



MIKE DEWINE
GOVERNOR
STATE OF OHIO

Executive Order 2021-10D

Establishing the Duties of Colleges and Universities as to Name, Image, and Likeness
Compensation of Student-Athletes

WHEREAS, student-athletes enrolled in colleges and universities within the State of Ohio deserve to be compensated for the commercial use of their name, image, and likeness arising from their skills and accomplishments; and

WHEREAS, the National Collegiate Athletic Association (“NCAA”) and the National Junior College Athletic Association (“NJCAA”) both have rules precluding student-athletes in colleges and universities from earning compensation for the use of their name, image, and likeness for a commercial purpose. These rules are contrary to and contradict laws that have passed in at least 17 states; and

WHEREAS, the aforementioned 17 states consequently have an advantage in recruiting and retaining talented student-athletes as compared to other states; and

WHEREAS, the failure of Ohio to act immediately to enable student-athletes to seek and receive compensation for the commercial use of their name, image, and likeness will result in a significant competitive disadvantage to the State of Ohio, as student-athletes pursue enrollment at colleges and universities that permit compensation for the commercial use of their name, image, and likeness regardless of the NCAA and NJCAA rules.

NOW THEREFORE, I, Mike DeWine, Governor of the State of Ohio, by virtue of the authority vested in me by the Constitution and laws of this State do hereby order and direct that:

1. No state institution of higher education or private college shall uphold any rule, requirement, standard, or other limitation that prevents a student-athlete of that institution or college from fully participating in intercollegiate athletics because the student-athlete earns compensation as a result of the use of the student-athlete's name, image, or likeness. Earning compensation from the use of a student-athlete's name, image, or likeness shall not affect the student-athlete's scholarship eligibility or renewal.

2. No state institution of higher education or private college, shall do any of the following:
 - A. Provide a prospective student-athlete who intends to participate in intercollegiate athletics with compensation in relation to the prospective student-athlete's name, image, or likeness;
 - B. Prevent a student-athlete who resides in this state and participates in intercollegiate athletics from obtaining professional representation in relation to contracts or legal matters regarding opportunities to be compensated for use of the student-athlete's name, image, or likeness;
 - C. Interfere with or prevent a student-athlete from fully participating in intercollegiate athletics because the student-athlete obtains professional representation in relation to contracts or legal matters regarding opportunities to earn compensation for use of the student-athlete's name, image, or likeness.
3. A scholarship from a state institution of higher education or private college at which a student-athlete is enrolled is not compensation for use of the student-athlete's name, image, or likeness for purposes of this executive order. No state institution of higher education or private college shall revoke or reduce a scholarship as a result of a student-athlete earning compensation for use of the student-athlete's name, image, or likeness if the student-athlete earns that compensation in accordance with this executive order.
4. A contract between a student-athlete and a state institution of higher education's or private college shall not prevent the student-athlete from using the student-athlete's name, image, or likeness for a commercial purpose when the student-athlete is not engaged in official team activities.
5. A student-athlete shall not enter into a contract providing compensation to the student-athlete for use of the student-athlete's name, image, or likeness that requires the student-athlete to display a sponsor's product, or otherwise advertise for a sponsor, during official team activities or any other time if that requirement is in conflict with a provision of a contract to which a state institution of higher education or private college is a party.
6. A student-athlete who intends to enter into a verbal or written contract providing compensation to the student-athlete for use of the student-athlete's name, image, or likeness shall disclose the proposed contract to an official of the state institution of higher education or private college for review by the institution or college. The institution or college shall designate an official to whom the student-athlete is to disclose the proposed contract.

7. If a state institution of higher education or private college identifies a conflict between the proposed verbal or written contract and any existing provisions of a contract to which the institution or college is a party, the institution or college shall communicate to the student-athlete the relevant contract provision that is in conflict. The student-athlete shall not enter into the proposed contract, but the student-athlete may negotiate a revision to the proposed contract to avoid the conflict. The revised proposed contract is subject to review by the institution or college to ensure compliance with this executive order.
8. A state institution of higher education or private college may establish reasonable policies or standards to address a student-athlete's failure to provide the disclosure required under this executive order or any other failure to comply with the requirements of this executive order.
9. A state institution of higher education, private college, athletic association, conference, or other group or organization with authority over intercollegiate athletics may prohibit a student-athlete who participates in intercollegiate athletics from entering into a contract providing compensation to the student-athlete for use of the student-athlete's name, image, or likeness if under the contract the student-athlete's name, image, or likeness is associated with any of the following:
 - A. Any company or brand that manufactures, markets, sells, or is associated with a controlled substance, marijuana product, medical marijuana product, alcoholic product, tobacco product, electronic smoking device, vapor product, or product or device that consists of or contains nicotine that can be ingested into the body;
 - B. Any medical marijuana cultivator, processor, laboratory, or retail dispensary licensed under Chapter 3796 of the Revised Code or under the laws of another state;
 - C. Any business engaged in the sale, rental, or exhibition for any form of consideration of adult entertainment that is characterized by an emphasis on the exposure or display of sexual activity;
 - D. Any casino or entity that sponsors or promotes gambling activities;
 - E. Any other category of companies, brands, or types of contracts that are similar to those described in this executive order that the institution or college communicates to the student-athlete before the student-athlete enrolls at the institution or college or 30 days after this executive order is in effect if currently enrolled.
10. Nothing in this executive order does any of the following:
 - A. Requires a state institution of higher education, private college, athletic association, conference, or other group or organization with authority over

intercollegiate athletics to identify, create, facilitate, negotiate, or otherwise enable opportunities for a student-athlete to earn compensation for use of the student-athlete's name, image, or likeness;

- B. Establishes or grants to a student-athlete any right to use the name, trademarks, services marks, logos, symbols, or any other intellectual property, regardless of whether the intellectual property is registered with the appropriate authority, that belong to a state institution of higher education, private college, athletic association, conference, or other group or organization with authority over intercollegiate athletics, to further the student-athlete's opportunities to earn compensation for use of the student-athlete's name, image, or likeness;
 - C. Limits the rights of a state institution of higher education or private college to establish and enforce any of the following:
 - i. Academic standards, requirements, regulations, or obligations for its student-athletes;
 - ii. Team rules of conduct or other rules of conduct;
 - iii. Standards or policies regarding the governance or operation of or participation in intercollegiate varsity athletics;
 - iv. Disciplinary rules and standards generally applicable to all student-athletes of the institution or college.
11. The use of an "athlete agent" for purposes of assisting with contracts for compensation for the student-athlete's name, image, and likeness shall conform to R.C. Chapter 4771 and comply with the Sports Agent Responsibility and Trust Act established in 15 U.S.C. Section 7801, et seq.
12. For purposes of this order:
- A. "Athletic authority" means any athletic association, conference, or other group or organization with authority over intercollegiate athletic programs, including but not limited to the National Collegiate Athletic Association and the National Junior College Athletic Association;
 - B. "Compensation" means any form of payment or remuneration, including but not limited to cash, gifts, in-kind items of value, social media compensation, payments for licensing or use of publicity rights, payments for other intellectual or intangible property rights under federal or state law, and any other form of payment or remuneration; It does not mean:
 - i. Educational expenses or any financial aid, benefits, or awards provided to a student-athlete in accordance with rules of an athletic association;

- ii. Federal or state grants or scholarships;
 - iii. Payment of wages and benefits at a rate commensurate with prevailing rate for similar work in the locality of the institution to a student-athlete for work actually performed other than for athletic ability or participation in intercollegiate athletics;
- C. "Image" means a picture of the student-athlete;
- D. "Student-athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, an intercollegiate athletics program at a postsecondary educational institution, but does not include for a particular sport an individual who is permanently ineligible to participate in that particular intercollegiate sport;
- E. "Likeness" means a physical, digital, or other depiction or representation of the student-athlete;
- F. "Name" means the first name, last name, or nickname of the student-athlete when used in a context that reasonably identifies the student-athlete with particularity;
- G. "College" or "University" means any postsecondary educational institution located in the State of Ohio;
- H. "State institution of higher education" has the same meaning as in section 3345.011 of the Revised Code;
- I. "Private college" has the same meaning as in section 3365.01 of the Revised Code and receives discretionary funding from the state.
13. Nothing in this order is intended to interfere with any state institution of higher education or private college's academic freedom and/or educational independence from State government. Nothing in this order is intended to interfere with or be contrary to any statutory law, any court decision, or any arbitration decision. Nothing in this order is intended to convey any private right of action on any person for violation of this executive order. Nothing in this executive order is intended to waive any sovereign immunity of any State institution of higher education. Nothing in this order is or should be construed as a consent to be sued in any court including federal court by any State institution of higher education.
14. This Order shall remain in effect until superseded by state or federal law.

I signed this Executive Order on June 28, 2021 in Columbus, Ohio and it will not expire unless it is rescinded.


Mike DeWine, Governor

ATTEST:

Frank LaRose, Secretary of State

