



THE UNIVERSITY OF NORTH CAROLINA SYSTEM

Friday, February 8, 2019

Members of the Legislative Commission on the Fair Treatment of College Student-athletes,

The University of North Carolina System is grateful for the work of this Commission and supportive of its charge to promote the well-being of student-athletes in North Carolina.

We believe strongly that college athletics benefits both student-athletes and the broader University community. Overwhelmingly, our students are stronger graduates, better leaders, and more active members of their communities as a result of their experiences with college athletics. They have an opportunity to pursue self-chosen academic and competitive ambitions, and in the process, they make our universities a better place for more than 235,000 students across the University System.

As many student-athletes and independent researchers shared during the Commission's hearings, collegiate athletics enhances the culture and cohesion of our campuses, enriches the experience of both student-athletes and their classmates, and strengthens the University's ties to communities across the state. In 2016, more than 5,400 students across the University System chose to take part in collegiate athletics, deepening their ties to their fellow students and to their institution. We are proud of their accomplishments and proud of the recognition they bring to our universities and our state.

As the Commission heard, the vast majority of our students go on to successful graduation in fields wholly unrelated to their sport. Student-athletes pursuing athletic careers are the exception, not the norm. For the overwhelming majority of student-athletes, their experience competing at the collegiate level is a satisfying and limited part of their overall university experience.

Our top priority is and must remain ensuring safe athletic competition that enhances academic success and graduation. We've made significant strides in recent years improving how we support and advise different student populations, including first-generation college students, underrepresented minorities, and student-athletes. Each group has unique needs, but by providing additional resources, flexible oversight, and encouragement to innovate on each of our campuses, we've established supports and accountability systems that have driven significant improvement in student progress, retention, and graduation.

As the Commission rightly notes, the athletics enterprise varies greatly at each of the fifteen public universities that field intercollegiate teams, reflecting the differences in mission, resources, priorities, and campus culture across the state. One of the great strengths of the UNC System is that it balances this respect for the historical diversity of our public universities with the benefits of effective, shared oversight. That includes athletic conference affiliations that already provide extensive regulatory guidance, tailored to the level of competitive play at different institutions.

Chancellors are charged with direct responsibility for overseeing the athletic enterprise at each constituent institution, consistent with their overall executive responsibility. Athletics is deeply intertwined with academic governance, student affairs, health and safety regulations, campus infrastructure and operations, and a host of other concerns that vary depending on the mission and



THE UNIVERSITY OF NORTH CAROLINA SYSTEM

priorities of each institution. There is a significant difference between managing the athletics enterprise at UNC Asheville and North Carolina State University, and chancellors are in the best position to make the management decisions that reflect their institutional profile. They do so under the close oversight and review of the UNC Board of Governors, which already has the authority to make changes to system-wide athletic policies.

Given our institutional diversity and the limited time available to review the Commission's findings and recommendations, it is not yet possible to predict the full impact that many of the proposed changes might have on the very different athletic enterprises across the state. An initial review by officials at our constituent institutions found that some of the Commission's broader recommendations carry significant risks to the continued viability of university athletic programs, and that certain recommendations appear to conflict with existing state law, national athletics regulations, and various University responsibilities held under federal law.

The call for one-size-fits-all policies to govern such vastly different operations will have a host of unintended consequences, complicating what is already a layered system of governance involving campus administrators, UNC System officers, the National Collegiate Athletic Association (NCAA), and the federal Department of Education. Adding another state-level bureaucracy with overlapping lines of authority will duplicate many functions already carried out by the legislatively appointed Board of Governors and confuse well-established systems of accountability for University officials. Creating competing lines of authority is unlikely to accomplish the Commission's goal of clarifying and strengthening protections for student-athletes. Some of the most consistent feedback from our student-athletes, reflected in the Commission's own hearings, is the excess of bureaucratic process governing the athletics enterprise. Many of the Commission's proposals threaten to magnify that problem rather than resolve it.

Nearly all athletics programs produce less revenue than required to meet operating costs. As a result, athletic programs on every campus are supported by student fees. The Commission's proposal for an entirely new governing structure is also likely to bring significant costs to the athletic enterprise on our campuses. The proposed ticket tax is almost certain to result in athletic fee increases, raising the cost of college for all students across the University.

Proposals for state-administered trust funds sourced from ticket revenue will create a new system of cross-subsidies that will inevitably impact the level of support currently offered to athletes in the most demanding, revenue-producing programs. We welcome any proposal that will allow institutions to better leverage scholarship resources for our student-athletes — including the Commission's laudable recommendation to reinstate the in-state scholarship provision for student-athletes — but we are cautious about the prospect of adding significant costs that could come at the expense of the extensive student support infrastructure already in place on our campuses.

While we readily acknowledge the importance of the Commission's charge, our initial review indicates that many of its recommendations could place the University out of alignment with NCAA policies, violate state law, undermine existing accountability structures, weaken the capacity of academic



THE UNIVERSITY OF NORTH CAROLINA SYSTEM

support staff and medical personnel to better serve student-athletes, and create significant legal and regulatory challenges that would take months or years to clarify.

There is significant concern among constituent institutions that the recommendations of this Commission would jeopardize conference and NCAA memberships, effectively blocking the ability of North Carolina's public universities to participate in intercollegiate athletics.

The legal and regulatory environment around college athletics is both complex and evolving. As the Commission notes, issues around student-athlete compensation are under active litigation across the country (Federal District Court, Northern District of California). And the NCAA has undertaken a variety of regulatory reforms, many ongoing, that overlap or conflict with this Commission's recommendations. A far more extensive review would be required to study the consequences of the Commission's recommendations so that lawmakers can make a fully informed decision about changes to the existing infrastructure of student-athlete regulation and support.

We have included below a brief overview of some specific concerns, including an examination of the proposed legislative text. This initial feedback is informed both by the UNC System's analysis and the comments and concerns from constituent institutions.

We hope this proves helpful as the Commission continues its important work. We look forward to an ongoing conversation with the Commission and all of our legislative colleagues in the shared effort to ensure the vitality of college athletics and the health and well-being of student-athletes.

Sincerely,

Thomas C. Shanahan
Senior Vice President Governance, Legal & Risk
The University of North Carolina System



THE UNIVERSITY OF NORTH CAROLINA SYSTEM

UNC System Response to Draft Legislation proposed by the Legislative Commission on the Fair Treatment of College Student-athletes (University Student-Athlete Protection Commission)

Students attending the universities within the University of North Carolina System enjoy the opportunity to participate in a variety of extra-curricular activities, including athletics. The circumstances of student participation in athletics are unique to each university community within the UNC System. Accordingly, within the University's governance structure, chancellors are accountable for overseeing intercollegiate athletics at their institutions, including matters related to intercollegiate athletics and student-athlete well-being.

The University and the members of the legislative commission share a commitment to student well-being. The draft legislation, however, proposes the creation of a structure and approach that is unlikely to improve student well-being. The proposal calls for the creation of a new bureaucratic entity within the University that places the Board of Governors in the role of an external regulator. This role is incompatible with the University's structure and the Board's responsibilities within it.

The mission of the University of North Carolina is to discover, create, transmit, and apply knowledge to address the needs of individuals and society through instruction, research, and public service. In addition to articulating this mission in North Carolina law, the General Assembly established the Board of Governors to guide the UNC System and the constituent institutions in the fulfillment of its responsibilities to North Carolina. When consolidating the University under the leadership of the Board and the president of the UNC System, the General Assembly chose not to establish the Board as an external regulatory or quasi-judicial body separate from the University itself. Rather, the law established the Board as part of the University itself, assigning it policy-setting and governance functions.

Moreover, the regulatory approach contemplated by the legislation will remove real accountability and responsibility for student well-being from the universities themselves, where it belongs. The law and the UNC System's operations over many decades recognize that day-to-day management of the constituent institutions and their academic programs and extra-curricular activities are best accomplished locally, accountable to the chancellor of each institution.

Finally, other aspects of the proposed legislation would likely render UNC institutions noncompliant with NCAA bylaws, impose financial costs on UNC students, and violate privacy protections for student and personnel information.

Feedback on Specific Recommendations

RECOMMENDATION F: Scholarships for Injured Student-Athletes

The NCAA already mandates, per Bylaw 15.3.4.3, that institutional financial aid based in any degree on athletics ability may *not* be reduced or canceled during the period of its award because of an injury, illness or physical or mental condition. However, there is no requirement for a coach to keep a student-athlete on a team roster. The student-athlete's financial aid is required to be protected in the case of a career-ending injury.



THE UNIVERSITY OF NORTH CAROLINA SYSTEM

RECOMMENDATION I: Academic Challenges for Student-Athletes

The NCAA already requires, under Bylaw 16.3.1.1, that member institutions must make available academic counseling and tutoring services to all student-athletes.

The percentage of student-athletes in various academic majors already is reported annually to the UNC Board of Governors in a public document available online to student-athletes, recruits and others, and the Commission heard extensive discussion of how these courses undergo added layers of scrutiny to ensure compliance with academic and athletic regulations.

RECOMMENDATION K: Due Process and Adequate Representation

We support the recommendation to have a pro bono group of lawyers available to assist student-athletes with NCAA eligibility issues. However, we recommend drawing a distinction between a legal matter that may affect eligibility and an NCAA matter that may affect eligibility. The way the draft report is written would bind universities to provide legal counsel to athletes accused of criminal offenses, because that would also risk their eligibility.

The NCAA has its own definition of Due Process and establishing a separate definition could create a conflict, jeopardizing NCAA memberships.

- For example, the timeline of eligibility investigations are not within an institution's control, so requiring athletic investigations related to eligibility to be done in a "timely manner" are not within our control.
- In addition, NCAA Bylaw 12.11.1 *Obligation of Member Institution to Withhold Student-Athlete From Competition* requires institutions to withhold a student-athlete from all collegiate competition if a student-athlete is ineligible under the provisions of the constitution, bylaws or other regulations of the NCAA. If a student-athlete competes while ineligible, NCAA Bylaw 12.11.4.1 *Loss of Eligibility* specifies that a student-athlete will be denied future eligibility for collegiate competition in a sport. An institution is required to appeal to the Committee on Student-Athlete Reinstatement for restoration of the student-athlete's eligibility. Therefore, if we think there may be an eligibility violation, we must declare that student ineligible immediately; if we waited 24 hours to give a student an opportunity to respond before declaring him or her ineligible, we would be in violation of NCAA rules.

RECOMMENDATION M: Creation of the University Student-Athlete Protection Committee

While we appreciate the desire to create additional protections for our students, the NCAA, conferences and universities already have multiple layers of policy and oversight bodies in place for reviewing and adjudicating matters related to students and staff. Universities already have Human Resources departments, Title IX offices, EOC offices, Honor Court Systems and other units that review and adjudicate student and staff matters. Depending on the timing of a complaint, schools could be in the unfortunate position of conducting an investigation while simultaneously responding to a complaint before the Commission regarding the same conduct. In addition, adding new bureaucracy could, even



THE UNIVERSITY OF NORTH CAROLINA SYSTEM

unintentionally, stall, interfere with or impact an NCAA investigation or criminal investigation and could also put our conference and NCAA memberships in jeopardy.

Specific Feedback of Proposed Legislative Language:

§ 116-405. Definitions.

The definition of “Athletic program” should be amended to clarify that the legislation would not apply to institutionally-sponsored club sports programs, which may be established by a national association for the promotion or regulation of collegiate athletics.

116-410. Rights of student-athletes.

Several of the proposed reforms contained in this section are duplicative and unnecessary based on institutions’ existing academic assistance programs and athletic reporting mechanisms. The objectives outlined in this section could be much more efficiently accomplished through University policy. For instance, health and safety standards or codes of conduct for university athletic personnel are squarely within the purview of the Board of Governors and/or constituent institution leadership. The UNC System regularly enacts and updates policies related to student health and safety, employee conduct, financial aid, academic progress, and athletics reporting. Nationally-recognized health and safety standards for college athletics have also been adopted across NCAA institutions. As detailed below, creating an institution obligation to award “injured athlete scholarships” would impose financial burdens on under-resources institutions, make athletic programs less competitive, and could potentially implicate NCAA scholarship limits.

116-415. Limiting revenue derived from a student-athlete’s name, image, or likeness.

This section is overly restrictive in its permissible uses of athletes’ name, image, or likeness. The majority of UNC student-athletes’ already expressly consent to licensing and their names, images, and likenesses are not used outside the context of promotions for specific events or institutions’ athletic programs generally. Revenue derived from athletic programs, including media or sponsorship rights and ticket sales, are predominantly reinvested into the institution to provide academic opportunities to student-athletes and institutions’ student populations broadly. Restrictions on institutions’ ability to market athletes would impose an economic cost of athletic departments and also not serve athletes’ interests

116-420. University Student-Athlete Protection Commission.

Generally, the Commission would create a financial and bureaucratic burden on constituent institutions. The types of issues with which the Commission would be involved are currently able to be reviewed and redressed in existing administrative or legal avenues. For instance, the athletic personnel code of conduct that the Commission would be responsible for enforcing creates reporting obligations that are inconsistent with each University’s administrative structures. Suspected employee misconduct should first be routed within the University and should not necessarily be mandatorily and immediately reported to an outside agency. Moreover, the proposed threshold for Commission involvement and review is too low and would result in Commission participation in and second-guessing of routine University business.



THE UNIVERSITY OF NORTH CAROLINA SYSTEM

116-430. University Student-Athlete Protection Commission Trust Fund.

The creation of a specially-designated Commission trust fund derived from athletic ticket sales revenue would place financial costs on athletic departments that are largely funded through student fees or other general funding mechanisms. Funding the Commission through a new tax on athletic event ticket sales may force under-resourced institutions to increase student athletic fees and result in higher ticket prices for the general public. Increasing the cost of attendance runs counter to the shared goal of providing access to affordable education for our University's students.

116-435. Powers and duties.

Many of the Commission duties listed in this section are already undertaken by constituent institutions as part of their athletics oversight, reporting, and compliance functions. For instance, athletic staff are already prohibited from engaging in harassment or retaliation and are responsible for reporting suspected misconduct. In addition to potentially duplicating existing efforts, the legislation does not provide sufficient input by the constituent institutions in establishing standards and obligations that institutional staff would be expected to fulfill. Constituent institutions also shared specific concerns regarding the proposed legislation prescriptions for medical treatment record protocols, which they consider administratively burdensome and, in some respects, inappropriate.

116-440. Complaints, investigations, and hearings

University cooperation in the legislation's proposed system of overly-legalistic investigations and hearings would entail investment of significant University resources. University staff would be responsible for conducting responsive pleadings, document discovery, oral arguments, and cross-examination before a quasi-judicial panel for resolution of even minor forms of suspected athletic personnel misconduct. This work is in addition to the time and resources required to protect confidential personnel and student information, as the legislation provides complaining student-athletes and athletic employees with unilateral discretion as to whether investigation and hearing records are publically available. The legislation does not, and likely could not, provide exceptions to federal privacy rights for students other than complainant. Therefore, other identifying information related to other student named or implicated in complaints, evidence, or hearings would require protection under federal law. Finally, the proposed legislation is unclear as to whether parties may settle complaints without Commission approval, which discourages efficient dispute resolution.

116-450. Appeal of sanctions to Board of Governors

This section creates substantial administrative burdens for the Board in reviewing and adjudicating appeals while also providing only a single limited basis upon which the Board may overturn a decision of Commission. If the legislation were to retain its proposal for permissive appeals to the Board, it should be amended to include additional bases for reviewing Commission decisions, such as procedural errors and abuses of Commission discretion.

116-460. Pro bono legal assistance for student-athletes.

The structure of pro bono attorney representation described in the proposed legislation likely would not align with existing NCAA bylaws or UNC System student conduct processes. If the Commission seeks to enable a pro bono attorney program for University student-athletes, the system should reflect NCAA



THE UNIVERSITY OF NORTH CAROLINA SYSTEM

restrictions regarding athlete representation and constituent institutions would not and should not be required to facilitate representation in all circumstances.

116-465. Injured Student-Athlete Scholarship Trust Fund.

This section would also result in significant financial impacts for many of our constituent institutions' athletics programs. Aside from the costs imposed, the section lacks clarity regarding how student-athlete eligibility would be determined. It is similarly unclear how scholarship disbursement would be affected by student enrollment decisions such as transferring institutions. Finally, this section may not be compliant with NCAA bylaws regarding extra benefits and would likely implicate NCAA athletic scholarship limits. Compulsory injured student-athlete scholarships would also render UNC constituent institutions less athletically competitive than their peers.