

§ 115C-407.61. Memorandum of understanding requirements.

(a) If the Superintendent of Public Instruction enters into a memorandum of understanding with a nonprofit organization as provided in G.S. 115C-407.60, the memorandum shall require that organization to do the following in accordance with the requirements of this Article to maintain the authority to administer and enforce the requirements for high school interscholastic athletic activities:

- (1) Apply, enforce, and administer all rules adopted by the State Board without alteration or expansion.
- (2) If delegated by the State Board, adopt, apply, enforce, and administer administrative rules, gameplay rules, and penalty rules. A rule shall not be adopted by an administering organization until the organization has provided for publication of the proposed rule on the organization's website and provided the opportunity to the public for notice and comment on the rule. All adopted rules shall be provided within 15 days to the Superintendent for review. If the Superintendent determines that the rule adopted by an administering organization is unenforceable, the Superintendent shall notify the State Board and the administering organization shall not enforce the rule. Upon notice from the Superintendent, the State Board may either require the administering organization to revise the rule and resubmit it to the Superintendent or may rescind the delegation of authority and adopt a rule by emergency rule.
- (3) Make publicly available at no cost on the administering organization's website the following:
 - a. The organization's handbook for participating schools.
 - b. All student participation rules.
 - c. All gameplay rules.
 - d. Information on the appeals process, including specific information on how to make an appeal.
 - e. Fees charged to participating schools for participation in interscholastic activities, including membership in the administering organization and post-season game participation.
- (4) Agree to adopt requirements for membership of the nonprofit board that require equal representation on the board from each educational district established as provided in G.S. 115C-65, and a member appointed by the Superintendent of Public Instruction.
- (5) Adopt an ethics policy that requires board members to avoid conflicts of interest and the appearance of impropriety.
- (6) Agree to adopt procedures for its operations that are comparable to those of Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Superintendent. The procedures may provide for the confidentiality of personnel files comparable to Article 7 of Chapter 126 of the General Statutes.
- (7) Apply the standards established by the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, to all student records containing personally identifiable information in the possession of the administering organization. The administering organization shall be authorized to display and share student information designated by a participating school as directory information unless the participating school indicates that a parent has opted out of disclosure of that information. Other than directory information, all student records containing personally identifiable information held by the administering organization are not public records and should not be released

- under procedures adopted in accordance with subdivision (6) of this subsection.
- (8) Enter into contracts with participating schools as to the monetary requirements for participation, including the payment of reasonable annual fees by participating schools as needed to support the duties of the administering association. Annual fees may vary based on the division to which the school is assigned. All fees shall be in compliance with the State Board's fee rules.
 - (9) Agree to reduce annual fees to participating schools by a minimum of twenty percent (20%) when the total fund balance for the administering organization and any associated entity is two hundred fifty percent (250%) of the administering organization's total expenses from the prior fiscal year. The administering organization may increase annual fees to participating schools, consistent with the State Board's rules on fees, when the total fund balance for the administering organization and any associated entity is one hundred fifty percent (150%) of the organization's total expenses from the prior fiscal year.
 - (10) Agree to retain no more than thirty-three percent (33%) of the net proceeds of any State tournament game.
 - (11) Agree to be audited annually by a reputable independent auditing firm that meets, at a minimum, the standards required by the Local Government Commission for certification to audit local government accounts as provided in G.S. 159-34, and to be audited by the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes, if the State Auditor deems an audit necessary. An independent auditing firm is a firm which performs no other tasks or functions for the administering organization besides the annual audit.
 - (12) Agree to not establish, control, or receive funds from an associated entity unless the associated entity agrees to all of the following:
 - a. An annual audit as provided in subdivision (11) of this subsection that will be made available to the Superintendent of Public Instruction.
 - b. A prohibition on engagement in any of the activities prohibited under subdivision (13) of this subsection.
 - c. A prohibition on receipt of any of the administering organization's funds or proceeds of State tournament games.
 - (13) Agree to not engage in any of the following activities:
 - a. Solicit grant funding and sponsorships from third-party organizations, other than for State tournament games.
 - b. Provide grants to schools regulated by the administering organization.
 - c. Provide scholarships to players, except when funded by donor-directed funds.
 - d. Designate the use of specific or preferred vendors or require the use of any single-source or vendor specific contracts.
 - e. Retain a percentage of gate receipts for games other than State tournament games.
 - f. Regulate or control the intellectual property of schools, including team logos, mascots, and audio or video of any game other than the State tournament games.
 - g. Restrict the recording of audio or video at a State tournament game by any parent of a student participating in the game or any employee of the school participating in the game.

- h. Retain any portion of receipts collected from ticket sales, concessions, or sale of merchandise by a participating school.
 - i. Retaliate against participating schools, or the employees or students of those schools, for reporting to the administering organization, the State Board, or any other government entity on any of the following topics. For the purposes of this sub-subdivision, "retaliate" does not include the application of a penalty rule that is appealable to an independent appeals board.
 - 1. Violations of laws or rules.
 - 2. Fraud.
 - 3. Misappropriation of resources.
 - 4. Substantial and specific danger to student or employee health and safety.
 - 5. Gross mismanagement or abuse of authority.
 - j. Prohibit or restrict a participating school from scheduling a nonconference game during the regular season or take any portion of ticket seasons from those games.
- (15) Report annually by December 1 to the Superintendent of Public Instruction and the State Board of Education on the following:
- a. Activities during the prior school year and recommendations and findings regarding improvement of high school interscholastic athletics.
 - b. A copy of both the most recent annual audit conducted by the independent auditing firm and any audit conducted by the State Auditor.
 - c. A schedule of current fees charged to participating schools.
 - d. The amount of fees and gate receipts collected.
 - e. The current fund balance for the administering organization.

(b) The Superintendent may terminate any memorandum of understanding for noncompliance with this Article or the terms of the memorandum of understanding. In the event of termination of a memorandum of understanding, the nonprofit organization shall return to each participating school a pro rata share of the funds paid by that school for the year as provided in the participating school's contract with the organization.

(c) The Superintendent may renew a memorandum of understanding with an administering organization for an additional term of four years. If the Superintendent or administering organization do not intend to renew a memorandum of understanding, that entity shall provide written notice to the other party a minimum of six months prior to the expiration of the memorandum of understanding. (2023-133, s. 17(a).)