

# Department of Education Rescinds Title IX Guidance on NIL Payments

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The Department of Education (the “**Department**”) has rescinded Name, Image, and Likeness (“**NIL**”) guidance issued in the final days of the Biden administration that interpreted Title IX to require proportional NIL payments among men’s and women’s collegiate sports. The Department’s rescission came less than a month after the Biden administration issued its Title IX guidance.

## **Biden Administration’s OCR Fact Sheet**

On January 16, 2025, in the final days of the Biden administration, the Department of Education’s Office for Civil Rights (“**OCR**”) issued guidance entitled “*Fact Sheet: Ensuring Equal Opportunity Based on Sex in School Athletic Programs in the Context of Name, Image, and Likeness (NIL) Activities*” (the “**OCR Fact Sheet**”). The OCR Fact Sheet provided guidance on the Title IX obligations of higher education institutions in connection with NIL activities. Generally, the OCR Fact Sheet directed institutions to offer “equal athletic opportunities in their athletic programs, including in the NIL context.”

Notably, the OCR Fact Sheet determined that NIL agreements between a school and a student-athlete qualify as “athletic financial assistance” subject to Title IX proportionality requirements. Additionally, the OCR Fact Sheet indicated that NIL agreements provided by collectives and other third parties could be subject to Title IX requirements. Whether a third-party NIL agreement would be subject to “Title IX’s equal athletic opportunity requirements is a fact-specific inquiry.” Given that these types of “NIL agreements vary widely and continue to evolve,” the OCR declined to “offer specific guidance on Title IX’s application in the context of compensation provided for the use of a student athlete’s NIL by a third party, including an NIL collective.”

The OCR Fact Sheet’s interpretation of Title IX was particularly noteworthy in connection to the pending *House* settlement, which proposes a revenue-sharing model among certain Division I institutions. One of the major issues facing the *House* settlement is whether institutional revenue-sharing and NIL payments to student-athletes constitute “athletic scholarships or grants-in-aid.” Under the OCR Fact Sheet, such institutional payments would have been subject to Title IX protections, requiring proportional distributions of such funds.

## **Trump Administration Rescinds OCR Fact Sheet**

Less than a month later, on February 12, 2025, the Trump administration’s OCR issued a Press Release entitled “U.S. Department of Education Rescinds Biden 11th Hour Guidance on NIL Compensation,” rescinding the OCR Fact Sheet and pulling it from the Department’s website (the “**Rescission**”). In support of its decision, the Department stated that “Title IX says nothing about how revenue-generating athletics programs should allocate compensation among student athletes” and characterized the OCR Fact Sheet as “overly burdensome, profoundly unfair, and ... well beyond what agency guidance is intended to achieve.” Finally, the Department discredited the OCR Fact Sheet as lacking “clear legal authority” in its decision to rescind the OCR Fact Sheet:

“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.”

### Impact and Recommendations

The Rescission will have significant implications for collegiate institutions as they adjust to the seemingly ever-changing world of college sports. While the OCR Fact Sheet would have subjected NIL pay to Title IX requirements, the Rescission shows the Trump Administration interprets NIL payments, and potentially revenue-sharing, as outside of the typical athletic financial assistance traditionally governed by Title IX.

Accordingly, institutions should assess their Title IX compliance strategies in light of the current administration’s guidance following the Rescission. For now, there do not appear to be any restrictions for or against a gender-proportionate distribution model. However, many schools will likely distribute the majority of the NIL funds to football and men’s basketball programs, often leaving less than 5% for women’s sports.

Despite the Rescission and the current administration’s stance on Title IX, there will likely be legal challenges to disproportionate NIL payments in line with the OCR Fact Sheet. While the Rescission provides a temporary reprieve to the legal challenges facing the *House* settlement, it does not definitively resolve the Title IX issues associated with NIL payments to student-athletes.

Relatedly, the *House* settlement still faces multiple legal hurdles. Under the prior administration, the Department of Justice (“**DOJ**”) filed a Statement of Interest expressing concerns about the proposed revenue-sharing model as a potential antitrust violation. To date, the DOJ has not yet rescinded the Statement of Interest, and the antitrust issues facing the *House* settlement remain unresolved.

*This article is general in nature and does not constitute legal advice. If you have legal questions, please consult the authors, Tate Thompson ([tthompson@sb-kc.com](mailto:tthompson@sb-kc.com)) at 816.265.4150, and Colby Stone ([cstone@sb-kc.com](mailto:cstone@sb-kc.com)) at 816.265.4162, or your regular attorney contact at Seigfreid Bingham at 816.421.4460.*