

Foul on the Play!

The Evolution of Title IX in High School
and College Athletics

BIANCA N.C. SMITH | October 2025

Disclaimer – “The Fine Print”

The information provided in this presentation does not constitute legal advice and is provided for educational and informational purposes only. Each legal matter requires unique analysis and legal research. This presentation does not establish an attorney-client relationship, and no person or entity should act or refrain from acting based upon information in this presentation without first consulting legal counsel.

This presentation consists of materials provided solely for use by ATIXA/NABITA and should not be reproduced without the expressed, written consent of the presenter.

Title IX Overview

- Established in 1972, Title IX is a federal law that prohibits sex discrimination in federally funded education activities.
- Title IX states “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[.]”

Why are we here?

- Analyze Executive Orders impacting Title IX from 2020-2025;
- Litigation Update: Review national case law directly addressing recent Title IX policy changes and practices;
- Discuss examples of Title IX regulations in practice in high school, college, and professional athletics;
- Test your knowledge – 4 scenarios designed to demonstrate the impact of Title IX decision-making for Athletic Directors.

What is an Executive Order?

- An executive order is not a law.
- Laws are rules which are normally enacted by legislative bodies or courts at the federal, state, and local levels. These rules must be followed within the geographic area that the rule maker has authority over.
- “An executive order is a written directive, signed by the president, that orders the government to take specific actions to ensure “the laws be faithfully executed.”
- In addition to staying up to date on newly issued executive orders, you should **always** check the state and local laws of the jurisdictions where you are located and where your athletes plan to compete.

What is an “EO” vs. What is not an “EO”

- **Example of an Executive Order:**
The President issues an executive order instructing the Department of Education to prioritize a certain initiative or policy over others.

Executive Orders are....	Executive Orders are NOT....
☒ binding on federal executive branch agencies (ex: Dept of Education, DOJ)	☒ able to override federal laws and statutes
☒ signed by the president	☒ permanent or unalterable
☒ subject to being struck down by courts for unconstitutionality	☒ Not issued by the legislative branch of government and not typically enforced by the judicial branch

The 2020 Title IX Rule

Issued by President Trump on May 6, 2020

- *Enacted on August 14, 2020*
- Changed the standards for responding to incidents of sexual harassment from “*constructive notice*” to “*actual knowledge*.”



Incident Reporting Under the 2020 Title IX Rule

- Respondents are presumed innocent until conclusion of the grievance process;
- All parties must be informed of Title IX policies and procedures, evidence standards, appeals process, and supportive services available during and after the investigation.
- Evidence gathering is the responsibility of the institution.
- Reduced confidentiality - does not restrict the parties from discussing the allegations or gathering evidence;
- Parties may select an advisor of the party's choice (does not have to be an attorney);
- Written notice for any activity requiring a party's attendance (ex: interview, hearing, etc.).
- Both parties may review and respond to any evidence gathered by the investigating institution; and
- Both parties are entitled to the investigative report summarizing the relevant evidence,
- Report may be provided prior to determination about responsibility.

President Biden Weighs In



- Jan 20, 2021: President Biden issued Executive Order 13988 “Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation”
- March 8, 2021: President Biden issued Executive Order 14021 “Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity.”

President Biden's 2024 Title IX Reform

- April 29, 2024: President Biden published “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance”:
- This prohibited a recipient of federal funding to treat a student differently on the basis of sex, including adopting policies or engaging in practices limiting a student from participating in an education program or activity consistent with their gender identity.

President Trump's Executive Orders (2025)



Executive Order 14168, “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government” (Jan 20, 2025)



United States Department of Education's (ED) Office for Civil Rights (OCR) issued their “Dear Colleague” Letter (Feb 4, 2025)



President Trump issued Executive Order 14201, “Keeping Men Out of Women’s Sports” (Feb 5, 2025)

Executive Orders in Action >>> 2024 Litigation



Tennessee v. Cardona



Slusser v Mt. W. Conf

President Trump Files Suit Against the States

- *United States v. Maine Department of Education*
- *United States v. California Interscholastic Federation*
- *United States v. California Department of Education*



High Schools Take a Turn...

Typically, state legislation is aimed at high school students.

High schools that blatantly refuse to follow state regulations, may still find themselves the targets of federal agencies.

Legislation at the High School Level

- Minnesota
- New Hampshire
- California



NCAA Policies Embrace President Trump's Executive Orders



- A student-athlete assigned male at birth may not compete on a women's team.
- 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.
- Student-athletes assigned male at birth may not receive athletic scholarships that are otherwise designated for women athletes.
- 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.

Three Universities = Three Approaches to Title IX

- Colleges and universities are typically not referenced in state athletic regulations.
- Federal regulations are usually directed at colleges and universities.

- University of Pennsylvania



- Brandeis University



Stephen F. Austin
State University



Name, Image, & Likeness Under 2020 Title IX

- During the Biden administration, schools were required to follow a guidance stating that schools must equitably distribute direct payments to male and female athletes. In February 2025, the Trump administration rolled back this guidance and stated that **Title IX guidelines do not apply to NIL deals.**
- Especially relevant following the 2025 *House* settlement.
 - The number of college athletes eligible for NIL reimbursement is growing exponentially following the House settlement. After a settlement earlier this year,
 - The NCAA will pay nearly \$2.8 billion in back damages for NIL use to athletes who competed in college at any time from 2016 through present day.

The SCORE Act (pending in 2025)

- Introduced in the House in July 2025.
- Currently moving through the Senate's fall session
- It would officially end most administrative restrictions on athlete's NIL compensation.
- It allows schools and conferences to establish what is and is not permissible.
- Should it pass, it would override current NIL laws, which vary from state-to-state, and grant antitrust (immunity) protections to the NCAA and collegiate conferences.
- Represents the federal government influencing the development of a national NIL policy.

Title IX & The Professional Athlete

- The Olympics
- The WNBA
- Nat'l Women's Soccer League



Scenario I – Sal

- Sal is a student athlete who plays on the men's baseball team. Two months into the season, Sal informs the team that they are non-binary and wants to be addressed as “they/them.” You are the Athletic Director at Sal's University. Sal's baseball coach approaches you and says that due to his religious beliefs, he would feel uncomfortable using the pronouns “they/them,” as Sal visually presents as male.
- QUESTION: The coach asks you if he may be granted an exception from calling Sal by their preferred pronouns?

Scenario I - Response

- Inform the coach of the likelihood of litigation that may arise if they choose not to refer to the athlete as their preferred pronoun.
- What do the Courts say?
 - While this scenario has not been addressed in a college setting, a federal court has ruled that teachers need not be granted an exception to calling a nonbinary or transgender student by their preferred name in a high school setting.
 - An exemption is an *undue burden on the school* and is contrary to the inclusive environment fostered by the district.

Scenario II - Sky

- Sky, who was born a male, has played for Blue University's men's soccer team freshman and sophomore year on an athletic scholarship. The summer between sophomore and junior year, Sky began to transition and now identifies as a transgender female who uses the pronouns "she/her." Upon returning to campus in the fall, Sky informs the athletic director that she would like to instead play for the Blue women's soccer team.

Scenario II - Response

- Advise Sky that if she wishes to continue as a student athlete, it is recommended that she remain on the men's soccer team.
- Inform her that per current NCAA guidelines, she would not be eligible to compete on the women's team outside of practice and she would no longer be eligible to receive her athletic scholarship.
- Understand that allowing Sky to play for the women's team could result in the revocation of federal funding and/or eventual recission of any titles the team wins including Sky's participation.
- Link Sky with supportive services to aid in her transition back to campus, if she agrees.

Scenario III - Jay

- Jay is a transgender female who is a star athlete at West Made-Up High School. The recruiting staff at Orange State would like to recruit Jay to play on the women's tennis team on a full scholarship, ignoring the Executive Order. The coaching staff also informs Jay that she can utilize the women's locker rooms, alongside the rest of the team.

Scenario III - Response

- The NCAA may seek to enforce sanctions against Orange State for behaviors that violate recruiting policies.
- Recruiting a student whose participation violates NCAA guidelines could negatively impact your ability to recruit in the future.
- Sanctions may resemble those imposed in cases of excessive recruiting, such as prohibiting coaches from off-campus recruiting in the future or reducing official visits for a period.
- Other possible NCAA sanctions may include, but are not limited to: public reprimand and censure, bans on post-season competition, and bans on television and media coverage.
 - Such sanctions may also affect NIL opportunities for other athletes at Orange State.

Scenario IV – Women's Lacrosse Team

- You coach the women's lacrosse team for a university in Idaho, whose athletics are governed by the NCAA. You understand that both Idaho state law and recent NCAA policy prohibit transgender women from competing on women's teams. One of your athletes is a transgender woman who began playing on the team prior to the new NCAA rule. In order to keep her on the field for the fierce competition this season, you schedule all lacrosse games for the season against teams in Maine and California, states where transgender women may compete on women's teams.

Scenario IV - Response

- Sanctions are based on the home state of the competing institution, not where the competition takes place (here, Idaho's rules determine the outcome).
- Although the states you compete in may allow transgender women to compete on women's teams, you may face sanctions upon returning to your home state.
- Additionally, if you decide to also schedule games in states whose laws prohibit transgender women to compete on women's teams, be aware that your transgender athletes may not be able to place on the podium or receive a winning title.

Looking Forward: How to Stay Compliant

- Check the state and local rules of the state that your team is based in, as well as the states that your team plans to compete in.
 - Pay attention to legislation and litigation changes in your area.
- Understand the distinction between gender identity and sex in your jurisdiction.
 - This distinction has been the most noticeable change between the administrations' interpretations of Title IX. Within the current administration, eligibility for women's teams is determined by an athlete's biological sex. Eligibility for men's teams may include athletes of differing biological sexes.
- Use the least invasive means to inquire about an athlete's gender identity, if any.
 - This is a slippery slope, and you should consult legal counsel before enacting a hormone monitoring or hormone measurement program.

Thank you!



Presentation assisted by Devon Crosby
University of Michigan Law School '27



Questions?

Bianca Smith
bsmith@beneschlaw.com
(216) 363-4503

Special thanks to ATIXA/NABITA
Enjoy the rest of the conference! Safe travels!