



The Drake Group

REALIZING THE PROMISE OF COLLEGE ATHLETICS

NILS AND TITLE IX

EXECUTIVE SUMMARY

The Drake Group identifies the Title IX gender equity obligations of education institutions and the persons and entities they create, control, assist, or benefit from in the areas of promotion, publicity, and recruiting as they directly and indirectly support their athletes in maximizing their marketplace NIL value and compensation. Institutions cannot use third parties as a subterfuge to evade their Title IX legal obligations.

Specifically, institutions must equally support male and female athletes in publicity, promotion, and recruiting and the provision of assistance with respect to NIL opportunities as follows:

1. The current NIL marketplace value of male and female athletes reflects the historically under-resourced treatment of women's sports with regard to the institution's promotion, publicity, and recruiting efforts. Colleges and universities must assess whether they are providing an equal percentage of male and female athletes (not teams) with equal publicity and promotion benefits and must undertake equal recruiting efforts. If inequities are identified, the institution should immediately act to remedy these inequities.
2. General education on brand-building, financial literacy, or information related to applicable athletic governance association rules or state/federal regulatory requirements must be equally provided to male and female athletes. Due to historical lack of resources applied to promotion and publicity provided to female athletes, education and information designed to build awareness of female athletes and remedy these inequities should also be provided.
3. Male and female athletes must be treated equally if the institution is involved in any way in supporting NIL opportunities including: (a) introducing athletes to prospective third-party NIL sponsors, (b) contributing or receiving any consideration as part of an athlete NIL agreement, (c) entering into co-licensing or group licensing agreements that include athletes, and (d) reviewing, analyzing, advising or discussing an athlete's NIL contract with a third party other than from a strictly regulatory perspective.

Conferences, national sport governing associations and third-party commercial businesses owned and operated by such entities and third-party commercial businesses operating on behalf of institutions should be held subject to Title IX in the following ways:

1. For conferences and national governing organizations, their treatment of the institutions' athletes at conference and national championship post-season or other events must not result in sex discrimination under Title IX.
2. Similarly, businesses such as conference- or institution-owned television networks must be subject to Title IX and not discriminate on the basis of sex in the provision of publicity and exposure to male and female athletes.
3. If conferences, national governing organizations, or third parties owned by conferences or national governing organizations, or operating on behalf of institutions contribute any consideration (i.e., use of trademarks, etc.) to athlete NIL agreements or enter into co-licensing or group licensing agreements that include athletes from member institutions, they must treat male and female athletes equally pursuant to Title IX, just as institutions are obligated to treat athletes equally under Title IX.

Institutions must require third-party representatives of athletics interests that are organized to support, or that in fact support, the recruiting success of their respective institutions by providing NIL compensation or other benefits, to treat male and female athletes equally. Specifically:

1. Institutions must not assist third parties or otherwise indirectly violate Title IX or its spirit whether through knowing inaction, encouragement, or other active inequitable involvement in areas that will negatively impact women's NIL opportunities.
2. Institutions must educate all athletics employees and fans, boosters, sponsors, or other representatives of athletics interests involved in providing compensation or benefits to prospective or current athletes about any obligations created by state or federal laws or athletics governance entities including the institution's Title IX obligations. Specifically with regard to NIL or other compensation or benefits, such education must include that compensation cannot be inducements to attend (recruiting) or remain at the institution and that services rendered in return for compensation must be actually performed, and at rates commensurate with fair market value in order to protect their eligibility for athletic competition.
3. Institutions must require third parties composed of boosters, fans or sponsors or other representatives of institutional interests to treat female and male athletes equally. There should be a presumption that any third party formed to operate to serve a single institution's athletes in any way related to NIL deals must comply with Title IX and, if they do not, the institution will be held to violate Title IX. More specifically, permitting institutions that have knowledge of, or whose employees directly or indirectly encourage the operation of, third-party entities organized by alumni or fans, boosters, sponsors, or other representatives of athletics interests for the purpose of providing direct NIL or other support limited to prospective or current athletes at a specific institution in a manner that discriminates on the basis of sex, effectively permits the institution to violate the letter and spirit of Title IX, which requires equal recruiting treatment and benefits. Accordingly, institutions must educate and require such third parties not to engage in sex discrimination. If the entity does not respond appropriately, the institution should be expected to completely sever ties (i.e., not provide benefits associated with the athletic program or institution such as attendance at athletic or other special athletic department events, etc.). Failure to remove institutional assistance (benefits) to members/contributors to the NIL entity organization enabling the institution to avoid its recruiting equal treatment mandate should result in a presumption that the institution knowingly violated its Title IX obligations. A similar requirement applies to the involvement by conferences and national governing organizations with third parties.

There is a distinction between the valuation of media rights or NIL agreements that are dictated by the marketplace and not controlled by the institution and the institution's effort to provide equal publicity, promotion, recruiting, and exposure. The institution's Title IX obligation is to demonstrably seek equal television exposure at fair market value and provide equal promotion, publicity, and recruiting support for its male and female athletes. Similarly, institutions must make the same effort to support NIL opportunities for male and female athletes rather than generating the same compensation.

The Drake Group urges all collegiate athletic programs to think deeply about ways to make this new arena — the monetization of NILs — a game changer with regard to gender equity.

READ THE FULL POSITION STATEMENT [HERE](#).