



FREQUENTLY ASKED QUESTIONS FEBRUARY 2020

MEDICAL MONITORING CLASS SETTLEMENT AGREEMENT: ARRINGTON V. NCAA

This document is the second Frequently Asked Questions document sent to the membership in response to final approval of the class action Settlement Agreement in *In re: National Collegiate Athletic Association Student-Athlete Concussion Injury Litigation (MDL No. 2494 / Master Docket No. 1:13-cv-09116 (N.D. Ill.) (Arrington Matter)*. This document addresses additional questions that have arisen since the release of the first frequently asked questions document on November 22, 2019 regarding the Settlement Agreement in the Arrington Matter and related member obligations. The November 2019 FAQ document is available [here](#).

This document is provided for informational purposes only and should not be construed as legal advice or a substitute for legal advice. Readers of this document are encouraged to review the content, including the materials accessible by hyperlink below, with applicable legal advisors and other school staff who might assist in appropriately evaluating this information as it applies to your individual institutional risk and practices.

1. What is the Arrington Matter?

The Arrington Matter was initiated in 2011 as a putative class action concussion lawsuit against the NCAA by plaintiffs that participated in men's and women's NCAA college sports at NCAA member schools. In 2013, the parties began negotiating toward a Settlement Agreement that would, among other things, relieve NCAA member schools from certain potential liability in the future.

In 2016, the Court granted preliminary approval of the settlement terms and, since that time, the parties have provided the required notifications to settlement class members and taken other steps as required by the Court and/or settlement while awaiting formal and final judicial approval. Final approval of the settlement terms occurred on August 13, 2019 and, pursuant to Court order, the effective date of the Settlement Agreement is November 18, 2019. A copy of the final Settlement Agreement can be found [here](#).

2. What are the primary outcomes of the Settlement Agreement?

The primary outcomes are twofold.

- a. **Medical Monitoring.** The NCAA and its insurers are providing \$70 million in funding to make free medical screening and testing, known as "medical monitoring," available to student-athletes who played an NCAA sport at an NCAA member school on or prior to July 15, 2016. The details related to the medical monitoring services are described in the Settlement Agreement. Information about the process through which student-athletes can access the monitoring services will be made available on the NCAA Student-Athlete

Concussion Injury Litigation Website at:
<https://www.collegeathleteconcussionsettlement.com/>

b. Member Obligations. The description of member obligations can be found in Section IX. of the Settlement Agreement. While the Settlement Agreement was negotiated directly with the NCAA and not its member schools, the language in Section IX.B. of the Settlement Agreement provides that an institution must certify in writing that it has complied with all the member obligations described in Section IX.A. in order to receive the benefit of the Settlement Release. The details of the Settlement Release can be found in Sections II.QQ. and II.RR. of the Settlement Agreement. In addition, Sections IX.C. and IX.F. describe certain member obligations related to annual concussion reporting, and concussion education and training, respectively. Subsequent questions in this document will address member obligations in more detail.

3. Does the Settlement Release automatically apply to all member schools?

As stated above, the language in Section IX.B. of the Settlement Agreement provides that an institution must certify in writing, on or before May 18, 2020, that it has put in place a concussion management plan that meets the requirements set forth in Section IX.A. in order to receive the benefit of the Settlement Release. This certification opportunity and the corresponding deadline apply to all member schools of the NCAA.

4. Does Section IX.A.1. of the Settlement Agreement really apply to “all student-athletes” at an institution?

In order to secure the broadest possible settlement release for members institutions, the provisions of Section IX.A. were intended to address activities involving *all* NCAA student-athletes; but there is no reason to believe that the scope of Section IX.A.1. would extend beyond that population of student-athletes (e.g. to participants in intra-mural or club sports).

5. What is the mechanism for a member institution to deliver the compliance certification required under the Settlement Agreement?

Certifications must be delivered by May 18, 2020. The Settlement Agreement provides that the certification from each institution must be provided to certain parties identified by the Court and that such certification will thereafter be posted on the Settlement Website.

Epiq Mass Tort (Epiq) has been appointed by the Court to act as the Program Administrator responsible for managing and administering various aspects of the Settlement. In order to streamline and simplify the member certification process, the parties to the Settlement have enlisted the services of Epiq to manage and support those activities as well. Epiq is still in the

process of finalizing the details related to the member certification process, but we understand that it will involve a user-friendly online platform with electronic signature capabilities and we anticipate that more specific information about the certification process, including next steps for member institutions, will be provided to the membership no later than mid-March.

6. Section IX.C of the Settlement Agreement provides that the NCAA will create a reporting process through which member institutions will report to the NCAA instances of diagnosed concussions in NCAA student-athletes and their resolution.

a. Are all member schools obligated to report concussion information?

Section IX.C. obligates the NCAA to “*create a reporting process through which member institutions will report diagnosed concussions.*” In January, all three NCAA divisions passed emergency or noncontroversial legislation (Division I Constitution 4.3.4.21; Division II Constitution 3.3.4.18; Division III Constitution 3.2.4.18) requiring an active member institution “*to report all instances of diagnosed sport-related concussions in student-athletes and their resolution to the NCAA on an annual basis pursuant to policies and procedures maintained by the Committee on Competitive Safeguards and Medical Aspects of Sports.*”

The legislation requires all schools to collect and report on concussions diagnosed on or after May 18, 2020, the date that coincides with the deadline for member schools who choose to certify that they have complied with all the member obligations described in Section IX.A. of the Settlement Agreement.

b. Who is responsible for reporting on behalf of a member institution?

While the oversight responsibilities of the Athletics Health Care Administrator should place that individual in a beneficial position to perform this reporting function, member institutions have flexibility to designate reporting responsibility as they deem appropriate. At a minimum, it is reasonable to expect that the Athletics Health Care Administrator will, as part of his or her broader oversight responsibilities, verify that this personnel decision has been addressed.

c. What information will be collected?

Section IX.C of the Settlement Agreement provides that the reporting system collect two specific pieces of data: (1) instances of diagnosed concussions in NCAA student-athletes; and (2) their resolution. The legislation described in response to Question 6(a) above provides that the details of the reporting process will be as approved by the NCAA Committee on Competitive Safeguards and Medical Aspects of Sports (CSMAS). While CSMAS is still in the process of reviewing and finalizing those details,* it is anticipated that, in addition to basic demographic and contact information (e.g., name, institutional

affiliation; email address), the individual reporting on behalf of the member institution will be required to report the same two data points identified in the Settlement Agreement, namely:

- (1) Aggregate number of diagnosed concussions incurred by all NCAA student-athletes at the institution within the defined reporting period; and
- (2) Of the aggregate number of diagnosed concussions reported, the number that resolved within the defined reporting period.

d. What is the “defined reporting period”?

Again, the legislation described in response to Question 6(a) above contemplates that the details of the reporting process will be finalized and approved by CSMAS. While CSMAS is still in the process of reviewing and finalizing those details,* reporting will occur on an annual basis and we anticipate that institutions will have some flexibility with respect to when they elect to report each year.

e. How is concussion “resolution” defined?

Section IX.C. of the Settlement Agreement does not provide a definition of “resolution.” However, in order to facilitate accuracy and consistency within the reporting process, we expect that CSMAS will identify a reasonable definition of “resolution” as part of the reporting policies and procedures that will be shared with membership prior to the reporting deadline.*

f. How exactly will reporting be conducted? Where will the reporting system reside and how will member institutions access it?

While the legislation described in response to Question 6(a) above contemplates that the details of the reporting process will be finalized and approved by CSMAS,* we anticipate that the design and functionality of the concussion reporting system will be modeled after the existing NCAA catastrophic reporting system, which has been utilized by membership since the fall of 2017. More specifically, we anticipate that the reporting system will have the following characteristics:

- (1) An online, web-based reporting portal;
- (2) Simplified access with respect to account registration and password protection; and
- (3) Available through a distinct URL.

Additional details regarding specific reporting policies and procedures that are approved by CSMAS will be shared with membership prior to the reporting deadline.*

g. Do we have to report *all* concussions that have been diagnosed in *all* student-athletes during the defined reporting period?

Section IX.C of the Settlement Agreement only requires reporting of instances of diagnosed concussions in NCAA student-athletes and the provision is intended to apply only to those concussions that are sport-related.

h. How will reported information be utilized, and with whom will it be shared?

At this time, the primary purpose of this concussion database is to satisfy the requirements of the Settlement Agreement. As you may know, the NCAA and U.S. Department of Defense launched the Concussion Assessment, Research and Education Consortium project in 2014 (CARE). It is the largest concussion and repetitive head impact study in history and now includes over than 50,000 participants from 30 campuses across the country. The CARE research, along with the NCAA Injury Surveillance System, will continue to be leveraged as the primary sources for validated research data and information pertaining to sport-related concussion. More information about the CARE research can be found [here](#).

The Settlement Agreement does not require that the data be disclosed after reporting and, in light of the limitations around the intent and design of the reporting system, we do not anticipate that reported data will be shared with member institutions or any external parties.

i. How will student-athlete privacy/confidentiality be safeguarded?

While the details of the reporting process will be approved by CSMAS,* we anticipate that all data will be reported on a deidentified, aggregated basis; and, therefore, will not involve the submission or maintenance of any protected personal or health information.

j. If our school participates in the NCAA Injury Surveillance System, will that satisfy its concussion reporting obligation?

No. The Injury Surveillance System and concussion data will be reported separately, into separate database systems, such that participation in the NCAA Injury Surveillance System will not impact or satisfy the legislative requirement to also report concussion information.

7. Section IX.A.1. of the Settlement Agreement contemplates that a member institution will implement guidelines that provide that *“every student-athlete will undergo pre-season baseline testing for each sport in which they participate prior to participating in practice or*

***competition.*” Does this mean that *all* student-athletes need a baseline test for *all* sports in which they participate *every* year?**

The provisions of Section IX.A. were intended to address activities involving NCAA student-athletes and there is no reason to believe that the scope of Section IX.A.1. would extend beyond that population of student-athletes. However, because the Settlement Agreement is a legal document, we encourage you to work with institutional general counsel and/or other risk management staff to identify a reasonable and defensible interpretation of what baseline testing practices should look like as they relate to this provision, after taking into consideration all relevant factors and variables that may impact the individual risks and compliance needs of your institution.

- 8. Section IX.A.3. of the Settlement Agreement contemplates that a member institution will implement guidelines that provide that “*any NCAA student-athlete diagnosed with a concussion by medical personnel must be cleared by a physician before being permitted to return to play in practice or competition.*” What are the definitions of “physician,” “medical personnel” and what does it mean to be “cleared”?**

The Settlement Agreement does not provide a definition for these terms. Because the Settlement Agreement is a legal document, we encourage you to work with institutional general counsel and/or other risk management staff to identify a reasonable and defensible interpretation of what it means to be “cleared” and the other requirements of this provision, after taking into consideration all of relevant factors and variables that may impact the individual risks and compliance needs of your institution.

- 9. Sections IX.A.4. and IX.A.5. of the Settlement Agreement contemplate that a member institution will implement guidelines that ensure that medical personnel with training in the diagnosis, treatment and management of concussion are “present” at all games and “available” at all practices involving certain “Contact Sports”.**

a. How are “Contact Sports” defined?

For purposes of the Settlement Agreement, Section II.I. defines “Contact Sports” to include the following sports, whether a men’s or women’s team:

- (1) Football.
- (2) Lacrosse.
- (3) Wrestling.
- (4) Ice hockey.

(5) Field hockey.

(6) Soccer.

(7) Basketball.

b. How are the terms “present” and “available” defined?

The Settlement Agreement does not provide a definition for these terms. As the Settlement Agreement is a legal document, we encourage you to work with institutional general counsel and/or other risk management staff to identify a reasonable and defensible interpretation of these provisions, after taking into consideration all of relevant factors and variables that may impact the individual risks and compliance needs of your institution.

c. What does it mean to have “training in the diagnosis, treatment and management of concussion”?

The Settlement Agreement does not provide details or clarification with respect to this language. As the Settlement Agreement is a legal document, we encourage you to work with institutional general counsel and/or other risk management staff to identify a reasonable and defensible interpretation of these provisions, after taking into consideration all of relevant factors and variables that may impact the individual risks and compliance needs of your institution.

d. What about away competitions?

Sections IX.A.4. and IX.A.5. of the Settlement Agreement do not distinguish between “home” and “away” events. As the Settlement Agreement is a legal document, we encourage you to work with institutional general counsel and/or other risk management staff to identify a reasonable and defensible interpretation of these provisions, after taking into consideration all of relevant factors and variables that may impact the individual risks and compliance needs of your institution.

10. How do I determine who the general counsel or primary risk management officer is on my campus?

Governance, administrative and personnel structures vary greatly from institution to institution. Often, where an institution has formally established an internal General Counsel role and/or an office that provides legal support and/or risk management services on behalf of the institution, that information will be provided as part of the content of the institution’s website. It is often possible to identify relevant contact information by utilizing the search function from the general institutional home page or within the institution’s staff directory page.

11. What should I do if I have additional questions about the Settlement Agreement or the steps that should be taken related to the compliance certification?

The Settlement Agreement is a legal document. Its terms require legal analysis and interpretation. Accordingly, we strongly encourage you to consult with institutional legal counsel and/or risk management staff about any additional questions you may have. In addition, you can forward non-legal questions to members of the Sport Science Institute at ssi@ncaa.org.

***The next CSMAS meeting is scheduled for March 17, 2020. It is anticipated that CSMAS will finalize policies and procedures related to the required concussion reporting activities at that time and additional information will be provided to the membership shortly thereafter.**