

2026 National Conference on Special Needs Planning and Special Needs Trusts	
Name, Image, and Likeness and Public Benefits	
Right of Publicity, Substantial Gainful Activity, and Special Needs Trust Planning	
	Travis Finchum, Esq., Special Needs Lawyers, PA
	Reilly Morrison, Esq., CTFA, Southeastern Trust Company
	Michael Pierce, Esq., University of Pittsburgh

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The Right of Publicity

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The Right of Publicity

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The Right of Publicity



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The Right of Publicity



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The Right of Publicity



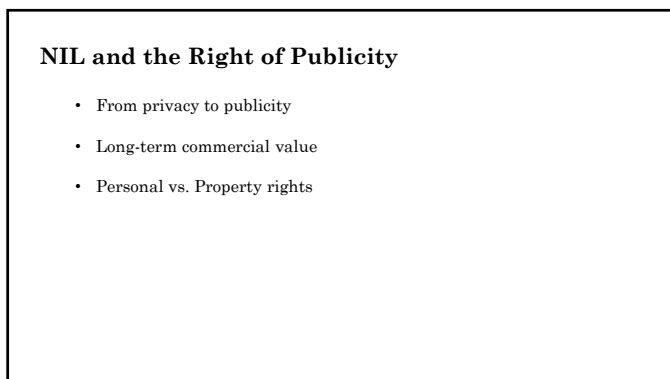
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Name, Image, and Likeness... AND

- Name, nickname, likeness (whether drawn or computer-generated), appearances, image and portrayals (whether photographed, filmed or otherwise), persona, performance, trademarks, right of publicity, biographical information, jersey number, statistics, data, voice, testimonials, endorsements, initials, facsimile or original autograph/signature or other attributes or indicia of persona, including as any of the foregoing may be generated by artificial intelligence

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NIL in Collegiate Athletics

- Amateurism



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NIL in Collegiate Athletics

- Amateurism



- *Post House*



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NIL ≠ 0

Types of NIL Assets and Income in Collegiate Athletics

- License fees – revenue share and third-party
- Endorsements
- Royalties (passive)
- Appearance fees (earned)
- Loss of Value insurance

*Sophisticated clients

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What does NIL have to do with Special Needs Planning and Special Needs Trusts?

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What does NIL have to do with Special Needs Planning and Special Needs Trusts?



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Not Just for College Athletes



Jared Stancil



Amy Bockerstette



Tatyana McFadden

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Not Just for Athletes



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Not Just for Athletes



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“Influencers” making money



You Tube Partner Program – Early Access

- 500 subscribers
- 3 qualified uploads AND
- 3,000 qualified watch hours or 3 Million public short views

Full Monetization (Ad and Premium Revenue)

- 1,000 subscribers
- 4,000 watch hours or 10 M public short views

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“Influencers” making money



Instagram Professional Account

- 10,000 followers

Sell sponsored content, brand deals, subscriptions

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“Influencers” making money



TikTok – Pulse

- 100k followers
- Content in top 4% in any day

Creator Rewards

- 10k followers
- Receive 100k views in last 30 days
- 1 minute or more videos

\$0.40 to \$1.00 per 1,000 qualified views

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The earned/unearned divide

EARNED INCOME

\$65

monthly exclusion — then one-half of the remainder is excluded as well

UNEARNED INCOME

\$20

general exclusion only — the rest offsets the benefit dollar for dollar

The same NIL dollars produce materially different benefit outcomes depending on how they are characterized.

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Characterization turns on the nature of the involvement

SERVICE-BASED → likely earned

- Coaching at a camp
- Paid appearances
- Scheduled social media posts

PASSIVE → likely royalty

- Licensing or merchandising the NIL
- Residual copyright material

Trade or business? Five factors decide whether it becomes Net Earnings from Self-Employment (NESA)

Holding oneself out as a provider

Intent to produce income

Ongoing and regular participation

Third-party customer relationship

Profit motivation

NESE = gross income from the business less allowable deductions.

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Royalties: two sections, one rule

SI 00830.510

Royalties are “compensation paid to the owner for the use of property, usually copyrighted material (e.g., books, music, or art) or natural resources” — placed in the unearned income series.

SI 00820.450

Supplies the exceptions that move royalties into earned income:

- Received as part of a trade or business
- Received in connection with any publication of the individual’s own work — a manuscript, magazine article, or artwork

The expense rule runs backwards. Expenses incurred in obtaining royalty income are deductible where the royalty is unearned — but not where it is treated as earned.

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Honoraria, appearance fees, and in-kind pay

Honorarium: an honorary or free gift, reward, or donation provided gratuitously for services rendered, with no legal obligation to pay.

EARNED

Payment for the service itself.

UNEARNED

Any other payment in cash or in kind connected with the service, to the extent it exceeds the individual’s expenses.

Do not reach for ISM. Free apparel, equipment, or travel supplied by a sponsor is not in-kind support and maintenance. It will likely be treated as “other in-kind income,” valued at current market value.

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Everything sorts along one spectrum

PROPERTY SIDE	CONTESTED	SERVICES SIDE
Default: unearned — royalty	Earned where regular	Default: earned
Merchandising, trading card, and video game licensing Group licensing pool distributions Royalty paid by an operating entity	Sponsored posts and endorsements	Coaching, training, camps — NESE or wages Platform content monetization — NESE Affiliate and referral codes — NESE Appearance fees and speaking — honorarium split

← toward property: absence of regularity or profit motive · another party operates the business

→ toward services: operating as a trade or business · regularity and holding out · an employment relationship · a regular circuit

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Assigning NIL to a Special Needs Trust

- Irrevocability**
 A legally assignable payment assigned to a trust is income to the beneficiary “unless an SSI income exclusion applies or the assignment is irrevocable.” A revocable assignment counts exactly as though it had never been made — and the rule applies whether the income stream or the underlying right is assigned.
- The non-assignable payment bar**
 In an NIL matter the bar is usually contractual, not statutory. Anti-assignment clauses are common boilerplate in licensing, collective, and endorsement agreements. Review the underlying agreements before the assignment is papered.
- Payback and entity placement**
 Assignment to a first-party trust subjects the rights to the Medicaid payback. Whether there is anything to reach turns on state law: if the right of publicity is not descendible, it ends at death and no remainder interest exists. Royalties already collected into the trust remain corpus, subject to payback in the ordinary course.

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Scenario One — Jane Doe

THE FACTS

An 18-year-old with Down syndrome. Social media accounts and a YouTube channel show her golfing with her father and competing in adaptive opens and pro-ams.

Jane treats golf as a hobby. She shows up and plays; she has no involvement in production, scheduling, promotion, or the business side. Her father films, edits, and schedules.

Apparel and equipment arrangements give her free gear in exchange for featuring and promoting it.

PLANNING QUESTIONS

- How might the accounts and channel be structured, and how would each structure affect the treatment of income?
- How might Jane’s involvement amount to work for SGA purposes?
- How might the apparel and equipment arrangements affect eligibility for, or the amount of, public benefits?

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Scenario Two — John Doe

THE FACTS

A junior running back at a top-10 program. A one-year \$2M revenue-sharing agreement with the school, plus a collective/dealership arrangement giving him use of a car for his NIL. School single-season rushing records as a sophomore; projected top-10 draft pick; injury insurance in place. He has bought homes for parents, both sets of grandparents, and his sister's family — all titled in his name. A hobby YouTube channel streams him playing football video games.

A motorcycle accident leaves him paralyzed from the waist down. He keeps producing videos; athletes and celebrities appear as guests, and speaking and television offers follow.

PLANNING QUESTIONS

- 1 What issues arise from the contracts and arrangements already in place before the accident?
- 2 How is YouTube income treated if John manages and edits the channel himself?
- 3 What planning opportunities exist for the channel, speaking engagements, television, and future signed-memorabilia income?
