the student is under 18 years of age, the student’s parent or legal guardian shall be a party to the
13 NIL agreement.

14 (3) The NIL agreement shall hold the following parties harmless from any liability related to, or arising
15 from the NIL agreement:

16 (A) The governing body of the PSU in which the student is enrolled, as well as its officers and
17 employees.

18 (B) Any administering organization with which the PSU is affiliated, as well as its officers and
19 employees.

20 (C) The State Board of Education and the Department of Public Instruction, as well as their
21 officers and employees.

22 (4) The NIL agreement shall otherwise comply with state and federal law.

23 (c) Prior to a student’s entry into an NIL agreement or an amendment to an existing NIL agreement:

24 (1) The student shall provide a copy of the NIL agreement or amendment to the principal and athletic
25 director of the student’s school, the local superintendent, the chairperson of the PSU governing
26 body, and the head coach of any sport in which the student participates during the terms of the NIL
27 agreement.

28 (2) The student shall complete the NIL education course offered by the NFHS. If the student is under
29 18 years of age, the student’s parent or legal guardian shall also complete the course. Those persons
30 required to complete the course shall provide the relevant administering organization with a
31 certificate of completion from the NFHS.

32 (d) A student participating in interscholastic athletics may enter into an NIL agreement to use the student’s name,
33 image, or likeness in any of the following ways:

34 (1) Public appearances or commercials.

35 (2) Autograph signings.

36 (3) Athletic camps and clinics.

37 (4) Sale of non-fungible tokens (“NFTs”).

- 1 (5) Product or service endorsements.
- 2 (6) Promotional activities, including in-person events and social media advertisements.
- 3 (7) Any other commercial activities that are intended to promote a product or service offered by,
4 increase the profits of, or otherwise generate financial benefits for a party to the NIL agreement
5 from the use of the student's name, image, or likeness.
- 6 (e) No student engaged in an NIL agreement-related activity shall do any of the following:
- 7 (1) Make any reference to a school, PSU, conference, or administering organization.
- 8 (2) Receive compensation for the use of intellectual property of any school, PSU, conference,
9 administering organization, or the NFHS. Intellectual property includes the name, uniform, mascot,
10 mark, or logo of the entity that owns the intellectual property.
- 11 (3) Appear in the uniform of the student's school or the school's sports team, or otherwise display the
12 intellectual property of any school, PSU, conference, administering organization, or the NFHS.
- 13 (f) No student shall endorse or promote the goods or services of any third-party entity with which the student has
14 entered an NIL agreement during interscholastic athletic competition or other school-based activities or events. This
15 restriction applies to the wearing of apparel displaying the mark, logo, brand, or other identifying insignia of the third-
16 party entity, unless it is part of the standard uniform for the school or sport.
- 17 (g) No student participating in interscholastic athletics shall enter into an NIL agreement or otherwise use the student's
18 name, image, or likeness to promote any of the following:
- 19 (1) An adult establishment, as defined in G.S. 14-202.10(2), or adult entertainment services.
- 20 (2) Alcohol or alcoholic products.
- 21 (3) Tobacco, vaping or other electronic smoking devices, or other nicotine products.
- 22 (4) Cannabis or cannabis products.
- 23 (5) Controlled substances, as defined in G.S. 90-87(5).
- 24 (6) Opioids or prescription pharmaceuticals.
- 25 (7) Weapons, firearms, or ammunition.
- 26 (8) Casinos or gambling, including sports betting.
- 27 (9) Activities that would disrupt the operations of a school or PSU.
- 28 (h) The school athletic director shall submit a current copy of any NIL agreement involving a student at the school to
29 any administering organizations of which the student's school is a member within 30 days of the disclosure of the NIL
30 agreement by the student or disclosure of any amendment to an existing NIL agreement. The administering
31 organization shall maintain accurate records of all NIL agreements received and provide a summary report of all NIL
32 agreements to the State Board of Education no later than June 30 of each year.
- 33 (i) No athletic director, coach, other employee of a PSU, representative of an athletic booster club, or representative
34 of an NIL collective shall use the promise of an NIL agreement to recruit a student to attend a specific participating
35 school or participate in a specific sport. No athletic director, coach, other employee of a PSU, representative of an
36 athletic booster club, or representative of an NIL collective shall act as a student's agent or marketing representative
37 or otherwise facilitate an NIL agreement between a student and a third party. If the relevant administering organization

1 finds a violation of this Paragraph by a preponderance of the evidence, the administering organization shall impose
2 penalties consistent with its regulations and with Rule .0209 of this Section.

3 (j) This rule shall apply to any NIL agreement that a student or the student's parent or legal guardian execute during
4 the time the student is enrolled in a PSU, even if the benefits of said agreement do not accrue to the student or an
5 immediate family member of the student until after the student has graduated.

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7 History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50; 115C-407.55; 115C-407.60;
8 115C-407.65; 116-235(b);
9 Temporary Adoption Eff.