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Female student-athletes contend NCAA settlement violates Title IX

A dozen current and former female college athletes have challenged the recently finalized \$2.8 billion *House v. NCAA* settlement that compensates current and former college athletes who missed out on the opportunity to monetize their name, image and likeness (NIL) and allows schools to pay student-athletes directly.

The women say the deal violates Title IX, which bans sex-based discrimination in education, because it overwhelmingly favors men's football and basketball players, whose sports are the largest sources of revenue in college sports.

The past four years have seen seismic changes in the status of student-athletes at NCAA Division I schools.

After the U.S. Supreme Court concluded in 2021 that the NCAA's rule limiting education-related compensation violated the Sherman Antitrust Act, the governing sports body began allowing student-athletes to earn money from their own NIL through brand partnerships. As a myriad of NIL opportunities opened up for student-athletes, a select few have made millions while most others earn far less.

Despite the changes since 2021, a sticking point has remained: The NCAA declined to directly share with student-athletes the considerable revenue generated by Division I college sports.

Student-athletes filed three antitrust suits, including a certified class action with nearly 400,000 members, against the organization and its five biggest conferences. A federal judge in California approved a final settlement in early June that ends restrictions on revenue sharing and distributes \$2.8



SPORTS MARKETING PLAYBOOK

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billion in back pay to former student-athletes who played from June 15, 2016, until the class was certified Nov. 3, 2023, and were unable to earn NIL money.

In finalizing the settlement, the judge rejected former female student-athletes' objections that approximately 90% of the back pay will go to male football and basketball players because those two men's sports overwhelmingly generate the most revenue.

Two sets of former female student-athletes who objected during the settlement process have appealed the final approval to the 9th U.S. Circuit Court of Appeals.

Eight female soccer, volleyball and track athletes at the College of Charleston, University of Virginia and Vanderbilt University filed a notice of appeal on June 6.

Another four women, who played

lacrosse and tennis at Boston College, the University of Georgia and Vanderbilt, filed their notice of appeal 10 days later. The appeals address only the back pay portion of the settlement; back payments have been put on hold, according to The New York Times and others.

Attorneys representing the student-athletes issued a statement saying the settlement resolves antitrust litigation and the Title IX claims are an unrelated issue that needlessly delay back payments to college athletes.

Meanwhile, the issue of Title IX's impact on the settlement has become a political football.

In January, the outgoing Biden administration issued Title IX guidance clarifying, among other matters, that Title IX requires schools to treat male and female athletes equitably regarding the then-proposed settlement.

The Trump administration rescinded that guidance in February, stating Title IX does not apply to NIL payments because the regulation says nothing about how revenue generated by athletics programs should be allocated among student-athletes. A mandate that schools distribute athletics revenue to student-athletes based on gender equity considerations lacks any clear legal authority to support it, the Trump administration said in a statement at the time.

Recently, however, the president signed "Saving College Sports," an executive order creating "a national solution" to address "unprecedented" and "mortal" threats to the future of college sports — litigation, pay-to-play inducements and the erosion of limits

on student-athlete transfers driven by these inducements, and NIL laws allegedly enacted by states to give their schools competitive advantage. The order declared its aim to protect and expand women's and non-revenue sports by imposing guidelines for scholarships and roster spots in the 2025-2026 season and beyond, based on revenue from the 2024-2025 season.

It also prohibits pay-for-play payments, which are already prohibited under current NCAA guidelines and state NIL statutes. The stated mechanisms for

enforcement of these guidelines include federal funding decisions and enforcement of Title IX.

It remains to be seen how a 9th Circuit decision clarifying whether Title IX applies to the settlement will affect other NIL gender discrimination claims because few have been filed so far.

In the first case seeking damages for alleged discriminatory NIL practices, an Oregon federal judge recently refused to dismiss a proposed class action filed against the University of Oregon in 2013, according to *The Oregonian* newspaper. Current and

former female student-athletes on the beach volleyball and rowing teams allege the Division I NCAA school violated Title IX by, among other things, providing them with fewer NIL-related opportunities. The University of Oregon provides male student-athletes with significantly more training, publicity and other opportunities to attract NIL partners and boost their income, through the university's NIL collective and its NIL marketplace.

The complaint cites but does not name as defendants Division Street, the

NIL collective, and Open-dorse, which operates the Oregon Ducks NIL Marketplace, leaving open the possibility that future litigation could involve these types of entities.

The 9th Circuit is unlikely to rule on the NCAA Title IX-related appeals until well into 2026, leaving the settlement's back payments to student-athletes in limbo. Time will tell whether other potential plaintiffs alleging unequal gender treatment move forward with litigation that may name not only their alma maters but also the NCAA, NIL collectives and brand partners.