



# Understanding the Changing Landscape of College Athletics and NIL

# Speakers



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# Agenda

## Module 1

- Name, Image, Likeness Developments

## Module 2

- Hot Topics in Title IX

## Module 3

- Grab Bag!

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# **Name, Image, Likeness (NIL) Developments**

# *In re College Athlete NIL Litigation*

- “The *House* Settlement”
- Three cases:
  - *House v. NCAA* (challenging rules related to broadcasts and NIL)
  - *Hubbard v. NCAA* (seeking *Alston* back payments for plaintiffs)
  - *Carter v. NCAA* (challenging anti-compensation rules)
- Three primary components of proposed settlement:
  - Payment of back damages for claims relating to NIL, academic-related awards, and other benefits
  - Increased benefits from institutions to student-athletes, *e.g.*, direct NIL licensing agreements between student-athletes and institutions
  - Elimination of scholarship limits in favor of roster limits

# The Court's Concerns and Parties' Responses

- Sept. 5, 2024: Approval Hearing
  - Restrictions on NIL compensation originating from boosters and NIL Collectives
  - Insufficient definitions of “booster” and what constitutes pay-for-play inducements
- Sept. 26, 2024: Amended Settlement Documents
  - Defines who can and cannot enter into NIL deals
  - Gives NCAA latitude to craft rules
- Oct. 7, 2024: Preliminary Approval

# The Final Approval Hearing & Responsive Filings

- Objections & telegraphed concerns?
  - Roster limits
  - Application to future athletes
  - *“Basically, I think it is a good settlement — don’t quote me. I think it is worth pursuing and I think some of these things could be fixed if people tried to fix them, and that it would be worth their while to try to fix them.”*
- Parties’ Response
  - Roster limits are a positive (and can’t be unwound)
  - Future class members’ opportunity to object

# What's Next?

- NCAA Settlement Implementation Committee
  - Draft new/clarify existing rules
  - Develop digital platform for the reporting and measurement of payments made to student-athletes by their institutions to ensure compliance with the cap
  - Create system to ensure that third-party NIL deals are legitimate deals intended to advance a valid business purpose.
  - Form a new entity to enforce rules
- Keep an eye on: South Dakota lawsuit



# Hot Topics in Title IX

# Gender Equity & NIL

~~Fact Sheet: Ensuring Equal Opportunity Based on Sex in School Athletic Programs in the Context of Name, Image, and Likeness (NIL) Activities~~

“Without a credible legal justification, the Biden Administration claimed that NIL agreements between schools and student athletes are akin to financial aid and must, therefore, be proportionately distributed between male and female athletes under Title IX. Enacted over 50 years ago, Title IX says nothing about how revenue-generating athletics programs should allocate compensation among student athletes. The claim that Title IX forces schools and colleges to distribute student-athlete revenues proportionately based on gender equity considerations is sweeping and would require clear legal authority to support it. That does not exist. Accordingly, the Biden NIL guidance is rescinded.”

# Gender Equity Lawsuits

- *Niblock v. University of Kentucky*
  - Decision applying third prong for Title IX compliance
- *Fisk v. San Diego State University*
  - Disparate treatment; disproportionate financial assistance
- *Schroeder et al v. University of Oregon*
  - Includes claims tied to NIL-related compensation and UO's relationship with its collective

# Transgender Athletes

## Keeping Men Out of Women's Sports Executive Order

“[I]t is the policy of the United States to rescind all funds from educational programs that deprive women and girls of fair athletic opportunities, which results in the endangerment, humiliation, and silencing of women and girls and deprives them of privacy. It shall also be the policy of the United States to oppose male competitive participation in women's sports more broadly, as a matter of safety, fairness, dignity, and truth.”

# Transgender Athletes

## NCAA Participation Policy for Transgender Student-Athletes

“The participation policy for transgender student-athletes . . . does not permit competition by an individual assigned male at birth to compete on a women’s team. The policy is clear that there are no waivers available, and students assigned male at birth may not compete on a women’s team with amended birth certificates or other forms of ID. Student-athletes assigned male at birth may not receive athletic scholarships that are otherwise designated for women. If competition occurs, the team will be considered a mixed team and not eligible to compete against women’s teams. This also applies to a student-athlete assigned male at birth competing as an individual against women. Such individual competition is not permitted under the policy.”

# Transgender Athletes

- ED “will return to enforcing Title IX protections on the basis of biological sex in schools and on campuses”
- OCR-directed investigations
  - San Jose State University
  - University of Pennsylvania
  - Massachusetts Interscholastic Athletic Association
- “Title IX Special Investigations Team”
  - ED Office for Civil Rights investigators and attorneys
  - DOJ Civil Rights Division attorneys
  - ED Office of General Counsel attorneys
  - ED Student Privacy Policy Office staff; FSA Enforcement investigator

# Transgender Athletes

- HHS OCR Compliance Reviews
  - Maine Department of Education, Maine Principals' Association, Greely High School
- Lawsuits
  - *U.S. v. State of Maine*
    - California and Minnesota “on notice”
  - *Estabrook v. Ivy League Council of Presidents*
  - *Tirrell v. Edelblut*
    - Challenging N.H. law banning transgender girls from participating in school sports
    - Request to expand to challenge EOs

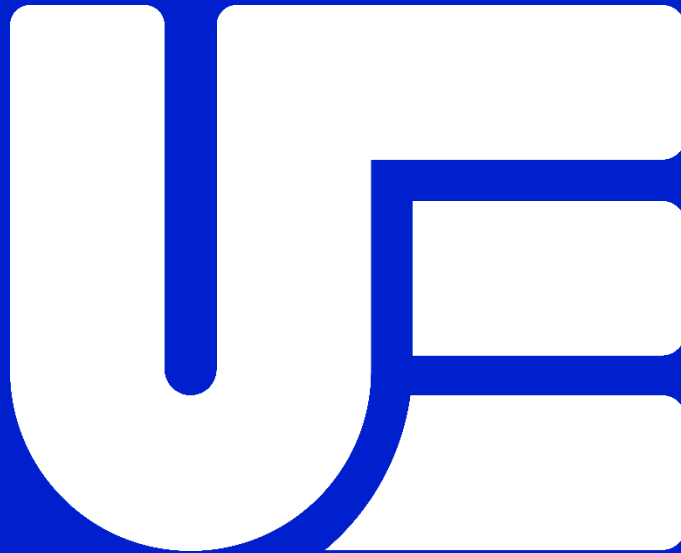


# Grab Bag!

# Legislation & Lawsuits

- Protecting Student Athletes' Economic Freedom Act
- NIL legislation?
  - Discussion draft (Ted Cruz)
  - Power 4 stakeholders lobbying
- (Other) Antitrust lawsuits
  - *Robinson v. NCAA*
  - *Choh v. Brown University*
  - *Cornelio v. NCAA*
- Employment/labor
  - *Johnson v. NCAA*

# Stay Connected



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