

Athletics Hot Topics

Higher Education Free Webinar Series

March 13, 2025 at 12:00p.m.

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Disclaimer

- We are not giving legal advice. Consult with your legal counsel regarding how best to address a specific situation.
- We are happy to answer questions about the material and address hypotheticals.
- We have no magic crystal ball, but we'll do our best to make predictions.

Agenda

- *House* Settlement
- NIL
- Title IX Gender Equity
- Transgender Participation in Sport
- NCAA Eligibility
- Student-Athlete Employment
- Future of College Sports



Follow us on X!



The screenshot shows the X profile for BrickerAthletics. The header features a banner image of athletes with the text "Bricker Graydon" in the top left and "@BrickerATHL" in the center. Below the banner is a circular profile picture with a blue and green geometric logo and the word "Athletics" underneath. To the right of the profile picture is an "Edit profile" button. The bio section includes the name "BrickerAthletics", the handle "@BrickerATHL", and a description: "The Athletics Compliance team at @brickergraydon helps academic institutions navigate today's compliance requirements and prepare for tomorrow's." Below the bio are two lines of metadata: "Lawyer & Law Firm" with a link to "bricker.com/resource-cente..." and "Joined September 2021".

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House Settlement

What is the House Settlement

- The settlement would resolve a host of antitrust claims by requiring the NCAA to pay around \$2.8 billion over ten years to former Division I athletes and establishing a revenue-sharing model for athletes beginning with the 2025-2026 academic year.
- DI institutions will have the option to engage in direct NIL contracts with student-athletes in the form of a licensing agreement, endorsement deal and/or brand promotion agreement.
 - Institutions opting-in will be subject to roster limits and team scholarship limitations will no longer apply.
- DI athletes will be required to report to (a) the member institution in which they are enrolled and/or (b) the designated reporting entity any and all third-party NIL contracts or payments with a total value of \$600 or more
 - State law influence: Oregon House Bill 3694

If an institution wants to offer...

- ✓ Direct NIL payments (rev share) to any athlete
- ✓ Additional scholarship beyond what is currently permitted to any athlete
- ✓ Additional personal benefits beyond what is currently permitted (e.g., vehicles, etc.) to any athlete
- ✓ *Alston* payments beyond what is currently permitted (above \$5,980) to any athlete



Update on *House Settlement*

- NCAA's Notice of Intent to Opt-In Deadline is now June 15, 2025 (was March 1, 2025)
- Final Approval Hearing is April 7, 2025
- On March 3, the Defendants submitted a Brief in Support of the Final Settlement Approval
 - Responds to three key objections:
 - complaints about the Pool structure, which allows schools to provide benefits to student-athletes that vastly exceed both the status quo and the results of prior litigation;
 - challenges to the implementation of roster limits under the settlement that serve to increase the number of student-athletes eligible to receive scholarships; and
 - objections to the decision by Plaintiffs' counsel to not allocate so-called "BNIL" damages to non-scholarship football and basketball student-athletes.

Notable Quotes

- “The fact that less than 0.1% of the approximately 389,700 potential class members have objected confirms that the settlement is fair and reasonable.”
- “All of these objections rehash arguments the Court already considered and rejected at the preliminary approval stage. And none provides a basis for derailing this unprecedented settlement and denying its benefits to hundreds of thousands of current and future student-athletes.”

Key Takeaways (from “House Settlement” section)

- Continue to gather information critical to your decision
 - Meet with appropriate stakeholders
 - Title IX compliance reviews
 - Financial models and budgets
- Determine how you are going to pay the settlement damages
 - Budget reallocation (Tiering)?
 - New revenue streams?
 - Outside collectives to off-set?
 - Other operational cost-saving measures?
 - Insurance coverage?
- Strategic planning for the next 5 to 10 years
- Craft communication plan



NIL

NIL Litigation

- Student-athletes who participated before 2016 antitrust lawsuits
 - *Chalmers v. NCAA*, No. 24-cv-05008 (S.D.N.Y.); *Bailey v. NCAA*, No. 2024CVS17715-910 (N.C. Super. Ct.); *Robinson v. NCAA*, No. 24-cv-12355 (E.D. Mich.); *Bush v. NCAA*, No. 24STCV24615, Cal. Super. Ct. (Los Angeles); *Pryor v. NCAA*, No. 24-cv-04019, (S.D. Ohio)
 - Key issue: Statute of limitations
- International student-athlete litigation
 - *Poa v. Jaddou (U.S. Citizen and Immigration Services)*, No. 24-cv-00887 (M.D. La.)
 - Key issue: Visas
- Promises to student-athletes
 - *Rashada v. Hathcock, et al*, No. 3:24-cv-00219 (N.D. Fla.)
 - Key issue: misrepresentations and tortious interference

Title IX Gender Equity

Title IX and the *House Settlement*

Participation Opportunities

- Roster limitations

Financial Aid

- Additional Scholarship
- Direct NIL payments?
 - On February 12, 2025, the Department of Education rescinded the fact sheet on how Title IX applies to NIL.

Benefit and Treatment Areas

- Publicity

Litigation (Part I)

- *Niblock v. University of Kentucky, 2024 WL 4891025, (E.D. Ky. Oct. 28, 2024)*
 - After a three day trial, judge ruled that the Plaintiffs failed to show sufficient unmet interest and ability among UK female students. Therefore, the UK met prong 3, which means they effectively accommodate the interests and abilities of UK female athletes.
 - “The question under Prong Three is whether UK is meeting ‘the *actual* interests and abilities of its students and admitted students.’”
 - Plaintiffs are appealing the ruling to the 6th Circuit.



Litigation (Part II)

- *Fisk v. Board of Trustees of the California State University (San Diego State)*, No. 22-cv-00173 (S.D. Cal.)
 - Group of women's rowers filed suit after SDSU eliminated their team in 2022 alleging that SDSU did not provide proportional athletic aid and benefits and treatment
 - Class action lawsuit
 - Trial set for April 2025
- *Schroeder v. University of Oregon*, No. 23-cv-01806 (D. Oregon)
 - Group of varsity women's beach volleyball and club women's rowing team filed suit alleging the university discriminated against them by not providing equal opportunities, equal financial aid, and equal benefits and treatment
 - Class action lawsuit
 - Oral arguments on the motion to dismiss or narrowed by the University was held on February 26, 2025

Key Takeaways (from “Title IX Gender Equity” section)

- Control your own destiny and be proactive in complying with Title IX
- Document compliance – have a written Gender Equity Plan!
- Do not add, eliminate, or transition a varsity sport **WITHOUT** doing a Title IX review



Transgender Participation in Sport

Executive Order

- "[Keeping Men Out of Women's Sports](#)," Feb. 5, 2025
 - Consistent with EO 14168 ("Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government," Jan. 20, 2025)
- Secretary of Education will:
 - Protect all-female athletic opportunities and all-female locker rooms by prioritizing Title IX enforcement actions against those that do not comply
 - Bring regulations and policy guidance into line with the Congress' existing demand for "equal athletic opportunity for members of both sexes;" and
 - Resolve pending litigation consistent with this policy.



By the authority vested in me as President by the Constitution and the laws of the United States of America, and to protect opportunities for women and girls to compete in safe and fair sports, it is hereby ordered:

Section 1. Policy and Purpose. In recent years, many educational institutions and athletic associations have allowed men to compete in women's sports. This is demeaning, unfair, and dangerous to women and girls, and denies women and girls the equal opportunity to participate and excel in competitive sports.

Moreover, under Title IX of the Education Amendments Act of 1972 (Title IX), educational institutions receiving Federal funds cannot deny women an equal opportunity to participate in sports. As some Federal courts have recognized, "ignoring fundamental biological truths

Federal Investigations

February 6

- ED announced three investigations - two universities, and one high school athletics association

February 11

- ED OGC sent letter to NCAA and NFHS "urging them to restore to female athletes the records, titles, awards, and recognitions misappropriated by biological males competing in female categories."

February 12

- ED Launches Title IX Investigations into Two Athletic Associations: Minnesota State High School League (MSHSL) and the California Interscholastic Federation (CIF)

February 22

- "U.S. Department of Agriculture (USDA) has initiated a **compliance review** of the University of Maine following the State of Maine's blatant disregard" for the EO

February 25

- The U.S. Department of Health and Human Services served a notice of violation to the state of Maine and declared the state violated Title IX by allowing transgender athletes to compete in girls' sports.

March 3

- ED Launches Title IX Investigation into Washington State School District

NCAA Policy

Definitions

- a. **NCAA Men's Team:** A varsity intercollegiate sports team that meets the qualifications to be considered for NCAA men's championships.
- b. **NCAA Women's Team:** A varsity intercollegiate sports team that meets the qualifications to be considered for NCAA women's championships.
- c. **Mixed Team:** A varsity intercollegiate team on which at least one individual of each sex assigned at birth competes. Per NCAA legislation, mixed teams are only eligible for NCAA men's championships.
- d. **Sex Assigned at Birth:** The male or female designation doctors assign to infants at birth, which is marked on their birth records.
- e. **Gender Identity:** An individual's own internal sense of their gender (e.g., man, woman, nonbinary).
- f. **Transgender:** An individual whose gender identity or gender expression is different from their sex assigned at birth.

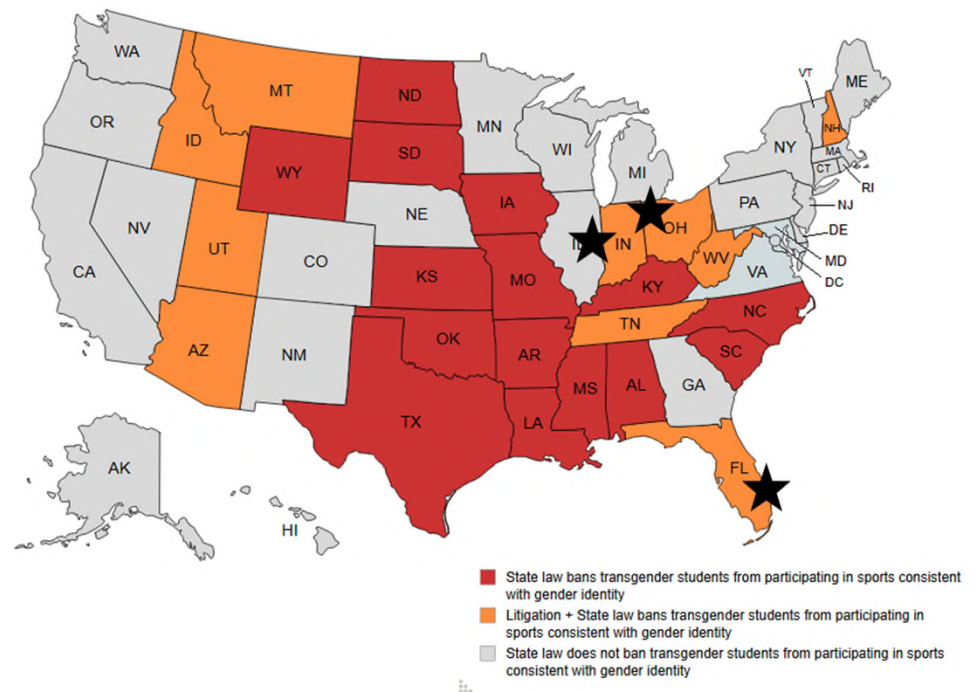
Policy

1. **NCAA Men's Team.** Regardless of sex assigned at birth or gender identity, a student-athlete may participate (practice and compete) with a men's team, assuming they meet all other NCAA eligibility requirements.
 - **Medical Exception Process.** Please note, student-athletes taking a banned substance (e.g., testosterone) must complete the medical exception process.
2. **NCAA Women's Team.**
 - a. **Student-athlete assigned male at birth.**
 - i. **Competition.** A student-athlete assigned male at birth may not compete on a women's team.
 - ii. **Practice.** A student-athlete assigned male at birth may practice on the team consistent with their gender identity and receive all other benefits applicable to student-athletes who are otherwise eligible for practice.
 - b. **Student-athlete assigned female at birth.**
 - i. **Competition.** A student-athlete assigned female at birth who has begun hormone therapy (e.g., testosterone) may not compete on a women's team. If such competition occurs, the team is subject to NCAA mixed-team legislation, and the team will no longer be eligible for NCAA women's championships.
 - ii. **Practice.** A student-athlete assigned female at birth who has begun hormone therapy (e.g., testosterone) may continue practicing with a women's team and receive all other benefits applicable to student-athletes who are otherwise eligible for practice.

“Additionally, schools are subject to local, state and federal legislation and such legislation supersedes the rules of the NCAA.”

State laws

- Current temporary injunctions blocking enforcement:
 - Arizona (Doe v. Horne, July 2023, affirmed in Sept 2024)
 - Idaho (Hecox v. Little, Aug 2020, upheld in Aug 2023)
 - Utah (Roe v. Utah HSAA, Aug 2022)
 - West Virginia (B.P.J. v. West Virginia, July 2021)
 - New Hampshire, (Tirrell and Turmelle v. Edelblut, Sept 2024 - has a temporary injunction is allowing only the two named plaintiffs in the lawsuit to play school sports while the lawsuit continues)
 - Montana (Barrett v. Montana, Sept 2022 - has permanently blocked the state's ban as it applies to higher education, but not K-12.)
- No current temporary injunctions, so the law is enforceable:
 - Ohio (Moe v. Yost, March 2024 – ruling being appealed)
 - Florida (D.N. by Jessica N. v. Desantis, Dec 2024)
 - Indiana (A.M. v. Indianapolis Public Schools, August 2022)
- Permanent injunctions granted to individual students:
 - Tennessee (L.E. by Esquivel v. Lee, March 2024)



Litigation

- The EO will likely be addressed in multiple court cases that are already pending regarding transgender women athletic participation
- *Tirrell et al v. Edelblut et al*, Case No. 1:24-cv-00251 (D.N.H.)
 - Two high school transgender girls challenge the "Keeping Men out of Women's Sports" EO



More Litigation

- *Gaines v. NCAA*, No. 24-cv-01109 (N.D.Ga.)
 - Several college athletes filed a lawsuit against the NCAA and some member institutions over its transgender athlete policies claiming that the NCAA's policies fail to protect the fairness and safety of its athletes and violates Title IX.
 - Class action lawsuit seeks a nationwide ban on transgender women participating in women's NCAA sports, and the invalidation of all athletic records of transgender women who have participated in NCAA events. The plaintiffs also want to ban transgender women from using women's locker rooms, restrooms, and showers at NCAA institutions.
- *Slusser v. Mountain West Conference et al*, Case No. 24-cv-03155 (D.Colo.)
 - Several current and former women's volleyball athletes challenge the Mountain West Conference's and old NCAA transgender inclusion policy.
- *Estabrook v. Ivy League*, Case No. 25-cv-10281 (D.Mass.)
 - Group of former Ivy League swimmers are challenging the NCAA and Ivy League's Transgender Eligibility Policies, arguing that they discriminate against women and violate Title IX.

NCAA Eligibility

Participation at non-NCAA school

- Additional year of eligibility for certain student-athletes (*Pavia v. NCAA*, No. 24-cv-01336 (M.D. Tenn.))
 - November 8, 2024: Diego Pavia, a Vanderbilt quarterback, sued the NCAA challenging the NCAA's rules regarding eligibility of JUCO players violated antitrust laws by limiting their NIL opportunities.
 - December 18, 2024: Judge grants Pavia's motion for preliminary injunction, ordering the NCAA to allow him to play in 2025.
 - December 22, 2024: The NCAA Division I Board of Directors granted a waiver to permit student-athletes who attended and competed at a non-NCAA school for one or more years to remain eligible and compete in 2025-26 if those student-athletes would have otherwise used their final season of competition during the 2024-25 academic year, and meet all other eligibility requirements (e.g., progress toward degree, five-year period of eligibility).

“Five Year Rule”

- *Fourquarean v. NCAA*, No. 25-cv-00068 (W.D. Wisc.)
 - A former football athlete at the University of Wisconsin is challenging NCAA Bylaw 12.8.1 (the "Five-Year Rule") and is requesting an additional year of eligibility.
 - He wants to take advantage of NIL opportunities and the *House* settlement revenue sharing. He argues that his year at a DII school should not be counted against him, given his personal difficulties during that year and the fact that DII does not offer the same economic and developmental opportunities as DI.
 - Status: On February 6, 2025, the court granted Plaintiff's motion for preliminary injunction, enjoining the NCAA from enforcing the Five-Year Rule as to Fourquarean. NCAA appealed to the Seventh Circuit.
- *Ciulla-Hall v. NCAA*, No. 25-cv-10271 (D. Mass.)
 - A master's student at the University of Maryland is challenging NCAA Bylaw 12.8.1 (the "Five-Year Rule") and is requesting an additional year of eligibility.
 - Ciulla-Hall made the same arguments as Fourquarean.
 - Status: On February 7, 2025, the court denied Plaintiff's motion for temporary restraining order.

“Five Year Rule” Continued

- *Osuna Sanchez v. NCAA*, No. 25-cv-00062 (E.D. Tennessee)
 - University of Tennessee baseball player challenging the “Five Year Rule” and wants to play an additional year after spending two years at a community college, three years at a DI institution, and one year at a DII institution. Claims that at Tennessee he "has already received an NIL opportunity that exceeds any NIL opportunities he has previously had."
 - Status: On February 7, 2025, the court denied Plaintiff’s motion for a preliminary injunction.
- *Arbolida v. NCAA*, No. 25-cv-02079 (D. Kansas)
 - Kansas State baseball player making similar argument to Osuna Sanchez.
 - Status: Arbolida filed a motion to voluntarily dismiss the lawsuit (3/11/2025)
- *Coley v. NCAA*, No. 25-cv-00098 (E.D. NC)
 - Football player who exhausted his Division I eligibility in 2024-25 wanting an additional year of eligibility. Plaintiff is arguing that the NCAA’s bylaws violate antitrust law, in part that (1) the NCAA didn't give him proper credit for his injuries in denying his hardship waiver; (2) the NCAA's definition of a "season" is arbitrary; and (3) the four-year limit is arbitrary given various exceptions like the COVID waiver.
 - Status: Plaintiff filed a motion for preliminary injunction

Hockey and Professional Team Competition

- *Masterson v. NCAA*, No. 24-cv-00754 (W.D.N.Y.)
 - Hockey athlete challenges the NCAA bylaws that make college athletes who play in the semipro junior league Canadian Hockey League (CHL) ineligible for NCAA competition arguing that it violates antitrust law.
 - Class action lawsuit
 - Status: In January 2025, the NCAA filed a motion to dismiss the case. In the background, the NCAA introduced a proposal that would change the bylaws to allow CHL players to be eligible for NCAA competition as long as they were not paid more than “actual and necessary expenses”



Prize Money



- *Brantmeier v. NCAA*, No. 24-cv-00238 (M.D.N.C)
 - UNC tennis player filed a lawsuit challenging the NCAA's ban on individual athletes' ability to receive prize money for outside athletic competitions beyond "actual and necessary" expenses.
 - She argues that under antitrust law, there is no longer any justification for the restriction given that athletes in other sports like football and basketball are able to earn money from the participation in their sports through NIL deals.
 - Class action lawsuit (DI tennis athletes only)
 - Judge denied Plaintiff's motion for a preliminary injunction
 - Status: In the discovery process

Student-Athlete Employment

Employment Efforts Stalled

- February 14: NLRB rescinds September 2021 memo on the rights of student-athletes under the NLRA [GC 21-08](#)
 - Backdrop of Congress trying to pass legislation that would deem student-athletes not employees
 - Unionization efforts abandoned before new administration
- *Johnson v. NCAA*, No. 19-cv-05230 (E.D. Penn.)
 - Issue: Are athletes employees under the FLSA?
 - Status: Ongoing



Future of College Sports

Future of College Sports

- How will funding challenges on campus effect athletics? Enrollment, State and Federal funds.
- Private equity investment or other outside financial involvement?
- Governance changes? Will NCAA/NAIA/NJCAA other all-sport models be adjusted?
- Future of student-athlete involvement? Collective bargaining, current SAAC model, revenue sport representation?
- “Federation” of Olympic sports? Will college sports be organized by NGO’s?
- “Total Athletics Package” approach on campus? Combining intercollegiate athletics, club sports, intramurals and recreation under one umbrella?

Upcoming Higher Ed Webinars

- Next Federal EO Update Webinar Placeholder: 3/14/2025
- Free: Employee Sexual Misconduct Cases – 3/27/2025
- Free: AI and Student Conduct on Campus – 4/10/2025
- Free: Sexual Misconduct Hearings – 4/24/2025
- Free: Title IX Litigation Update – 5/29/2025

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