



## CONGRESSIONAL BRIEFING PAPER

### Computation of Title IX Compliance Under the Terms of the *House v. NCAA* Settlement

The purpose of this paper is threefold: (a) to show how gender equity in the computation of financial benefits is calculated under Title IX, (b) to demonstrate how this calculation is applied to institutions seeking to meet the new roster limits and restrictions on athletics financial benefits categories outlined in the *House v. NCAA* settlement (“settlement”), and (c) to demonstrate how Title IX permits any institution to prioritize sports by financially supporting some sports better than others. We use financial aid and athletic participation data from a selected typical P5 institution obtained from the 2023-24 Equity in Athletics Disclosure report as our example to show how both (b) and (c) can be accomplished.

#### A. Title IX Computation of Equal Opportunity to Receive Financial Assistance

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Whether an institution is (1) a Division I institution that is participating in the *House v. NCAA* settlement, (2) a Division I institution that is not participating in the settlement, or (3) any NCAA, conference or other higher education association that offers an athletic program that provides any form of financial assistance to its athletes, conditioned on those students participating in intercollegiate athletics, the computation of equitable financial benefits under Title IX is identical.<sup>1</sup>

Step One: Identify the number of male and female students who participated in intercollegiate varsity athletics and calculate the participation rates for male and female athletes. This is an “unduplicated count” where each athlete is counted only once, even if they participate in multiple sports.

	Male Athletes	Female Athletes	Total Athletes	Male Percent	Female Percent
<b>Institution:</b>	<b>305</b>	<b>281</b>	<b>586</b>	<b>52.0%</b>	<b>48.0%</b>

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<sup>1</sup> Even if NIL money is not categorized as financial assistance, as some schools are arguing to try to escape Title IX liability, it is still a benefit under the 37 words of the statute: “No person in the United States shall, on the basis of sex, be excluded from participation in, **be denied the benefits of**, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Institutions must provide NIL benefits without engaging in sex discrimination.

Step Two: Identify the amount of financial aid awarded to male and female athletes and compute the percentage of financial aid awarded to male and female athletes, respectively.

	Male Fin. Aid.	Female Fin. Aid.	Total Fin. Aid.	Male Percent	Female Percent
<b>Institution:</b>	<b>\$13,196,775</b>	<b>\$11,544,552</b>	<b>\$24,741,327</b>	<b>53.3%</b>	<b>46.7%</b>

Step Three: Determine if male and female athletes received financial aid proportional to their respective unduplicated participation rates.

**Institution: Female Athletes = 48% of all participants; received 46.7% of all financial aid benefits**  
**Male Athletes = 52% of all participants; received 53.3% of all financial aid benefits**

Step Four: Determine the variance from exact proportionality. If the variance exceeds one percent (the acceptable variance), and it is not caused by legitimate nondiscriminatory factors, then male or female athletes receiving less than their proportional share have been denied their equal opportunity to receive financial aid.

**Institution: Females received 1.3% less than Title IX requirements, which exceeds the allowable 1 percent variance; therefore, female athletes have been denied an equal opportunity to receive financial aid. They should have received:**

<b>48% X \$ 24,741,327 =</b>	<b>\$ 11,875,837</b>
<b>Amount actually received =</b>	<b><u>\$ 11,544,552</u></b>
<b>Amount shortchanged =</b>	<b>\$ 331,285</b>

Step Five: Giving females \$331,285 will not fix the shortfall because male athletes actually received 1.3% more than their entitlement, which cannot be clawed back as it has already been awarded. Therefore, the institution must determine the total amount of financial aid that should have been awarded if males received \$13,196,775, representing their 52% unduplicated count, the correct proportion they should have received. This calculation (52% times X = \$13,196,775 and solving for X involves dividing 13,196,775 by .52) results in \$25,378,414 as the total aid that should have been awarded for male athletes to have received their 52%. Thus, the remedy for women to receive their 48% proportional entitlement would be 48% of \$25,378,414 minus the \$11,544,552 they actually received, which equals \$637,087.

**Institution:     Remedying the inequity would require distributing an additional \$637,087 to 2023-24 female athletes who received partial or no athletic financial assistance.**

## **B.     Settlement Overview and Requirements**

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While participation in the settlement is specified as voluntary, as a practical matter, each of the 65 P5 schools is expected to distribute to their college athletes close to the specified limit of \$20.5 million this year in new financial assistance above previous scholarship limits. This amount is projected to grow to \$33 million by year ten under the provisions of the settlement. **These settlement terms do not detail the sport or gender allocations of the new financial benefits, leaving those decisions to the institution. A purpose of this paper is to help institutions understand how to ensure that total financial benefits comply with the proportional distribution requirements of Title IX.**

Most non-P5 NCAA Division I schools have also opted to participate in the new settlement compensation construct. Due to more limited financial resources, they are expected to spend significantly less. They will most likely not attempt to compete with P5 schools on football expenditures but will try to remain, or even become more, competitive in basketball to retain their current access to and possible success in *March Madness*, the NCAA's premier Division I national basketball championship.

Most of the P5 schools have announced that they will allocate their future new financial benefit funds as follows: 75 percent to football, 15 percent to men's basketball, 5 percent to women's basketball, and 5 percent to selected priority men's and women's sports, or similar unbalanced amounts favoring male athletes. Since 57 of the 65 defendant institutions appear not to be in compliance with Title IX based on 2023-24 Equity in Athletics Disclosure Act data, there is concern that Title IX obligations will continue to be ignored or that institutions (which already lack resources) will devote most of the new funds to the men's football and men's basketball arms race, rather than ensuring gender equity for female athletes. We will soon find out, as most institutions have already awarded traditional athletics scholarships, the newly permitted scholarships, and signed contracts with individual athletes for the \$20.5 million in new financial benefits. Many conferences and institutions have been explicit that the new payments are not covered by Title IX, which is inaccurate (see Appendix A).

The purpose of the next section is to show the amount of funding required to provide equal financial assistance to female athletes while providing football and men's basketball players with the bulk of the new financial benefits pool. Failure to provide proportional overall

financial assistance to female athletes puts institutions at risk for Title IX complaints and lawsuits.

### C. **Computation of Title IX Compliance That Also Meets the Terms of the House v. NCAA Settlement**

**Understanding the New Categorizations.** The computation of equal opportunity to receive financial aid under the settlement does not change from the example presented in section A of this paper. However, the settlement additionally requires institutions to categorize, track, and potentially limit athletic participation and any new financial benefits into certain categories. Table 1 which follows is instructional in identifying these new categories of aid and showing how the institution has significant flexibility to award new scholarships under the settlement.

**Table 1. Sample P5 Institution: New 2025-26 Settlement Roster Limits Compared to 2023-24 EADA Participant Counts, 2024-25 NCAA Full Scholarship Limits**

A	B	C	D	E
Sports Included in This Sample P5 Institution's Athletics Program	Settlement Roster Limit- Projected 2025-26 Participants*	2023-24 EADA Participant Count (actual roster)**	2024-25 NCAA Full Scholarship Equivalencies***	NEW SCHOLARSHIPS Difference Between Settlement Roster Limit & 2024-25 Full Scholarship Equivalencies ****
Baseball	34	41	11.7	22.3
Basketball-M	15	14	13	2
Basketball-W	15	14	15	0
Beach Volleyball -W	19	23	6	13
Football	105	113	85	20
Golf-M	9	9	4.5	4.5
Golf-W	9	9	6	3
Lacrosse-W	38	36	12	26
Track-Indoor/Outdoor-M(no Xctry)-M	90	74	12.6	77.4
Track-Xctry/Indoor/Outdoor-W	107	100	18	89
Rowing-W	68	43	20	48
Soccer-W	28	27	14	14
Swimming-M	30	34	9.9	20.1
Swimming-W	30	27	14	16
Tennis-M	10	9	4.5	5.5
Tennis-W	10	11	8	2
Volleyball-M	18	19	4.5	13.5
Volleyball-W	18	19	12	6
Water Polo-M	24	29	4.5	19.5
Water Polo-W	24	28	8	16
	<b>Participant Count</b>		<b>Full Scholarship Equivalencies</b>	
<b>Men</b>	<b>335</b>	<b>342</b>	<b>150.2</b>	<b>184.8</b>
<b>Women</b>	<b>366</b>	<b>337</b>	<b>133</b>	<b>233</b>
*Maximum number of athletes on the team which also acts as a scholarship limit				
**Equity in Athletics Disclosure Database 23-24 participant data for this institution. Retrieve from: <a href="https://ope.ed.gov/athletics/#/">https://ope.ed.gov/athletics/#/</a> . Most recent available data.				
***2024-25 NCAA Division I Manual. Retrieve from: <a href="https://www.ncaapublications.com/p-4701-2024-2025-ncaa-division-i-manual.aspx">https://www.ncaapublications.com/p-4701-2024-2025-ncaa-division-i-manual.aspx</a>				
****Settlement roster limit minus 2024-25 allowable scholarship limit. The difference indicates the number of unused full scholarship equivalencies that could be used for NEW scholarships, with all but \$2.5 million counting against the new \$20.5 million financial benefits pool; the rest do not				

Column B not only indicates new roster limits but also reflects new full scholarship limits. Instead of the 283.2 full scholarship equivalents awarded under the 2024-25 NCAA maximum scholarship limits (see last two lines col. D), our sample institution, if capable, could theoretically award 701 full scholarships (see last two lines col. B) or 417.8 additional scholarships over the NCAA's published 2024-25 limits (see last two lines of col. E) on full scholarship equivalencies by sport. Only the first \$2.5 million in "NEW"<sup>2</sup> scholarships would count against the \$20.5 million new financial benefits pool. This means that if the school chooses to allocate 75% of the new benefits pool to football players and 15% to male basketball players, it can do so as long as females, in total, receive their unduplicated share of TOTAL financial aid. That financial aid could come from the new scholarships, which, except for the initial \$2.5 million, does not count against the \$20.5 million cap of the new financial benefits pool.

Note, for this institution, the new roster limits in Col. B will result in a loss of 24 participation opportunities for men (baseball-7, football-8, swimming-4, water polo-5) and 10 participation opportunities for women (beach volleyball-4, tennis-1, volleyball-1 and water polo-4) compared with actual 2023-24 rosters (see col. C). However, there are special provisions for athletes whose financial aid was reduced, cancelled or not renewed due to the settlement.

Also note that in 2024-25 this institution could have awarded 283.2 full scholarships, 150.2 for men and 133 for women (see last two lines col. D). We assumed they did award this number in both 2023-24 and 2024-25 and assumed the same total scholarship expenditure in both years, because 2024-25 data is not yet available. We used the amount of \$25,378,414 for total financial aid awarded in both years to reflect a Title IX compliant expenditure based on the 52% male and 48% female unduplicated athlete participant count (see Section A, Step Five for this computation). We then computed an average cost per full scholarship by dividing this \$25,378,414 total financial aid amount by the 283.2 full scholarships awarded, which was \$89,613. This average full scholarship figure will be used for subsequent examples that require the estimated costs of new scholarships. We acknowledge the delimitation of the data by not building in an inflation adjustment for 2025-26.

**Building the 2025-26 Financial Assistance Budget.** We recommend that institutions begin with the following predicate tasks:

1. Recognize that the existing 2024-25 financial aid limits by sport have been replaced with roster limits, which provides that all athletes are eligible for full, partial, or no

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<sup>2</sup> We note that a "new" scholarship DOES NOT MEAN more than the number of scholarships or amount the institution awarded in 2024-25, it is only those scholarships awarded by the institution that exceed 2024-25 maximum scholarship limits, scholarships that were not previously permitted by NCAA rules.

traditional cost of attendance scholarships<sup>3</sup>. Additionally, they can receive individual benefits from the new capped financial benefits pool and are also eligible for *Alston* academic awards. It is important to correctly categorize all forms of financial assistance by following these steps.

- a. Determine scholarship renewals and NEW cost-of-attendance scholarships up to 2024-25 scholarship limits and other 2024-25 permissible benefits (see 2024-25 NCAA Division I Manual for permissible benefits such as summer school aid, special financial assistance fund grants that are also allowed to be awarded and amounts the institution will award this year);
  - b. Identify any NEW cost-of-attendance scholarships, which by definition are the cost-of-attendance scholarships that go beyond the 2024-25 NCAA maximum limits (see Table 1), with the first \$2.5 million in new scholarships counting against the new \$20.5 million financial benefits pool, thereby reducing it by that amount;
  - c. Determine how many *Alston* Academic Awards<sup>4</sup> will be offered with the first \$2.5 million in *Alston* awards, counting against the new \$20.5 million financial benefits pool (reducing it by that amount);
  - d. Subtract the b and c up-to-\$2.5 million amounts from the \$20.5 million new benefits pool (could be up to \$5 million total, leaving \$15.5 million to be awarded) to determine the new financial benefits pool balance; and
  - e. Using the new financial benefits pool balance (determined by d above), make those awards to individual athletes in any amount.
2. Determine whether all financial benefits afforded to males and females by the above distributions are proportional to their respective unduplicated participant counts and if not, ensure that any financial assistance shortfall is awarded in the form of new cost-of-attendance scholarships.

Table 2 on the next page depicts a financial benefits budget that meets the sample institution's desire to prioritize the new financial benefits pool for selected men's sports

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<sup>3</sup> Traditional cost of attendance scholarships consist of tuition, required fees, room, board, books, and additional amounts calculated by the institution's office of student financial aid for other expenses associated with attending college (i.e., computer, travel to and from home, etc.). These additional amount costs are consistent for athlete and non-athlete students and the same amounts used to calculate federal student loan budgets.

<sup>4</sup> *Alston* academic awards permit an institution to award up to \$5,980 per year to individual athletes for academic achievement. To date, those institutions that can afford this expense have chosen to award this amount to athletes who maintain their academic eligibility.

(football and basketball), while providing *Title IX compliant* proportional financial assistance for female athletes from a different revenue source with fewer restrictions. Note that prioritizing football and men's basketball means that most other men's teams most likely will not be considered for NEW scholarships or new financial benefits pool payments. The following 2025-26 projected financial benefits budget for our sample institution details these necessary structural strategies.

Table 2. PROJECTED 2025-26 FINANCIAL BENEFITS BUDGET			
	FINANCIAL AID THAT DOES NOT COUNT AGAINST THE NEW FINANCIAL BENEFITS REVENUE POOL	MALE ATHLETES	FEMALE ATHLETES
1	SCHOLARSHIPS AWARDED WITHIN 2024-25 FINANCIAL AID LIMITS. Assume (1) the institution will award males and females the same amount of financial aid as they received in 2023-24 and 2024-25, (2) that this distribution met the then 52% male and 48% (female unduplicated participation rates which remains unchanged for this 2025-26 projection, and (3) number of scholarships are within maximum allowable 2024-25 full scholarships permitted by NCAA rules for sports sponsored by this institution (283.2).	\$13,196,775	\$ 12,181,639
2	ALSTON ACADEMIC AWARDS. Assume the institution awards the maximum allowable amount to all male and female athletes based on the new roster limits but adjusted for multisport athletes (unduplicated count*) - 299M/305F X \$5,980 per athlete. The settlement requires first \$2.5 million counting against \$20.5 million pool.	\$ 1,788,020	\$ 1,823,900
3	NEW COST OF ATTENDANCE SCHOLARSHIPS (over 2024-25 NCAA Limits) - Based on average full scholarship cost of \$89,613. MEN'S: Only football and men's basketball receive new scholarships allowed per their higher roster limits (FB increased from 85 to 105 and men's basketball from 13 to 15) because they are priority sports. The new scholarships must go to women's sports in order to maximize the use of the new benefits pool for priority men's sports. Settlement requires first \$2.5 million in men's and women's new scholarships to reduce the \$20.5 million pool by that amount. WOMEN'S. Compute the female total scholarship entitlement (see Line 13) which corresponds to 48% of total financial aid awarded (Title IX proportional entitlement). Then subtract \$12,181,639 in 2024-25 old scholarships (Line 2), \$1,823,900 in Alston Awards (Line 3), and the \$1,162,500 (Line 8 & 9) awarded from the new financial benefits pool to generate the female athlete new scholarship entitlement that does not reduce the \$15.5 million new financial benefits pool.	\$ 1,971,486	\$ 13,718,528
4	SUBTOTAL	\$16,956,281	\$27,724,067
5	FINANCIAL AID THAT COUNTS AGAINST THE NEW FINANCIAL BENEFITS POOL - \$15,500,000 (\$20.5 million less the mandatory reductions of \$2.5 million for Alston and \$2.5 million for new scholarships noted above)	MALE ATHLETES	FEMALE ATHLETES
6	Football 75% (.75 x \$15,500,000 remaining after deduction of Alston awards and new cost of education scholarship - see lines 3 and 4 above)	\$ 11,625,000	
7	Men's Basketball 15% (.15 x \$15,500,000 remaining after deduction of Alston awards and new cost of education scholarship - see lines 3 and 4 above)	\$ 2,325,000	
8	Women's Basketball 5% (.05 x \$15,500,000 remaining after deduction of Alston awards and new cost of education scholarship - see lines 3 and 4 above)		\$ 775,000
9	Other Sports 5% (.05 x \$15,500,000 remaining after deduction of Alston awards and new cost of education scholarship - see lines 3 and 4 above) - assume 50% to male and 50% to females	\$ 387,500	\$ 387,500
10	SUBTOTAL	\$ 14,337,500	\$ 1,162,500
11	TOTAL FINANCIAL ASSISTANCE BENEFITS	\$31,293,781	\$28,886,567
12	PERCENT OF ALL FINANCIAL BENEFITS	52%	48%
13	HOW TO COMPUTE THE TITLE IX FEMALE ENTITLEMENT IF \$31,293,781 represents males receiving 52% of total financial aid. FORMULA: Total of ALL financial benefits to male athletes divided by .52 which yields the total financial benefits for all males and females. Then subtract the total men's financial benefits (31,293,781). The amount remaining is 48% of the total, the women's Title IX financial aid entitlement.		\$ 28,886,567
14	*The unduplicated count under new roster limits was based on the percent difference between duplicated and unduplicated counts from the previous year (10.8% male multisport vs. 16.6 percent female multisport athletes). Unduplicated counts used were 299 males and 305 females.		



Table 3 below demonstrates the flexibility of Title IX's proportional distribution gender equity standard. No sport is compared directly to another, even if both men's and women's teams compete in the same sport. The standard acknowledges that men's and women's sports are different and that schools have varying priorities for sport development. The sex equity standard involves separately calculating all financial aid for men and all financial aid for women, then distributing that aid based on the percentage of males and females, respectively. Each sex can choose which sports to prioritize, if any. Athletes in some sports may be treated differently as long as the overall distribution remains proportional to participation.

Table 3 also illustrates this point by showing how football and basketball athletes can receive more financial aid than athletes in other men's sports, as long as women receive a proportional overall share.

<b>Table 3. 2025-26 FINANCIAL BENEFITS BUDGET - WHAT DO FOOTBALL AND MEN'S BASKETBALL RECEIVE IN RELATION TO OTHER SPORTS?</b>	<b>FOOTBALL</b>	<b>MEN'S BASKETBALL</b>	<b>OTHER MEN'S SPORTS</b>
SCHOLARSHIPS AWARDED WITHIN 2024-25 FINANCIAL AID LIMITS -Football- 85 x \$89,613 and M-BB 13 X \$89,613	\$ 7,617,105	\$ 1,164,969	\$4,414,701
ALSTON ACADEMIC AWARDS - Football- 105 x \$5,980 and M-BB 15 X \$5,980 - based on unduplicated count of 299 men	\$ 627,900	\$ 89,700	\$ 1,070,420
NEW COST OF EDUCATION SCHOLARSHIPS OVER 2024-25 LIMITS -20 FB at \$89,613 and 2 BB at \$89,613	\$ 1,792,260	\$ 179,226	0
NEW FINANCIAL BENEFITS POOL	\$ 11,625,000	\$ 2,325,000	\$ 387,500
<b>TOTAL MEN'S SPORTS FINANCIAL BENEFITS = \$31,293,781</b>	<b>\$ 21,662,265</b>	<b>\$ 3,758,895</b>	<b>\$ 5,872,621</b>
<b>PERCENT OF TOTAL FINANCIAL ASSISTANCE PROVIDED TO MEN'S SPORTS - \$31,293,781</b>	<b>69.2%</b>	<b>12.0%</b>	<b>18.8%</b>

As indicated in Table 3 above, the total financial assistance provided for men's sports is \$31,293,781. As stated in Table 2, row 11, the total financial assistance provided for women's sports is \$28,886,567. For this institution, the combined total of financial assistance would be \$60,180,348 with men's sports receiving 52% (football=36%; men's basketball=12%; and other men's sports=18.8%) and all women's sports receiving 48%.

July 28, 2025

## Appendix A

### CONGRESSIONAL BRIEFING PAPER

#### Application of Title IX to New College Athlete Financial Benefits Available under the *House v. NCAA* Settlement

As a result of the *House v. NCAA* settlement, there is a focus on financial benefits, including revenue sharing, NIL licensing payments, and cash payments untethered to education. The settlement, the NCAA, the Power Five conferences, and the schools have stated that these financial benefits do not make the students employees. And, the *House* plaintiffs' attorneys, the NCAA, Power Five conference Commissioners, and school officials have stated that the new financial benefits either are not covered by Title IX, or that the issue needs to be resolved by the courts. The settlement fails to address the applicability of Title IX other than explicitly leaving the students the opportunity to challenge in court the distribution of such future financial payments under Title IX.

**All financial benefits covered by Title IX.** The following statutory and other long-standing regulations and interpretations demonstrate that Title IX applies to all financial and non-financial benefits provided to students participating in an institution's educational programs or activities:

1. The **Title IX statute's** core language (specifically says 'benefits' which include financial and other valuable benefits and treatment that are not easily monetarily quantifiable)

*No person in the United States shall, based on sex, be excluded from participation in, **be denied the benefits** [emphasis added] of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.*

*20 U.S.C. §1681(a)*

2. The Title IX regulations (34 C.F.R. Part 106) include provisions that directly and indirectly impact intercollegiate athletics.

- a. **Section 106.31 General** (includes a broad mandate that applies to all educational programs and activities, including athletics.)

*§ 106.31 Education programs or activities. (a) General. (1) Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, extracurricular, research, occupational*

*training, or other education program or activity operated by a recipient that receives Federal financial assistance.*

**b. §106.37 Financial Assistance**

*(a) General. Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not: (1) On the basis of sex, provide different amounts or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate;*

*(c) Athletic scholarships. (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics. (2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and §106.41.*

*34 C.F.R. § 106.37(c); 1979 Policy Interpretation, 44 Fed. Reg. at 71,415 (“When financial assistance is provided in forms other than grants, the distribution of non-grant assistance will also be compared to determine whether equivalent benefits are proportionately available to male and female athletes.”).*

**c. § 106.41 Athletics.** (athletics financial assistance is covered by § 106.37 while this section deals with participation opportunities and other non-financial benefits and treatment)

*(a) General. No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.*

*(b) Separate teams. Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a*

*contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.*

*(c) Equal opportunity. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:*

- (1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;*
- (2) The provision of equipment and supplies;*
- (3) Scheduling of games and practice time;*
- (4) Travel and per diem allowance;*
- (5) Opportunity to receive coaching and academic tutoring;*
- (6) Assignment and compensation of coaches and tutors;*
- (7) Provision of locker rooms, practice and competitive facilities;*
- (8) Provision of medical and training facilities and services;*
- (9) Provision of housing and dining facilities and services;*
- (10) Publicity.*

*Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.*

**NIL Licensing Agreements.** All individuals have the right of publicity – the right to control the commercial use of their identity, including their names, images, likenesses (NIL), and other identifying characteristics, and seek monetary compensation. Note that institutions maintain that under the provision of the *House v. NCAA* settlement, college athletes are NOT being paid for participating in athletics, and they are NOT employees. If institutions wish to pay athletes for their publicity rights, then such payments must relate to their valid NIL value and not their value as players in competition. Valid NIL business purposes include promoting the sale of tickets to athletics events, soliciting contributions to the athletics department, participate in athletic department sponsorship or promotional agreements, entering into a group licensing arrangement with their institutions and video game producers to participate in production of an electronic game or with their institution and the college bookstore to produce game jerseys with the name of the athlete on the back, etc. Compensation for such service must be at rates and terms commensurate with compensation paid to individuals with NIL rights of comparable value who are not college athletes or prospects, rather than athletic performance, the value of the player to the institution.

Many of these NIL payments made by institutions or their associated third-party booster collectives are not for legitimate NIL services despite their label, but instead are actually

provided for their expected athletic participation and performance value, financial benefits that could be considered as employment. Some NIL licensing agreements offered by institutions, actually go beyond normal NIL agreements and include clauses typically found in employment agreements such as clawbacks, buyouts, liquidated damages, and injury terminations. To the extent that such agreements create an employee relationship, employment is also covered by the Title IX regulations (34 C.F.R.. Part 106) as follows:

**a. § 106.38 Employment assistance to students.**

*(a) Assistance by recipient in making available outside employment. A recipient which assists any agency, organization or person in making employment available to any of its students:*

*(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and*

*(2) Shall not render such services to any agency, organization, or person which discriminates on the basis of sex in its employment practices.*

*(b) Employment of students by recipients. A recipient which employs any of its students shall not do so in a manner which violates subpart E of this part.*

**b. § 106.51 Employment.**

**Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited**

*(a) General. (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives Federal financial assistance.*

*(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of sex.*

*(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.*

*(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.*

*(b) Application. The provisions of this subpart apply to:*

*(1) Recruitment, advertising, and the process of application for employment;*

*(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;*

*(3) Rates of pay or any other form of compensation, and changes in compensation;*

*(4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;*

*(5) The terms of any collective bargaining agreement;*

*(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;*

*(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;*

*(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;*

*(9) Employer-sponsored activities, including those that are social or recreational; and*

*(10) Any other term, condition, or privilege of employment.*

*(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)*

*[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000]*

**c. § 106.52 Employment criteria.**

*A recipient shall not administer or operate any test or other criterion for any employment opportunity which has a disproportionately adverse effect on persons on the basis of sex unless:*

*(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and*

*(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.*

**d. § 106.54 Compensation.**

*A recipient shall not make or enforce any policy or practice which, on the basis of sex:*

*(a) Makes distinctions in rates of pay or other compensation;*

*(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.*

*(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)*