

OCR Issues Guidelines on Title IX's Application to NIL Payments

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As the sun sets on the Biden administration, the Office for Civil Rights of the U.S. Department of Education (OCR) provided a new [Fact Sheet](#) on Jan. 16, 2025, to “clarify” how Title IX will apply to universities’ direct payments to student-athletes for use of their names, images and likenesses (NIL) under the proposed *House* vs. *NCAA* settlement.

The Fact Sheet is consistent with decades of prior OCR guidance. It is not surprising that “compensation from a school for use of a student-athlete’s NIL” under the *House* settlement will qualify as “athletic financial assistance” subject to Title IX. It is also not surprising that OCR reminded schools that they retain responsibility to treat male and female student-athletes equitably even when NIL payments are made by affiliated third parties like collectives.

The key, as always, to Title IX compliance is in the implementation – the details of how schools are implementing their *House* structures.

Title IX Applies to Schools’ *House* Payments

While OCR inaccurately mingled two different Title IX standards applicable to athletic financial assistance on page 4 of the Fact Sheet (which confused many commentators on social media), OCR ultimately set forth the standard in the applicable Section 4 that is consistent with Title IX regulations dating back to 1979:

“When a school provides athletic financial assistance in forms other than scholarships or grants, including compensation for the use of a student-athlete’s NIL, such assistance also must be made proportionately available to male and female athletes.” (Emphasis added.)

This is not necessarily a dollar-for-dollar proportionality test. There may be legitimate non-discriminatory justifications to explain differences in who qualifies for *House* payments as well as their amounts, as long as a school’s *House* payment structure provides for equitable availability.

Implementation Is Key

The pathway for schools to implement *House* consistently with federal civil rights laws remains

available for those universities that choose to take it.

The keys for schools' Title IX-compliant implementation will remain implementing an equitable NIL marketing strategy and structuring good-faith NIL valuations, as many schools have begun to do. Of course, there are many nuances to the legal implementation.

Conclusion

Because the new Fact Sheet doesn't change long-standing Title IX guidance, this particular Biden administration action is unlikely to affect Judge Claudia Wilken's approval of the *House* settlement itself, and nothing would be accomplished if this Fact Sheet were withdrawn by OCR next week because it merely reiterates existing Title IX concepts. Of course, the incoming administration or Congress may take a new legal approach to this evolving area of our industry.

Lawsuits are inevitable over Title IX's application to schools' *House* implementation strategies. Developing Title IX-compliant NIL and *House* frameworks now are essential for future defense strategies.

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