

DEMOCRATIC WOMEN'S CAUCUS

November 14, 2024

Dr. Miguel Cardona
Secretary of Education
Department of Education
400 Maryland Ave. SW
Washington, DC 20202

Dear Secretary Cardona,

As members of the Democratic Women's Caucus, we are deeply invested in the success of women athletes at all levels and upholding Title IX of the Education Amendments of 1972 (Title IX). At this pivotal moment, we must take every possible step to advance women's sports and ensure there is equality in our institutions. This includes settlements to ongoing court cases, future revenue-sharing agreements, and ensuring that Title IX applies to its full extent.

The recently preliminarily approved settlement agreement in *House v. NCAA*, *Hubbard v. NCAA*, and *Carter v. NCAA* would, for the first time, require the back-payment of damages to former athletes who were denied an explicit share in media revenue as well as name, image, and likeness (NIL) rights because of the National Collegiate Athletic Association's (NCAA) policies. The settlement also provides a clear path for schools to begin sharing their revenue with athletes by directly providing them with cash payments. Without proper guidance and careful consideration, we are deeply concerned this settlement could drive more inequality into women's collegiate athletics.

The settlement, if granted final approval, would allocate \$2.76 billion in damages to former athletes. The settlement proposes to split most of the damages inequitably. Damages to compensate athletes for their broadcast NIL rights, lost NIL opportunities, and so-called "additional compensation" claims would be divided up with 90% of the total damages, about \$ 2.37 billion, being awarded to exclusively Power Five men's basketball and football athletes, leaving 10%, about \$360 million, to be split between Power Five women's basketball athletes and all other male and female Division I athletes. This lopsided distribution flies in the face and spirit of Title IX, which, if correctly applied either to the proposed settlement or to the

distribution of this money absent the settlement, would result in equitable benefits to women athletes commensurate with their overall participation in collegiate athletics.¹

We are deeply concerned that, if approved, the back-payment thresholds established in the settlement could be misinterpreted as compliant with Title IX or used as a justification to not apply Title IX to athlete compensation going forward. Clearly, the originally proposed breakdown that would result in less than 10% of damages going to women athletes is not equal to the rate paid to athletes of the opposite sex, and it makes gender-based distinctions in rates of pay which is in violation of the Title IX Regulations. While the expert who performed the economic analyses underpinning the proposed breakdowns testified that he did not consider Title IX whatsoever, some schools may incorrectly assume that an approved settlement's distribution for back damages is Title IX compliant. Such a skewed breakdown, if approved and enacted, would formalize discriminatory under-compensation for women which is deeply harmful.

We understand that this payment structure is designed to reflect the revenue generated by respective sports. However, those revenues are also predicated on women's sports being historically underfunded and underpromoted, as detailed by the NCAA-commissioned Kaplan Report. Particularly, we are concerned that the economic analysis performed to justify the settlement does not adequately weigh the last few years, during which women's sports have grown exponentially in popularity, including record viewership² of this year's Women's Basketball Final Four, record attendance³ at Memorial Stadium for a Nebraska Women's Volleyball game last year, and the 2022 Women's College World Series surpassing⁴ viewership of the men's final.

We are also concerned about the prospect of leaving the decision over what constitutes Title IX compliance for the future revenue sharing to individual institutions and conferences, many of which have routinely and brazenly failed to live up the spirit of the law for years. We acknowledge that Assistant Secretary Catherine Lhamon stated over the summer that Title IX rules will apply to future revenue dollars that schools share with collegiate athletes, and that the

¹ U.S. District Court for the Northern District of California Oakland Division (2024). *IN RE COLLEGE ATHLETE NIL LITIGATION*. Case No. 4:20-cv-03919-CW. Retrieved from

<https://storage.courtlistener.com/recap/gov.uscourts.cand.360907/gov.uscourts.cand.360907.450.0.pdf>

² Hruby, E. (2022, June 29). Oklahoma's WCWS title win beats out CWS as most-watched NCAA game of 2022. *Just Women's Sports*. <https://justwomenssports.com/reads/ncaa-softball-baseball-oklahoma-college-world-series-win-viewership/>

³ Lavigne, P., & Murphy, D. (2024, July 16). Title IX will apply to college athlete revenue share, feds say. *ESPN*. <https://www.espn.com/college-sports/story/?id=40567726/title-ix-college-athlete-revenue-share-nil>

⁴ In Re: College Athlete NIL Litigation, Exhibit 6 to the Declaration of Rakesh N. Kilaru, No. 4:20-cv-03919-CW, Document 251-6, filed April 28, 2023 (N.D. Cal.).

<https://storage.courtlistener.com/recap/gov.uscourts.cand.360907/gov.uscourts.cand.360907.251.6.pdf> Women's Sports Foundation. (2019, September 10). What is Title IX? HYPERLINK "https://www.womenssportsfoundation.org/advocacy/what-is-title-ix/"https://www.womenssportsfoundation.org/advocacy/what-is-title-ix/

Department of Education has commented publicly about concerns regarding gender disparities in these new opportunities for athletes.⁵ However, we are all too familiar that the law can say one thing, and the reality that women athletes face is another.

For instance, Title IX requires that male and female athletes receive academic scholarship support proportionate to their participation.⁶ However, in a 2022 investigation, USA Today found that Football Bowl Subdivision (FBS) schools collectively shortchanged women \$23.7 million in academic assistance from 2020-2021.⁷ The same investigation found that 127 FBS schools failed to give women enough roster spots on their athletic teams to be compliant with Title IX, effectively robbing women athletes of the opportunity to continue their athletic career at the school of their dreams. Based on their consistent disregard for Title IX's requirements and their historical underinvestment in women athletes, colleges and conferences should not be trusted to define what is Title IX compliant when it comes to direct athlete compensation.

Finally, we are aware of suggestions that schools could try to evade their Title IX obligations by funneling the funds through an outside entity or collective. We strongly object, as it would once again undermine their obligations under Title IX, and we request that the department issue guidelines that prohibit such subterfuge.

At a time when women's sports are exploding in popularity, collegiate athletics should not take a step back by implementing a model that ignores the progress of women's sports and eliminates the opportunity for women athletes to be compensated equally as required under Title IX. Quite simply, the acknowledgement that college athletes are deserving of compensation does not invalidate Title IX or allow it to take a backseat. In fact, it should be a lynchpin of the conversation.

As such, we ask that you respond to the following questions no later than December 5, 2024:

1. To what extent would Title IX apply to direct athlete compensation from recipients of federal aid?

⁵ Kaplan Hecker & Fink LLP. (n.d.). *NCAA external gender equity review*. <https://ncaagenderequityreview.com/> Jacoby, K., Axon, R., Schnell, L., & Berkowitz, S. (2022, August 17). These 20 universities stiffed female athletes the most on scholarships. We asked them why. *USA Today*. Retrieved from <https://www.usatoday.com/story/news/investigations/2022/08/17/20-universities-athletic-scholarship-inequity-title-ix/10331936002>

⁶ Brooks, A. (2024, April 9). 2024 NCAA Women's Championship and Final Four on ESPN Platforms is Most Watched on Record. *ESPN Press Room U.S.* <https://espnpressroom.com/us/press-releases/2024/04/2024-ncaa-womens-championship-and-final-four-on-espn-platforms-is-most-watched-on-record/>

⁷ Voepel, M. A. (2023, August 30). Nebraska volleyball sets world record for women's sports attendance. *ESPN*. <https://www.espn.com/college-sports/story/ /id/38294591/nebraska-volleyball-sets-world-record-attendance-women-sporting-event>

2. What guidance or resources, in the form of rules, guidance, or other materials, has the Department of Education or its Office for Civil Rights created that may assist recipients and athletes in understanding Title IX's application to such matters?
3. Does the Department of Education agree that, if approved, the settlement's back-pay thresholds should not be considered as compliant with Title IX for purposes of additional payments to current and future athletes?
4. Can you provide clarification on what constitutes enough interaction between schools/athletes and collectives or outside organizations that would require Title IX to be applied and enforced?

Thank you for your partnership as we work to ensure that women athletes receive the equal treatment and compensation they deserve and are long overdue.

Sincerely,



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Member of Congress

Mikie Sherrill
Member of Congress

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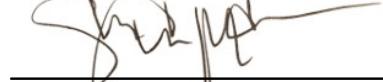
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