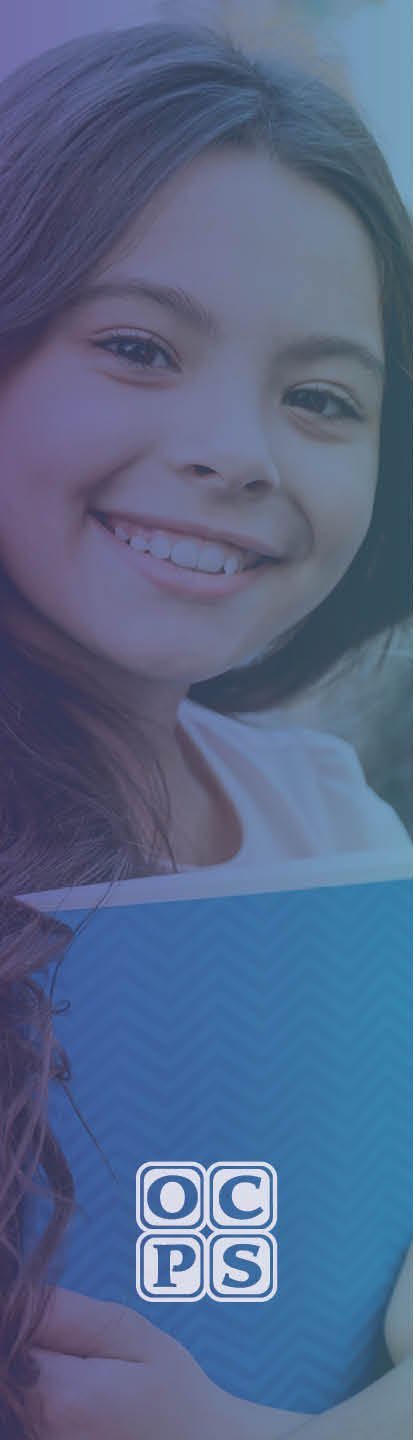
# 47th FIAAA State Conference

***May 5, 2025***

Orange County Public Schools

# The Precursor Cases

The Road to Name, Image and Likeness Laws

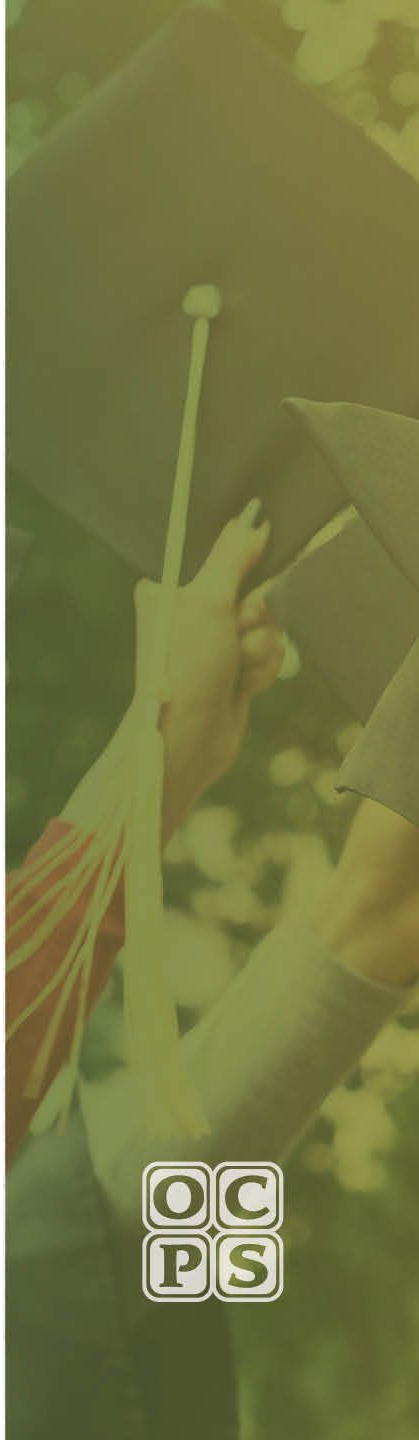


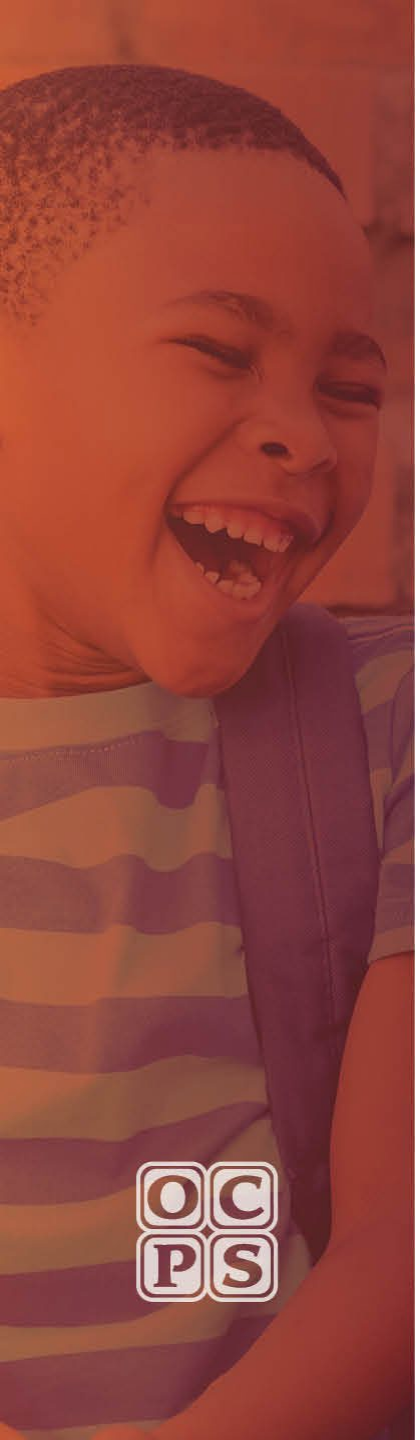
# O’Bannon v. NCAA

- In 2008, Ed O'Bannon, a former All–American basketball player at UCLA, visited a friend's house, where his friend's son told O'Bannon that he was in a college basketball video game produced by Electronic Arts (EA), a software company that produced video games based on college football and men's basketball from the late 1990s until around 2013.
- The friend's son turned on the video game, and O'Bannon saw a virtual player who visually resembled O'Bannon, played for UCLA, and wore O'Bannon's jersey number, 31. O'Bannon had never consented to the use of his likeness in the video game, and he had not been compensated for it.

# O’Bannon v. NCAA

- Sam Keller, the former starting quarterback for the Arizona State University and University of Nebraska football teams, separately brought suit against the NCAA, CLC, and EA.
- Keller alleged that EA had impermissibly used student-athletes' NILs in its video games and that the NCAA and CLC had wrongfully turned a blind eye to EA's misappropriation of these NILs. The complaint stated a claim under Indiana's and California's right of publicity statutes, as well as a number of common-law claims.
- The claims were made under the Sherman Anti-Trust Act. The Plaintiffs challenged limits on player compensation for their name, image and likeness as a violation of 15 U.S.C. s. 1, which prohibits “contracts, combinations, or conspiracy in restraint of trade or commerce.”



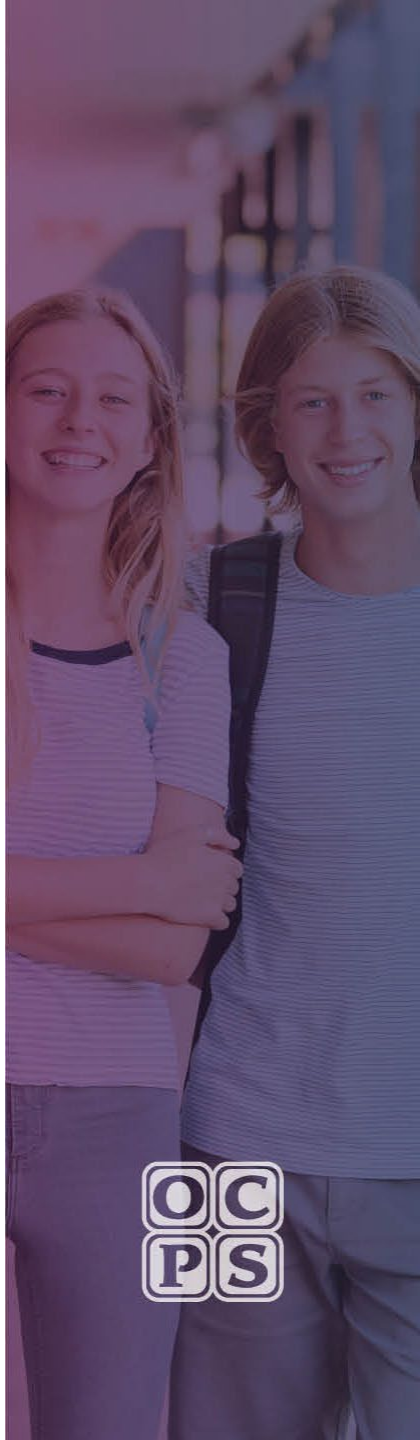


# O’Bannon v. NCAA

- The Court certified a class action:
  - “All current and former student-athletes residing in the United States who compete on, or competed on, an NCAA Division I (formerly known as ‘University Division’ before 1973) college or university men's basketball team or on an NCAA Football Bowl Subdivision (formerly known as Division I–A until 2006) men's football team and whose images, likenesses and/or names may be, or have been, included or could have been included (by virtue of their appearance in a team roster) in game footage or in videogames licensed or sold by Defendants, their co-conspirators, or their licensees.”

# O’Bannon v. NCAA

- The trial court ruled that:
  - (1) that a cognizable “college education market” exists, wherein colleges compete for the services of athletic recruits by offering them scholarships and various amenities, such as coaching and facilities;
  - (2) that if the NCAA's compensation rules did not exist, member schools would compete to offer recruits compensation for their NILs; and
  - (3) that the compensation rules therefore have a significant anticompetitive effect on the college education market, in that they fix an aspect of the “price” that recruits pay to attend college (or, alternatively, an aspect of the price that schools pay to secure recruits' services). These findings have substantial support in the record.



# O'Bannon v. NCAA

- There were two matters at issue.  The first was the value of athletic scholarships.  The Court ruled that the NCAA could increase the athletic scholarship up to the full value of the scholarship.
- These scholarships were capped at the amount of a full "grant in aid," defined as the total cost of "tuition and fees, room and board, and required course-related books." Student-athletes were prohibited from receiving any "financial aid based on athletics ability" in excess of the value of a grant-in-aid, on pain of losing their eligibility for collegiate athletics. Student-athletes could seek additional financial aid not related to their athletic skills; if they chose to do this, the total amount of athletic and nonathletic financial aid they received could not exceed the "cost of attendance" at their respective schools.
- In August 2014, the NCAA announced it would allow athletic conferences to authorize their member schools to increase scholarships up to the full cost of attendance. The 80 member schools of the five largest athletic conferences in the country voted in January 2015 to take that step, and the scholarship cap at those schools is now at the full cost of attendance.

# O'Bannon v. NCAA

- The Court held that the Sherman Antitrust Act required the full cost of attendance:
  - "A compensation cap set at student-athletes' full cost of attendance is a substantially less restrictive alternative means of accomplishing the NCAA's legitimate procompetitive purposes. And there is no evidence that this cap will significantly increase costs; indeed, the NCAA already permits schools to fund student-athletes' full cost of attendance. The district court's determination that the existing compensation rules violate Section 1 of the Sherman Act was correct and its injunction requiring the NCAA to permit schools to provide compensation up to the full cost of attendance was proper."

# O’Bannon v. NCAA

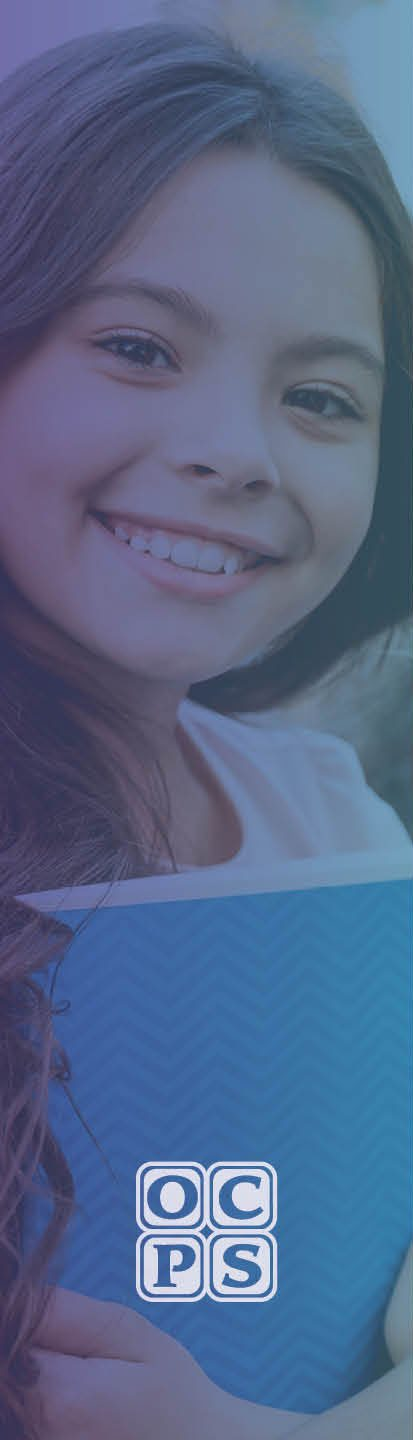
- The second issue was payment to athletes of $5,000 per year in deferred compensation for their name, image and likeness through trust funds that would make payment to the player after they left school.
- The trial court ordered that payment as relief.
- The appeals court overruled that provision as not required under the Sherman Antitrust Act:

# O'Bannon v. NCAA

- "The difference between offering student-athletes education-related compensation and offering them cash sums untethered to educational expenses is not minor; it is a quantum leap. Once that line is crossed, we see no basis for returning to a rule of amateurism and no defined stopping point; we have little doubt that plaintiffs will continue to challenge the arbitrary limit imposed by the district court until they have captured the full value of their NIL. At that point the NCAA will have surrendered its amateurism principles entirely and transitioned from its 'particular brand of football' to minor league status."

# O'Bannon v. NCAA

- The Court had some concluding thoughts:
  - "By way of summation, we wish to emphasize the limited scope of the decision we have reached and the remedy we have approved. Today, we reaffirm that NCAA regulations are subject to antitrust scrutiny and must be tested in the crucible of the Rule of Reason. When those regulations truly serve procompetitive purposes, courts should not hesitate to uphold them. But the NCAA is not above the antitrust laws, and courts cannot and must not shy away from requiring the NCAA to play by the Sherman Act's rules. In this case, the NCAA's rules have been more restrictive than necessary to maintain its tradition of amateurism in support of the college sports market. **The Rule of Reason requires that the NCAA permit its schools to provide up to the cost of attendance to their student athletes. It does not require more**."

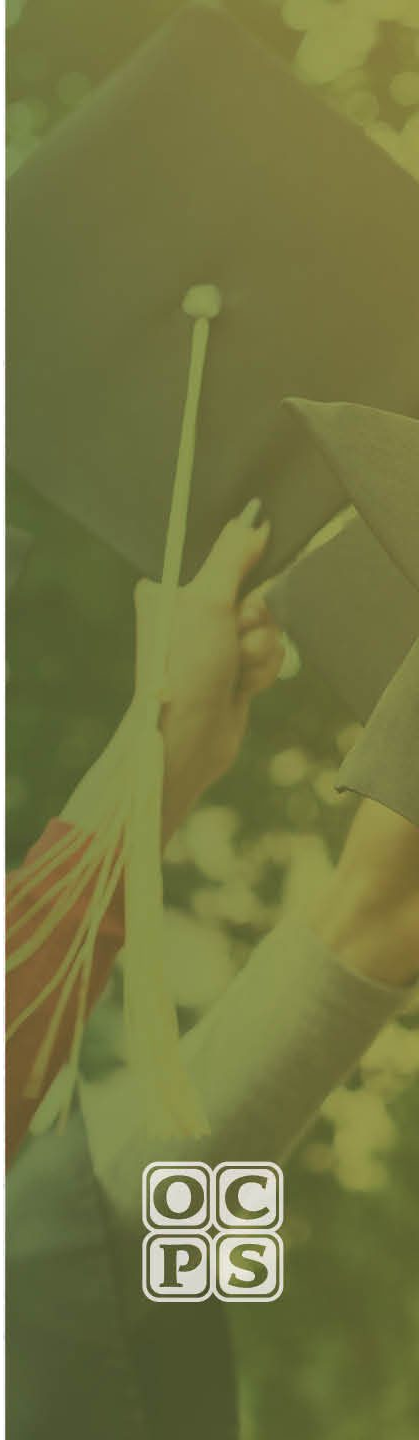


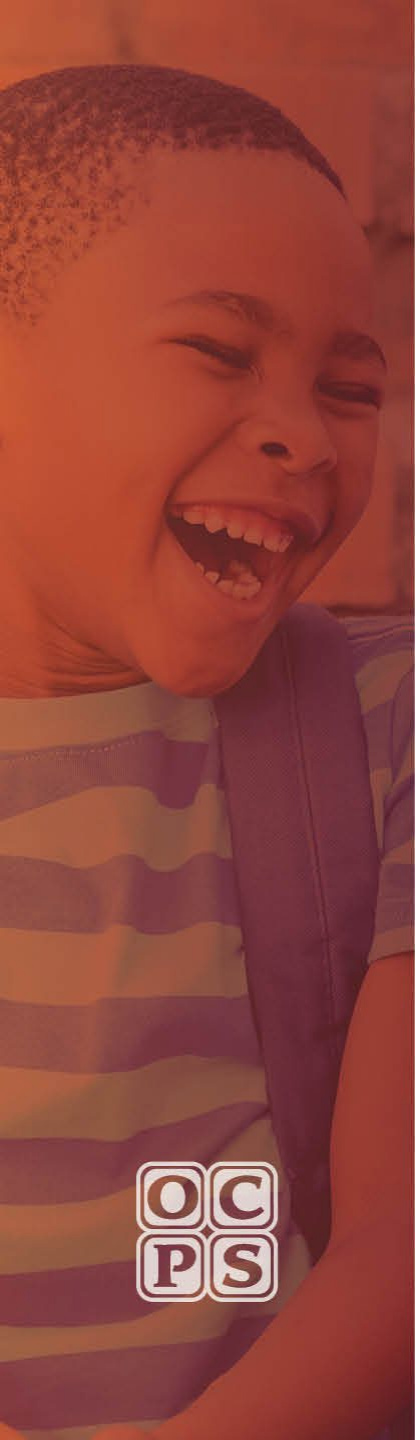
# NCAA v. Alston

- Numerous men's football players as well as men and women basketball players filed suit against the NCAA and the 11 Division 1 conferences for violation of the Sherman Antitrust Act. NCAA v. Alston, 594 U.S. 69 (2021).
- The Plaintiffs challenged limits on player compensation as a violation of 15 U.S.C. s. 1, which prohibits "contracts, combinations, or conspiracy in restraint of trade or commerce."
- The Court went through the history of competitive sports in colleges and universities.

# NCAA v. Alston

- 1852 Harvard v. Yale boat race, where a railroad executive sponsored the event to promote train travel to the picturesque lake. He offered the competitors an all-expenses-paid vacation with lavish prizes - along with unlimited alcohol.
- The Court then traced the rise of football in the late 1880s. Yale and Princeton drew paid crowds of 40,000 spectators. The game gate revenues were $25,000 (worth $783,821 today).
- The game was played by “graduate students and paid ringers.”



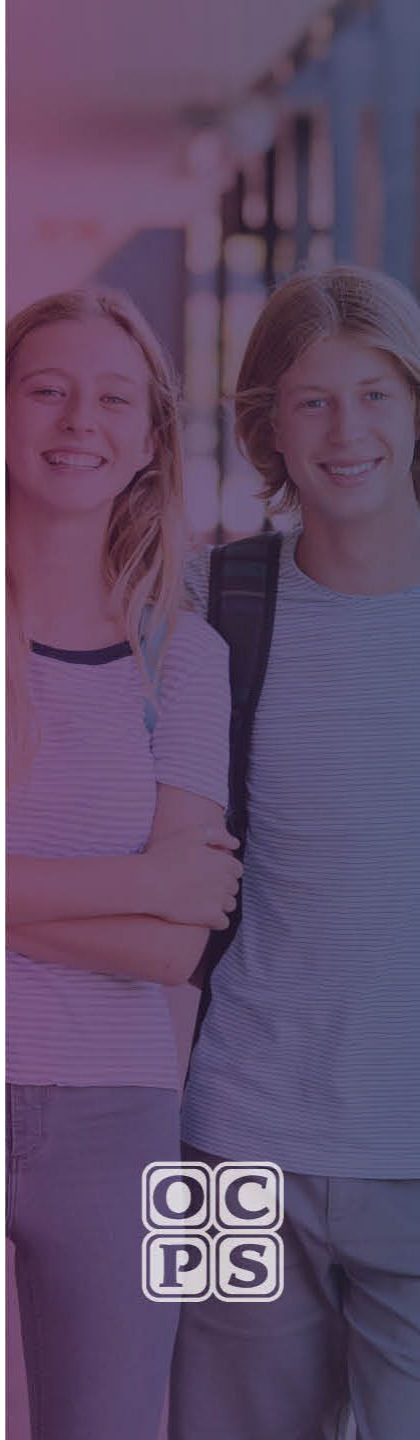


# NCAA v. Alston

- Fielding Yost, who later went on to coach Michigan to six national titles, played for Lafayette as a freshman one week in 1896 – the next week, he resumed his enrollment at West Virginia University's law school.
- In 1916, the NCAA set the following rules: "[n]o student shall represent a College or University in any intercollegiate game or contest who is paid or receives, directly or indirectly, any money, or financial concession."
- The rules weren't followed. The court stated that during that time period "College football was not a student's game; it was an organized commercial enterprise' featuring athletes with years of training, professional coaches, and competitions that were highly profitable."

# NCAA v. Alston

- In 1948, the NCAA, while still prohibiting paying players, allowed for the payment of tuition for the first time.
- In 1956, the NCAA allowed for the payment of room, board, books, and incidentals like laundry.
- In 1984, the U.S. Supreme Court struck down restrictions on limiting the number of games to be televised in any given year to protect live attendance at games. Prior to 1984, schools could only appear on television six times total, including four national contests as an unreasonable restraint of trade under the Sherman Act. NCAA v. Board of Regents of the University of Oklahoma, 468 U.S. 85 (1984).
- This decision permitted more games to be broadcast, exploding the amount of money being made by universities from college athletics.



# NCAA v. Alston

- The NCAA and its member institutions made massive amounts of money off the work of student athletes.
  - “The NCAA’s current broadcast contract for the March Madness basketball tournament is worth $1.1 billion annually. Its television deal for the FBS conference's College Football Playoff is worth approximately $470 million per year. Beyond these sums, the Division I conferences earn substantial revenue from regular-season games. For example, the Southeastern Conference (SEC) “made more than $409 million in revenues from television contracts alone in 2017, with its total conference revenues exceeding $650 million that year. All these amounts have increased consistently over the years.”

# NCAA v. Alston

- The Court then looked at various facets of college athletics. It ruled it is a monopsony – a market in which a single buyer substantially controls the market as a major purchaser of goods and services offered by many would-be sellers.
- "The NCAA *accepts* that its members collectively enjoy monopsony power in the market for student-athlete services, such that its restraints can (and in fact do) harm competition. Unlike customers who would look elsewhere when a small van company raises its prices above market levels, the district court found (and the NCAA does not here contest) that student-athletes have nowhere else to sell their labor."

# NCAA v. Alston

- The Court then looked at various practices restricted by the lower court.
- First, the NCAA was concerned about limits on post-graduate “internships,” which could be used as thinly disguised payments to players in other forms. As an example, a shoe company could offer a postgraduate internship at a school that wears the shoe company’s apparel.
- However, the Court did allow NCAA rules to stay in place that only conferences and schools could fund internships.

# NCAA v. Alston

- Second, the Court left in place the NCAA's ability to limit academic or graduation awards to no lower than what the NCAA permitted for athletic awards (which was approximately $5,980 per year). The Court said the NCAA was free to limit both academic and graduation awards and athletic awards lower.
- Third, the Court allowed the NCAA to lower in-kind contributions given to athletes. The NCAA worried that such in-kind awards would be utilized to provide luxury items such as cars as a way to circumvent rules against paying players.

# NCAA v. Alston

- The Court concluded as follows:
  - “Some will think the district court did not go far enough. By permitting colleges and universities to offer enhanced education-related benefits, its decision may encourage scholastic achievement and allow student-athletes a measure of compensation more consistent with the value they bring to their schools. Still, some will see this as a poor substitute for fuller relief. At the same time, others will think the district court went too far by undervaluing the social benefits associated with amateur athletics. For our part, though, we can only agree with the Ninth Circuit: ‘The national debate about amateurism in college sports is important. But our task as appellate judges is not to resolve it. Nor could we. Our task is simply to review the district court judgment through the appropriate lens of antitrust law.’ That review persuades us the district court acted within the law's bounds.”

# NCAA v. Alston

- The concurrence by Justice Kavanaugh paved the way for name, image, and likeness.
- Justice Kavanaugh said the ruling did not address the NCAA's underlying compensation rule that college athletes cannot be paid compensation beyond tuition, room, board, etc.
- He then stated that previous comments in rulings about amateurism and college sports were not binding and had no application to the NCAA's compensation rules.
- Justice Kavanaugh further stated that the Court was clear that college sports do not enjoy antitrust exemption, which allow them to restrain trade.
- The only sport to get an antitrust exemption is Major League Baseball. Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs, 259 U.S. 200 (1922)

# NCAA v. Alston

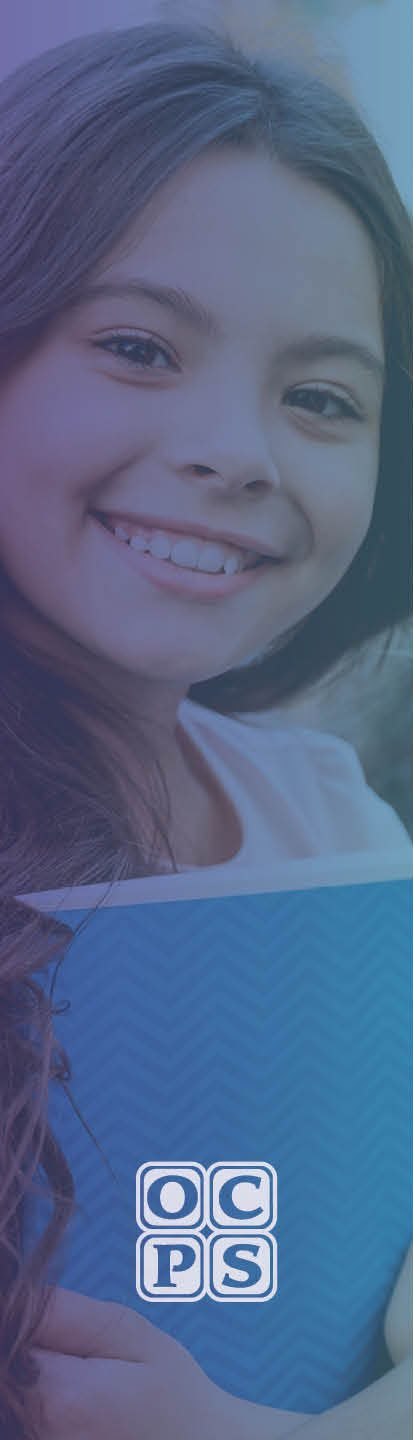
- Justice Kavanaugh then cut to the heart of the matter:
  - “The bottom line is that the NCAA and its member colleges are suppressing the pay of student athletes who collectively generate *billions* of dollars in revenues for colleges every year. Those enormous sums of money flow to seemingly everyone except the student athletes. College presidents, athletic directors, coaches, conference commissioners, and NCAA executives take in six- and seven-figure salaries. Colleges build lavish new facilities. But the student athletes who generate the revenues, many of whom are African American and from lower-income backgrounds, end up with little or nothing.”

# NCAA v. Alston

- He then finished his concurrence with the following:
  - “To be sure, the NCAA and its member colleges maintain important traditions that have become part of the fabric of America—game days in Tuscaloosa and South Bend; the packed gyms in Storrs and Durham; the women's and men's lacrosse championships on Memorial Day weekend; track and field meets in Eugene; the spring softball and baseball World Series in Oklahoma City and Omaha; the list goes on. But those traditions alone cannot justify the decision to build a massive money-raising enterprise on the backs of student athletes who are not fairly compensated. Nowhere else in America can businesses get away with agreeing not to pay their workers a fair market rate on the theory that their product is defined by not paying their workers a fair market rate. And under ordinary principles of antitrust law, it is not evident why college sports should be any different. The NCAA is not above the law.”
- The NIL floodgates opened after this ruling.

# Name, Image and Likeness

I thought high school sports were amateur sports

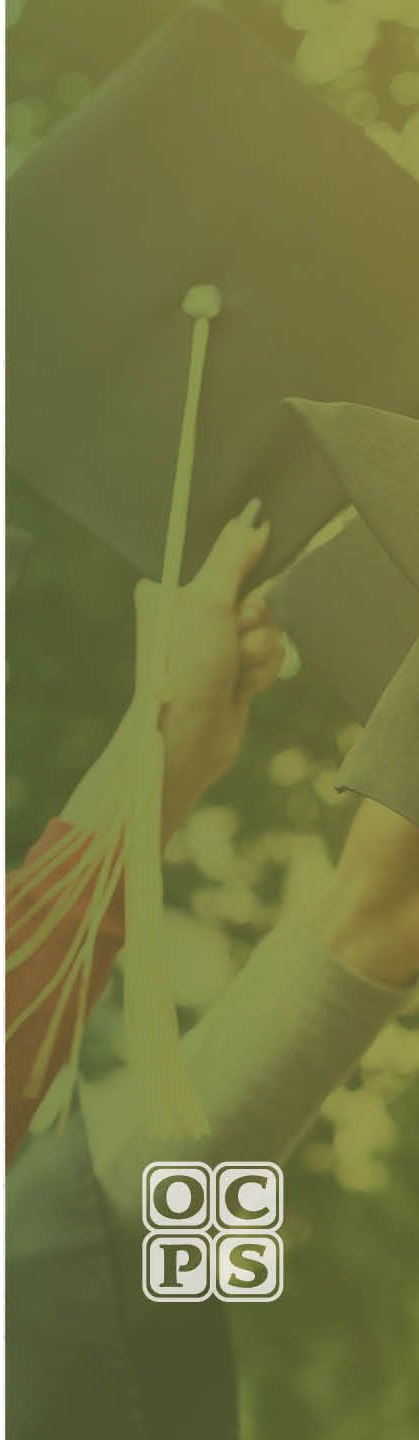


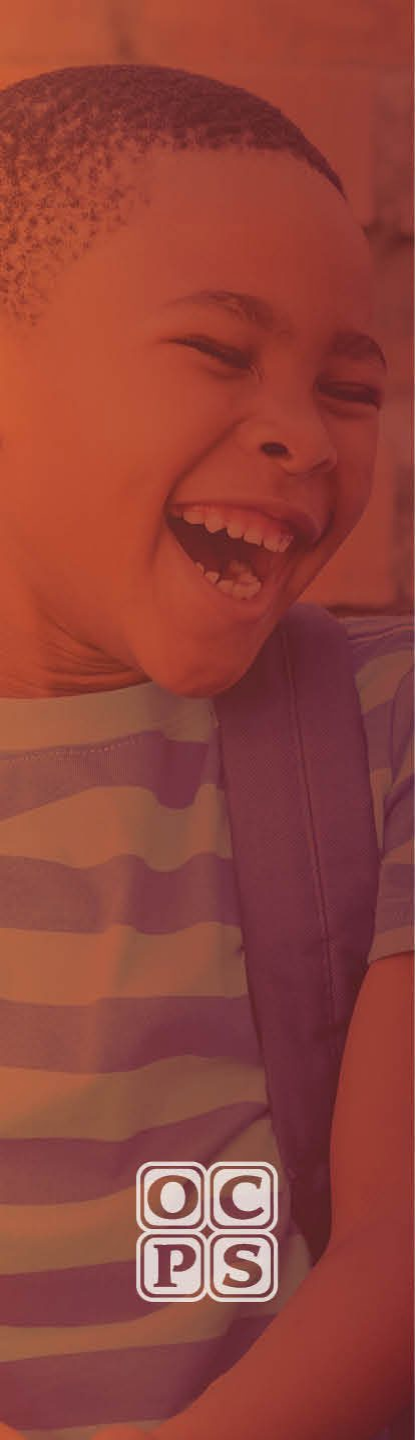
# Name Image And Likeness

- In June , 2024, FHSAA authorized FHSAA Bylaw 9.9, titled “Amateurism and Name, Image and Likeness (NIL),: which had the effect of allowing student-athletes to monetize their name, image and likeness.
- On July 24, 2024, the State Board of Education ratified Bylaw 9.9.
- The Bylaw has many different parts and components – each will be addressed in turn.

# Name, Image and Likeness

- Bylaw 9.9 Preamble
  - FHSAA recognizes the importance of maintaining amateurism
  - Compliance with Bylaw 9.9 does not ensure eligibility standards under NCAA, National Association of Intercollegiate Athletics (NAIA), National Junior College Athletic Association (NJCAA) rules and regulations.
  - FHSAA supports NIL education so student-athletes to make informed decisions.



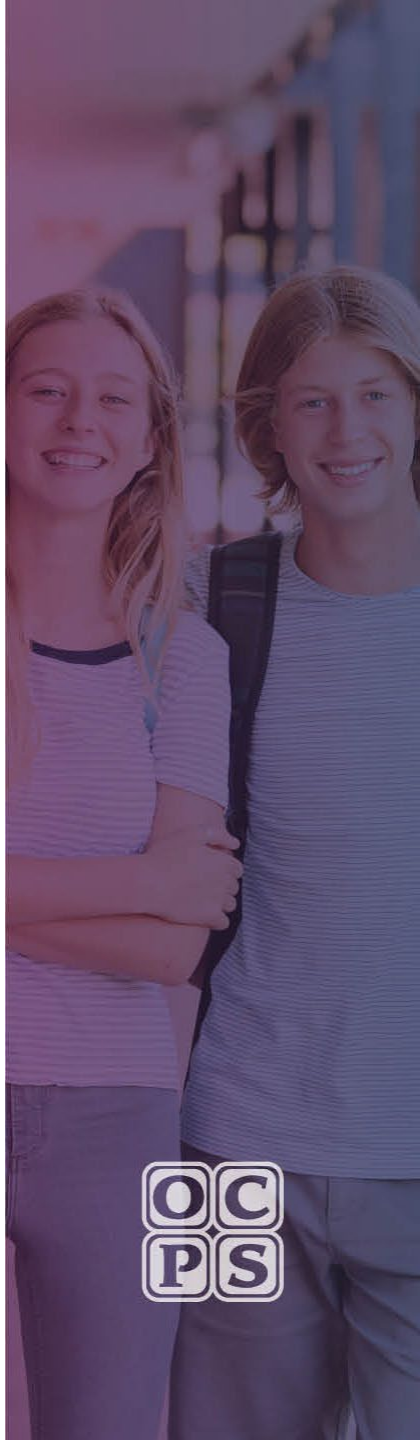


# Name, Image and Likeness

- Bylaw 9.9.1 – A student may not participate unless he or she is an amateur. An amateur is a person “who engages in athletic competition solely for the physical, mental, social, and pleasure benefits derived from the activity.”
- Bylaw 9.9.2: The following activities may impact a student athlete’s amateur status:
  - Competing for money or other monetary compensation
  - Receiving any award or prize of monetary value not approved by FHSAA
  - Capitalizing on athletic fame or performance by receiving money or gifts of a monetary nature
  - Signing a professional playing contract
  - Hiring an agent to manage an athletic career, other than for advising on NIL-related matters
  - Competing under an assumed name
  - Accepting an NIL deal that does not adhere to Bylaw 9.9

# Name, Image and Likeness

- Bylaw 9.3.3 details Permissible Awards, Gifts, or other Compensation:
  - Symbolic awards such as school letters, medals, trophies, plaques, pins, keys, or ribbons of small monetary value purchased from an established award company;
  - Rings, sweaters, jackets, or award blankets that are presented by the school, which they represent, and does not exceed the value of the purchase price from an established award company.
  - Remuneration of “essential expenses” for any game in which he or she participates as a player (e.g., meals, lodging, or transportation).
  - NIL agreement as defined in Bylaw 9.9.



# Name, Image and Likeness

- Bylaw 9.9.4 states a student-athlete may profit from the use of their name, image, and likeness. Permissible activities include commercial endorsement, promotional activities, social media presence, and product or service advertisements.
- Bylaw 9.9.4.1. states a NIL deal is a fully executed, written contract that allows student-athletes to profit from or be compensated for promoting, partnering, and/or representing product endorsements and other activities. The NIL agreement is limited to a student-athlete's high school period of athletic eligibility and shall not extend beyond graduation.

# Name, Image and Likeness

- Bylaw 9.9.4.1.1: By entering the NIL, the student-athlete and his or her parent/guardian release the school, its district or governing body (e.g., Charter School governing board, etc.) and FHSAA from any liability related to, or arising from, the NIL agreement.
- Bylaw 9.9.4.1.2: The Student athlete and his/her parent/guardian shall hold harmless their school, its district or governing body, and FHSAA from any liability related to, or arising from, the NIL agreement.

# Name, Image and Likeness

- Bylaw 9.9.4.2: NIL Collectives
  - NIL Collectives are groups, organizations, or cooperative enterprises that exist to collect funds from donors, individuals, or businesses to:
    - Help facilitate NIL deals for student-athletes
    - Facilitate payments to or transfers of funds to student-athletes
    - Create ways for athletes to monetize their NIL and/or
    - Otherwise, promote BIL for schools or student athletes.
  - NIL collectives shall not include school-sanctioned team fundraising.

# Name, Image and Likeness

- Bylaw 9.9.4.2: Student-athletes cannot use or make reference to, or authorize others to use uniforms, logos, mascots, insignia, and identifying marks of a member school, the FHSAA, the National Federation of State High School Associations (NFHS), and/or any FHSAA, NFHS, or member school event, game, or championship when engaging in NIL activity.
- Student-athletes will be prohibited from monetizing their name, image and likeness with the use of the school's uniforms, logos, name, proprietary patents, products or copyrights associated with an FHSAA member school, NFHS and/or school district, either in public, print or social media platforms unless granted prior written consent from the school, district, governing body of the school, or Association, respectively.

# Name, Image and Likeness

- Bylaw 9.9.4.3.1: Student athletes may not promote any third-party entities, goods, or services during school or district-sponsored activities or FHSAA activities.
- Bylaw 9.9.4.3.2: No references to FHSAA, NFHS, school, or school district accolades or championships may be used in NIL activities for which students are compensated.

# Name, Image and Likeness

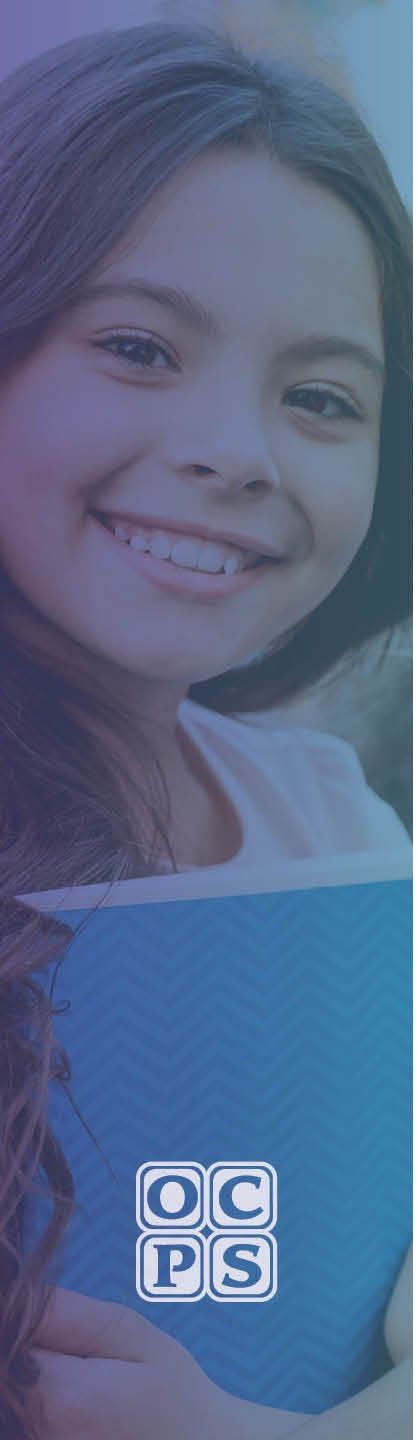
- Bylaw 9.9.4.4: Prohibited Engagements. Student-athletes may not engage in NIL activities involving the following categories and services:
  - Adult entertainment products and services
  - Alcohol, tobacco, vaping, and nicotine products
  - Cannabis products
  - Controlled substances
  - Prescription pharmaceuticals
  - Gambling, sports betting, lottery, betting in connection with video games, online games, and mobile devices
  - Weapons, firearms, and ammunition
  - Political or social activism
  - NIL Collectives.

# Name, Image and Likeness

- Bylaw 9.9.4.5: No school employee, athletic department, staff member, or representative of the school's athletic interest as defined in Bylaw 1.4.17 (a-e) may form, direct, offer, provide, or otherwise engage in any activity outlined in Bylaw 9.9.
- Representative of the school's athletic interests:
  - Student athlete or other student participant in the athletic program
  - Parents, guardians, or other family members of a student-athlete or a student participant
  - An immediate relative of the coach or other member of the athletic department staff at that school
  - Volunteer with that school's athletic program
  - A member of an athletic booster organization of that school
- Representatives of the school's athletics interest are prohibited from being part of NIL Collectives.

# Name, Image and Likeness

- Bylaw 9.9.4.6: NIL activities shall not be used to pressure, urge, or entice a student athlete to attend a school for the purpose of participating in sports. The NIL agreement shall not be used as a guise for athletic recruiting.
- Bylaw 9.9.4.7: A student-athlete who transfers after starting a sport shall be prohibited from securing an NIL agreement that season, unless they meet the requirements for transferring after starting a sport (i.e., continuing participation for a previous public school or beginning participation for a new school)

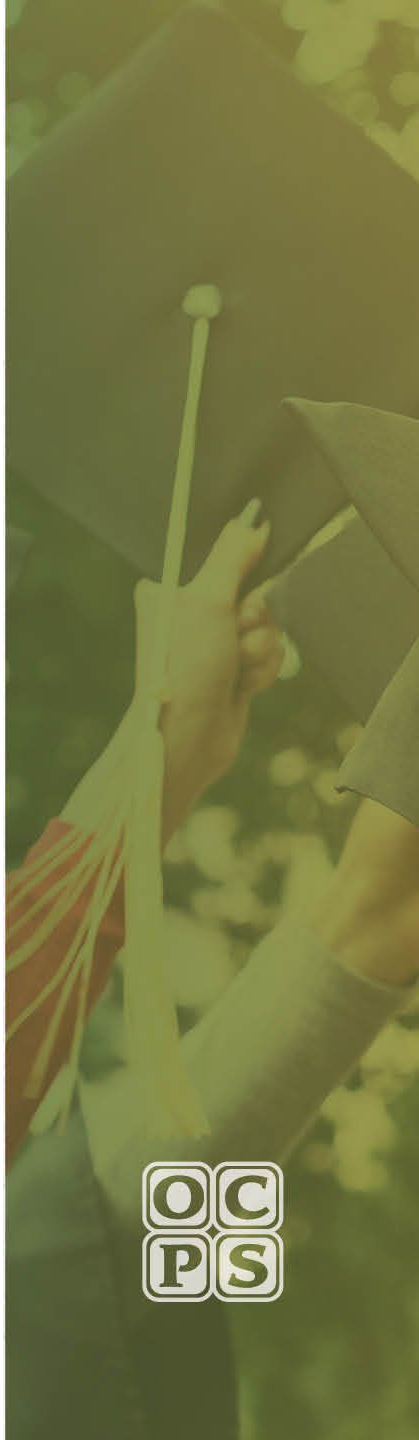


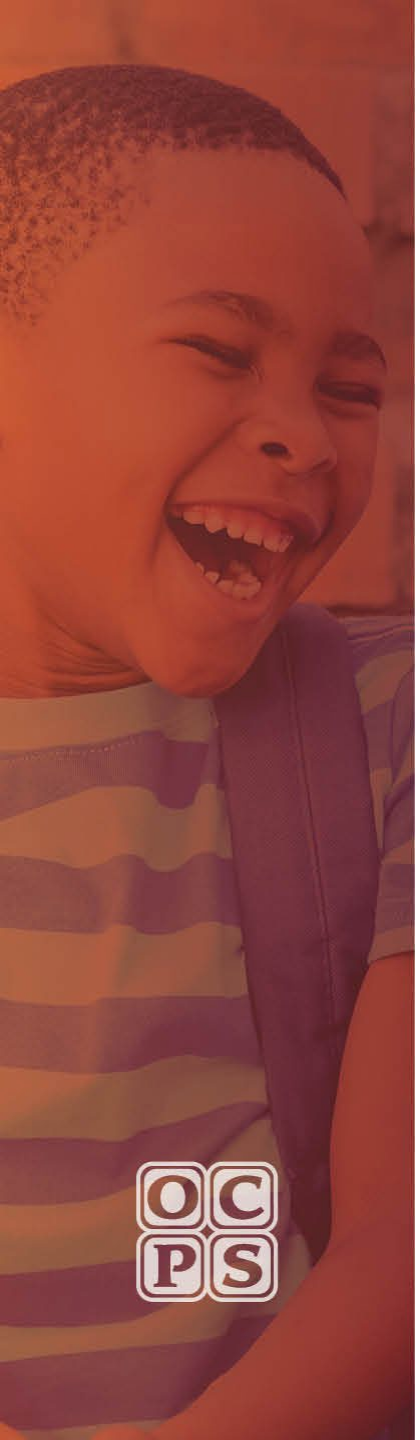
# Name, Image and Likeness

- Bylaw 9.9.5
  - Failure to comply with Bylaw 9.4.4 (allowing student athletes to profit from their NIL) will result in penalties to the school, including
    - Public reprimand
    - Minimum fine of $2,500
    - Probation (administrative, restrictive, or suspension) for one or more years
    - Prohibition on participating in the FHSAA Championship Series
    - Prohibition against participating in any interscholastic competition for one or more years in the sports in which the violation occurred
    - Participation in a higher classification for one or more years
    - Expulsion from the Association.

# Name, Image and Likeness

- Bylaw 9.9.5.2. Same penalties for school employees and contractors as there are for schools.
- Bylaw 9.9.5.3: Violations of NIL rules for student-athletes
  - First Offense: Formal warning and if applicable, the student shall terminate/modify the NIL agreement, remove any advertisement, promotional activity, or endorsement, and return any awards, gifts, and other compensation.
  - Second offense: Student-athlete will be ineligible to represent any member school for a period of one year from the date of discovery.
  - Third offense: Permanent ineligibility.



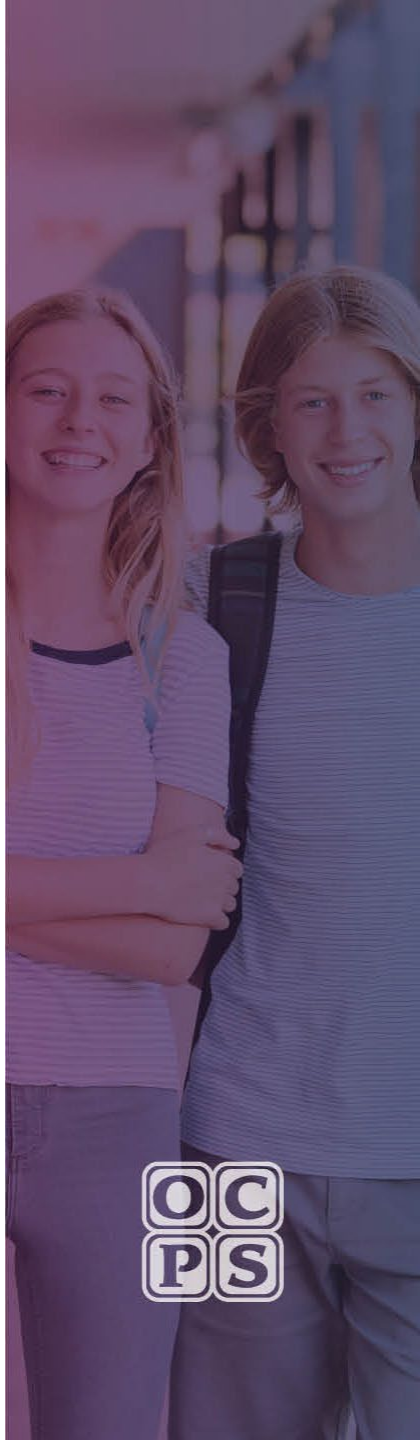


# Name, Image and Likeness

- Student-athlete has to sign an “Affidavit of Compliance with the Regulations on Amateurism and Interscholastic Athletic Eligibility.”
  - I have read and understand the regulations regarding activities or other compensation that may impact the amateur status for THIS STUDENT.
  - I have read and understand the regulations regarding permissible awards, gifts, or other compensation that THIS STUDENT may accept.
  - I have read and understand the regulations regarding Name, Image, and Likeness (NIL) that THIS STUDENT must adhere to.
  - I have read and understand that THIS STUDENT must have prior written consent from the school, district, or governing body of the school authorizing the use of uniforms, logos, mascots, insignia, or identifying marks of a member school.
  - I have read and understand the regulations regarding prohibited engagements, including activities involving NIL Collectives.
  - I have read and understand the escalating penalties that shall result from THIS STUDENT engaging in activities or receiving awards, gifts, or other compensation that impact the amateur status of THIS STUDENT.
  - https://fhsaa.com/documents/2024/10/2//GA1_Affidavit_of_Amateurism_10124.pdf?id=5736

# Name, Image and Likeness

- FHSAA has provided tips for athletes to safeguard their finances:
  - Understanding budgeting
  - Keep track of finances
  - Plan for the future (save and/or invest; avoid get-rich-quick schemes)
  - Build a reliable team of advisors, including trustworthy professionals (accountants, lawyers, etc.)
  - Manage debts (pay off debts prior to making luxury purchases)
  - https://fhsaa.com/documents/2024/8/12//Tips_for_Athletes_to_Safeguard_Their_Finances.pdf?id=5634



# Name, Image and Likeness

- Contract basics
  - An agreement between two or more parties to either carry out or abstain from an action in the present and future.
  - If a contract is breached, the other party can take legal action to enforce the agreement.
  - Contracts must be lawful and not infringe on public policy.
  - Both parties must be capable of entering into a contract.
  - Minors lack the ability to enter into a contract without parental permission.
  - https://fhsaa.com/documents/2024/8/12//Contract_Basics.pdf?id=5629

# Name, Image and Likeness

- Section 743.08(1), Fla. Stat.:
  - “A contract made by a minor or made by a parent or guardian of a minor, or a contract proposed to be so made, may be approved by the probate division of the circuit court or any other division of the circuit court that has guardianship jurisdiction, where the minor is a resident of this state or the services of the minor are to be performed or rendered in this state, where the contract sought to be approved is one under which: The minor will endorse a product or service, or in any other way receive compensation for the use of right of publicity of the minor as that right is defined by s. 540.08.”

# Name, Image and Likeness

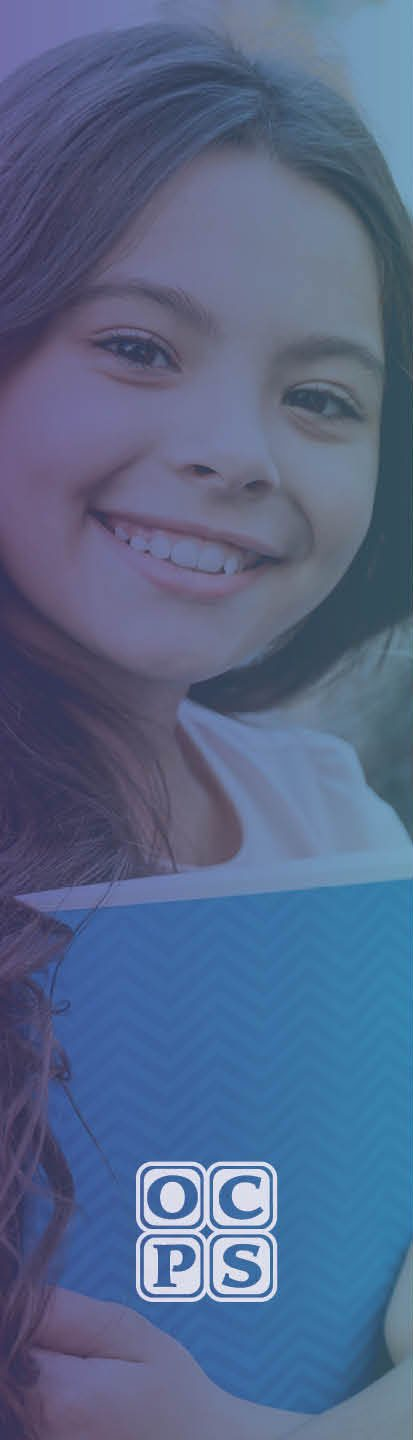
- Section 743.08(3)(a)-(b), Fla. Stat.
  - "If a contract described by subsection (1) is so approved by the circuit court pursuant to the requirements of this section and the requirements of ss. 743.09, 743.095, and chapter 744, the minor may not, either during his or her minority or upon reaching his or her majority, disaffirm the contract on the ground of minority or assert that the parent or guardian lacked authority to make the contract. A contract modified, amended, or assigned after its approval under this section shall be deemed a new contract."
  - "If a contract described by subsection (1) is so approved, all earnings, royalties, or other compensation earned or received by the minor pursuant to said approved contract shall become the property of the minor, subject to the provisions of ss. 743.09, 743.095, and chapter 744."

# Name, Image and Likeness

- NIL and Taxable compensation:
  - Cash payments (endorsements, posts, appearance fee, autograph signing)
  - Merchandise deals
  - Car leases
  - Any goods received in exchange for promotion: clothing, merchandise, equipment
  - Sale of products produced by or for you
  - NIL is considered self-employment income. If in excess of $600, you will receive an IRS Form 1099
  - Federal tax implications if income surpasses $12,550.
  - https://fhsaa.com/documents/2024/8/12//NIL_Taxes.pdf?id=5630

# Name, Image and Likeness

- FHSAA resources: https://fhsaa.com/sports/2024/8/12/ABOUT_NILResources.aspx
- NFHS NIL Course: https://nfhslearn.com/courses/name-image-and-likeness

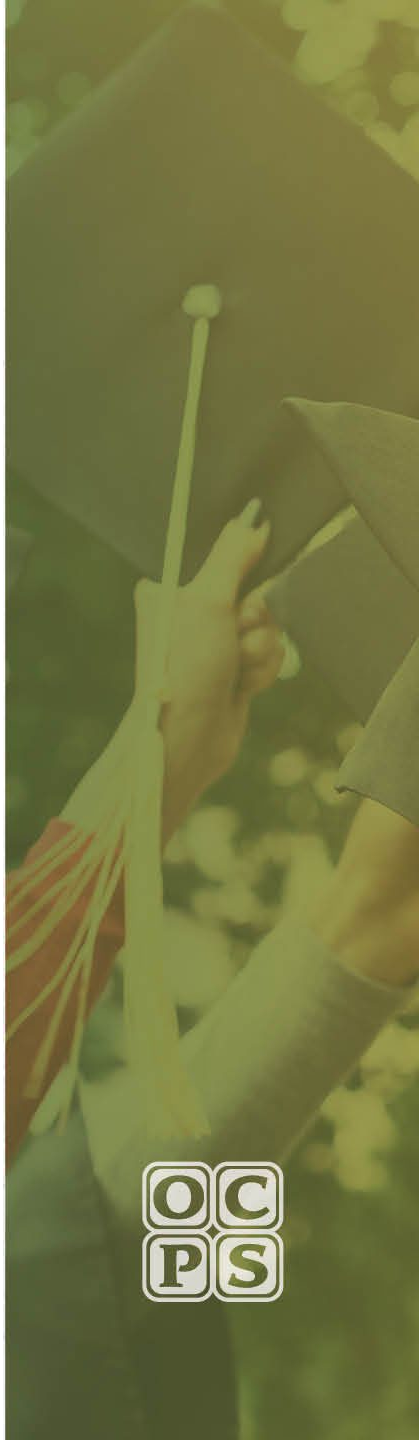


# Name Image and Likeness

- Students are now taking advantage of this opportunity.
- D1 Training in Fort Myers signed Anayeli Guzman, a varsity softball standout at Evangelical Christian School , to an NIL deal.  She has trained at D1 Training since seventh grade. She is currently a sophomore.
- “Honestly, this gym has helped me a lot with training,” said Guzman. Guzman hopes her NIL deal will prepare her for college.
- https://www.winknews.com/news/lee/local-high-school-softball-player-lands-nil-deal/article_b4c51287-ffc2-5a29-84f3-902741d4cbef.html

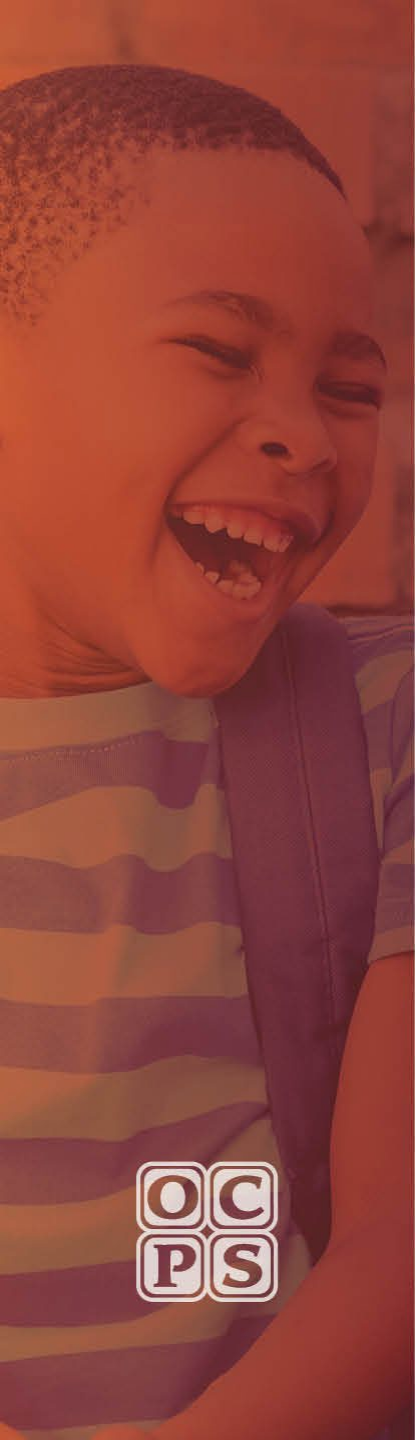
# Name Image and Likeness

- A student at Jupiter High School wanted to start a club to discuss NIL issues.
- The student was told no by the school's Athletic Director.
- "When I brought up the words 'nil,' he actually shut me down right away, and really didn't give me a chance to explain that I just want to help educate the athletes and the people who don't understand what it is yet," said Judah Glusman, the student behind the club.
- In an email to Glusman, the Athletic Director said, "district protocols regarding NIL prohibit schools from having any interaction and association with NIL...we will not be having an NIL club at JHS."
- https://cbs12.com/news/local/nil-club-snubbed-by-school-official-district-deciding-whether-to-allow-club-to-be-created-name-image-likeness-sports-football-basketball-baseball-jupiter-high-palm-beach-county-october-2-2024



# Title IX Facilities

Its Always Baseball and Softball



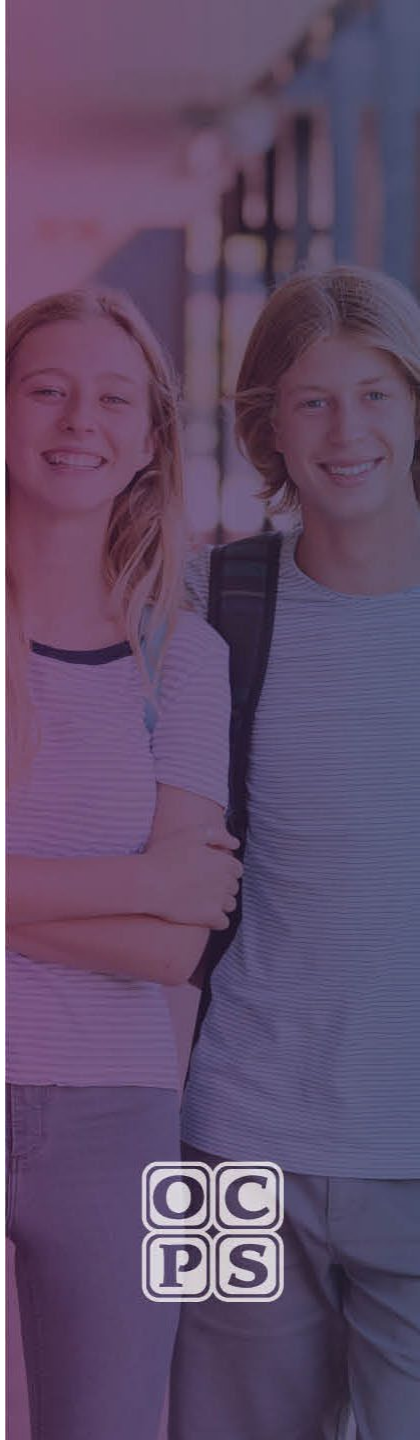
# Cases Under Title IX Facilities

- Daniels v. School Board of Brevard County, 985 F.Supp. 1458(M.D. Fla. 1997):
  - Girls' softball program complained of disparities in facilities between them and the baseball program.
  - Electronic scoreboard:
    - Baseball had one, and softball did not.
  - Batting cage:
    - Baseball had one, and softball did not.
  - Bleachers:
    - Girls' softball had worse bleachers and fewer spectators than baseball.
  - Signs:
    - The baseball team had "Merritt Island Baseball" on a large structure by the baseball field. Softball had no similar sign.

# Cases Under Title IX
## Facilities

- Bathroom facilities:
  - Baseball had bathrooms, and softball did not.
- Lighting:
  - Baseball had lights, and softball did not.
- The Court entered an injunction requiring upgrades to the softball facilities:

> "Since these inequities should have long ago been rectified, the Court is unsympathetic to Defendant's claims that it will be unduly harmed by expenditure of funds necessary to level the playing field for girls softball athletes. For far to long, the softball team has been denied athletic opportunity equal to the baseball team. The harm associated with that treatment as second class citizens is significant."



# Cases Under Title IX
## Facilities

- Daniels v. School Board of Brevard County, 995 F.Supp. 1394 (M.D. Fla. 1997):
  - Brevard County was ordered to provide a remediation plan. Its remediation plan was as follows:
    - Electronic Scoreboard:
      - Turn off the baseball scoreboard.
    - Batting cage:
      - They would locate the pitching machines in the cages so the teams could use the cages in alternate weeks.
    - Bleachers:
      - The school would rope off the bleachers at the baseball field so only spaces equivalent to the girls softball bleachers would be available.
    - Signs:
      - The school would change “Merritt Island Baseball” to “Merritt Island Baseball and Softball.”

# Cases Under Title IX
## Facilities

- Bathrooms:
  - The school would remove a fence to allow access from the softball field to the bathroom.
- Lighting:
  - Install lights on girls' field and discontinue usage of lights on the baseball field until lights are installed on the softball field.
- The Court rejected the plan:

  "Unfortunately, the Board's plan leaves much to be desired; it creates the impression that the Board is not as sensitive as it should be regarding the necessity of compliance with Title IX. The Court is inclined to agree with Plaintiffs that many of the Board's proposals seem more retaliatory than constructive."
- The Court ordered the removal of the fence for the restroom, established a schedule for both teams to use the batting cage, changed the sign to read "Merritt Island Baseball and Softball" and to speed up installation of lights.

# Cases Under Title IX
## Facilities

- Landlow v. School Board of Brevard County, 132 F.Supp. 2d 958 (M.D. Fla. 2000):
  - Plaintiffs sued about the disparity between the baseball and softball facilities at Titusville and Astronaut High Schools.
  - Softball had an off-campus stadium at a City of Titusville Park. Baseball had an on-campus stadium.
  - Softball fields had lights, but girls could not play at night due to city-sponsored recreational leagues. Baseball could play night games.
  - Baseball teams had batting cages. Softball did not.

# Cases Under Title IX

## Facilities

- Baseball fields had scoreboards.  Softball did not.
- There was a press box at the Titusville baseball stadium. There was no press box at the softball fields.
- The dimensions of the softball fields did not conform to the dimensions of a fast-pitch softball field.  It conformed to male slow-pitch softball.  The fences were too far for softball players to hit a homer.

# Cases Under Title IX

## Facilities

- The Court, using the 10 factors from 34 C.F.R. 106.41, ruled that the School Board violated Title IX and required the development of a plan which "elevates the girls softball program at Titusville and Astronaut to a level enjoyed by the boy's baseball teams at those schools. The School Board should not propose a course of action that imposes 'separate disadvantages' upon the girls' and boys' programs as the Board initially attempted to do in response to the Court's decision on the motion for preliminary injunction in Daniels."

# Cases Under Title IX
## Facilities

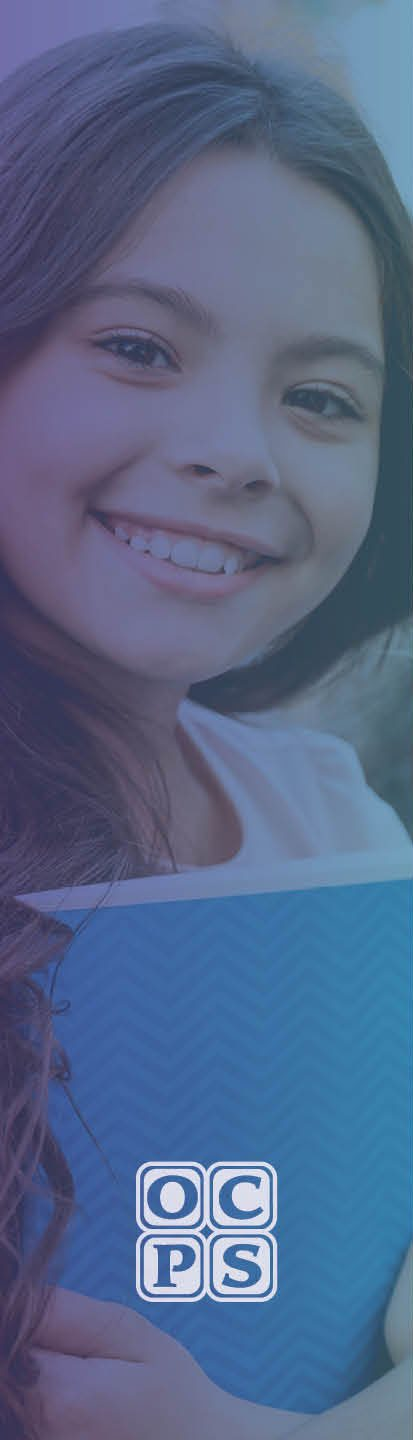
- Case study on inequity in facilities. Ollier v. Sweetwater Union High School District, 858 F.Supp.2d 1093 (S.D. Cal 2012).
  - The Court looked at various factors and found disparities between boys' and girls' sports sufficient to find a violation of Title IX:
    - Recruiting: Every athletic coach at the high school is tasked with recruiting new players and conducting publicity for the team. The Court found a violation of Title IX because female athletes were provided with fewer coaches, coaches with more limited experience, and coaches who could not adequately coach because of time constraints. The Athletic Director went to the feeder school to talk about boys' sports, but not girls' sports.

# Cases Under Title IX
## Facilities

- Locker Rooms, practice and competition facilities:
  - The court found that 39 percent of boy athletes had superior facilities and 61 percent had adequate facilities. The court found 100 percent of the females had adequate facilities.
- The football team had its own locker room, which was rated superior, which meant they were next to the practice and competition facilities. An adequate facility is one that is not close to a practice and competition facility but is on campus.

# Cases Under Title IX
## Facilities

- With respect to baseball and softball, the baseball team had a netted instructional complex, two bullpens, a rollaway backstop, multi-station instructional areas, a batting case, significant storage area, four stands for spectators, wind-screened outfield fences, and high-quality playing surfaces.
- The girls' softball team had a wooden backstop, which was too small, and chain-link dugouts rather than cinderblock dugouts. The dugouts did not have roofs. There was no outfield fence for the softball field, and the infield dirt was extremely hard.

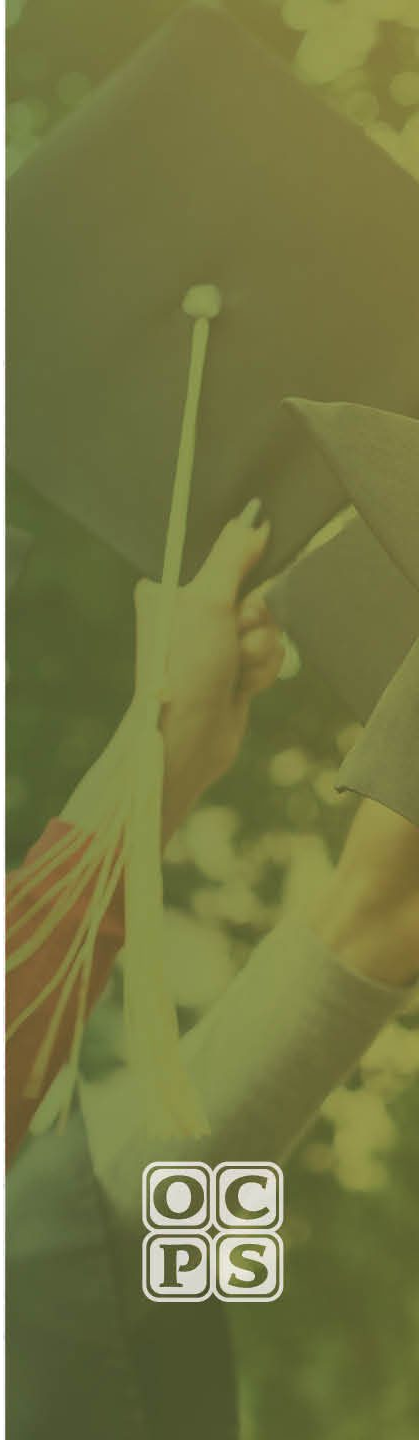


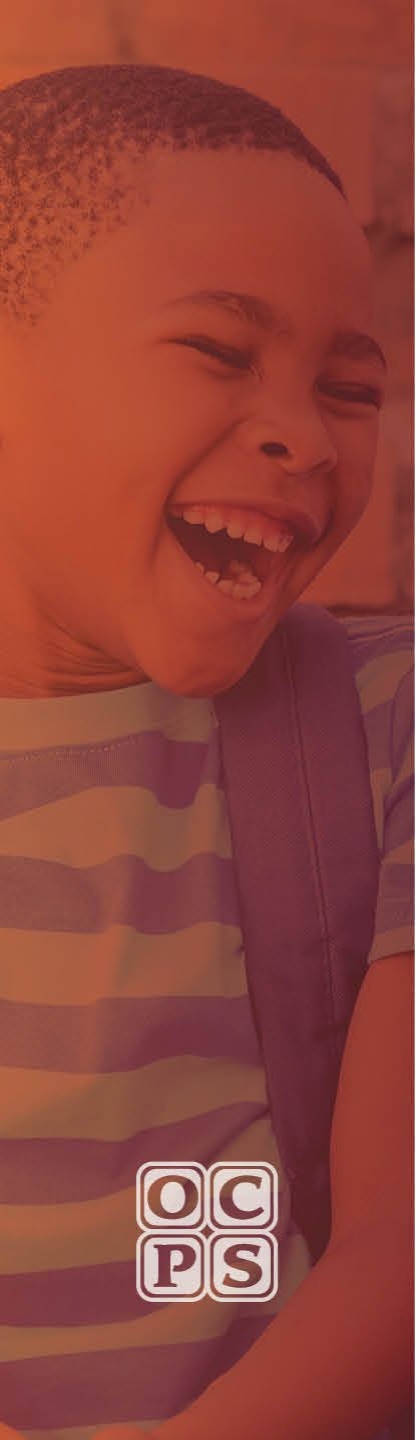
# Cases Under Title IX
## Facilities

- Equipment, Uniforms, and Storage:
  - Girls' softball had insufficient balls for pitching machines, ball carts, buckets, and balls. There was no maintenance storage area for maintenance supplies. Additionally, there was no monitoring of the uniform replacement schedule, and it allowed for violations of the uniform replacement schedule as it pertained to girls' sports.
- Scheduling:
  - Girls' sports had less optimum times for scheduling. The girls' basketball games always started at 6:00 p.m. on Friday, while the boys always started at 7:30 p.m. There was no alternating of start times weekly to allow the girls to go later on occasion.

# Cases Under Title IX
## Facilities

- Equal access to coaching:
  - Female athletes were provided with fewer coaches. Coach-to-athlete ratios were higher for female sports than male sports. Additionally, with respect to supplements, while the boys' baseball team and girls' softball teams had identical supplements, the baseball coach would not take his supplement and would spend it on additional coaches.
- Medical and training services:
  - The weight rooms, while open to both genders, were used predominantly by boys and had equipment for strength-based sports (i.e., football, weightlifting, wrestling) rather than for girls, which typically have lower weight plates and free weight equipment designed for flexibility.





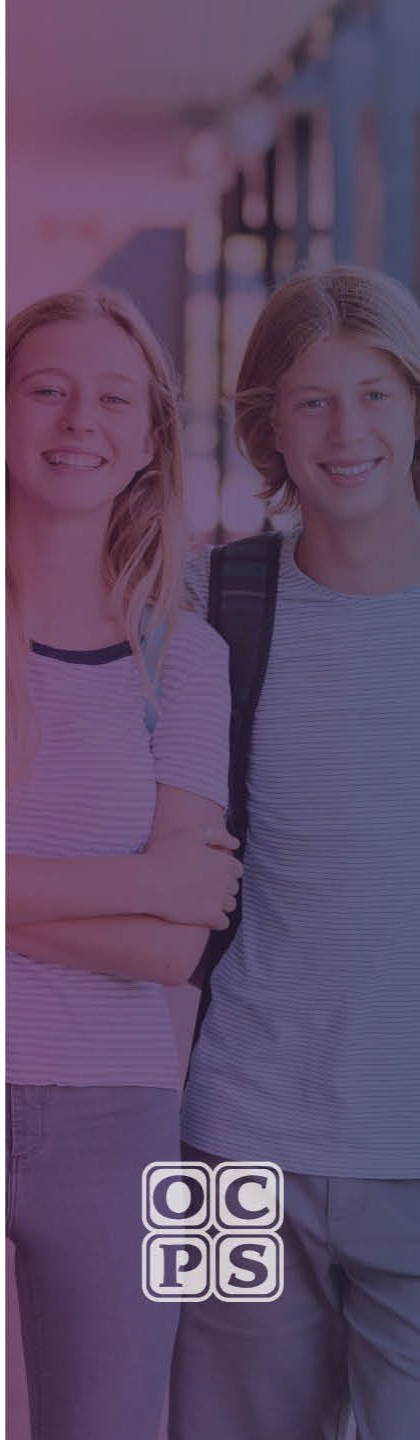
# Cases Under Title IX
## Facilities

- Publicity and promotional support:
  - In the yearbook, there was more coverage of boys' sports than girls' sports. The student newspaper had twice as many announcements for boys' sports than girls' sports, as placed by the coaches of the sports.
- Fundraising:
  - The baseball team sold concessions to raise money. The softball coach prohibited fundraising. As such, the girls team was unable to attend post-season competitions.
- There was a grant-making body which supplied money for boys' sports, but the girls' coaches did not know how to access the fund. The athletic director was faulted for not ensuring the girls' coaches knew how to access the grant fund.

# Cases Under Title IX
## Facilities

- The administration of the school was faulted, as there was no Title IX Coordinator at the school level. Title IX compliance was at the discretion of the individual coaches.
- Based upon all of these factors, the Court ruled:

  "As a result of systemic administrative failures at CPHS, female athletes have received unequal benefits before and during the time this action has been pending. Although some remedial measures have been taken at CPHS, particularly with respect to the girl's softball facility, those steps have not been consistent, adequate or comprehensive."



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