



**REPORT OF THE NCAA  
BOARD OF GOVERNORS  
APRIL 28, 2020, VIDEOCONFERENCE**

**ACTION ITEMS:**

- None.

**INFORMATONAL ITEMS:**

1. **Welcome and announcements.** NCAA Board of Governors Chair President Michael Drake convened the videoconference at approximately 1 p.m. and welcomed the Governors. President Drake gave a special welcome to Commissioner Heather Benning, President Allison Garrett, Commissioner Chris Graham and President Fayneese Miller, noting that although they have participated in several teleconferences, he had not had the opportunity to officially welcome them to the Board. NCAA staff confirmed that a quorum was present.
2. **Consent Agenda.** By way of a consent agenda, the Board of Governors approved the reports of its January 23, 2020, meeting, March 11 and 12, 2020, teleconferences and March 26, 2020, joint videoconference with the NCAA Division I Board of Directors. Further, the Board approved the appointment of Bryce Choate, a men's cross country student-athlete at Oral Roberts University, and Jaila Tolbert, a former women's volleyball student-athlete at Virginia Polytechnic Institute and State University to serve on the NCAA Board of Governors Student-Athlete Engagement Committee.
3. **NCAA president's report.** NCAA President Mark Emmert provided brief comments on several issues facing the Association that were part of the Governors meeting agenda. President Emmert stressed the need for flexibility during this unprecedented time and the importance of assisting member schools as they work to reopen their campuses.
4. **NCAA Federal and State Legislation Working Group Update.** The Board of Governors received the final report of the Federal and State Legislation Working Group including its updated recommendations to allow student-athletes to receive compensation for activities related to name, image and likeness. The Board also received an update on the work of the Presidential Subcommittee on Congressional Action and its recommendations, as well as updates from the divisional Council/Management Council chairs on their legislative efforts. Consistent with its actions taken in October 2019, the Board of Governors reinforced the importance of the divisions continuing to make significant progress on related rule changes consonant with the amended principles and guidelines and make those changes by January 2021, to be effective no later than the 2021-22 academic year. The Board of Governors emphasized that any modernization of the divisional bylaws should be through a transparent and inclusive process aligned with the divisional philosophies.

It was VOTED

“That any modernization of the divisional NIL bylaws must be accompanied by guardrails to ensure that:

- Any compensation received by student-athletes for NIL activities represents a genuine payment for use of their NIL, and is not pay for athletics participation;
- Schools and conferences play no role in a student-athlete's NIL activity;
- Schools or boosters are not using NIL opportunities as a recruiting inducement;
- The role of third parties in student-athlete NIL activities is regulated; and
- Liberalization of NIL rules does not interfere with NCAA members' efforts in the areas of diversity, inclusion or gender equity.

Provided those guardrails are established, the divisions could develop legislation to permit student-athletes to:

- Receive compensation for use of their NIL in third party endorsements, including those related to athletics;
- Receive compensation from third parties, but not schools, for the use of their NIL in their work product, including social media influencer activity, promotion of a business or work product or personal promotion; and
- Use agents, advisors or professional services in conjunction with the NIL activities, provided appropriate regulation is established.

In addition, if the divisions make these changes, they must take care to prohibit schools or conferences from (1) paying student-athletes for these activities; (2) playing any role in locating, arranging or facilitating third parties to pay for these activities; or (3) using, or allowing boosters to use, the possibility of such payments as a recruiting inducement.

Further that the Board of Governors support all the recommendations in the report related to the work of the Presidential Subcommittee on Congressional Action with respect to the NCAA's engagement with members of Congress including to seek preemption of state NIL laws, to safeguard the non-employment status of student-athletes, to establish a safe harbor against lawsuits versus the Association related to NIL, to maintain a distinction between student-athletes and professional athletes and to uphold the NCAA's values including diversity, inclusion and gender equity.

Finally, that the Federal and State Legislation Working Group be dissolved as it has completed its work and each of the divisions continue their work to modernize rules to further support student-athletes within the context of college sports and higher education." **Approved** (Unanimous voice vote).

5. **Review of NCAA Strategic Plan.** NCAA Strategic Planning Working Group Chair Glen Jones and Reshma Patel-Jackson, Attain consultants project lead, updated the Board on progress in the strategic planning process and recent changes to the draft plan. Next steps include development of the implementation roadmap and final branding work to advance the plan to the final format for Board review in August. The Board approved the content and substance of the plan and accepted the direction going forward.
  
6. **Review of NCAA Campus Sexual Violence Policy.**
  - a. **Amendments to Campus Sexual Violence Policy.** The Board of Governors continued its previous discussion on the Campus Sexual Violence Policy and possible amendments to the policy. The recommended amendments would require each university president/chancellor, director of athletics and campus Title IX coordinator to attest annually that:
    - (1) All prospective, continuing and transfer student-athletes have completed a disclosure form annually related to their conduct that resulted in an investigation, discipline through a Title IX proceeding or in a criminal conviction for sexual, interpersonal or other acts of violence.\*\* Failure to accurately and fully disclose investigatory activity, a disciplinary action or criminal conviction could result in penalties, including loss of eligibility to participate in athletics as determined by the member institution.
    - (2) Institutions have taken reasonable steps to confirm whether prospective, continuing and transfer student-athletes have been under investigation, subject to discipline through a Title IX proceeding or criminally convicted of sexual, interpersonal or other acts of violence.\*\* In a manner consistent with federal and state law, all NCAA member institutions must share information related to these matters with other member institutions when a student-athlete attempts to enroll in a new college or university.
    - (3) An institution choosing to recruit a prospective student-athlete or accept a transfer student-athlete must have a written policy that directs its staff to gather information that reasonably yields information from the former institution(s) to put the recruiting institutional leadership on notice that the prospect has been under investigation, disciplined through a Title IX proceeding or a criminal conviction for sexual, interpersonal or other acts of violence.\*\* Failure to have a written policy and to gather information consistent with that policy could result in penalties.

It was VOTED

“That the Board of Governors approve the amendments to the NCAA Campus Sexual Violence Policy, requiring attestation in the 2021-22 academic year.”  
**Approved** (Unanimous voice vote).

**b. Request to postpone the annual campus sexual violence attestation requirement.**

The Board of Governors discussed concerns expressed by Division I athletics directors regarding modifications to the required policy on campus sexual violence attestation. The May 15, 2020, deadline for submission was moved to June 15, 2020, and free, online education has been made available to the membership. Additionally, only the athletics director’s signature is required on the form after conferring with the president and campus Title IX coordinator. The Board discussed the athletics directors’ concerns and agreed that the modifications should remain in place this year, as they were implemented to ease the administrative burden on schools during this difficult and unprecedented time. Members may continue to provide all three signatures, but will not be penalized if only the athletics director executes the attestation.

**7. NCAA Board of Governors Finance and Audit Committee report.** President Satish Tripathi, chair of the Finance and Audit Committee presented the committee’s report.

**a. NCAA Tax Return 990.** The Board of Governors received the NCAA’s 2018-19 Form 990, which covers the tax year September 1, 2018, through August 31, 2019.

**b. FY 2019-20 NCAA revenue and expenses second quarter budget-to-actual report.** President Tripathi noted that due to the significant financial abnormalities that have occurred since the second quarter, the committee’s discussion of the second quarter results was appropriately limited.

**c. Revised 2020 NCAA internal audit plan.** Staff presented to the Finance and Audit Committee recommended changes to the approved internal audit plan for this fiscal year. The changes were suspensions and cancellations of current audit activities with a goal of maintaining integrity with necessary audits while at the same time reducing costs over the next 18 months and included:

(1) Cancellation of the review of the \$200 million one-time distribution to Division I from three years ago. This would have been the second and final year of these reviews. Five percent of schools had reviews last year and no issues were identified with how the dollars were spent.

(2) Cancelling the men’s basketball Division I host audits for the current fiscal year since very few expenses were incurred and no revenues were collected

(3) Suspending some event certification financial transparency activities. The NCAA will continue to collect the financial documents from grassroots teams and event operators but defer this year's planned audit.

(4) Deferring a review of the academic and membership affairs quality control process and replacing it with a review of the ticket revenue reconciliation performed in March. The NCAA believes the ticket revenue is more important due to the large volume of reimbursements.

It was VOTED

“That the Board of Governors approve the recommended changes to the 2019-20 internal audit plan.” **Approved** (For 20, Against 0, Abstain 1).

- d. **Changes to the NCAA Investment Policy Statement.** The Finance and Audit Committee recommended that the NCAA's Operating Reserve Investment Policy be modified to add language that the committee will fully consider minority and women owned businesses that are highly rated by the NCAA's investment consultant. Further, that the policy make clear the investment subcommittee must adhere to the NCAA's Conflict of Interest Policy when considering investment managers.

It was VOTED

“That the Board of Governors approve the recommended changes to the NCAA's Operating Reserve Investment Policy.” **Approved** (Unanimous voice vote).

- e. **NCAA investment update.** The Finance and Audit Committee reported an update received on its investment subcommittee's work, which included a review of the committee's membership, how the NCAA allocates its investments across various categories and the NCAA's performance compared to member institutions as reported in the National Association of College and University Business Officer's annual endowment study. The committee was pleased with the performance for the time period covered, which confirms the Association's allocation policy. Yet, acknowledged that the current financial situation is much different than the 2019 performance as a result of unprecedented circumstances.

- f. **Financial update.** NCAA Chief Financial Officer Kathleen McNeely updated the Board of Governors on the finances of the Association and the national office. The Board was apprised of the status of the line of credit approved by the Board at its previous meeting. The Board also was informed of the actions taken by the national office staff to reduce FY20 and FY21 budgets, which included among other savings: suspension of business operations at the national office, elimination of planned technology refresh, reductions in travel and in-person meetings, a 20% pay cut for senior executives and 10% cut for vice presidents, elimination of any pay raises or

bonuses for employees in 2020-21, and a hiring and promotion freeze from now through the end of 2021, except in business critical/mission driven circumstances

- 8. NCAA Transgender Student-Athlete Participation Policy update.** The Board of Governors was informed of federal and state legislative activity related to transgender student-athlete participation in athletics. At the federal level, one bill has been introduced and at the state level, 22 states have introduced legislation, with one state (Idaho) having passed a bill. In addition, the NCAA is conducting a review of its Transgender Student-Athlete Participation Policy to ensure it continues to provide fair, inclusive and dignified opportunities and competitive equity for all student-athletes and is supported by evidence- and consensus-based research. The timeline for the engagement of various NCAA governance groups in the review was summarized. The Board was notified that it would be presented with possible modifications to the Transgender Student-Athlete Participation Policy during its August 2020 meeting.
- 9. Board of Governors meeting preparation.** The Board discussed concerns expressed by the Division I Collegiate Commissioners Association about collaboration and transparency regarding Board of Governors meeting material and agendas. The Board noted its unique role in the governance process and its fiduciary responsibility to the Association as a whole. Board members are asked to use their independent judgment to make decisions in the best interests of the Association, which is unlike other governance bodies (particularly in Division I) that rely upon reflection of school, conference or divisional representation and perspective on issues. In exercising independent judgment, each Board member has discretion to prepare for meetings which may include consulting with other presidents, commissioners, student-athletes and subject matter experts. The Board agreed that its policies and practices should not be revised, and that meeting material should continue to be distributed to members-only via a secure portal. The Board did note, however, that its meeting agendas are available on the NCAA website prior to meetings.
- 10. Law, Policy and Governance Strategic Discussion.**

  - a. COVID-19 update.** The NCAA Chief Medical Officer Brian Hainline highlighted for the Board the federal Guidelines published to help state and local officials when reopening their economies, getting people back to work and continuing to protect American lives. Dr. Hainline identified core principles consistent with the Guidelines, which serve as the foundation for potentially resuming athletics practice and competition at the collegiate level. Dr Hainline noted that the Guidelines and principles are resources for schools to use in coordination with institutional and governmental decision-making specific to a locale. Dr. Hainline distinguished that college sports differ from professional sports because all college athletes are first and foremost students and, therefore, the resocialization of college sports must be grounded in resocialization of college campuses. Finally, Dr. Hainline reflected that the core principles of resocialization of collegiate sports drafted by the COVID-19 Advisory Panel were widely discussed within the divisional practitioner governance structures

and that after discussing with the divisional presidential structures the following day and sharing with commissioners, it would be published more broadly.

- b. Government relations.** The Board was informed of state and federal legislative activity related to sports wagering and student-athletes' ability to benefit from use of their name, image and likeness included in the quarterly government relations report.
  - c. Legal and litigation update.** NCAA general counsel noted the privileged and confidential quarterly litigation status report included in the meeting materials for the board's information and discussed recent legal developments, including new cases.
- 11. NCAA Independent Accountability Resolution Process/Structure update.** Denis McDonough, chair of the Independent Accountability Oversight Committee, gave a brief update of the Independent Accountability Resolution Process that became effective August 1, 2019. The Board was informed that there has been activity in the new process and that when a case is accepted into the independent structure there will be a limited public disclosure of that fact. Such a disclosure was made in early March when the first case was accepted into the IARP by the NCAA Infractions Referral Committee.
  - 12. NCAA Board of Governors' Executive Committee report.** President Drake reported on matters considered in the Board's Executive Committee meeting earlier in the day.
  - 13. Executive Session.** The Governors concluded its meeting in executive session to discuss various administrative matters.
  - 14. Adjournment.** The videoconference was adjourned at approximately 6:15 p.m. Eastern time

*Board of Governors chair: Michael Drake, The Ohio State University*

*Staff liaisons: Jacqueline Campbell, law, policy and governance*

*Donald M. Remy, law, policy and governance*

| <b>NCAA Board of Governors<br/>April 28, 2020, Videoconference</b> |  |
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| <b>Attendees:</b>  |  |
| Heather Benning, Midwest Conference                                |  |
| Grace Calhoun, University of Pennsylvania.                         |  |
| Eli Capilouto, University of Kentucky.                             |  |
| Ken Chenault, General Catalyst.                                    |  |
| Mary Sue Coleman, Association of American Universities.            |  |

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| John DeGioia, Georgetown University.  |
| Philip DiStefano, University of Colorado.   |
| Michael Drake, The Ohio State University.   |
| Mark Emmert, NCAA.  |
| Allison Garrett, Emporia State University.  |
| Christopher Graham, Rocky Mountain Athletic Conference.   |
| Burns Hargis, Oklahoma State University.  |
| Grant Hill, CBS/Warner Media/Atlanta Hawks.   |
| Sandra Jordan, University of South Carolina Aiken.  |
| Renu Khator, University of Houston.   |
| Ronald Machtley, Bryant University.   |
| Fr. James Maher, Niagara University.  |
| Denis McDonough, Former White House Chief of Staff.   |
| Fayneese Miller, Hamline University.  |
| Tori Murden-McClure, Spalding University.   |
| Vivek Murthy, 19th United States Surgeon General.   |
| Denise Trauth, Texas State University.  |
| Satish Tripathi, University at Buffalo, The State University of New York.   |
| David Wilson, Morgan State University.  |
| Randy Woodson, North Carolina State University.   |
| <b>Absentees:</b>   |
| None.   |
| <b>Guests in Attendance:</b>  |
| Val Ackerman, Board of Governors Federal and State Legislation Working Group co-chair.  |
| Greg Baroni, Attain, LLC  |
| Nicholas Clark, NCAA Board of Governors Student-Athlete Engagement Committee chair  |
| Briana Guerrero, Attain, LLC  |
| Glen Jones, NCAA Board of Governors Strategic Planning Working Group chair  |
| Reshma Patel-Jackson, Attain LLC  |
| Gene Smith, Board of Governors Federal and State Legislation Working Group co-chair.  |
| <b>NCAA Staff Liaisons in Attendance:</b>   |
| Jacqueline Campbell and Donald Remy.  |
| <b>Other NCAA Staff Members in Attendance:</b>  |
| Scott Bearby, Joni Comstock, Dan Dutcher, Kimberly Fort, Abe Frank, Jennifer Fraser, Dan Gavitt, Terri Gronau, Brian Hainline, Maritza Jones, Kevin Lennon, Kathleen McNeely, Stacey Osburn, Dave Schnase, Naima Stevenson, Cari Van Senus, Stan Wilcox and Bob Williams. |