



Feds Announce that NIL Payments Will Not Be Subject to Title IX Gender Equity Requirements – What Your School Needs to Know

Insights

2.18.25

President Trump's new administration just clarified that Title IX equity principles should not apply to Name, Image, and Likeness (NIL) payments, a decision that could have a significant impact on your college athletics program. On February 12, the U.S. Department of Education's Office for Civil Rights (OCR) announced that it had rescinded the Title IX guidance on NIL that had been issued in the waning days of the Biden administration, which had tried to establish ground rules requiring equal payment to male and female athletes. What does your college, university, or business need to know about this announcement and its impact on college athletics?

What Was President Biden's Guidance?

Days before the inauguration, President Biden's Department of Education's Office of Civil Rights (OCR) issued a nine-page "fact sheet" that advised schools to ensure equal NIL opportunities and resources for both male and female college athletes. **It stated that NIL compensation paid to college athletes should receive the same treatment as the existing gender-equity standards for athletic scholarships.**

- The impact would mean that colleges and universities would have to classify NIL compensation as **athletic financial assistance**, placing it on the same level as grant-in-aid and cost-of-attendance funds.
- Additionally, colleges and universities would need to ensure that **both genders have equal access** to workshops, networking opportunities, educational resources about NIL rights, legal obligations, financial management, publicity and marketing opportunities, and any other subject they may provide regarding NIL agreements.
- They would also need to ensure that they are **equally notifying all athletes** about NIL opportunities.
- Finally, the OCR guidance signaled that the recent **\$2.8 billion dollar settlement** in House v. NCAA, which would allow for a revenue-sharing plan with schools and student-athletes, would be considered by the OCR in determining whether the total amount of athletic financial assistance made available by the school complied with Title IX.

What President Trump's Policy Reversal Signifies

In a brief press release, the OCR stated that President Biden's NIL guidance was overly burdensome and extended well past the scope of the purpose of agency guidance. Further, it stated that Title IX is silent on the issue of the proper method for revenue-sharing athletics programs to distribute funds to student-athletes.

In closing, the press release asserted that any claim that Title IX requires colleges and universities to proportionately distribute NIL funds based on gender equity considerations requires clear legal authority – which does not exist – and therefore rescinded the Biden administration's NIL guidance.

How Does This Impact Colleges and Universities?

It is important to note that an agency "fact sheet," such as the one issued by President Biden's OCR, is not binding law and serves as mere guidance on issues. They are generally regarded as having persuasive effect when reviewed in conjunction with existing statutes and regulations.

However, the rescission of this guidance will still likely have an impact on college athletics as schools are preparing to enter into NIL agreements directly with their athletes and questions remain regarding the Title IX implications of these NIL deals.

Pending final approval of the [House v. NCAA proposed settlement agreement](#), which will be heard on April 7, schools will be able to directly share revenue with their athletes for the first time ever. This will result in a dramatic shift in the landscape of college athletics, which for so long has fought to maintain the athletes amateur status in their sports.

How Will Funds Be Distributed?

The impact of Title IX as it pertains to how these schools will choose to distribute funds to their athletes needs to be at the forefront for colleges and universities. It is estimated that approximately 90% of the proposed settlement will be distributed to football and men's basketball players, 5% to women's basketball players, and 5% to other athletes such as those who play Olympic sports.

The proposed settlement itself does not suggest the appropriate proportionate method for how schools should distribute their revenue with athletes, nor does it address Title IX compliance. There is also disagreement with whether the proposed agreement releases Title IX claims, which would prevent female athletes from bringing claims later alleging disproportionate revenue sharing with female athletes.

Best Practices

Although the issue of revenue sharing under Title IX remains in flux, colleges and university should still continue to ensure equitable and proportionate access between genders to workshops, networking opportunities, seminars, training, educational resources about NIL rights, legal obligations, financial management, and any other subject they may provide regarding NIL

agreements. You should make such resources available at times that do not prioritize one gender over the other, accommodate the diverse schedules of different sports teams, and generally cover comparable topics at regular intervals.

If sport-specific resources are offered, schools should ensure that these materials are distributed equally between men's and women's sports. Similarly, you should regularly monitor access to support staff to ensure that neither gender is prioritized over the other.

What's Next?

It appears likely that these Title IX implications of the *House* settlement will eventually be the subject to legal action, which might eventually lead to clear guidance on the revenue-sharing and Title IX issues. Until then, work with your FP counsel to determine your best course of action.

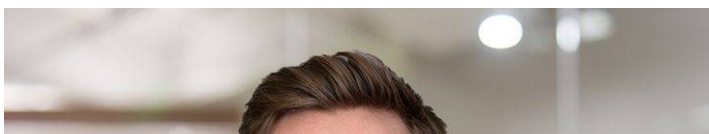
Conclusion

For questions regarding NIL and Title IX, feel free to reach out to your Fisher Phillips attorney, the authors of this Insight, another member of our [Sports Industry Group](#), or any member of the [Higher Ed Team](#). We'll continue to monitor the status of developing NIL and Title IX legislation and will provide updates as warranted, so make sure you are signed up for [Fisher Phillips' Insight service](#) to receive the latest news directly in your inbox.

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Rob Dickson
Associate
908.516.1029
[Email](#)





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Stephanie Reynolds

Partner
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