



## POSITION STATEMENT

### Compensation of College Athletes Including Revenues from Commercial Use of Their Names, Likenesses, and Images<sup>1</sup>

Originally issued March 26, 2015; Revised February 12, 2016; December 2, 2017, December 27, 2017

#### EXECUTIVE SUMMARY

With regard to students participating in intercollegiate athletics, The Drake Group<sup>2</sup> believes that higher education institutions and their national sport governance organizations should operate according to the following basic principles:

a. Institutions and their national sport governance organizations have the highest obligation, especially in light of public and alumni pressure to produce winning sports teams, to promulgate policies that permit a student to fully engage in and complete the academic requirements for a degree.

b. It is within the authority of higher education institutions and their national sports governance organizations to define a “professional athlete” and prohibit professional athletes from participating in college athletic programs.

c. Extracurricular activities generally, and intercollegiate athletic programs among them, are important contributors to student development. If revenues are directly generated from the staging of such activities, such revenues should be used to support that

<sup>1</sup> Preferred citation: D. Lopiano, B. Porto, G. Gurney, D.B. Ridpath, A. Sack, M. Willingham, A. Zimbalist, (2017) *The Drake Group Position Statement: Compensation of College Athletes Including Revenues from Commercial Use of Their Names, Likenesses, and Images*. (March 24, 2015; Revised February 12, 2016, December 2, 2017 and December 27, 2017). Retrieve at: <http://thedrakegroup.org/>

<sup>2</sup> The Drake Group is a national organization of faculty and others whose mission is to defend academic integrity in higher education from the corrosive aspects of commercialized college sports. The Drake Group goals include: (1) ensure that universities provide accountability of trustees, administrators, and faculty by publicly disclosing information about the quality of education college athletes receive; (2) advance proposals that ensure quality education for students who participate in intercollegiate athletics, (3) support faculty and staff whose job security and professional standing are threatened when they defend academic standards in intercollegiate sports; (4) influence public discourse on current issues and controversies in sports and higher education; and (5) coordinate local and national reform efforts with other groups that share its mission and goals. The Drake Group is “In residence” at the University of New Haven. For further information see: <http://thedrakegroup.org> or contact Gerald S. Gurney, President at [geraldgurney@gmail.com](mailto:geraldgurney@gmail.com)

extracurricular activity and, if there are excess revenues, should be used to support the non-profit institution generally.

d. College athletes should be treated like other students with regard to their independent efforts to engage in non-school employment except for employment as professional athletes, in which case they should be ineligible to participate as college athletes in the sport in which they are a professional.

The Drake Group has issued the following recommendations to advance these basic intercollegiate athletics principles:

1. The institution should not pay students for participating in curricular or extracurricular activities except for educational scholarships not to exceed full cost of attendance. Such scholarships should be continued through graduation conditioned only on (a) academic performance, (b) compliance with rules of conduct applicable to all students, and (c) enrollment or participation in the academic subject or activity for which the scholarship was awarded. Renewal should not be (a) conditioned on sport performance, which practice should be considered athletics employment, (b) withdrawn due to non-participation resulting from an injury or (c) terminated because of non-compliance with rules of conduct not applicable to the student body generally.

2. Detailed proposed definitions of "college athlete" and "professional athlete employee" are offered to create a clear line of demarcation between college athletics and professional sports and enable the application of the recommended policies based on such differentiation.

3. Higher education institutions should have the right to own and commercially exploit performance events involving students participating in the institution's curricular and extracurricular activities through the sale of tickets, parking, game or event programs, advertising and sponsorship rights, and rights to live and delayed electronic telecasts. The revenues from such activities should be used to defray the costs of the extracurricular activity or otherwise advance the mission of the non-profit higher education institution, including caring for the health and welfare of participants. However, such commercial exploitation must acknowledge the right of a student to approve the use of his or her own name, image, or likeness (NIL). Accordingly, the following policies should apply:

- a. Institutions should be required to obtain the consent of students for the use of their names, images, and likenesses (NILs) if such extracurricular events are to be audio or videocast or otherwise recorded for live or delayed electronic distribution or photographed, sketched or in any other way reproduced for print or digital publication.
- b. The institution may properly condition the participation of students in such commercially exploited extracurricular events on consent to the use of their NILs

without compensation for such use. The Drake Group supports priority use of intercollegiate athletics revenues for athletic scholarships that provide educational opportunities, academic support programs conducted by academic authorities, comprehensive athletics injury insurance, and other benefits that protect the health and well-being of college athletes and the establishment of academic trust funds<sup>3</sup> to provide financial support for the completion of undergraduate or graduate degree programs.

- c. The institution should not otherwise exploit current student NILs for non-extracurricular program activities such as entering into licensing agreements using current student NILs for videogames, licensed apparel, licensed products, etc. Such institutional or third-party exploitation of students is ethically inappropriate for a non-profit higher education institution. However, the institution should be unfettered with regard to the commercial exploitation of its own name and registered marks for the purpose of marketing the institution or generating revenues subject to the provisions of the federal unrelated business income tax (UBIT) on such non-profit organization commercial activities.
- d. It is appropriate for institutions to use the names, likenesses, and images of students, faculty, college athletes, and coaches in publications sold in conjunction with school extracurricular events, commemoration of students' graduation, or other purposes supporting current student activities (e.g., yearbooks, concert or recital programs, athletic event programs, etc.) assuming student consent for such use. Logically, in the case of current athletic events, such publications may include historical records or photographs (e.g., performance records and photographs of prior championship teams who may not currently be participating). However, such historical license should not extend to commercial documentary products that exist separate from the current athletic event.
- e. Any effort to commercially exploit former student NILs requires the institution (or third party) to obtain permission from each former student for each specific use, which, may include payment of licensing fees or royalties to such former students or the charitable donation of such income to the institution or other non-profit entity.
- f. Faculty, students, staff, coaches, or other employees of the non-profit institution should not be permitted to use the name or logo of their non-profit institution (i.e., Head Coach, Smith University Tigers) for private gain. This prohibition of individual inurement is a basic non-profit organization legal and ethical obligation.

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<sup>3</sup> The Drake Group does not support the concept of "lifetime scholarships" to currently eligible college athletes that implies the inappropriate message that the currently enrolled athlete does not have to worry about academic diligence because he/she can always return to college on full scholarship to complete the degree.

**4. College athletes should otherwise have the right to use their names, images, and likenesses for private gain conditioned on the athlete independently obtaining such employment (i.e., such activities are not arranged by employees or others engaged by the athlete's institution for that purpose).**

## **Introduction**

The Drake Group believes that with regard to all college students generally, each institution of higher education should seek to (1) promulgate policies regarding the conduct of students or programs that maximize student pursuit of educational goals in an environment that protects their health, safety, and general welfare, (2) protect the rights of students to accept and retain financial inducements to enroll or maintain enrollment such as athletic or other forms of scholarships or grants-in-aid, (3) recognize students' legal rights to the use of their names, likenesses, and images by the institution or other third parties, (4) not restrain students from independently engaging in employment or activities outside the institution, and (5) operate according to financial, ethical, and other principles appropriate for non-profit educational organizations. The Drake Group supports the adoption of additional principles and policies that clearly define a line of demarcation between college athletics and employment as a professional athlete. The purpose of this position statement is to address these principles and policies in order to provide institutions of higher education with sound decision-making guidance for national governance association rule making.

## **Nature and Function of Extracurricular Activities**

Extracurricular activities generally, and intercollegiate athletic programs among them, are considered important contributors to student development. Most colleges and universities have a broad educational mission that includes development of the "whole student." A broad range of extracurricular activities is available on most campuses to deliver on the promise of individual student development. These activities meet a variety of student interests including entertainment and social purposes, also providing laboratory-like settings for students to gain and improve skills and to explore a wide range of activities that enable them to explore interests beyond the highly restricted nature of required and elective courses within specific degree programs. Many of these activities involve sport and the performing arts (music, dance, theatre, etc.). In cases where the extracurricular activity has a direct relationship to the student's degree program, credit may be awarded for such participation. The institution may or may not provide for the full expenses of students participating in such programs or pay the leaders (i.e., teachers, coaches, etc.) of such activities. Thus, it is not uncommon for students to pay their own expenses or for mandatory or optional student fees to contribute to such offerings.<sup>4</sup> These activities may or may not lend themselves to public performances for which admission is charged. Suffice it to say that extracurricular activities are an integral part of the

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<sup>4</sup> For further information on the use of student fees and other institutional subsidies to support intercollegiate athletic programs, see D.B. Ridpath, B. Porto, G. Gurney, D. Lopiano, A. Sack, M. Willingham, and A. Zimbalist (2015) *The Drake Group Position Statement: Student Fee Allocations to Fund Intercollegiate Athletics*. (March 19, 2015). Retrieve at: [www.thedrakegroup.org](http://www.thedrakegroup.org)

college experience.<sup>5</sup> Athletic events are analogous to music, dance, or drama performances, debates, lectures, or other activities for which institutions routinely charge for admission. If admission is charged, these revenues are used to defray the costs of the extracurricular program. With regard to athletics, notably, only 20 of the 1,076 athletic programs sponsored by NCAA member institutions in 2013-14 generated sufficient revenues to fully defray program expenses on an operating basis (i.e., without considering capital costs).<sup>6</sup>

### **Paying Students to Participate in Extracurricular Activities**

Extracurricular activities generally and intercollegiate athletic programs among them are considered important contributors to student development. The institution should not pay students for participating in curricular or extracurricular activities except for educational scholarships not to exceed full cost-of-attendance (COA).<sup>7</sup> Limiting scholarship values to the full COA according to federal student financial aid guidelines is a commonly accepted practice of institutions of higher education and ethically defensible for a non-profit organization charged with wise stewardship of funds. Such scholarships should be continued through graduation conditioned only on (a) academic performance, (b) rules of conduct applicable to all students, and (c) enrollment or participation in the subject or activity for which the scholarship was awarded.

Because scholarships represent incentives for student attendance that greatly influence enrollment decisions and family financial planning, once they are awarded, students should be protected from arbitrary or capricious withdrawal of aid. Conditioning renewal based on transparent rules regarding minimum academic performance and normal progress toward the degree is both reasonable and directly related to the primary purpose of higher education institutions. Continuation of athletic scholarships for five years or until graduation protects against an employment relationship in which a coach could simply not renew whenever a better player is recruited or the coach is otherwise dissatisfied. One-year athletic grants of aid should be considered de facto employment relationships just as non-renewal based on sport performance should be considered athletics employment. Withdrawal due to non-participation because of injury, a participation factor not under the student's control, should similarly be prohibited. Additionally, scholarships should be protected from arbitrary or capricious withdrawal based on any violation of "team rules" or "athletic department policy" that are more onerous than or inconsistent with rules of conduct applied to students generally or without due process hearings afforded to all students. It is not uncommon for violation of team rules or athletics policies to be misused as a justification for termination of financial aid.

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<sup>5</sup> [College Extracurricular Activities - Impact on Students, Types of Extracurricular Activities - Organizations, Involvement, Development, and University - StateUniversity.com](http://education.stateuniversity.com/pages/1855/College-Extracurricular-Activities.html#ixzz3RYLjNs8c)  
<http://education.stateuniversity.com/pages/1855/College-Extracurricular-Activities.html#ixzz3RYLjNs8c>

<sup>6</sup> D. L. Fulks (2013) *Revenues and expenses in NCAA Division I Intercollegiate Athletics Programs Report: 2004-2013*. National Collegiate Athletic Association, Indianapolis, IN, p. 13.

<sup>7</sup> Being a participant in an extracurricular activity is different than campus jobs for which students are paid which could overlap (say, with students paid to be ushers at a theatre performance).

Violations of such athletic policies may properly result in disciplinary action, but such action should not extend to removal of financial aid.<sup>8</sup>

### **Prohibiting Professional Athlete Employees from Participating in College Sports**

Higher education institutions have proper educational justification for prohibiting intercollegiate athletic participation of students who have been or are currently professional athletes. Professional athlete prohibitions are historically related to concerns that college athletes be students first and foremost and that there be a clear line of demarcation between college sports where the first priority of students is academic study and professional sports as a form of employment, where sport training and competition is the top priority. Non-professional college players have been commonly referred to as “amateurs,” although this term has lost its clear meaning over the last several decades as athletic scholarships have been used as financial inducements to recruit blue-chip college athletes and Olympic and national sport governing body rules limiting the acceptance of prize money, training expenses, and even direct payments for participation by open amateur sport athletes have relaxed.

Unfortunately, these rules of amateurism and efforts to define the line between college and professional sports have focused on college athlete compensation instead of the primacy of college athlete education. This failure to insist on sufficient time for college athlete academic study and address the recruiting of academically unprepared college athletes coupled with the enormous pressure of winning in order to obtain revenues from the multi-billion dollar Division I athletics industry has resulted in the current Division I football and basketball environment that is rampant with academic fraud, the recruiting and admission of athletes who do not meet normal admissions standards, athlete verbal and physical abuse, athletes being forced to take less demanding courses and degree majors so that they can spend more time on sports, and the creation of 50-hour “sport work weeks.” Not only is there constant pressure to violate the letter and spirit of rules that emphasize academic commitments but a huge conflict of interest when million-dollar-a-year coaches and administrators are rewarded for college athlete exploitation.

### **Obligation to Protect the Opportunity for Students to Achieve Academic Success**

Higher education has an important obligation in promulgating rules that place a student’s academic success above the athletic success of its sports teams. Thus, defining a “college athlete” and the proper limitations governing extracurricular athletics activities that permit a student to fully engage in and complete academic requirements for a degree is well within the authority of a higher education institution. As important, is the definition of professional athlete employment, which should not be a practice of non-profit institutions of

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<sup>8</sup> The Drake Group believes that all athletic departments should have clear policies that stringently review and approve team rules for consistency with general student conduct rules, with such review conducted by tenured faculty. For instance, no team rules should prohibit taking classes in conflict with team practice and team rules should not result in a level of control over the college athlete’s activities outside of sport that have no relationship to the conduct of the educational activity. Further, penalties should always be commensurate with the severity of any violation.

higher education and should render a student ineligible to participate in intercollegiate athletics.

The first step in drawing the proper demarcation between college sports and professional sport employment is drawing the line that separates the college athlete from the professional athlete employee by definition. Such definitions should be based both on the primacy of academic obligations and on conditions of allowable and prohibited pay or benefits that accompany the expectation of sport participation. The Drake Group recommends the use of the following definitions and conditions.

### **Definition of “College Athlete”**

The Drake Group maintains that the following policies and practices be used to define acceptable and prohibited compensation and benefits to a college athlete:

- a. In order for an athletics grant-in-aid (athletic scholarship) not to be considered a contract for hire, such financial aid should:
  - be guaranteed for five years or until graduation, whichever occurs first;
  - be conditioned on maintenance of a required GPA and normal progress toward the degree with a standard selection of courses based on the student’s choice but conditioned on prerequisites applicable to all students;
  - be conditioned on participation in a sport program but not be withdrawn for reasons of physical injury, unsatisfactory athletic performance, or improper pressure to withdraw from the team; and
  - must not exceed the “full cost of attendance” consistent with the Federal Student Financial Aid Handbook definition
- b. College athletes may receive benefits and treatment beyond those afforded non-athlete students that are necessary to protect their health and well-being (athletic injury insurance, catastrophic injury insurance, access to medical treatment and physical therapy, etc.).
- c. College athletes should be restricted from participating in athletics-related activities for more than 20 hours per week when classes are in session in order to ensure that adequate time is available for class attendance and study. Athletic participation should be prohibited during final examination periods.
- d. College athletes should be prohibited from missing more than an established percentage of classes for reasons of participation in athletics competition as approved by the faculty senate at their respective institutions.
- e. College athletes should receive academic advising, academic remediation, and tutoring under the supervision of the institution’s academic authorities in the same manner as all other students and in the same facilities as are available to all students.

- f. A faculty oversight committee consisting of tenured members of the faculty appointed by the institution's faculty senate should be responsible for reviewing the athletics time demands, academic support practices, and course and major enrollment practices. This committee should carefully examine courses, grades, and majors in order to prevent academic fraud or misconduct. College athlete course or major enrollment that is more than double the proportion of athletes in the student body, a "red flag" representative of clustering, should be carefully examined.
- g. College athletes should not be subject to unwarranted limitations in course registration or selection of academic major based on optimizing their availability for athletics participation.
- h. College athletes shall not be provided with exclusive or lavish facilities whose cost is inappropriate for a non-profit educational institution. Facilities afforded student-athletes should be open to all students. The isolation of college athletes from the general student body should be avoided whenever possible (e.g., dormitory facilities, eating facilities, academic support areas, social areas, etc.). It is the legal duty of the higher education institution's board of directors to prohibit excesses in compensation, benefits, or treatment of any individual or group of individuals such as college athletes, coaches, or athletics administrators. It is improper for a non-profit education institution to use its tax preferences and other benefits of its non-profit status to conduct an intercollegiate athletic program in a manner similar to a professional sports business operated for profit.
- i. Hotel, travel, and per diem expenses for college athletes (and athletic staff) should be consistent with general university policies used for all students or staff engaged in off-campus travel paid for by the institution and should not exceed actual and necessary expenses.
- j. College athletes may receive compensation and benefits from the institution or any outside source for work actually performed other than pay as a professional athlete as defined in this definition.
- k. A college athlete may accept compensation for playing any sport other than his or her college sport.
- l. A college athlete may obtain employment and accept remuneration for the commercial use of his or her name, image or likeness in advertisements, appearances, or speaking engagements, and for endorsement of commercial products related to any sport conditioned on the athlete independently obtaining such employment (i.e., such activities are not arranged by the athlete's institution, its athletic program sponsors, or advertisers or representatives of its athletics interests).

- m. A college athlete may earn pay for work actually performed and at a rate commensurate with the going rate in that locality for services as a coach, a fee-for-lesson sport instructor, a sport camp counselor in any sport, as a model (including the modeling of athletics apparel or equipment in any sport).
- n. A college athlete may not accept compensation or benefits for any activity that includes acknowledgement of affiliation with the institution of higher education he or she is attending as a college athlete.
- o. A college athlete may enter into a professional draft at any time and will not lose eligibility until that athlete signs a professional employment contract or receives remuneration (bonus or any other compensation) for participating in a professional sport.

### **Definition of Professional Athlete Employment**

The Drake Group maintains that any one of the following policies and practices should be used to designate a student as a professional athlete employee in a specific sport, noting that a student CAN BE a professional athlete in one sport and a college athlete in another sport:

- a. Receives compensation for the use of his or her athletics skill to play a sport in excess of actual and necessary expenses to participate in practice or competition.
- b. Accepts a promise of pay to play a sport even if such pay is to be received following completion of intercollegiate athletics participation;
- c. Signs a contract or commitment of any kind to play professional athletics, regardless of its legal enforceability.
- d. Receives, directly or indirectly, a salary, reimbursement of expenses, or any other form of financial assistance from a professional sports organization as payment for sport participation.
- e. Competes on any professional athletics team.
- f. Competes in an athletics competition or exhibition for pay or remuneration in excess of actual and necessary expenses to participate in such activity.

The Drake Group supports the premise that college athletes should be permitted to pay for the services of an agent to obtain an athletic scholarship or to investigate prospective professional athlete employment without such contractual or oral relationship making the college athlete a professional athlete employee.

## **Separating Institution and College Athlete Rights Related to Use of Name, Likeness, and Image (NIL)**

The Drake Group believes that the following positions properly reflect the legal rights of the institution and the college athlete with regard to use of name, likeness, and image.

1. Other than signing a contract to play for a professional athletic team or accepting remuneration for such participation, college athletes may obtain other types of non-playing employment and accept remuneration for the commercial or charitable use of their names, images or likenesses in advertisements, appearances, or speaking engagements and for endorsement of commercial products related to any sport conditioned on (1) the athlete independently obtaining such employment (i.e., such activities are not arranged by employees or others engaged by the athlete's institution for that purpose) and (2) such use not including the name or affiliation with the student's institution.
  - a. Any participation by the institution's employees or others engaged by the institution for that purpose or use of the institution's name or affiliation should be considered de facto athletics employment in that it is unrelated to institutionally granted scholarships.
  - b. Prior to acceptance of remuneration or the execution of any contractual agreement between a currently enrolled athlete listed on an institution's squad list in any capacity (including but not limited to red-shirt, academically ineligible, injured, scholarship, non-scholarship) and a third party for such outside income for the use of the college athlete's NIL, the member institution should be required to review written terms to ensure the inclusion of the following stipulations or conditions:
    - (1) Use does not include the name, marks, institutional colors, or affiliation, implied or otherwise, with the student's institution or the use of its facilities or properties for such engagement;
    - (2) Acknowledgement that the institution's employees or others engaged by the institution were not involved (i.e., identification of possible employment opportunities, introductions, etc.) in obtaining employment; and
    - (3) Statement of remuneration, which shall be commensurate with the going rate in that locality for services and be paid only for work specifically described and actually performed.
  - c. The college athlete should not be prohibited from donating the use of his or her NIL related to participation in charitable activities for no remuneration. Any use of the institution's name, marks, or affiliation for such activities requires the written approval of the institution.
2. Higher education institutions have the right to own and commercially exploit performance events involving students participating in the institution's curricular and extracurricular

activities through the sale of tickets, parking, game or event programs, advertising and sponsorship rights, and rights to live and delayed electronic telecasts. The revenues from such activities should be used to defray the costs of the extracurricular activity or otherwise advance the mission of the non-profit higher education institution. However, such commercial exploitation must acknowledge the right of a student to approve the use of his or her own name, image, or likeness (NIL). Accordingly, the following policies should apply:

- a. Any college athlete paid by his or her institution to participate in a college sport event, including for the use of his or her NIL as a participant, beyond the receipt of an athletic scholarship becomes a professional athlete employee ineligible for college athletic participation.
- b. The institution should be required to obtain the consent of students to the use of their names, images, and likenesses (NILs) if such extracurricular events are to be audio or videocast or otherwise recorded for live or delayed electronic distribution or photographed for print or digital publication. The fact that the institution owns the extracurricular activity event property does not negate the legal rights of students to own their own NILs.
- c. The institution may condition the participation of students in such commercially exploited extracurricular events on consent to use of their NILs. The college student does not have a “right to participate” in extracurricular activities. Thus, the institution may impose restrictions on participation. If the institution wants to televise or otherwise commercially exploit an extracurricular event property it owns, the institution has the right to restrict participation to only those students who do not object to the use of their NILs. If a college athlete takes a position that he/she will not participate without payment for use of his or her NIL, the college athlete has the right to not participate without the institution imposing a penalty for such non-participation, such as the institution withdrawing scholarship assistance or not permitted the objecting college athlete’s participation in practices or events not televised or commercially exploited.
- d. The institution should not otherwise exploit current student NILs for non-extracurricular program activities such as entering into licensing agreements using current student NILs for video games, licensed apparel, licensed products, etc. Such institutional or third-party exploitation of students is inappropriate for a non-profit higher education institution.
- e. The institution should be unfettered with regard to the commercial exploitation of its own name and registered marks for the purpose of marketing the institution or generating revenues from licensed apparel or other products, subject to the provisions of the federal unrelated business income tax (UBIT) on such non-profit organization commercial activities.

- f. It is appropriate for institutions to use the names, likenesses, and images of students, faculty, college athletes, and coaches in publications sold in conjunction with school extracurricular events, commemoration of students' graduation, or other purposes supporting current student activities (e.g., yearbooks, concert or recital programs, athletic event programs, etc.) assuming student consent for such NIL use and, like gate receipts or admission fees, retain the use of such revenues to support the extracurricular program or the institution generally. Logically, in the case of current athletic and other events, such publications may include historical records or photographs (e.g., performance records and photographs of prior championship teams, some or all of which may not currently be participating). NIL permission from students should be obtained at the time they are current students for this historical use of NIL for the limited purpose of future athletic event programs. However, use of historical footage, photographs, recordings, or records should not extend to commercial sale of documentary products that exist separate from the current athletic event.
- g. Any effort to commercially exploit FORMER student NILs should require the institution or third party to obtain permission from each student for each specific use, which may include payment of licensing fees or royalties to such former students or their charitable donation of such use.
- h. Faculty, students, staff, coaches or other employees of the non-profit institution should not be permitted to use their institutional non-profit organization affiliation or title (i.e., Head Coach, Smith University Tigers) for private gain. This is a basic non-profit organization legal obligation.