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Webinar

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# Preparing for Kick Off: Athletics Issues for 2025-2026

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# Agenda

- Introduction
- NCAA, Legislation, and Litigation Updates
- Gender Equity
- NIL Contracts and Best Practices
- Audience Q&A and Closing Remarks



# NCAA Update

# Litigation Update - *House* and NIL

*House* Appeals

Fontenot

Injunctive class members notices

# Compensation and Oversight

- Range of compensation
- Third-party NIL review
- Cap anticircumvention rules
- College Sports Commission and NCAA delineation (re: enforcement)

# College Sports Commission

- What is it?
- Guidance
- Enforcement
- Arbitration

# Direct Benefits under *House*

- CAPS platform
- Settlement and injunction (and the cap) apply to student-athlete benefits not previously allowed by NCAA rules.
- Financial aid can be maxed to anyone on a roster.
- Direct NIL institutional payments can be given to student-athletes.

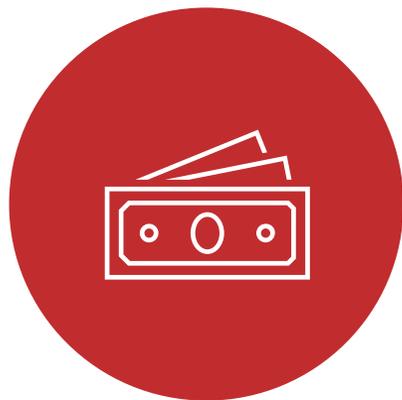


# Legislation

# Overview of the SCORE Act

- Introduced in July 2025, the SCORE Act aims to establish a uniform national framework for college athlete compensation.
- It addresses the evolving NIL landscape by codifying athletes' rights to earn from endorsements while attempting to preserve college sports traditions.
- The Act seeks to replace varied state NIL laws with a single federal standard.

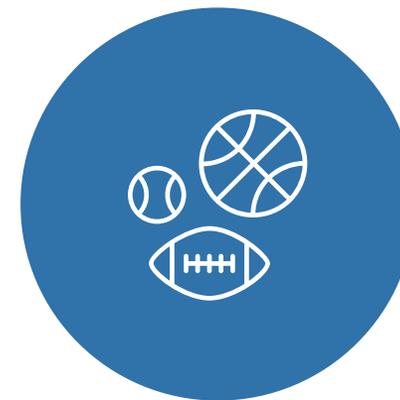
# Implications and Goals of the SCORE Act



THE SCORE ACT AIMS TO  
BALANCE ATHLETE  
COMPENSATION WITH THE  
INTEGRITY OF COLLEGE  
SPORTS.



IT PROVIDES CLARITY AND  
CONSISTENCY ACROSS  
STATES AND INSTITUTIONS.



THE ACT ALSO SEEKS TO  
ENSURE FAIR TREATMENT  
AND OPPORTUNITIES FOR  
ALL STUDENT-ATHLETES.

# Key Provisions of the SCORE Act

- Codifies athletes' rights to earn money from endorsements.
- Introduces guardrails to maintain the traditional college sports model.
- Addresses athlete employment status and booster-funded collectives.
- Supports sustainability of non-revenue sports.

# SCORE Act Criticisms

- Long-Term Athlete Employment Rights
- Equity in NIL Opportunities
- Enforcement Mechanisms and NCAA Accountability
- Impact on Smaller Schools and Conferences
- Booster Influence and Transparency
- State-Level Consumer Protections

# Saving College Sports Executive Order (EO)

## Purpose and Policy

## VALUES

- College sports
- Olympic success
- Federal regulation of college sports
- Balanced use of resources across the program, in support of
  - Educational and developmental benefits
  - Women's sports
  - Non-revenue sports
- Elimination of pay for play inducements by 3<sup>rd</sup> party market



# Saving College Sports EO (cont.)

- Protecting scholarship and competitive opportunities for women and non-revenue sports
  - Directs an agency plan 30 days from July 24<sup>th</sup>.
- Student-Athlete Status – Determination as to whether student-athletes should be employees
  - No deadline for Labor and NLRB to issue clarification of status.

# Saving College Sports EO (cont.)

- Whether there should be a federal rule on NIL compensation that preempts state laws on NIL
  - Directs an agency plan 30 days from July 24
- What the antitrust protection should be for NIL compensation to student-athletes
  - Directs AG & FTC determination 60 days from July 24



# Litigation

# Litigation

- Risk of court-mandated changes to amateurism and competitive balance.
- Eligibility litigation
- Cases to watch



# Litigation - NCAA Prize Money Restrictions

*Brantmeier v. NCAA*

**Filed:** March 2024

**Status:** Class Certification Granted

**Claim:** Antitrust - unfair suppression of individual sport athletes' potential earnings (prize money earned in non-NCAA competitions)

**Facts:** UNC student-athlete Reese Brantmeier, a top-ranked collegiate tennis player, was denied amateur status by the NCAA due to accepting prize money at the 2021 U.S. Open in excess of the NCAA's cap of \$10,000 plus actual expenses.

# Litigation - Institutional NIL Deals

*U. of Wisconsin & V.C. Connect v. U. of Miami*

FACTS:

- NIL deal with UW states SA will not play for another school and cannot grant NIL rights to another school. NIL deal contains a condition precedent for final approval of the *House* settlement.
- SA asks UW to enter SA into the transfer portal. UW declines based on the NIL contract language.
- SA disenrolls from UW and announces enrollment in U. of Miami.

# Litigation - Institutional NIL Deals (cont.)

## U. of Wisconsin's legal claims

- Contract validity
- Tortious interference with the NIL contract
- Tampering

## U. of Miami's legal position

- The NIL deal was conditional because *House* had not settled.
- There is no legal foundation for a tampering claim.
- Public policy disfavors constraints on a student-athlete's right to transfer/contract elsewhere (anti-competitive practice).
- The WI court does not have jurisdiction over U. of Miami (based in FL).

# Litigation - Institutional NIL Deals (cont.)

*U. of Wisconsin & V.C. Connect v. U. of Miami*

## LEGAL QUESTIONS

- Enforceability of NIL deals across state lines
- Impact on how NIL deals are structured
- Viability of civil liability claims for contract tampering
- Whether a student-athlete can contract away their right to transfer

Note: Sovereign immunity and public universities

- U. of Miami is a private institution.

# Litigation - Title IX & NIL as Treatment, Benefit, Opportunity and Income

*Schroeder v. U. of Oregon*

**Filed:** Dec. 1, 2023

**Status:** Settlement conference Aug. 26, 2025

**Claims:** Title IX – benefits, financial aid, participation

**Court on U. of OR Mtn to Dismiss:** “But Plaintiffs do not challenge the third-party NIL contracts themselves; they merely allege that one of the ways Plaintiffs are harmed by UO’s discrimination is by receiving less NIL-related training, opportunities, and income. Those ill effects are not irrelevant to Plaintiffs’ claim.”

# Litigation - Title IX & Program Contraction

## *Post-House*

*Myers v. S.F. Austin State U.*

**Filed:** June 30, 2025

**Status:** 5<sup>th</sup> Cir. Appeal of Prelim. Inj.

**Claims:** Title IX effective athletic participation

**Court on granting PI for Plaintiffs:**

- *Loper Bright* doesn't disturb prior cases that relied on *Chevron* – it is undisputed that the TIX statute applies to athletics.
- Under *Kisor*, ED's interpretive guidance of TIX regs is reasonable and does not conflict with Congressional intent.
- SFA must preserve all women's varsity teams while case is pending.



# Gender Equity

# Gender Equity - Title IX State of Play

- Executive Branch policy
- Regulatory enforcement
- Litigation

# Athletic Participation: The “Three-Part Test”

1. Whether participation opportunities for male and female students are provided in numbers **substantially proportionate** to their respective enrollments; or
2. Where the members of one sex have been and are underrepresented among interscholastic or intercollegiate athletes, whether the school can show a **history and continuing practice of program expansion** which is demonstrably responsive to the developing interests and abilities of the members of that sex; or
3. Where the members of one sex are underrepresented among interscholastic or intercollegiate athletes, whether the school can show that the interests and abilities of the members of that sex have been **fully and effectively accommodated by the present program.**

## Athletic Participation (cont.)

- *House* roster caps
- Designated student-athletes
- *Pavia* line of cases – 5<sup>th</sup> year of eligibility

# Athletic Participation – *Niblock v. U. of Kentucky*

- Prong 1: Even if cheer, dance and JV soccer count, the participation gap is 59 to 116 slots .
- Prong 2: One varsity sport added in 25 years is insufficient. Addition of non-NCAA sports do not count towards expansion. UK lacks a continuing expansion plan.
- Prong 3: The survey showed interest, but evidence did not show enough female varsity-level ability.

# Athletic Participation - *Myers v. Stephen F. Austin State U.*

- Prong 1: At the time sports were cut, SFA was not close to substantial compliance (gap estimates between 71 and 245 based on witnesses).
- Prong 2: Failure to brief compliance interpreted as a concession that SFA did not meet this test.
- Prong 3: Lack of local competition/regional popularity does not negate interest of the SFA student body or lack of a survey of interest.

# Athletic Financial Assistance

- Total amount of athletic scholarships and financial assistance is in proportion to the number of male and female athletic participants.
- Title IX does not require the same number of scholarships for male and female athletes or for individual scholarships to be of equal dollar value.
- Institutions can justify disparity with legitimate, nondiscriminatory reasons.
- Presumption that disparity of >1% is a violation. 1998 ED DCL Bowling Green.
- A disproportionate amount of non-grant assistance will also be compared. 1979 ED Policy Interpretation.

# Athletic Financial Assistance (cont.)

- *House* additional payment and benefits
  - Increase in scholarship opportunities
  - Other direct institutional payments or additional benefits to SAs and/or SAs' families not currently permitted or exempted by NCAA rules
  - NIL
  - *Alston* / academic or graduation awards or incentives
- ED on then off NIL Guidance
- EO on Saving College Sports
  - Expanding or preserving scholarships for women's and non-revenue sports
- *Schroeder v. U. of OR* on NIL compensation

# Athletic Financial Assistance – Practical Application

- Individual athlete NIL valuation
- Justify the compensation according to the brand value the SA brings to your institution.
- Examples given:
  - Drives greater interest in seeing games which has potential revenue generation in the form of concessions, parking, campus merch, corporate sponsorships, conference/media payouts
  - Furthers the charitable/educational purpose of public universities
  - Inspires interest in the athletics program for other recruits
  - Fosters alumni/donor engagement
  - Admissions effect

# Athletic Financial Assistance – Practical Application (cont.)

- Similarly situated individuals not student-athletes
- Audience size and engagement (social media following)
- Sport specific reach (local for your campus/geographic reach)
- Demographic reach (age, location, “purchasing power”)
- Athletic reputation: recognition, award, stats
- Campus reputation
- Academic or other campus interests
- Media exposure
- Longevity (incoming freshman versus outgoing senior)
- Demand for the NIL (other third-party deals)

# Athletic Financial Assistance - Practical Application (cont.)

- What will the institution do with NIL compensation valuation over time?
  - Does the analysis still work in/after the post-season?
  - Agreements with services vs. agreements without services
  - Accounting for equity in opportunity for NIL services
  - Annual re-evaluation as longitudinal dataset grows for institutional NIL
- What types of clauses might the institution consider to substantiate NIL compensation?

# Benefits, Treatment, Opportunities

- Publicity
- Support services
- Recruitment [?]
- New category [?]
- Gender equity plan

# Transgender Student-Athlete Participation

## EO 14201: Keeping Men Out of Women's Sports

- Signed February 5, 2025.
- Per the EO, "it is the policy of the United States to rescind all funds from educational programs that deprive women and girls of fair athletic opportunities..."

## NCAA Transgender Participation Policy

- Revised Feb. 6, 2025.
- A student-athlete assigned male at birth would not be allowed to compete on a women's team but may practice on a team consistent with their gender identity and receive all other benefits.
- A student-athlete assigned female at birth who has begun hormone therapy may not compete on a women's team but may practice and receive all other benefits.
- Local, state, and federal legislation supersedes NCAA policy.

# Transgender Student-Athlete Participation (cont.)

- University of Pennsylvania entered a resolution agreement on June 30, 2025, requiring:
  - The University to issue a public statement that it will comply with Title IX;
  - The University to rescind or revise any guidance authorizing male athletes to compete in women's athletics; and
  - The University to review and restore "all individual [r]ecognitions that female athletes earned and would have been given but for the [r]ecognitions being give to male athletes who competed in women's athletics..."
- Wagner College entered a similar agreement on August 1, 2025.
- Quiet defunding of San Jose State University due to participation by women's volleyball transgender student-athlete.

# Transgender Student-Athlete Participation (cont.)

Trends in Resolution Agreement (RA) language:

- RA language tracks EO 14168 and 14201
  - Incl. review and restore records under binary definition
  - Personal and public letters of apology
- RA language tracks with NCAA Transgender Participation Policy focus on competition
- Facilities:
  - Athletic facilities (locker rooms/bathrooms) strictly separated by sex [Brown]
  - All-female locker rooms and showering facilities [Columbia]
  - Separate and comparable facilities like locker rooms and bathrooms [U. Penn/Wagner]

# Transgender Student-Athlete Participation Litigation

- *Gaines v. NCAA* (Filed: Mar. 14, 2024)
  - Claims: Title IX statutory violation by permitting transgender athlete participation
- *DOJ v. CA Dept. of Educ. and CA Interscholastic Federation* (Filed: July 9, 2025)
- *DOJ v. Maine Dept. of Educ.* (Filed: April 16, 2025)
  - Claims: Title IX preempts conflicting state policies
- *Parts v. Swarthmore College & NCAA* (Filed Aug. 14, 2025)
  - Claims: Excluding transgender athlete participation violates Title IX and Pennsylvania state law

# Mental Health - NCAA Mental Health Best Practices

- Create healthy environments that support mental health and promote well-being;
- Establish procedures for identification of student-athletes with mental health symptoms and disorders, including mental health screening tools;
- Create mental health action plans that outline referral pathways of student-athletes to qualified providers; and
- Ensure licensure of providers who oversee and manage student-athlete mental health care

*Information taken from NCAA Mental Health Best Practices: Understanding and Supporting Student-Athlete Mental Health*

# Mental Health (cont.)

- University of Wisconsin lawsuit filed by former women's basketball players related to mental health
- Intersection of mental health and NIL
- Impact of mental health on UNLV quarterback's decision to not participate ahead of the 4-game max



# NIL Contracts and Best Practices

# Contracting In a Post-*House* World

## Understand:

- Schools can now contract directly with a Student-Athlete (SA).
- Revenue sharing vs. NIL rights and related services
- Most universities are contracting for NIL rights, marketing, promotion and/or services.
- Payments count against the cap.

## Consider:

- What rights are you contracting for and who owns the rights?
- What do you want to do with the rights?
- Who else do you want to be able to use the rights?
- What rules and laws do you want to control?
- What conditions do you want to occur before you want the contract to take effect?
- How long will the contract last?
- What happens if things go sideways?
- What if the SA is an international student?

# Key Contracting Issues

## Term and Termination

- Start date
  - 1<sup>st</sup> day of class/practice
  - Issuance of Financial Aid
- End date
  - 1 year anniversary
  - End of sport/Academic yr.
- Early Termination
  - SA enters/declare for transfer portal or draft
  - SA leaves University
  - Violation of University/ NCAA/Conference rules
  - Morals Clause
- SA Termination Rights

# Key Contracting Issues (cont. )

SA is an independent contractor

No Pay for Play

No playing time guarantee

No requirement to use NIL rights/services

SA must maintain eligibility and good conduct

Agreement subject to all NCAA, Conference, University, State & Federal rules and laws

SA cannot use University/Conference IP without permission

# Key Contracting Issues (cont. )

- Compensation
  - Taxes
  - Waiver\*
  - \* *School does not use rights or services*
- Compensation Related Issues
    - Right to offsets
    - Repayment
    - Reductions
    - Liquidated damages
    - Buy-outs

# License to NIL Rights

- Type of rights
- NCAA/Conference
- Marketing, merchandising & promotions
- Historical rights
- Group rights
- NCAA/Conference
- SA carve-outs or restrictions
- Anti-Brand Ambassador language
- SA may refuse conflicting exclusive promotions
- Product category carve outs
- Size of group for group licensing deals
- Brand integrity

# Protect University Licensed NIL Rights

- Ownership
- All deliverables are University property
- Works made for hire
- SA must assign any non-automatically-owned rights
- Can the University sublicense?
- What is the value?

# Other Contracting Issues

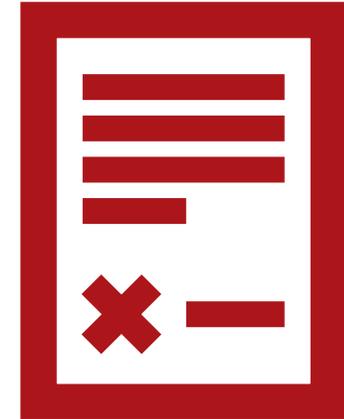
- What if someone else owns the SA's NIL Rights?
- What if the SA has preexisting NIL deals?
- What if the SA wants to pursue 3<sup>rd</sup> party NIL deals?

# Student-Athlete Services

- Types of services
  - Event appearances
  - Social media posts
  - Meet-and-greets
  - Autograph signings (in-person or for University use)
  - Group licensing participation
- Non-specific (e.g., promo services as requested)
- Specific services
- How many?
- What is the value?

# Other Contract Terms

- Survival & Assignment
- Confidentiality
- Includes mandatory state contract terms (Public)
- Dispute Resolution
- Severability
- Representations/Warranties/Covenants
- Impermissible Terms



# Contract Monitoring

- State law requirements
- Conflicts with institutional sponsorships/agreements
- Intellectual Property
- Associated Individuals and Entities
- Third-party vs. Marketing Agent
- Circumvention



# Confidentiality and Public Records



## Confidentiality

Survival Period  
Notice requirement



## Requests for limited purpose disclosures



## Public universities and sunshine laws

Statutory exemptions  
FERPA  
Other public record exemptions



Questions?

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