



# Due Process Guidelines for the Arbitration of Disputes Over Sports Participation and Name, Image, and Likeness<sup>1</sup>

## Challenges for Arbitration Programs<sup>2</sup> to Resolve Athlete Participation Disputes

Arbitration of athlete participation disputes presents challenges, particularly for athletes involved with sports organizations or governing bodies (collectively, “sports organizations”). Some of these athletes may lack a unified representative group to advocate for their interests or to contribute to the development of necessary arbitration programs. Even where certain sports organizations have established athlete representative groups to address this gap and to foster fairness in the arbitration process, it is crucial for these groups to independently access information about the arbitration procedures to ensure that athlete representative groups can make well-informed decisions regarding the requirements and intricacies of the arbitration process.

## Challenges for Arbitration Programs to Resolve NIL Disputes

Arbitration of Name, Image, and Likeness (NIL) disputes poses challenges for many athletes and other parties involved in NIL deals, as a significant portion may lack familiarity with legal proceedings and terminology. The arbitration demand and related communications should be crafted in a clear and accessible manner, recognizing that athletes may not have any prior experience with litigation or arbitration processes.

In particular, athletes with no prior arbitration experience may not understand that arbitration results in an award that is final and binding. Communications within the arbitration process should provide information about the process, the importance of participating in the proceedings, and the fact that failure to do so can result in a binding award, as to which there are very limited grounds under the Federal Arbitration Act and some state laws to vacate, modify, or correct. In addition, arbitration’s more informal characteristics should be emphasized as well as the athlete’s opportunity to enter into meaningful discussions with the sports organization regarding possible settlement.

## Due Process Guidelines

**Fundamentally Fair Process** – All parties are entitled to a fundamentally fair arbitration process. As embodiments of fundamental fairness, these Guidelines should be observed in structuring Arbitration Programs for disputes over an athlete’s (a) sports participation, and (b) NIL agreements.

**Access to Information about Arbitration Programs** – Each sports organization should undertake reasonable measures to provide athletes with full and accurate information regarding the organization’s Arbitration Programs. Such measures should include (1) clear and adequate notice regarding the Arbitration Program and arbitration provisions, and (2) reasonable means by which the athlete may obtain additional information regarding the Arbitration Program. After a

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<sup>1</sup> These guidelines are not meant to address those athletes who compete in professional leagues or as part of similar sports organizations that have their own arbitration guidelines and processes.

<sup>2</sup> These guidelines use the term “arbitration program” broadly to include both established arbitration programs as well as arbitration pursuant to contractual arbitration provisions.



dispute arises, athletes should have access to all information necessary for their effective participation in any arbitration regarding their sports participation or NIL dispute.

**Arbitrator Selection** – Arbitration rules and procedures should provide for an impartial, mutual participation method for selecting an impartial arbitrator or arbitrators. We recognize the right of athletes and sports organizations to jointly select an arbitrator, one whom both parties trust as most promising to bring finality and to withstand judicial scrutiny. Regardless of their prior experience, arbitrators on the roster must be independent of bias toward either party, and arbitrators should decline cases where they believe the procedure lacks the requisite due process.

**Access to Information** – One of the advantages of arbitration is that in most cases, less time and money is spent in pre-trial discovery. Adequate but limited pre-trial discovery is to be encouraged, and athletes and their representatives should have access to all information reasonably relevant to arbitration of their claims. The athletes and their representatives should also have reasonable access to all such information and documentation during the hearing.

**Arbitration Hearing Location** – In sport participation dispute cases in which there will be an in-person arbitration hearing, the hearing locale by default should be the location of the athlete or athlete’s representative so that necessary travel time and associated costs are not a burden or disadvantageous to the athlete. The parties, however, can agree on a different locale. For NIL disputes, the athlete may choose to have the hearing in their city of residence or the city where their school is located. If the parties dispute the hearing locale, the arbitrator(s) or the arbitration provider should determine the locale.

**Arbitration Confidentiality** – Arbitration Programs should consider maintaining the confidentiality of the athlete’s name in sports participation or NIL disputes. This would keep private the athlete’s identity outside of the arbitration proceedings, while still encouraging equity in dealmaking. Additionally, athletes are encouraged to promptly report any NIL dispute or NIL arbitration decision to the relevant sports organization. The voluntary report should include, if not in violation of any contractual obligations, a clear and concise summary of the dispute, details about the arbitration process, and the prevailing party or outline of the final decision. This voluntary reporting is designed to help the sports organization facilitate transparency and accountability in the resolution of NIL disputes if it chooses to publish these reports.

**Arbitration Costs** – Typically, athletes do not have the same level of financial resources as most sports organizations or other parties involved in NIL deals. In some instances, athletes may not be able to afford to pursue their claims if they are responsible for paying an arbitration provider’s administrative fees and some or all of the arbitrator’s or panel’s compensation. Therefore, arbitration programs applicable to sports participation and NIL disputes should shift all arbitration fees, costs, and expenses, other than a nominal filing fee to submit an arbitration demand, from the athlete to the sports organization or other NIL parties.

**Arbitration Timeliness** – Arbitration proceedings and hearings should occur within a reasonable time, without undue delay. Arbitration Programs for sports participation and NIL disputes should provide specific, reasonable time periods for each step in the arbitration process and, where necessary, set forth default procedures in the event a party fails to participate in the process after reasonable notice.



**Arbitration Rules and Procedures** – Arbitration Programs for sports participation and NIL disputes involving athletes should specify or incorporate rules and procedures that provide the arbitrator(s) with the following authority: the arbitrator must be bound by applicable state and federal laws, as well as the parties’ agreements and the statutes, regulations, and rules of procedure of the designating sports organization, provided those organizational statutes, regulations, and rules do not conflict with any applicable state or federal laws. Where conflicts arise, state and federal laws shall prevail. The arbitrator shall have the authority to decide arbitrability issues; determine which rules or procedures govern the arbitration; determine the time and place of the hearing; allow for reasonable discovery; issue subpoenas; maintain order, confidentiality, and privacy during and after hearings; rule on evidentiary issues; conclude the hearing and manage post-hearing submissions; and issue a binding award in accordance with applicable laws.

**Mediation** – Arbitration Programs for sports participation and NIL disputes involving athletes should include mediation as a part of the dispute resolution process, both before a party initiates an arbitration and during an arbitration, as it provides the parties with an opportunity to attempt to reach a mutual settlement of their dispute before a final and binding arbitration award.



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These Guidelines were prepared by the American Arbitration Association, Inc. in conjunction with, and with the support of, its Sports Advisory Committee. Those Advisory Committee members are listed below. Some members were designated by their respective organizations, but the Guidelines reflect their personal views and should not be construed as representing the policy of the designating organizations.

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