



**REPORT OF THE  
NCAABOARD OF GOVERNORS  
October 29, 2019, MEETING**

**ACTION ITEMS:**

- None.

**INFORMATONAL ITEMS:**

1. **Welcome and announcements.** NCAA Board of Governors chair Michael Drake convened the meeting at approximately 7:30 a.m. and welcomed everyone. President Drake welcomed new members Ken Chenault, David Wilson and Randy Woodson to their first in-person meeting.
2. **Consent agenda.** By way of a consent agenda, the Board of Governors approved the reports of its August 6, 2019, meeting, its September 3, 2019, teleconference and its September 3-4, 2019, voting opportunity.
3. **NCAA president's report.** NCAA President Mark Emmert noted that while most of the day's discussion would center on the NCAA Board of Governors Federal and State Legislation Working Group recommendations, he wanted to note another important matter for future dialogue. President Emmert informed the Board that the Association has been working for some time on how to ensure a fair competitive environment for transgender student-athletes. Recently, the landscape on how to manage fair standards for competition for transgender athletes has changed in other sports arenas (e.g., Olympics, international competition) and the NCAA has been monitoring those changes. With the upcoming Olympics, the discussion of the issue will become more frequent and as the NCAA continues to review its policy, there may be a request to revise it.
4. **NCAA championships sponsorship restrictions.** The Board was reminded of its previous actions to revise the Association-wide policy to allow each of the divisions to pursue division-specific legislation regarding alcohol sales and advertising at championship events. Division I voted to allow the sale of beer and wine at championships events. All three divisions currently are considering legislation to modify or eliminate limitations related to alcohol advertising (i.e., advertising of malt beverages, beer and wine is limited to those products that do not exceed six percent alcohol by volume, advertisements are limited to not more than 60 seconds per hour of any telecast or broadcast) in conjunction with NCAA championships. The Board was asked to consider modifying the championships sponsorship restrictions to permit sponsorships by liquor, beer or wine companies. After due consideration, the Board declined to support modification of those sponsorship categories.

It was VOTED

“That the Board of Governors support modifications of the Association-wide championships sponsorship policy as well as endorse any efforts by divisional bodies to modify legislation to permit championship sponsorships by liquor, beer or wine companies.”

**Motion failed.** [For 7 (Drake, Hargis, Hill, Jordan, Khator, Machtley, Olson), Against 11 (Capilouti, Chenault, Coleman, DeGioia, Henderson, Maher, McDonough, Murden-McClure, Murthy, Wilson, Woodson), Abstain 0.]

5. **NCAA strategic plan update.** Strategic Planning Working Group Chair Glen Jones and Reshma Patel-Jackson, Attain consultants project lead, updated the Board on the strategic planning process, including an additional feedback session with divisional governance groups.
6. **NCAA Board of Governors Finance and Audit Committee report.** In the absence of the committee chair, the NCAA chief financial officer presented the committee's report.
  - a. **NCAA internal audit year-end review for 2018-19.** The Finance and Audit Committee received a review of the prior fiscal year audits that were performed under staff's purview. In summary, 13 audits were completed with 69 percent of the reports showing adequate internal controls. Thirty-one percent showed controls that should be enhanced, and zero instances where controls were inadequate. All findings that reflected a need for improvement have mitigation plans in place that have been completed or are on target to complete.
  - b. **Update to FY 2019-20 NCAA internal audit plan.** An additional audit by a third party audit firm was introduced to the 2019-20 audit plan. The additional audit relates to non-scholastic basketball financial transparency efforts. In 2019-20, the NCAA started requesting and collecting financial information from non-scholastic basketball teams and event coordinators.

It was VOTED

"That the Board of Governors approve the change to the 2019-20 internal audit plan."  
(Unanimous voice vote.)

- c. **Approval of new committee member, Melody Bianchetto, to the NCAA Board of Governors Finance and Audit Committee.** The committee recommended Melody Bianchetto, vice president for finance at the University of Virginia, be appointed to the Finance and Audit Committee.

It was VOTED

"To approve the appointment of Melody Bianchetto to the Board of Governors Finance and Audit Committee." Motion passed. (Unanimous voice vote)

7. **Law, Policy and Governance Strategic Discussion.**

- a. **NCAA Sports Science Institute/NCAA Committee on Competitive Safeguards and Medical Aspects of Sports.** The NCAA chief medical officer reviewed the differences in the divisional legislation regarding concussion management plan protocols. Division I legislation requires an annual submission of concussion safety protocol to the NCAA Concussion Safety Protocol Committee for review. In Divisions II and III, schools are

required to have a concussion management plan for its student-athletes, and that the plan adheres to the process and format (e.g., concussion protocol checklist) prescribed by the Board of Governors or its designee. With the creation of the new NCAA Concussion Advisory Group, whose work is overseen by the Committee on Competitive Safeguards and Medical Aspects of Sports, it was recommended that the CSMAS be designated to prescribe the process and format of Divisions II and III concussion management plans as specified in the NCAA Constitution.

It was VOTED.

“That the Board of Governors approve the recommendation.” Motion passed. (Unanimous voice vote.)

- 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 facilitated a privileged and confidential discussion regarding several matters of ongoing litigation.

**8. NCAA Federal and State Legislation Working Group report.** Val Ackerman and Gene Smith, working group co-chairs presented the working group report and recommendations related to student-athletes benefitting from the use of their name, image and likeness. Nicholas Clark, chair of the NCAA Board of Governors Student-Athlete Engagement Committee, shared the student-athlete perspective on the issue. The Board accepted the report (see Attachment) and the included recommendations.

It was VOTED

“It is the policy of the Association that NCAA member schools may permit students participating in athletics the opportunity to benefit from the use of their name, image and/or likeness in a manner consistent with the values and beliefs of intercollegiate athletics. To effectuate this change, the Board of Governors directs each of the three divisions to immediately begin considering modification and modernization of relevant NCAA bylaws and rules in harmony with the following principles and guidelines:

- Assure student-athletes are treated similarly to non-athlete students unless a compelling reason exists to differentiate.
- Maintain the priorities of education and the collegiate experience to provide opportunities for student-athlete success.
- Ensure rules are transparent, focused and enforceable and facilitate fair and balanced competition.
- Make clear the distinction between collegiate and professional opportunities.
- Make clear that compensation for athletics performance or participation is impermissible.
- Reaffirm that student-athletes are students first and not employees of the university.

- Enhance principles of diversity, inclusion and gender equity.
- Protect the recruiting environment and prohibit inducements to select, remain at, or transfer to a specific institution.

The federal and state working group will continue to gather feedback from the membership and its student-athletes through April 2020 on how best to respond to the state and federal legislative environment and refine its recommendations on the Association-wide principles and regulatory framework. The working group will periodically report its progress to the Board of Governors including at its January and April 2020 meetings and provide regular public briefings about its progress. Further, gathering as much feedback and information as necessary through a process that is inclusive and transparent, divisions shall work to create new NCAA bylaws reflecting divisional priorities on a timeline most appropriate for those authorized to legislate, commencing immediately and concluding not later than January 2021.

These guidelines, principles and potential changes will form the basis for those continued conversations and engagement with state and federal lawmakers around enacted, introduced and proposed legislation on name, image and likeness. Further, the Board directs the NCAA leadership to develop and advance a comprehensive plan to prepare the membership to collaborate with legislators on important issues in college sports.

Lastly, the Board reaffirms its commitment to the college model of athletics in America. We – our schools, conferences, and the NCAA national governance boards – exist for the purpose of providing for the well-being of the over 500,000 student-athletes and will continue to advocate for them. This has been exhibited through benefits such as \$3.5 billion in scholarships annually; degree-completion programs; enhanced nutrition and wellness; academic assistance; and much more. Let us continue to work together to advocate and provide for the best interests of the student-athlete, working with them, on our campuses and nationally.” Motion passed. (Unanimous voice vote.)

**9. Adjournment.** The meeting adjourned at approximately 12:08 p.m.

*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/>October 29, 2019, Meeting</b>   |  |
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| <b>Attendees</b>   |  |
| Stevie Baker-Watson, DePauw University.  |  |
| Grace Calhoun, University of Pennsylvania.   |  |
| Eli Capilouto, University of Kentucky.   |  |
| Ken Chenault, General Catalyst.  |  |
| Mary Sue Coleman, Association of American Universities.  |  |
| John DeGioia, Georgetown University.   |  |
| Michael Drake, The Ohio State University.  |  |
| Mark Emmert, NCAA.   |  |
| Burns Hargis, Oklahoma State University.   |  |
| Sue Henderson, New Jersey City University.   |  |
| Grant Hill, CBS/Warner Media/Atlanta Hawks.  |  |
| Sandra Jordan, University of South Carolina Aiken.   |  |
| Renu Khator, University of Houston.  |  |
| Laura Liesman, Georgian Court University.  |  |
| Ronald Machtley, Bryant University.  |  |
| Fr. James Maher, Niagara University.   |  |
| Denis McDonough, Former White House Chief of Staff.  |  |
| Tori Murden McClure, Spalding University.  |  |
| Vivek Murthy, 19 <sup>th</sup> United States Surgeon General   |  |
| Gary Olson, Daemen College.  |  |
| David Wilson, Morgan State University.   |  |
| Randy Woodson, North Carolina State University.  |  |
| <b>Absentees</b>   |  |
| Philip DiStefano, University of Colorado.  |  |
| Denise Trauth, Texas State University.   |  |
| Satish Tripathi, University at Buffalo, The State University of New York.  |  |
| <b>Guests</b>  |  |
| Val Ackerman, Board of Governors Federal and State Legislation Working Group co-chair.   |  |
| Greg Baroni, Attain, LLC.  |  |
| Nicholas Clark, Board of Governors Student-Athlete Engagement Committee chair.   |  |
| Briana Guerrero, Attain, LLC.  |  |
| Glen Jones, 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 in attendance</b>  |  |
| Katrice Albert, Scott Bearby, Joni Comstock, Dan Dutcher, Kimberly Fort, Dan Gavitt, Terri Gronau, Brian Hainline, Kevin Lennon, Kathleen McNeely, Stacey Osburn, Dave Schnase, Naima Stevenson, Cari Van Senus, Stan Wilcox and Bob Williams. |  |

*Report is not final until approval of the Board of Governors.*

**Federal and State Legislative Working Group  
Report to the NCAA Board of Governors  
October 23, 2019**

**Introduction.**

For the reasons identified in the Board of Governors [charge](#), and after our own further examination of the issues around name, image and likeness, we agree change is appropriate, necessary and in the best interest of student-athletes and the Association. The NCAA membership and its divisions have a long history of [expanding opportunities for college athletes](#), and enhanced opportunities related to name, image or likeness would be an appropriate extension of efforts to modernize NCAA rules in a way that is consistent with our values and principles. We believe additional flexibility in this space can and must continue to support the collegiate model in clear contrast to the professional sports model.

The working group spent many hours studying, considering extensive feedback, discussing and deliberating challenges and opportunities related to student-athlete engagement in activities that use a student-athlete's name, image or likeness in return for some form of compensation. As part of this process, the working group engaged a diverse group of stakeholders through in-person interviews, written feedback and formal presentations. These stakeholders included current and former student-athletes, faculty, presidents, conference commissioners, athletics administrators and coaches from Divisions I, II and III, as well as thought leaders and experts in the higher education and college sports communities. Members of the working group agree that issues related to such use are complex and any potential modifications should be carefully considered by the NCAA membership. Further, members of the working group agree that any changes must both enhance the student-athlete experience and support the collegiate model.

At this stage, the working group is prepared to make the following recommendations to the Board of Governors with the request that each division have the benefit of providing input to identify appropriate regulations and address divisional needs. Membership input and decision-making are the foundation of our voluntary association and, while our working group was a representative body, the issues here are so important, complex and challenging that we believe further dialogue is appropriate before we submit additional recommendations. These recommendations will form the basis for continued conversations and engagement with state and federal lawmakers around enacted, introduced and proposed legislation.

## **Recommendations.**

To best serve student-athletes, the Federal and State Legislation Working Group recommends that the Board of Governors:

- Authorize change in policy and bylaws to permit name, image and likeness benefits consistent with NCAA values and principles as well as with legal precedent.
- Reject any approach that would make student-athletes employees or use likeness as a substitute for compensation related to athletic participation and performance.
- Reaffirm the integrity of the student-athlete recruitment process, which is unique to college sports. Changes to NCAA name, image and likeness rules should support this principle and not result in undue influence on a student's choice of college.
- Extend the timeframe of this working group through April 2020 to continue to gather feedback and work with the membership on the development and adoption of new NCAA legislation.
- Endorse the regulatory framework described in this report as appropriate guardrails for future conversations and possible NCAA legislation.
- Instruct NCAA leadership on engagement with state and federal lawmakers.

The NCAA, over many years, has progressively adapted to changing student-athlete environments by adopting regulations that meet their needs in a manner consistent with NCAA values and principles, including the opportunity to receive cost of attendance. Our recommendations reject the idea of student-athletes as employees and the use of their name, image, or likeness as a substitute currency in a “pay-for-play” model.

The current state and federal legislative efforts are in conflict with NCAA values and principles and fail to differentiate the NCAA intercollegiate athletic experience from those of professional athletes. These efforts also undermine the legal precedent that the U.S. Supreme Court and other courts have afforded the NCAA to regulate intercollegiate athletics at a national level. What we are proposing within this document is a framework by which all student-athletes in all sports across all three divisions have the opportunity to engage in name, image and likeness activities without eroding the priorities of education and the collegiate experience.

NCAA member schools also continue to seek opportunities to allow prospective and current student-athletes to go directly into the professional leagues. Students should have choice and opportunity to select the professional model whenever they believe they are ready to pursue a professional sports career.

The law does not recognize name, image and likeness compensation to individuals in the broadcast of athletic events. Student-athletes cannot be afforded special publicity rights regarding name, image or likeness that are not available to the general population.

The working group recommends a uniform set of principles and a framework that will allow for equitable national collegiate competition and championships. State mandates such as the law enacted by California or those contemplated by other jurisdictions fail to address this necessary uniformity. NCAA legislation that allows for variability based on identified circumstances must first be vetted and adopted by the membership representing college athletics in all 50 states – not by a single state or even multiple states. The framework proposed by the working group will facilitate national consistency while allowing for divisional differences and greater student-athlete choice within our structure. This approach works for colleges and universities throughout our membership, public and private, urban and rural, in all three divisions and addresses the needs of 500,000 student-athletes nationwide. Institutions will need to consider how gender equity, including Title IX regulations, may be applied for all student-athletes.

Our recommendations are made with the explicit reliance on the principles, guidance, and framework identified below, based on the NCAA constitution and operating bylaws.

### **PRINCIPLES AND ADDITIONAL GUIDANCE FOR THE DECISION-MAKING PROCESS RELATED TO POTENTIAL NAME, IMAGE AND LIKENESS MODIFICATIONS**

Student-athletes may pursue and receive benefits for the use of their name, image and likeness in a manner consistent with the principles stated below.

1. In order to maintain the differentiation of collegiate and professional sports, payment to a student-athlete for use of his or her name, image or likeness should not be a substitute form of currency to pay for athletic performance or participation; nor should the payment serve as an inducement for a prospective or current student-athlete to select a particular NCAA member school.
2. Regulation of a student-athlete's name, image or likeness use should be transparent, narrowly tailored and enforceable, and it should facilitate the principle of fair competition among schools in a division, including the integrity of the recruiting process. While the concept of fair competition is important to all three divisions, all divisions recognize variability will exist among member schools based on institutional mission, priorities, resources and membership in a particular division or subdivision.
3. A student-athlete should be able to use his or her name, image or likeness similar to college students who are not student-athletes, while recognizing the importance of interstate, uniform competition and recruiting rules that are unique to NCAA athletics. To fairly balance these interests, there must be some factors that result in treating student-athletes differently.

When identifying a compelling reason to differentiate, through regulation, a student-athlete's name, image and likeness activities from those of a college student who is not a student-athlete, the following considerations may allow for additional flexibility in some form:

- a. Name, image and likeness benefits should be tethered to education.
- b. The determination and receipt of name, image and likeness benefits should be transparent, objective and reasonable.
- c. The activity is regulated to allow first amendment expression that is without the expectation of compensation.
- d. Regulation of a student-athlete's name, image and likeness use should promote student-athlete well-being and educational achievement.

#### **Regulatory framework developed by the working group.**

The working group spent considerable time discussing a regulatory framework that will serve as guidance for additional discussions by the working group and the divisions' governance structures, as well as the enactment of future NCAA legislation. The working group believes the framework is consistent with NCAA values and principles, enhances the collegiate model, affirms an appropriate nexus between higher education and intercollegiate athletics and supports the guiding principles developed by the working group.

It is important that the framework addresses both current and future opportunities related to the use of a student-athlete's name, image or likeness. The working group will continue to develop resource materials, including targeted issues for discussion, that will inform the group and the membership about licensing and monetization opportunities so that proper assessment can occur before additional recommendations are provided to the Board of Governors in April 2020.

The working group conceptualized name, image and likeness benefits and opportunities on a continuum. At one end of the spectrum, the working group generally believes student-athletes should be permitted to use their name, image or likeness to promote their own work product or business, particularly when the work product or business is not related to athletics. Even when the work product or business is related to athletics, the working group believes sufficient controls can be developed to mitigate potential abuse, including current rules related to recruitment offers and inducements and extra benefits, and permit student-athletes to pursue opportunities in a manner consistent with the collegiate model. Any regulation should focus on restricting behavior that is inconsistent with the collegiate model. Further, the working group acknowledges some amount of regulation may be necessary to ensure the relevant activities remain consistent with the principles developed by the working group.

It is important to note that NCAA bylaws already allow for student-athletes to have outside employment and business activity. This framework of review and regulation is specific to when student-athletes wish to lend their name, image or likeness to promote a student's own enterprise or an employer's business activity, such that name, image and likeness become intertwined.

Examples include but are not limited to:

- Student-athlete uses name, image or likeness to promote his or her legitimate commercial activity (for example, writing and publishing a book or charging a fee for a lesson).
- Student-athlete creates a social media channel to serve as the platform for his or her business.
- Student-athlete uses name, image or likeness to promote his or her own nonprofit organization.
- Student-athlete creates and produces a video series containing nutritional tips for athletes and distributes the content via social media.

Potential issues to consider:

- Whether a student-athlete is truly being compensated for the work product, as opposed to being compensated (directly or indirectly) for participation in NCAA athletics.
- Challenges of determining where "work product" ends and the name, image and likeness begins as the value-driver.
- Possible inappropriate involvement of institutional boosters that could impact enrollment decisions of prospective student-athletes.

Examples of regulation to consider:

- Prior approval from athletics director, faculty athletics representative or their designee (for example, the compliance administrator) to address potential pay-for-play and related concerns.
- Student-athletes may not miss class or required team activities to participate in promotional activities.
- No involvement of schools, employees or boosters in the development or promotion of these opportunities.
- No use of institutional, conference or NCAA brand marks.

- Include a “failsafe” or “backstop” provision to address obvious malfeasance not clearly prohibited by the legislation.

Next steps for working group and divisional governance structures:

- Develop regulation to mitigate potential abuse and ensure appropriate institutional oversight.
- Propose legislation to codify or develop waiver guidelines to facilitate or support the concepts noted above.
- Determine the extent to which current rules would apply to possible modifications.
- Examine and make recommendations about application of these rules to pre-enrollment activities.

On the other end of the spectrum of activities, the working group believes that the commercial value of a student-athlete’s name, image or likeness may be derived largely through that student-athletes association with his or her school and/or participation in NCAA athletics. As such, the working group believes that, in many cases, allowing student-athletes to be paid for the right to use their name, image or likeness in these circumstances could be tantamount to allowing compensation for athletic participation. Such compensation could be a substitute form of currency to pay for athletic performance, which is inconsistent with the principles developed by the working group. Without mitigation, these activities would be inconsistent with the collegiate model.

Potential issues to consider:

- Unregulated use of student-athlete name, image and likeness could inappropriately impact the recruitment process. (For example, a student-athlete’s endorsement agreement explicitly or implicitly requires the student-athlete to attend a particular college or university.)
- Representatives of a student-athlete’s interests or an institution’s athletics interests could inappropriately insert themselves into business agreements to provide enrollment inducements for prospective student-athletes or extra benefits for enrolled student-athletes.

Examples of regulation to consider:

- Agreements may not require or encourage enrollment in a particular school or set of schools.
- Institutions and boosters may not be involved in arranging endorsement activities.
- Institutional, conference and NCAA brand marks may not be used in any aspect of the activity.

- Student-athletes may not miss class or required team activities to participate in promotional activities.

Next steps for working group and divisional governance structures:

- Determine whether enforceable regulation could address the concerns around recruiting and improper inducement in order to make the activities permissible.
- Review and develop current agent and advisor regulations with respect to allowing student-athletes representation to further permissible name, image and likeness activities.
- Examine and make recommendations about application of these rules to pre-enrollment activities.
- Examine whether shared revenue activities generated by the commercial use of a student-athlete's name, image or likeness would be lawful.