

Notice of Meeting
UNIVERSITY OF HAWAI'I

BOARD OF REGENTS COMMITTEE ON INTERCOLLEGIATE ATHLETICS

Members: Regents Acoba (Chair), McEnerney (Vice-Chair), Acopan, Bal, and Westerman

Date: Thursday, February 6, 2020

Time: 10:30 a.m.

Place: University of Hawai'i at Mānoa
Information Technology Building
1st Floor Conference Room 105A/B
2520 Correa Road
Honolulu, Hawai'i 96822

AGENDA

- I. Call Meeting to Order**
- II. Approval of Minutes of the November 7, 2019 Meeting**
- III. Public Comment Period for Agenda Items:** All written testimony on agenda items received after posting of this agenda and up to 24 hours in advance of the meeting will be distributed to the board. Late testimony on agenda items will be distributed to the board within 24 hours of receipt. Written testimony may be submitted via US mail, email at bor.testimony@hawaii.edu, or facsimile at 956-5156. Individuals submitting written testimony are not automatically signed up for oral testimony. Registration for oral testimony on agenda items will be provided at the meeting location 15 minutes prior to the meeting and closed once the meeting begins. Oral testimony is limited to three (3) minutes. All written testimony submitted are public documents. Therefore, any testimony that is submitted verbally or in writing, electronically or in person, for use in the public meeting process is public information and will be posted on the board's website.
- IV. Agenda Items**
 - A. Coaches Corner: Todd Graham, University of Hawai'i at Mānoa Head Football Coach
 - B. Proposed Revisions to Regents Policy 7.208, Intercollegiate Athletics
 - C. Continued from November 7, 2019 Meeting:
 1. Committee Goals and Objectives
 2. Future Committee Status of the Intercollegiate Athletics Committee
 - D. Legislation Related to Postsecondary Student Athlete Compensation for the Use of Name, Image, or Likeness
- V. Adjournment**

**DISCLAIMER – THE FOLLOWING ARE DRAFT MINUTES AND ARE
SUBJECT TO REVIEW AND CHANGE UPON APPROVAL**

MINUTES

BOARD OF REGENTS COMMITTEE ON INTERCOLLEGIATE ATHLETICS MEETING

NOVEMBER 7, 2019

I. CALL TO ORDER

Chair Simeon Acoba called the meeting to order at 12:41 p.m. on Thursday, November 7, 2019, at University of Hawai'i at Hilo, 'Imiloa Astronomy Center of Hawai'i, Moanahoku Exhibit Hall, 600 'Imiloa Place, Hilo, Hawai'i 96720.

Committee members in attendance: Chair Simeon Acoba; Vice-Chair Michael McEnerney; Regent Kelli Acopan; Regent Eugene Bal; Regent Robert Westerman.

Others in attendance: Regent Wayne Higaki; Regent Randy Moore; Regent Alapaki Nahale-a; Regent Ernest Wilson Jr. (ex officio committee members); President David Lassner; Vice President for Legal Affairs/University General Counsel Carrie Okinaga; University of Hawai'i at Mānoa Provost Michael Bruno; University of Hawai'i at Hilo (UHH) Chancellor Bonnie Irwin; Executive Administrator and Secretary of the Board of Regents (Board Secretary) Kendra Oishi; and others as noted.

II. APPROVAL OF MINUTES OF THE JUNE 6, 2019 MEETING

Vice-Chair McEnerney moved to approve the minutes of the June 6, 2019, meeting seconded by Regent Westerman, and the motion carried unanimously.

III. PUBLIC COMMENT PERIOD

Board Secretary Oishi announced that the Board Office did not receive any written testimony and that no one signed up to deliver oral testimony.

IV. AGENDA ITEMS

Chair Acoba announced that he would be taking the agenda items out of order as there was a special guest presenter and that the Committee would take up agenda item D immediately after agenda item B.

A. Coaches Corner: Chris Leonard, UHH Interim Head Volleyball Coach

A talk story session was held with UHH Interim Head Volleyball Coach, Chris Leonard. Coach Leonard provided a brief background on his volleyball coaching career stating that he has served as a volleyball coach in some capacity for over 20 years, has served as a member of the UHH coaching staff for the past six years, and that this was his first year as head coach. He noted that the program has a proud history and is a program on the rise with a very diverse group of 18 student athletes on his squad, including seven who were local athletes. Coach Leonard stressed that the team mantra has been to get better every day, both on the court and in the classroom, and that the coaching staff continuously stresses to their athletes that they are students first. He highlighted the

athletic and academic successes of the team even with limited resources when compared to other Division II schools in the Pacific West Conference noting that the team was 18-6 (13-3 in conference) and in second place but more importantly, that last year the team GPA was 3.13. Coach Leonard then noted that UHH was the only public institution in the 12 team conference and spoke of the challenges facing UHH volleyball competing against teams that are funded at greater levels than UHH. However, he was thankful for the support of the University and the regents and felt that the team could, and would strive to, do better and continue to improve every day.

Coach Leonard stated that last year the team finished the season with 21 wins and tied for third in the conference with three teams being chosen from the Pacific West Conference to compete in the NCAA Division II regionals. Unfortunately, UHH was number four. He also mentioned that the regional rankings were just released and that UHH was ranked 9th and that 8 teams ultimately get selected for the regional tournament.

Vice-Chair McEnerney asked about the state of the facilities for women's volleyball at UHH. Coach Leonard responded that UHH facilities are sufficient but that there are nicer facilities visited during away games. He noted that UHH has had some issues with the gym floor and air conditioning, which have been discussed at previous meetings. At times, the humid conditions have made the floor slick and unplayable. He stated that having facilities that put you on an equal footing with other comparable programs is very helpful.

Vice-Chair McEnerney asked whether UHH was responsible for transportation and other costs for teams who come to Hawai'i from the mainland. Coach Leonard answered that, with the exception of tournament play, teams were responsible for their own costs, similar to when UHH travels to the mainland. He also noted that travel is the biggest expense for the UHH program.

Vice-Chair McEnerney inquired about concussions. Coach Leonard noted that while the team has not experienced a concussion this year, one player might have gone through concussion protocols about two years ago. He also praised the UHH medical and training staff on their handling of athlete's medical issues.

Regent Higaki inquired about the number of scholarships for the program. Coach Leonard replied that UHH women's volleyball is allowed an equivalency of 8 scholarships and currently has an equivalency of about 6.9. UHH is not fully funded for scholarships but are a lot closer than they have been in the past. He also noted that about two-thirds of the 18 players on the team receive some sort of financial assistance in varying amounts from UHH.

Regent Higaki then inquired about paid staff and whether the coach was the only paid member on staff. Coach Leonard stated that he was paid as the head coach and that three of the six coaches on staff were paid some small compensation but not a wage where this would be considered their primary job.

Regent Nahale-a asked Coach Leonard to speak to the local connection with regard to community support and in recruiting for the program. Coach Leonard responded that throughout his time and career on the Big Island, both on and off the court, he has been able to make a lot of local connections within the community which has been extremely

helpful and has made it easier to get the community excited about the program. Both fan and community support has been tremendous and people are talking about the revitalization of the program and the excitement it has created.

Regent Acopan noted that an issue that has been brought up in discussions from the students' perspective has been affordability and food and health insecurity. She inquired as to whether issues of food or health insecurity affected his student athletes. Coach Leonard stated that he doesn't believe they have a problem but noted that athletes sometimes don't get to eat after late practices, tournaments, or games because the dining hall is closed. UHH provides meals for their athletes after games and works to ensure that their student athletes don't face this issue.

Chair Acoba asked Coach Leonard what the UHH women's volleyball budget was and how the Committee or Board could assist in getting the 8 scholarships fully funded. Coach Leonard responded that his budget was approximately \$130,000 and that he welcomed the opportunity to get increased financial support for scholarships noting that this would be helpful in making the team more competitive but that UHH was trying to be creative with the resources they had.

B. Update on Health and Wellness for University of Hawai'i at Mānoa and University of Hawai'i at Hilo

UHM Athletic Director (AD) David Matlin introduced Dr. Jon Sladky who would be providing an update on the health and wellness of athletes at UHM. Prior to Dr. Sladky's presentation, Chair Acoba noted that UH ranked 68th in the Director's Cup rankings and asked AD Matlin to elaborate.

AD Matlin stated that the Director's Cup is a measure of how well athletic teams do in NCAA tournaments and that this was UHM's highest ranking since 2009. He noted that UHM was 68th out of 350 to 351 schools but that UHM was 10th out of 280 non-Power 5 schools, was the highest ranked of all the Big West teams, and was ahead of Clemson, who won the national collegiate football championship.

Dr. Sladky outlined some of the initiatives and areas of focus, as well as progress being made, in improving the health and wellness of student athletes at UHM specifically highlighting three initiatives currently underway at UHM involving electrocardiogram (EKG) screening, concussion tracking, and mental health initiatives. He mentioned that the EKG screening program first started approximate 4 to 5 years ago and UHM has progressively been screening the EKGs of all incoming athletes. At this time all athletes at UHM have had EKG screens completed. This process is more a preventative measure that can help identify cardiac conditions that can cause injury to athletes competing at the elite collegiate level. If cardiac issues are discovered based on this screening, the athletes are then referred to a specialist for a more thorough examination.

Dr. Sladky proceeded to discuss UHM's concussion program and tracking system saying that the concussion management plan is updated several times a year and that new recommendations for concussion treatment were made in 2019. He noted that UHM's concussion protocols have met all of the concussion safety requirements of the NCAA and received full certification. Dr. Sladky provided statistics on concussions at UHM noting that there was a slight decrease in the number of sports related concussions

experienced by student athletes. Approximately 30 sports related concussions were experienced between 2017 and 2018 with football having the largest number at 7 concussions. He also stated that concussions were evenly split between male and female athletes.

Dr. Sladky spoke on the mental health of student athletes and provided an overview of UHM's mental health initiatives. This semester, UHM added two licensed clinical psychologists to the athletic department who work closely with athletic department medical staff to provide 7 hours of mental health appointments per week and who also track the mental health and wellness of the student athletes. He stated that the service provided by the clinical psychologists is very popular with student athletes and that all appointments were completely booked for several weeks. The student counseling center is also working on a training program for coaches and staff to teach them how to recognize and identify red flags with regard to the mental health of their athletes as well as educating coaches and staff on the availability of mental health resources.

Vice-Chair McEnerney inquired about the status of drug testing of athletes. Dr. Sladky responded that there were two phases to the drug testing of athletes. The NCAA conducts standardized drug testing at random intervals and UHM also has in-house drug testing that takes place at certain random intervals throughout the year. The in-house drug testing had briefly been paused as the athletic department searched for a new head team physician but since his employment, the program has started again. The in-house program also had drug and alcohol counseling available for athletes who test positive.

Vice-Chair McEnerney asked whether there had been an uptick in tests that were positive for marijuana, particularly in light of the availability of medical marijuana and the relaxing of legal restrictions on marijuana use. Dr. Sladky answered that he didn't believe there had been enough data collected yet to speak definitively on that issue but that in his personal experience there didn't appear to be an increase. He attributed this partially to athletes being knowledgeable and aware that marijuana is still an illegal substance at the federal level and as such the NCAA restricts its use.

Chair Acoba, noting that the clinical psychologists were booked up for weeks, asked Dr. Sladky the areas of mental health in which athletes were seeking assistance. Dr. Sladky responded that the clinical psychologists were not sports psychologists and dealt mainly with issues such as anxiety, depression, and other clinical mental health issues and student athletes seem to experience a mixture of issues, particularly those who are far away from home for the first time. He noted, however, that it was a good sign that student athletes are utilizing the resource.

Chair Acoba then asked whether suicide prevention and domestic abuse were being addressed. Dr. Sladky stated that these issues are trying to be addressed and that part of the new training being developed for coaches and staff relates to suicide prevention and they could explore adding domestic violence to the training as well. There also are some initiatives on campus through the public health programs that are domestic violence related but is not something that is specific to student athletes.

Regent Westerman applauded the efforts in training coaches and staff in recognizing mental health issues but asked whether similar training would be afforded to the student

athletes themselves since many student athletes confide in their peers more than in their coaches. Dr. Sladky stated that the athletic department's focus at the moment is on bringing coaches and staff up to speed. However, he mentioned that athletes have come forward about concerns they had with issues being faced by their fellow teammates or other student athletes. While discussion with student athletes have been more reactionary to this point, he noted that having a student athlete component of the training as part of the longer term plan would be good for everyone.

Regent Wilson inquired as to whether there was any collaboration between JABSOM, the kinesiology program in the College of Education, clinical psychology students at UHM, and others to assist the athletic department with their health initiatives and work with student athletes. Dr. Sladky responded that the athletic department did use some student volunteers, specifically noting that dietician and nutrition students from the Food Science Health and Nutrition Program currently help student athletes with health and nutrition issues. AD Matlin added that there has been some collaboration on various issues, including concussion prevention issues, but that there could be more collaboration between various university programs and the athletic department and that they would continue to look for opportunities to collaborate.

Regent Moore inquired as to whether there would be benefits in doing EKG tests as student athletes left the athletic program. Dr. Sladky stated that abnormal electrical cardiac activity is usually a pre-condition that is detected as a result of athletic activity and not caused by the athletic activity itself. Student athletes who have abnormal EKG tests are usually monitored and retested but those with normal EKGs are not since evidence does not exist that retesting individuals with normal EKGs has any significant benefits.

Regent Moore then asked whether there had been any studies or analyses of mental health issues to determine if there were differences between the mental health issues being faced by athletes versus those being faced by the general student population. Dr. Sladky responded that he was aware of ongoing studies on this issue but there did not appear to be any consensus or definitive conclusions one way or the other. He noted that there is some thought that because athletes as a whole are generally living healthier lifestyles that they experience less mental health issues but he reiterated that he has not seen anything definitive on this issue.

UHH Associate AD (AAD) Kula Oda spoke on the health and wellness of student athletes at UHH. He provided an update on UHH's concussion protocols noting that UHH only experienced one concussion last year and only 12 concussion related injuries over the past three years. Of the 12 concussions, 9 occurred among male athletes and 3 occurred among female athletes, with soccer being the sport that experienced the majority of concussions (5).

AAD Oda briefly discussed mental health services for student athletes at UHH stating that the bulk of mental health services are provided through the counseling center located on campus which is under the purview of UHH's health and wellness program. A counselor from the counseling center speaks to student athletes twice a year on topics such as suicide prevention and gender based violence and UHH secures guest speakers to talk about issues such as performance enhancing drugs and their effects on mental health.

Vice-Chair McEnerney reiterated the question posed to Dr. Sladky regarding drug testing, marijuana use, and how UHH was dealing with these issues. AAD Oda noted that UHH does not have in-house drug testing like UHM but does take part in the standardized drug tests conducted by the NCAA which were recently conducted at UHH. To his knowledge, UHH did not experience upticks in marijuana use among athletes.

Regent Nahale-a inquired as to whether athletes at UHH experienced more mental health challenges and domestic violence issues because of things such as school size, isolation, and distance from family and if there were distinctions between local athletes and out-of-state athletes. AAD Oda stated that he wasn't aware of UHH athletes having greater mental health challenges and that UHH had great resources to deal with these issues. If an issue does arise UHH has the ability to quickly respond in the right way, especially since Hilo is such a tight knit community. He noted that he hasn't heard of drug or suicide issues being a problem but has had to deal with more issues involving the death of a family member.

Chair Acoba asked for an explanation of the NCAA annual health survey. AAD Oda noted that this was something fairly new that UHH AD Guillen was very involved with and could probably more adequately address. However, he did know that it was an annual survey that UHH participated in comprised of various questions posed by the NCAA that were answered by UHH AD Guillen. Chair Acoba requested AAD Oda to provide follow-up to the Committee regarding this question.

D. Discussion of NCAA Name, Image, and Likeness Policy

Chair Acoba mentioned that all of the athletic teams were members of the Big West Conference, except for football, and welcomed Dennis Farrell, Big West Commissioner, who has been associated with the Big West Conference for 40 years, serving 20 as Commissioner to the meeting.

Commissioner Farrell spoke on the new policy recently adopted by the NCAA in response to legislation that passed in California (SB206) and was being introduced in various other jurisdictions that sets in motion the process to allow name, image, and likeness opportunities for student-athletes, the so-called "pay to play" rule. Commissioner Farrell mentioned that the provisions of SB206 would become operative on January 1, 2023, which basically provided lead time for the NCAA, the federal government, or other states to follow suit and enact similar legislation. Some of the states currently considering such legislation include New York, South Carolina, Florida, Washington, Colorado, and Michigan. He noted that the Florida bill, if passed, could take effect as early as July 2020.

Commissioner Farrell stated that the NCAA did not wait for the final outcome of SB206 before taking steps to try to address the issue. In the spring of 2019, the NCAA Board of Governors created a working group whose only task was to examine the issues surrounding the use of an athlete's name, image, and likeness. The working group recently submitted its report to the NCAA Board of Governors who unanimously supported the working group's recommendation that student athletes should be permitted to benefit from the use of their name, image, or likeness in a manner consistent with the collegiate model. Furthermore, the NCAA directed all of its three divisions to immediately begin modifying and modernizing relevant bylaws, policies, and rules to address this

situation stipulating that they take effect no later than January of 2021. He noted that, of major concern among commissioners, athletic directors, and universities was how to control the involvement of schools, employees, or boosters in the development or promotion of economic opportunities for student athletes with regard to the use of their name, image, or likeness. Commissioner Farrell's main issue with this new policy shift is the effect the unregulated use of an athlete's name, image, or likeness will have on the recruitment process. He stated that he does not ultimately know which direction things will go in, the effects these policies will have on intercollegiate athletics, and how the NCAA, or member institutions will respond but that there is still much to be determined and sorted out.

Vice-Chair McEnerney inquired as to whether there had been a study or if data was available on the effects of this new policy on the different programs and types of athletes at the collegiate level. Commissioner Farrell responded that there has been no such study or analysis conducted on this issue that he is aware of. Anecdotally, however, there is an expectation that the football and men's basketball programs, and the higher echelon of athletes in these programs, will be the primary beneficiaries of this new policy. Nevertheless, the policy must be applicable and available equally across the board for all athletes when it is finalized.

Vice-Chair McEnerney mentioned that his concern was more with the upper echelon of athletes and whether Commissioner Farrell had any idea of the monetary compensation being estimated for these athletes. Commissioner Farrell stated that he did not have any information on that topic. However, there is a concern that universities may try to outbid each other to get particular athletes to attend their schools.

Vice-Chair McEnerney asked whether Commissioner Farrell thought that this shift in policy would work towards keeping more student athletes in college. Commissioner Farrell pointed out that he had been asked a similar question in an interview a few weeks ago and that there was no definitive answer, although anecdotally some professional athletes have stated that they may have gone to college or stayed in college had this rule been in place prior to their joining their respective leagues. However, Commissioner Farrell noted that the NCAA rules are not the main reason that student athletes in college do not immediately become athletes. Rather, it is the various professional league and player association rules that limit when an athlete can join the league.

Vice-Chair McEnerney asked what part of the university would be responsible for monitoring this issue and these policies. Commissioner Farrell stated that nothing was certain at this point but that it would probably be an athletic department's compliance office that will have oversight responsibility.

Vice-Chair McEnerney inquired as to how many of the Big West schools governing boards had a separate athletic committee. Commissioner Farrell stated that probably half of the members of the Big West Conference had some outside entity that provided some oversight regarding intercollegiate athletics. The other members of the Conference were members of the Cal State or UC systems where athletic issues were controlled more at the campus level.

Regent Westerman questioned whether states needed to pass legislation to deal with this issue if the NCAA was already going to allow it and are working to have something in place by 2021. Commissioner Farrell stated that his personal prediction was that if we continued on this path with states passing individual laws unique to each state the NCAA would file a lawsuit claiming restraint of interstate trade under the Commerce Clause.

Regent Westerman asked Commissioner Farrell how he saw this new policy playing out with different sports and different levels of schools with regard to sponsorship and funding. Commissioner Farrell stated that he felt the potential was there for a number of unintended consequences. One of these was the issue of stockpiling, where schools get a number of athletes sponsored by a large company and therefore would have a number of scholarships freed up for other athletes which could technically lead to some schools having far greater numbers of “scholarship” players than other schools. Currently, the number of athletic scholarships allowed is regulated by the NCAA. This could lead to an unfair competitive advantage among schools. He further noted that the NCAA has looked at this issue numerous times in the past and that they faced a number of challenges each time this was done.

Vice-Chair McEnerney raised the issue of taxing scholarship moneys, mentioning that he had read that legislators in Washington were thinking that if athletes were getting big endorsements perhaps the federal government should start taxing scholarship moneys. Commissioner Farrell agreed and noted that there has been discussion of the federal government proposing a federal law regarding this issue.

Chair Acoba noted that Hawai'i is the only non-California school in the Big West Conference and asked how Hawai'i would be impacted by SB206. Commissioner Farrell noted that he was not sure on the impacts SB206 would have on Hawai'i.

C. Overview of NCAA Compliance

UHM AD David Matlin provided an overview of NCAA compliance for Division I discussing the NCAA's violation structure and levels, including the parameters of Level I, Level II, and Level III violations with Level I being the most egregious violation. He commented that it is unrealistic to expect a program to never have a violation. The NCAA rulebook contains numerous rules which are often amended and new rules are constantly being added, and universities, at times, are not aware of these new rules or rule changes until a violation occurs. UHM self-reported 10 Level III violations in 2018-2019 and no Level I or Level II violations. At the request of Chair Acoba, AD Matlin spoke briefly on the basketball violation that UHM was sanctioned for, noting that in 2018 the UHM basketball program was cited for some Level I and Level II violations that resulted in severe sanctions including the loss of scholarships, the loss of the ability to play in post-season tournaments, and fines of up to \$10,000. UHM appealed these violations and sanctions and won the appeal which lowered the violations to Level III.

Vice-Chair McEnerney asked what a realistic target is for violations. UHM AD Matlin responded that the focus is on the penalties and not repeating the same violation and that 10 or 20 would be more realistic. He noted that the best thing to do is self-report.

Chair Acoba asked how sports at a university played into the perspective or view of the university. UHM AD Matlin stated that although a university is an educational

institution first and foremost, athletics is likely the most visible aspect of a university, receiving more media coverage than most university programs, which provides an opportunity for a university to shine but also can result in embarrassing developments for a university. He felt that athletics was an education in itself where athletes learn about teamwork, perseverance, and hard work which is a valuable extension to academics. He also noted that athletics provides exposure to a university that allows the university to showcase academic programs that might not get that kind of exposure otherwise.

Chair Acoba asked UHM AD Matlin if he felt it was important to monitor and oversee athletics at UH as it is one of the more public and highly visible functions of the University. UHM AD Matlin said that oversight and monitoring is important and that it occurs at different levels at UH.

Chair Acoba stated that having a committee at the Board level to help monitor and oversee one of the most public functions of a university was a good thing and inquired as to whether UHM AD Matlin concurred with this assessment. UHM AD Matlin responded in the affirmative.

Chair Acoba opened discussions among members as to the pros and cons of having an Intercollegiate Athletics Committee.

Regent Wilson stated that UH athletics are our state's athletics and it was important for the people of Hawai'i. He favored keeping the Committee because it sends a strong message to the community on the importance of athletics at UH to Hawai'i.

Regent Westerman opined that it was critical that the Board maintain the Committee to protect the athletes and monitor the NCAA, particularly in light of the new policy and direction that were discussed earlier regarding the use of name, image, and likeness, and help to determine how we, as a school, will react to the changes.

Regent Higaki agreed with the sentiments noted and felt that oversight was a good thing but that it appeared that Board Chair Kudo's major concern regarding the Intercollegiate Athletics Committee was based more on timing and the reduction in the number of Regents and the increased workload this may entail.

Regent Moore offered a contrary perspective noting that oversight over athletic programs was critical but questioned whether the Board needed a separate committee to exercise this oversight or could these responsibilities be incorporated into another existing committee such as Academic and Student Affairs. He felt that having a separate committee to maintain this oversight was not necessary.

Vice-Chair McEnerney stated that having a separate Committee on Intercollegiate Athletics allows the Board to exercise more specific and focused oversight of athletic programs and that adding these responsibilities to another committee might make proper oversight difficult.

E. Committee Goals and Objectives

Chair Acoba discussed the annual review of the Committee, bylaws, and projected accomplishments for 2019-2020. Committee members were asked to propose goals and objectives for the Committee at the next meeting.

F. Discussion of Committee Scope and Functions

Brief discussions took place on the scope and functions of the Committee in conjunction with agenda item G below.

G. Future Committee Status of the Intercollegiate Athletics Committee

Chair Acoba noted that monitoring one of the most public functions of the University is important and that having an Intercollegiate Athletics Committee at the Board level plays a vital role in this oversight function. Discussions occurred as to whether the Committee should be maintained or abolished. Time not permitting, this topic would need to be continued to be discussed at the next Committee meeting.

V. EXECUTIVE SESSION

Upon motion by Vice-Chair McEnerney, seconded by Regent Westerman, the Committee unanimously approved convening in executive session to consider matters relating to the solicitation and acceptance of private donations pursuant to Section 92-5(a)(7), Hawai'i Revised Statutes.

The meeting recessed at 2:18 p.m.

Chair Acoba called the meeting back to order at 2:40 p.m. He noted that the Committee went into executive session to discuss the acceptance of private donations as noted on the agenda.

VI. ADJOURNMENT

There being no further business, Vice-Chair McEnerney moved to adjourn, and Regent Bal seconded, and with unanimous approval, the meeting was adjourned at 2:41 p.m.

Respectfully Submitted,

Kendra Oishi
Executive Administrator and Secretary
of the Board of Regents

Item IV.A.
Coaches Corner –
Todd Graham

NO MATERIALS



Regents Policy Chapter 7, Student Affairs
Regents Policy RP 7.208, Intercollegiate Athletics

Effective Date: ~~Aug. 23, 1996~~ February XX, 2020

Prior Dates Amended: Oct. 17, 1963; July 16, 1974; Oct. 20, 1978; Dec. 12, 1986; Aug. 23, 1996; Oct. 31, 2014 (recodified)

Review Date: August ~~2018~~2023

**PROPOSED REVISIONS
FOR DISCUSSION**

I. Purpose:

~~To set forth policy regarding intercollegiate athletics.~~ Well-managed intercollegiate athletics competition, conducted under the fundamental principles of fair play and amateurism, is of educational value to student-athletes as well as a source of pride and unity to the wider student body, faculty, staff, and all those in our community who cherish and support the University of Hawai'i.

II. Definitions:

~~No policy specific or unique definitions apply.~~ None.

III. Policy:

Responsible administration and oversight are fundamental to the management of intercollegiate athletics. Each campus that participates in intercollegiate athletics must have in place written procedures to provide careful and thorough scrutiny of its sports programs and deliver required information to ensure appropriate oversight.

Overall leadership of intercollegiate athletics will be taken into account in the annual evaluations of the chief executive officer of the University of Hawai'i at Mānoa (UHM CEO) or the chancellor of the University of Hawai'i at Hilo (UHH Chancellor). Campuses shall establish standards and benchmarks against which the success of its intercollegiate athletics program may be assessed.

~~A. Well-managed intercollegiate athletics competition, conducted under the fundamental principles of fair play and amateurism, can be of educational value to student-athletes as well as a source of pride and unity to the wider student body, faculty, staff, and all those in our community who cherish and support the University of Hawai'i.~~

~~The board shall establish or abolish intercollegiate athletic programs and authorize membership in intercollegiate athletic conferences or associations upon recommendation of the chancellor of the concerned campus and with the endorsement of the president.~~

A. Guiding principles for Intercollegiate Athletics

PROPOSED REVISIONS FOR DISCUSSION

1. Health and safety

The health and safety of student-athletes shall be the highest priority of the entire athletics program.

2. Commitment to academics

Student-athletes are first and foremost students. Student-athletes shall be admitted under the same standards as applied to other students and their academic performance and progress shall be comparable to non-athletes. Contracts for coaches and other athletics department staff will include expectations for the academic as well as athletic success of student-athletes.

3. Equal opportunity

Gender equity in athletics shall be respected and honored, and athletics programs shall be operated in compliance with Title IX, the Patsy T. Mink Equal Opportunity in Education Act.

4. Broad and enthusiastic campus and community support

Enthusiastic campus and community support, especially that of students, is a prime indicator of a successful athletics program. The athletics program and campus leadership should proactively reach out to students and faculty as well as to the wider community to encourage interest in and support for intercollegiate athletics.

5. Compliance with NCAA and conference requirements

The UHM CEO and UHH Chancellor are responsible for compliance with all National Collegiate Athletic Association (NCAA) and conference rules and regulations, and he or she will promptly notify the president, who shall inform the chairperson of the board, of all major NCAA infractions (Level I or II), and of all NCAA or conference investigations into all major NCAA infractions (Level I or II).

The use of performance enhancing drugs or prohibited substances undermines the integrity of intercollegiate athletics and may harm the individual student-athlete. The president will develop and institute a drug and prohibited substances testing policy in accordance with NCAA rules and applicable state and federal law. Performance enhancing drugs and prohibited substances include but are not limited to the classes of drugs and related substances banned by the NCAA or prohibited by law.

~~B. Responsibilities of the Chancellor~~

- ~~1. Responsible administration and oversight by the chancellor are fundamental to the management of intercollegiate athletics. Each campus that participates in intercollegiate athletics must have in place written procedures which~~

~~provide careful and thorough scrutiny of its sports programs and deliver required information to the chancellor and, as appropriate, to the president and the board. Management of intercollegiate athletics will be taken into account in the president's evaluations of chancellors. The chancellor shall establish standards and benchmarks against which the success of the campus' intercollegiate athletics program may be assessed. Among the program's priorities should be:~~

~~a. The health, safety and academic progress of student athletes~~

- ~~1. The health and safety of student athletes shall be the athletics department's highest priority.~~
- ~~2. Student athletes are first and foremost students. Student athletes shall be admitted under the same standards as applied to other students and their academic performance and progress shall be comparable to non-athletes. Contacts for coaches and other athletics department staff will include objectives and minimum expectations for academic as well as athletic success of student athletes.~~

~~b. Equal opportunity~~

- ~~1. Equal opportunity is a value the university and the State of Hawai'i hold dear. The chancellor will ensure that gender equity in athletics is respected and honored, and that the athletics program is in full compliance with Title IX, the Patsy T. Mink Equal Opportunity in Education Act.~~

~~c. Broad and enthusiastic campus and community support~~

- ~~1. Enthusiastic campus-wide support, especially that of students, is a powerful indicator of a successful athletics program. The chancellor, coaches and athletics department staff should proactively reach out to students, faculty, and the administration, as well as to the wider community to encourage interest in and support for intercollegiate athletics.~~

~~d. Financial integrity~~

- ~~1. Transparency in financial reporting is mandatory. The board shall be informed in advance of any long-term financial commitment or change that may affect the budget in future years.~~

~~e. Compliance with NCAA and conference requirements~~

- ~~1. The chancellor is responsible for compliance with all National Collegiate Athletic Association (NCAA) and conference rules and regulations, and he or she will promptly notify the president, who shall~~

~~inform the chairperson of the board, of all major NCAA infractions, potential or actual, and of all NCAA or conference investigations.~~

- ~~2. The use of performance enhancing drugs or prohibited substances undermines the integrity of intercollegiate athletics and may harm the individual student athlete. The board authorizes the chancellor to institute testing of student athletes at his or her discretion for the presence or use of performance enhancing drugs or prohibited substances in accordance with NCAA rules or applicable state and federal laws. Performance enhancing drugs and prohibited substances include but are not limited to the classes of drugs and related substances banned by the NCAA or prohibited by law.~~

B. Board of Regents Oversight

1. Board approval shall be necessary to establish or abolish an entire intercollegiate athletic program on a particular campus.
2. The board shall be kept aware of the overall state of intercollegiate athletics programs through regular reports on academic, compliance, and financial issues including but not limited to:
 - a. student-athlete health and welfare;
 - b. gender equity/Title IX;
 - c. academic standing and progress of student-athletes; and
 - d. overall financial condition.
3. The board shall be notified of events or situations that might reasonably be expected to draw unusual public attention to the athletics program, a particular team, a student-athlete, or a department employee.
4. The board shall be notified of events or situations that might reasonably be expected to have a significant negative impact on financial performance.

C. Reports to the Board

- ~~1. The chancellor will ensure that the athletics department develops a mission statement that reflects the values of the University of Hawai'i and that the department's annual plan and budget contain realistic and measurable goals. The chancellor will inform the board through the president on progress in achieving those goals. The chancellor will furnish the board through the president with regular reports on academic and financial issues.~~
- ~~2. The chancellor will furnish the board through the president with an annual report on the academic standing and progress of student athletes overall and by sport, including comparisons to the campus's own undergraduates and~~

~~student-athletes at other peer institutions. The report shall include as appropriate data on the academic progress rate and the academic success rate of student-athletes.~~

- ~~3. The chancellor shall promptly inform the president, who may inform the board, of any events or situations that might draw unusual public interest to the athletics program, a particular team, student athlete, or department employee. The report should provide sufficient detail to permit the president and/or the board to respond appropriately.~~

C. Responsibilities of the UHM CEO and UHH Chancellor

1. Each intercollegiate athletics program shall develop a mission statement, approved by the UHM CEO and UHH Chancellor, respectively, that reflects the values of the University of Hawai'i. Annual plans and budget for athletics shall contain realistic and measurable goals that advance the mission.
2. Financial management
 - a. Transparency in financial reporting is mandatory.
 - b. The campus athletics department will prepare an annual budget. Should the athletics department end a fiscal year in a deficit, meaning that total expenses exceed total revenues, including institutional support and student fees, this shall be noted in the annual financial report of the campus along with plans to reconcile the deficit and to account for its costs. The UHM CEO or UHH Chancellor may eliminate a deficit of their respective athletics department by providing funds from other sources, as permitted by law, to offset such a deficit.
 - c. To the extent allowable under NCAA regulations, the UHM CEO or UHH Chancellor may exempt the nonresident portion of tuition for nonresident student-athletes, graduate assistants, and team managers in accordance with Regents Policy 6.208.
 - d. All funds or gifts, either monetary or in-kind, generated by the athletics department booster organizations or contributed by individuals, corporations, or other entities to support an intercollegiate athletics program shall be channeled through the University of Hawai'i Foundation or 'Ahahui Koa Ānuenuē, both of which have 501(c)(3) status, unless otherwise approved by the president. Funds or gifts shall be used in accordance with the donor's intent, and shall be subject to all applicable policies, procedures, and regulations.
 - e. An external audit of "Agreed-Upon Procedures" will be conducted at least as frequently as required by the NCAA and furnished to the board.

3. The UHM CEO or UHH Chancellor may convene an Athletic Advisory Board in accordance with NCAA bylaws to advise the UHM CEO or UHH Chancellor and athletics director on policies and matters relating to the conduct of intercollegiate athletics on campus and to perform other functions as may be stipulated by the NCAA, by a conference to which the institution belongs, or by the UHM CEO or UHH Chancellor.
4. The UHM CEO or UHH Chancellor shall appoint a faculty athletics representative to perform such functions as may be assigned by the NCAA, by a conference to which the institution belongs, or by the UHM CEO or UHH Chancellor.

~~D. Financial Matters and Management~~

- ~~1. The athletics department will prepare an annual budget that balances expected revenues and expenses. Should the athletics department end a fiscal year in deficit, meaning that total expenses exceed revenues, including institutional support and student fees, the chancellor will report to the Board of Regents on plans to reconcile the deficit and to account for its costs. The chancellor may eliminate a deficit of the athletics department by providing funds from other sources, as permitted by law, to offset such deficit.~~
- ~~2. To the extent allowable under NCAA regulations, the chancellor may exempt the nonresident portion of tuition for nonresident student athletes in accordance with RP 6.208.~~
- ~~3. All funds or gifts, either monetary or in-kind, generated by 501(c)(3) booster organizations or contributed by individuals, corporations or other entities to support an intercollegiate athletics program shall be channeled through the University of Hawai'i Foundation. Funds or gifts shall be used in accordance with the donor's intent, and as assets of the foundation shall be subject to its policies and procedures.~~
- ~~4. An annual external audit of the financial statements of the athletics department will be conducted and the auditor's report will be presented to the board. An external audit of "Agreed-Upon Procedures and Internal Controls and Business Issues" will also be conducted and furnished to the board.~~
- ~~5. The chancellor may convene an Athletic Advisory Board in accordance with NCAA bylaws to advise the chancellor and athletic director on policies and matters relating to the conduct of intercollegiate athletics on campus, to help resolve conflicts that may arise with the intercollegiate athletic program, and to perform other functions as may be stipulated by the NCAA, by the conference to which the institution belongs, or by the chancellor.~~
- ~~6. The chancellor shall appoint a faculty athletics representative to perform such functions as may be assigned by the NCAA, by the conference to which the institution belongs, or by the chancellor.~~

~~7. The chancellor shall ensure that a senior women administrator (SWA) has been designated to perform such functions as may be assigned by the NCAA, by the conference to which the institution belongs, or by the chancellor.~~

IV. Delegation of Authority:

The board delegates to the president, UHM CEO, and UHH Chancellor the authority to carry out the actions set forth in this policy.

~~The board authorizes the chancellor to institute testing of student athletes. See RP 7.208(B)(1)(e)(2).~~

~~To the extent allowable under NCAA regulations, the chancellor may exempt the nonresident portion of tuition for nonresident student athletes in accordance with RP 6.208. See RP 7.208(D)(2).~~

~~The chancellor may convene an Athletic Advisory Board. See RP 7.208(D)(5).~~

~~The chancellor shall appoint a faculty athletics representative. See RP 7.208(D)(6).~~

~~The chancellor shall designate a senior woman administrator (SWA). See RP 7.208(D)(7).~~

V. Contact Information:

Office of the Board of Regents, 956-8213, bor@hawaii.edu

VI. References:

- <http://www.hawaii.edu/offices/bor/>
- ~~<http://www.justice.gov/crt/about/cor/coord/titleixstat.php>~~
- <http://www.ncaa.org>
- ~~RP 6.208~~
- ~~EP 7.205~~

Approved as to Form:

~~Cynthia Quinn~~ Kendra Oishi
Executive Administrator and
Secretary of the Board of Regents

_____Date

Committee on Intercollegiate Athletics

Annual Review for the 2019-2020 Academic Year

	Committee duties per bylaws	2019-2020 Committee Goals and Objectives	Projected 2019-2020 Accomplishments
1	Serve as a liaison between the Board and the respective campuses and their athletic departments.	Committee should monitor the viability of the Mānoa and Hilo campuses' athletic programs.	<ul style="list-style-type: none"> Chris Leonard, UHH Interim Volleyball Coach (11/7/19) Todd Graham, UHM Football Coach (2/6/20) AD Matlin update on Mānoa athletic teams' seasons (2/6/20) Mānoa Coaches Corner (3/5/20) Mānoa Coaches Corner (6/4/20)
2	Advise the Board regarding its responsibility to oversee: <ol style="list-style-type: none"> The health, safety and academic progress of student-athletes; Fiscal integrity and budgetary concerns; Compliance with NCAA and conference requirements; and Any event or situation that may draw unusual public interest to the athletics program, a particular team, student athlete, or department employee. 	Committee should conduct the following to properly advise the Board on its responsibility to oversee athletics and policy oversight: <ul style="list-style-type: none"> Review annual athletic department audit Review and monitor compliance with NCAA and conference requirements Review and monitor the health and safety of student athletes Review and Monitor the financial integrity of the athletic department Review and monitor events or situations that may draw unusual public interest to university athletics, including teams, 	<ul style="list-style-type: none"> NCAA Compliance (Level 1, 2, and 3) review (11/7/19) Report on Big West Conference by Dennis Farrell, Commissioner (11/7/19) Student Athlete Health and Wellness (11/7/19) Financial Update (3/5/20) Title IX Compliance (3/5/20) Booster Club Updates (3/5/20)

		athletes, or employees	<ul style="list-style-type: none"> • Athletic Facilities (6/4/20) • Stadium Update (6/4/20 or possibly earlier)
3	Review annual reports on the academic standing and progress of student athletes, including, but not limited to, the Academic Progress Rate report.	Committee should review and monitor reports on academic standing and progress of student athletes from the athletic department on an annual basis to properly advise the Board on its oversight responsibilities and to ensure that the athletic department and athletic programs are aligned with the academic mission of UH.	<ul style="list-style-type: none"> • Student Athlete Academics (6/4/20)
4	Recommend policies governing all aspects of Intercollegiate Athletics at the University.	<p>Committee should conduct the following to properly advise the Board on its responsibility to oversee athletics and policy oversight:</p> <ul style="list-style-type: none"> • Review committee functions and purposes • Ensure adherence to laws and policies regarding equal opportunities for student athletes • Review and monitor name, image, and likeness legislation, laws, and policies and the effects of these on the athletic department and athletic programs • Review and monitor campus and community support for athletic programs 	<ul style="list-style-type: none"> • Discussion on maintaining the ICA committee (11/7/19) • Revisions to RP 7.208, Intercollegiate Athletics (2/6/20) • Discussion with Commissioner Farrell on California SB 206, effective in 2023, and similar measures that allow athletes to be compensated for the use of their names, images, or likenesses, and possible impacts on Hawai'i (11/7/19) • Information on Hawai'i proposed legislation on the use of a student athlete's name, image, and likeness (2/6/20)

AGB BOARD OF DIRECTORS' STATEMENT ON

Governing Boards' Responsibilities for

INTERCOLLEGIATE

ATHLETICS

*governing board's fiduciary responsibilities for athletic programs are **co-equal** and indistinct from those that apply to other **components** of an institution's work. The board should delegate the conduct and control of the athletic program to a department to the institution's chief executive office, but to **fulfill** its **fiduciary** role the board must ensure the **adequacy** and implementation of institution policies, including those related to **intercollegiate athletics**. **This guidance** applies equally to governing boards of **multi-campus** systems, though their processes for policy making may be **distinctive**.*

ABOUT AGB

Since 1921, the Association of Governing Boards of Universities and Colleges (AGB) has had one mission: to strengthen and protect this country's unique form of institutional governance through its research, services, and advocacy. Serving more than 1,300 member boards, 1,900 institutions, and 40,000 individuals, AGB is the only national organization providing university and college presidents, board chairs, trustees, and board professionals of both public and private institutions and institutionally related foundations with resources that enhance their effectiveness.

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agb.org



AGB Board of Directors' Statement on
**Governing Boards' Responsibilities for
Intercollegiate Athletics**

Introduction

The Association of Governing Boards of Universities and Colleges (AGB), which provides counsel to higher education governing bodies and chief executive officers, has been formally engaged in addressing best practices in the governance of intercollegiate athletics since 2001. Through a series of well-considered formal statements and guidelines, data, advocacy efforts, direct consulting, and other initiatives, AGB helps boards—alongside institutions' chief executives and organizations such as the NCAA, athletics conferences, and others—understand and engage in effective fiduciary practices regarding intercollegiate athletics. Earlier AGB Board of Directors' statements on governing boards' accountability for athletics, issued most recently in 2009, have provided valuable guidance to governing boards for being appropriately accountable for their institutions' athletics programs.

Yet challenges associated with college sports have continued to increase dramatically—including growing costs, complexities related to conference play, student-athlete academic performance and health and safety risks, and rising tolerance for long-term liabilities in coaching and athletics personnel contracts, as well as some high-profile athletics scandals and ethical violations. Many in higher education perceive an ever-widening gulf between athletic and academic cultures. No governing board, regardless of its institution's athletics division, can afford to ignore its ultimate fiduciary responsibility for that part of the institution's business carried out by the athletics department. Effective board engagement and accountability is imperative for bridging that gulf.

Since at least the 1980s, college sports have constituted an enrollment strategy at both large and small institutions. Athletic events are often important occasions for campus engagement with local, regional, and even national stakeholders. At virtually all institutions offering athletics, those programs present high-value opportunities for community-building on campus. The prospective benefits attached to these programs are prodigious. Nonetheless, the risks associated with college sports, both financial and reputational, require consistent attention from higher education's leaders, including governing boards.

Some of the highest-profile failures in contemporary higher education leadership are related to college sports. Instances of sexual misconduct by athletics department personnel or within athletics facilities—and serious injury or even the death of a student-athlete—violate these institutions’ recognized missions and purposes. Among the fundamental responsibilities of higher education’s leaders, at any level of athletic competition, none is greater than the protection of students and minors on campus. The role of college sports extends well beyond the playing field in any institution, and governing boards cannot afford to miss the bigger picture. Board members must temper their dispositions as fans and boosters in light of their formal fiduciary responsibilities.

Among the fundamental responsibilities of higher education’s leaders, at any level of athletic competition,

none is greater than the protection of students and minors on campus.

While the present AGB statement is appropriately focused on institution and multi-campus system board engagement, the AGB Board of Directors believes it is important to encourage those external bodies holding substantial influence in the business of intercollegiate athletics—the NCAA, NAIA, athletic conferences, and perhaps others—to recognize that higher education’s fiduciary bodies remain as accountable for intercollegiate athletics as they are for institutional finances, academic quality, and student success. The AGB Board of Directors continues to call upon these bodies to include voices from among higher education’s 40,000 fiduciaries within their own governance structures.

The AGB Board of Directors, which is composed predominantly of college and university board members, approved this statement in August 2018. The statement presents three principles for governing board accountability for intercollegiate athletics.

We commend the following principles as a framework for sound governance practice to boards and institutional leadership.

1. While delegating administrative responsibility to the institution’s chief executive officer, the governing board is ultimately accountable for athletics policy in keeping with its fiduciary responsibilities.
2. The governing board must accept accountability for upholding the integrity of the athletics program and ensuring it advances the institution’s educational mission.

3. Governing boards must develop systematic approaches for upholding their responsibilities regarding athletics and apply themselves diligently to that work.

Principle 1. While delegating administrative responsibility to the institution's chief executive officer, the governing board is ultimately accountable for athletics policy in keeping with its fiduciary responsibilities.

The board's fiduciary responsibility regarding athletics programs is not distinct from its fiduciary responsibility for other aspects of an institution or system. A governing board's responsibility to ensure the adequacy and implementation of policies related to intercollegiate athletics is just as essential as its responsibilities for academic programs, institution finances, and education quality and student success. A governing board should formally delegate the conduct and control of the athletics department to the institution's chief executive officer but should not presume that this delegation limits the board's scope of accountability. This guidance applies equally to governing boards of public systems, though their processes for policy implementation and review will differ from those of single-institution boards.

The board's fiduciary responsibility regarding athletics programs is

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Part of the governing board's accountability is to ensure that the institution's chief executive officer is attentive to the strategy and operations of athletics programs. To do this, the board must periodically review information about the primary areas of athletics policy: finance, student-athlete health and safety, admissions and academic policies and progress, institutional compliance, ethical behavior, and athletics personnel. The mission and goals of the athletics department must contribute to, and be accounted for, within the institution's overall strategic plan,¹ and the governing board must be assured that the mission of the athletics department is being met. From the vantage of the governing board, which holds the entire institution in trust, none of an institution's programs, including athletics, should be an end unto itself.

¹ Some institutions have found a strategic plan for the athletics department, aligned in a subsidiary way with the institution's strategic plan, to be beneficial.

Regardless of the size or complexity of their finances, almost all athletics departments are subsidized by the institution's operating budget.² Board members must monitor the running average and current-year subsidies to athletics departments from all sources, and they need to engage substantively with questions about appropriate student fees and transfers from institutional operating budgets for support of athletics programs. These programs can benefit college and university missions in many ways, but many of the benefits arising from investments in athletics are indirect. For example, athletics programs can have positive effects on prestige, political capital, donor support, and student enrollment. Ultimately, it is up to the board, working with its chief executive, to determine the most appropriate application of resources in pursuit of the institution's mission. A thoughtful agenda of board member orientation and ongoing education is indispensable to fulfillment of these responsibilities.

No matter what the level of intercollegiate competition, the governing board should express curiosity and become familiar with the policy agendas of membership groups organizing intercollegiate play, including the NCAA, the NAIA, relevant athletics conferences, and perhaps others. As fiduciaries, boards can help set their institutions up for success by insisting these partner organizations maintain high policy standards and good governance policies.

QUESTIONS FOR BOARDS TO CONSIDER

- Does our institution orient trustees to their responsibilities concerning intercollegiate athletics? What does this program include?
- How can the board make clear its support for the chief executive officer's management of the institution's athletics program? Is the chief executive officer providing the leadership necessary to implement the standards and expectations articulated by the board?
- How does the board monitor its members' engagement related to athletics? Is there a process for addressing situations in which board members exceed their proper authority in the area of intercollegiate athletics?
- Has the board approved a strategic plan that makes explicit the ways in which the athletics department is expected to advance the institution's mission? Does it include meaningful benchmarks for the board to monitor, and does the board make use of the data and updates it receives?³
- Are the policies of the NCAA, the NAIA, or relevant athletics conferences consistent with the work of the board and administration regarding finance, academic integrity, and student well-being?

² See knightcommission.org/finances-college-sports/.

³ At the Division I level, governing board chairs should be aware of—and ask to review—university-level data collected through the Institutional Performance Program (IPP), which replaced the NCAA Athletics Certification Program. See ncaa.org/governance/division-i-institutional-performance-program-ipp. It would be entirely appropriate for the board chair to have that access.

Principle 2. The governing board must accept accountability for upholding the integrity of the athletics program and ensuring it advances the institution's educational mission.

While intercollegiate athletics programs must be sensitive to the institution's business model, the most important measure of success for such programs should be the degree to which they further the institution's overall educational mission. Only the governing body can hold the chief executive responsible for establishing expectations for the athletics department that go beyond wins and losses. The board must be confident that the athletics program reflects the institution's values and does not undermine them.

The governing body must also ensure that student-athletes are held to the same academic and behavioral standards all students are required to meet, and athletes have the same opportunities as other students for a well-balanced academic, social, and athletics experience. The board must be confident that admissions policies set student-athletes up for educational success. Special facilities and dedicated support for student-athletes should reflect the institution's strong commitment to these students' learning, rather than separate and special treatment. Athletic commitments that require significant time away from class or away from campus life, or those that effectively preclude participation in internships, service-learning, and other educational experiences, should be understood as impediments to student learning.

The periodic review of data that show academic progress of all student-athletes, including those in major revenue sports, forms a basic responsibility of the governing board. Boards need to evaluate graduation rates and other indicators of educational quality adopted by the institution, and athletes should be among the groups for distinct analysis. The board must hold the chief executive accountable for delivering insightful information on trends and anomalies in student-athlete enrollment, academic progress, and degree completion.

Some governing boards perceive intercollegiate athletics programs to be somewhat removed from the educational mission of the institution. Governing boards must be confident that all stakeholders understand these programs are integral to that mission. They affect the makeup of the student body, campus climate, and ultimately the nature of educational effectiveness both inside and outside of the classroom.

The governing body must ensure that
***student-athletes
are held to the
same academic
and behavioral
standards***

all students are required to meet.

QUESTIONS FOR BOARDS TO CONSIDER

- What benchmarks should be used to gauge the success of the athletics department? Are they consistent with the institution's mission and values?
- What is the impact of intercollegiate athletics on campus climate? How does athletics affect admissions, social life, academic values, and the composition of the student body?
- Is the board or a board committee monitoring the fundraising efforts for intercollegiate athletics programs? Is the institution maintaining an appropriate balance in its fundraising priorities for athletics and academics? Are fundraising efforts for athletics and academics integrated with or discrete from one another?

Principle 3. Governing boards must develop systematic approaches for upholding their responsibilities regarding athletics and apply themselves diligently to that work.

Intercollegiate athletics programs are in various ways cost centers, revenue centers, and risk centers for colleges and universities. And while they are not of themselves mission centers, they influence the educational mission in meaningful ways. Effective fiduciary governing bodies must become broadly informed about these programs and must accept ultimate accountability for them. Perhaps nowhere has this been more tragically proven over the past decade than in a small number of institutions that have had athletics-related ethical violations affecting student safety. Boards must organize their accountability for athletics to deliver consistent and reliable results.

Most governing boards do not maintain committees focused exclusively on athletics.⁴ If the board decides to have a standing or ad hoc committee on intercollegiate athletics, then it must be keenly aware of the need to: a) ensure impartiality toward athletics among all members of the committee and b) share discussion of financial, academic, reputational risk assessment, and mission considerations, whose impact extends well beyond the athletics department and therefore becomes relevant to other committees of the board. The way in which a board positions itself for accountability in this area is an important decision, and one that should be made with awareness of the risks and rewards of having a single board committee for an area of the institution's work holding broad implications.

⁴ AGB survey data suggest about 7 percent of public governing boards and 6 percent of independent institution governing boards maintain a standing committee on athletics. A majority of those institutions are engaged in Division I intercollegiate athletic competition.

Among the areas in need of regular attention, boards must:

- Identify and manage personnel and facilities risks by ensuring the currency and implementation of policies related to the use of campus athletics facilities (including youth camps and other activities that are adjunct to the intercollegiate athletics program and imply athletics staff engagement with minors, faculty, development personnel, the board, and perhaps others).
- Ensure that institutional strategy accounts for risks inherent to sport (e.g., those involving concussions and other serious injuries) and periodic board discussions of student well-being are informed by relevant medical research, as well as summary data on the institution's athletics-related student health risks.
- Review year-end balances to inform annual intercollegiate athletics budgeting and ensure that process occurs as a component of the institution's budgeting process, not separately.
- Review and monitor outcomes related to the institution's plans for gender equity in athletics programs under Title IX—and make certain that the institution, its personnel, and its facilities are complying at all times with laws and regulations pertaining to sexual misconduct.⁵
- Ensure that donor and sponsorship support of intercollegiate athletics reflects institutional priorities, and those revenues remain under institutional control.
- Consider for approval all proposals for significant athletics capital expenditures, including any future debt service commitment as part of the regular financial planning of the governing board.

For governing boards of institutions with revenue-generating sports, head coaches' contracts in those sports have become increasingly fraught with high-dollar guarantees and buy-out clauses that amount to long-term financial liabilities for the institution. Boards responsible for these institutions must have policies that require governing board approval of the institution's largest salaries, and they should strongly consider including meaningful athlete academic success goals within coaches' incentive structures. Governing boards concerned

...higher education leaders, including boards, must guarantee, above all,

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⁵ For further guidance, see agb.org/statements/2015/agb-statement-on-sexual-misconduct.

that their policies are inadequate or potentially risky should require a post-audit of the institution's financial commitments to the athletics department's highest-paid personnel. Further, it is the board's responsibility to make certain that institutional policies governing extramural consulting, sponsorships, and outside business interests of employees are applied consistently across the institution. At whatever level of athletics the institution competes, higher education leaders, including boards, must guarantee, above all, the safety of students and minors on campus.

QUESTIONS FOR BOARDS TO CONSIDER

- With which committee(s) of the board does the monitoring of intercollegiate athletics reside? Who is responsible for providing the board with information pertaining to intercollegiate athletics? When and how is that information provided?
- Does the chief executive officer convey to the athletics director expectations concerning compliance and ethical conduct? How effectively is the commitment to compliance with institutional, conference, and NCAA rules and regulations communicated to coaches, administrators, students, faculty, boosters, and alumni?
- Are thorough background checks, including records of NCAA compliance, conducted of prospective athletics department employees? Is there a clear policy that protects whistleblowers from punitive action, and are students, employees, and others aware of it?
- What is the philosophy concerning the background, qualifications, and compensation of our coaches and athletics director? Is it well-aligned with other institutional policies?
- Do coaches and administrators accept their responsibilities to be educators? How is this communicated to them?

A NOTE ON PROPER GOVERNING BOARD ENGAGEMENT WITH INTERCOLLEGIATE ATHLETICS

Governing boards and board members must understand the scope and limits of their authority related to intercollegiate athletics. The governing board can add best value to the institution through diligence at the policy level, not operational activity. Unless explicitly empowered to act on behalf of the full board, no committee, subgroup, or individual board member holds legal authority to direct action or promulgate a specific policy. Select examples of appropriate and inappropriate board behavior include:

APPROPRIATE	INAPPROPRIATE
Reviewing and approving institutional budgets in alignment with annual and longer-term strategy	Seeking special appropriations for favored teams or facilities, or inserting board members into conference or broadcasting negotiations
Charging the chief executive with vigorous, continuous pursuit of student safety and educational quality; monitoring progress on benchmarks	Making special allowances or otherwise exempting any program or department from ethical and educational principles that guide the institution
Ensuring clear and consistent reporting lines such that: 1) all coaches report to the athletics director and 2) compliance officers with responsibility for athletics report to a university chief compliance officer	Developing expectations of specific employees, explicitly or implicitly; seeking program-level information or assurances of any kind outside the boardroom
Verifying that employment and compensation policies are being implemented consistently and with full fidelity; where such policies exist, reviewing and considering for approval employee compensation above set thresholds, including for athletics personnel	Becoming involved in individual contract negotiations for any employee of the institution below the level of chief executive, including coaches and athletics directors
Working closely with the chief executive to refine a holistic and aspirational set of goals and indicators of success for the athletics program overall	Encouraging the chief executive to make a coaching personnel change related to insufficient athletic success

Conclusion

Governing boards are neither more nor less accountable for intercollegiate athletics programs than for any other aspect of a college or university. In consideration of the significant financial, mission, and reputational risks associated with these programs today, boards are pressed to attend more substantively to athletics than ever before.

While the vast majority of colleges and universities are committed to a program of intercollegiate athletics, the goals and strategies underlying those programs vary widely. Where the value of intercollegiate athletics is taken for granted, these programs are capable of distorting, rather than enabling, the educational mission of the institution—and in some instances, student-athletes have suffered while benefitting the institution. It is ultimately the board's responsibility to ensure the athletics program reflects and advances the institution's mission.

AGB's 2012 report, *Trust, Accountability, and Integrity: Board Responsibilities for Intercollegiate Athletics*⁶, concluded:

The findings of our survey and insights of our advisory group have strengthened our conviction that the presence of administrative or managerial oversight alone is not sufficient to counter the forces that cause athletics to equal and even overshadow the academic purposes of an institution. Boards are the natural agents to provide that presence because of the fiduciary responsibility they have for their institutions.

We stand firmly behind that assertion, even as we recognize a harsh reality: athletics programs historically invite governing board and board member overreach to a greater degree than any other aspect of the institution's work. In the end, we call upon all boards to treat intercollegiate athletics programs with a level of seriousness that has been too frequently lacking.

⁶ See agb.org/reports/2012/trust-accountability-and-integrity-board-responsibilities-intercollegiate-athletics.

Across levels of competition, and regardless of the size and complexity of departmental budgets, governing boards cannot delegate their responsibility for ensuring that athletics contributes to institutions' educational missions, and no other entity can do their job. At a time of competitiveness for limited resources, heightened visibility, and declining trust in colleges and universities, attention by higher education's fiduciaries to the challenges of intercollegiate athletics is essential. Boards must develop systematic approaches to carry out informed oversight of athletics and hold themselves accountable for results.

*Governing boards cannot delegate their
responsibility for ensuring that athletics*

*contributes to institutions'
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and no other entity can do their job.

Board Statement of Commitment and Accountability for Intercollegiate Athletics

The Association of Governing Boards of Universities and Colleges (AGB) commends this statement of commitment and accountability as principles of engagement with the important topic of intercollegiate athletics. We urge boards to review and discuss it annually—and formally commit to upholding it.

This board...

1. Delegates administrative responsibility for intercollegiate athletics to our chief executive officer but recognizes its ultimate accountability for athletics policy and effective fiduciary oversight of athletics. We hold the chief executive responsible for establishing expectations for intercollegiate athletics that go beyond wins and losses.
2. Shall monitor the finances and business model of the institution's athletics program, including compensation, fundraising, capital expenditures, and debt-service commitments.
3. Affirms its accountability for upholding the integrity of the athletics program and ensuring it advances our institution's educational mission. To that end, we shall ensure that student-athletes are held to the same academic and behavioral standards that all students are required to meet, and athletes have the same opportunities as other students for a well-balanced academic, social, and athletic experience.
4. Shall periodically review information about the primary areas of athletics policy and ensure that the mission and goals of the athletics department are consistent with our institution's overall mission and goals.
5. Shall ensure that the chief executive officer conveys to the athletics director (AD) our institutional expectations for compliance and ethical conduct—and the AD will clearly communicate these expectations to coaches, administrators, students, faculty, boosters, and alumni.
6. Shall ensure that thorough background checks, including records of NCAA/NAIA and conference compliance, are conducted of prospective athletics department employees. We further shall ensure our institution has a clear policy that protects whistleblowers from punitive action.

7. Shall monitor policies related to the use of campus athletics facilities, including youth camps and other activities adjunct to the intercollegiate athletics program.
8. Shall ensure that institutional policy accounts for physical safety risks inherent to sport and we will remain aware of the well-being of our student-athletes, informed by relevant medical research.
9. Shall review and monitor outcomes related to our institution's plans for gender equity in athletics programs under Title IX—and will closely monitor our athletics program's concerns for complying at all times with laws and regulations pertaining to sexual misconduct.
10. Shall ensure that donor and sponsorship support of intercollegiate athletics reflects our institutional priorities and those revenues remain under institutional control.

Signature of the Board Chair

Date

AGB BOARD OF DIRECTORS' STATEMENT ON

Governing Boards' Responsibilities for

INTERCOLLEGIATE

ATHLETICS



1133 20th St. NW, Suite 300, Washington, DC 20036
agb.org

Item IV.C.2.
Future Committee
Status of the ICA
Committee

NO MATERIALS

JAN 17 2020

A BILL FOR AN ACT

RELATING TO INTERCOLLEGIATE ATHLETICS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 **STUDENT ATHLETE BILL OF RIGHTS**

6 § -1 **Definitions.** As used in this chapter, unless the
7 context indicates otherwise:

8 "Postsecondary educational institution" means any campus of
9 the university of Hawaii system as defined in section 305J-2 or
10 a private college or university as defined in section 305J-2.

11 § -2 **Postsecondary educational institutions; student**
12 **compensation; scholarship eligibility.** No postsecondary
13 educational institution shall uphold any rule, requirement,
14 standard, or other limitation that prevents a student athlete of
15 the institution participating in intercollegiate athletics from
16 earning compensation as a result of the use of the student
17 athlete's name, image, or likeness. Earning compensation from



1 the use of a student athlete's name, image, or likeness shall
2 not affect the student athlete's scholarship eligibility.

3 **§ -3 Athletic associations; student compensation; school**
4 **eligibility.** (a) No athletic association, conference, or other
5 group or organization with authority over intercollegiate
6 athletics shall prevent a student athlete of a postsecondary
7 educational institution who is participating in intercollegiate
8 athletics from earning compensation as a result of the use of
9 the student athlete's name, image, or likeness.

10 (b) No athletic association, conference, or other group or
11 organization having authority over intercollegiate athletics
12 shall prevent a postsecondary educational institution from
13 participating in intercollegiate athletics as a result of the
14 compensation of a student athlete for the use of the student
15 athlete's name, image, or likeness.

16 **§ -4 Prospective student athletes; professional**
17 **representation.** (a) No postsecondary educational institution,
18 athletic association, conference, or other group or organization
19 having authority over intercollegiate athletics shall provide a
20 prospective student athlete with compensation in relation to the
21 student athlete's name, image, or likeness; provided that a



1 scholarship from the postsecondary educational institution in
2 which a student athlete is enrolled that provides the student
3 athlete with the cost of attendance at that institution is not
4 compensation for purposes of this section, and a scholarship
5 shall not be revoked as a result of earning compensation or
6 obtaining legal representation pursuant to this section.

7 (b) No postsecondary educational institution, athletic
8 association, conference, or other group or organization having
9 authority over intercollegiate athletics shall prevent a student
10 athlete participating in intercollegiate athletics from
11 obtaining professional representation in relation to contracts
12 or legal matters.

13 **§ -5 Athletic contracts; team contracts; conflicts;**
14 **disclosure; official team activities.** (a) No student athlete
15 shall enter into a contract providing compensation to the
16 student athlete for use of the student athlete's name, image, or
17 likeness if a provision of the contract is in conflict with a
18 provision of the student athlete's team contract.

19 (b) A student athlete who enters into a contract providing
20 compensation to the student athlete for use of the student
21 athlete's name, image, or likeness shall disclose the contract



1 to an official of the institution, to be designated by the
2 institution.

3 (c) An institution asserting a conflict described in
4 subsection (a) shall disclose to the student athlete or the
5 student athlete's attorney the relevant contractual provisions
6 that are in conflict.

7 (d) No team contract of a postsecondary educational
8 institution's athletic program shall prevent a student athlete
9 from using the student athlete's name, image, or likeness for a
10 commercial purpose when the student athlete is not engaged in
11 official team activities.

12 § -6 **Sanction.** Any person who violates this chapter
13 shall be deemed to have engaged in an unfair or deceptive act or
14 practice pursuant to section 480-2."

15 SECTION 2. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun before its effective date.

18 SECTION 3. This Act shall take effect upon its approval.
19

INTRODUCED BY: Michelle N. Kildani

~~Scott~~ *Scott*
Stacy
Amanda Mercedes K...

Karl Rhoads

D. Karl



S.B. NO. 2673

Report Title:

Student Athletics; Compensation

Description:

Establishes the right of postsecondary student athletes in intercollegiate athletics to receive compensation for the use of their name, image, or likeness.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.





UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Higher Education
Thursday, January 30, 2020 at 2:50pm

by

David A. K. Matlin, Athletic Director
University of Hawai'i at Mānoa
and

Patrick Guillen, Athletic Director
University of Hawai'i at Hilo

SB 2673 – RELATING TO INTERCOLLEGIATE ATHLETICS

Chair Kim, Vice Chair Kidani, and members of the committee:

Thank you for this opportunity to submit this joint testimony of the University of Hawai'i's athletic departments at Mānoa and at Hilo, requesting SB 2673 be held.

SB 2673 would allow student athletes participating in collegiate athletics at the University of Hawai'i, and other postsecondary educational institutions, to be compensated for the use of their "name, image or likeness" (NIL). SB 2673 includes provisions that have requirements on the student-athletes, as well as on the educational institution, and athletics associations and conferences.

The issue being addressed in SB 2673, the compensating of student athletes for use of their NIL, is also before multiple other forums. Most significantly:

In 2019, the State of California passed legislation (SB206), and the NCAA announced its intent, to allow student athletes to be compensated for the use of their NIL. However, recognizing that there remains considerable development of how the legislation and/or NCAA intent is to be implemented, both are not scheduled to take effect in the near future to allow time for more work to be done on the issue.

Last week, at its convention in Anaheim, California, NCAA President, Mark Emmert stated that the NCAA working committee crafting new NIL rules is targeted to provide recommendations to the NCAA Board of Governors in April 2020. Those rules would be the basis for NCAA legislation to be voted on next January.

At the same time, various members of the U.S. Congress have indicated a willingness to have Congress involved in addressing the NIL issue. For example a bill has been introduced by Rep. Mark Walker (North Carolina) and a bipartisan

working group headed by Sen. Chris Murphy (Connecticut) and Mitt Romney (Utah) has been announced.

While all movement is toward providing student athletes the opportunity to be compensated for use of their NIL, the changes are expected to have far reaching and significant impact across collegiate athletics. Recognizing the far reaching impact of the changes, and the complex and interrelated nature of collegiate athletics, the implementation dates for the changes have been deferred (i.e., 2023) to allow more time to define the rules under how it will be done.

The University of Hawai'i believes in the importance of continuing to make advancements for our student athletes and has actively participated in recent changes such as student-athlete stipends and improved nutrition. There is more that we need to do and hopefully the new NCAA initiative will improve the collegiate experience.

While the recent developments regarding the NIL issues are important to address, it is imperative that we look after the interests of all of our student athletes and carefully avoid unintended consequences, but also implement any changes to provide the benefits intended.

It is for those reasons that the University of Hawai'i's recommendation is that Hawai'i-specific legislation be held off for now to allow it to benefit from the further definition of the issue that is ongoing. Allowing the time to have the issue develop more fully will benefit the eventual introduction of any needed legislation so that it better benefits the University of Hawai'i's student-athletes.

The University of Hawai'i at Mānoa Athletics Department and the University of Hawai'i at Hilo Athletics Department respectfully request that SB 2673 be held and thank you for your consideration of this joint testimony.

1 the use of a student athlete's name, image, or likeness shall
2 not affect the student athlete's scholarship eligibility.

3 **§ -3 Athletic associations; student compensation; school**
4 **eligibility.** (a) No athletic association, conference, or other
5 group or organization with authority over intercollegiate
6 athletics shall prevent a student athlete of a postsecondary
7 educational institution who is participating in intercollegiate
8 athletics from earning compensation as a result of the use of
9 the student athlete's name, image, or likeness.

10 (b) No athletic association, conference, or other group or
11 organization having authority over intercollegiate athletics
12 shall prevent a postsecondary educational institution from
13 participating in intercollegiate athletics as a result of the
14 compensation of a student athlete for the use of the student
15 athlete's name, image, or likeness.

16 **§ -4 Prospective student athletes; professional**
17 **representation.** (a) No postsecondary educational institution,
18 athletic association, conference, or other group or organization
19 having authority over intercollegiate athletics shall provide a
20 prospective student athlete with compensation in relation to the
21 student athlete's name, image, or likeness; provided that a



1 scholarship from the postsecondary educational institution in
2 which a student athlete is enrolled that provides the student
3 athlete with the cost of attendance at that institution is not
4 compensation for purposes of this section, and a scholarship
5 shall not be revoked as a result of earning compensation or
6 obtaining legal representation pursuant to this section.

7 (b) No postsecondary educational institution, athletic
8 association, conference, or other group or organization having
9 authority over intercollegiate athletics shall prevent a student
10 athlete participating in intercollegiate athletics from
11 obtaining professional representation in relation to contracts
12 or legal matters.

13 § -5 **Athletic contracts; team contracts; conflicts;**
14 **disclosure; official team activities.** (a) No student athlete
15 shall enter into a contract providing compensation to the
16 student athlete for use of the student athlete's name, image, or
17 likeness if a provision of the contract is in conflict with a
18 provision of the student athlete's team contract.

19 (b) A student athlete who enters into a contract providing
20 compensation to the student athlete for use of the student
21 athlete's name, image, or likeness shall disclose the contract



H.B. NO. 2665

Report Title:

Student Athletics; Compensation

Description:

Establishes the right of postsecondary student athletes in intercollegiate athletics to receive compensation for the use of their name, image, or likeness.

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UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Lower and Higher Education
Friday, January 31, 2020 at 2:00 p.m.

by
David A. K. Matlin, Athletic Director
University of Hawai'i at Mānoa
and
Patrick Guillen, Athletic Director
University of Hawai'i at Hilo

HB 2665 – RELATING TO INTERCOLLEGIATE ATHLETICS

Chair Woodson, Vice Chairs Hashem and Quinlan, and members of the committee:

Thank you for this opportunity to submit this joint testimony of the University of Hawai'i's athletic departments at Mānoa and at Hilo, requesting HB 2665 be held.

HB 2665 would allow student athletes participating in collegiate athletics at the University of Hawai'i, and other postsecondary educational institutions, to be compensated for the use of their "name, image or likeness" (NIL). HB 2665 includes provisions that have requirements on the student-athletes, as well as on the educational institution, and athletics associations and conferences.

The issue being addressed in HB 2665, the compensating of student athletes for use of their NIL, is also before multiple other forums. Most significantly:

In 2019, the State of California passed legislation (SB206), and the NCAA announced its intent, to allow student athletes to be compensated for the use of their NIL. However, recognizing that there remains considerable development of how the legislation and/or NCAA intent is to be implemented, both are not scheduled to take effect in the near future to allow time for more work to be done on the issue.

Last week, at its convention in Anaheim, California, NCAA President, Mark Emmert stated that the NCAA working committee crafting new NIL rules is targeted to provide recommendations to the NCAA Board of Governors in April 2020. Those rules would be the basis for NCAA legislation to be voted on next January.

At the same time, various members of the U.S. Congress have indicated a willingness to have Congress involved in addressing the NIL issue. For example a bill has been introduced by Rep. Mark Walker (North Carolina) and a bipartisan working group headed by Sen. Chris Murphy (Connecticut) and Mitt Romney (Utah) has been announced.

While all movement is toward providing student athletes the opportunity to be compensated for use of their NIL, the changes are expected to have far reaching and significant impact across collegiate athletics. Recognizing the far reaching impact of the changes, and the complex and interrelated nature of collegiate athletics, the implementation dates for the changes have been deferred (i.e., 2023) to allow more time to define the rules under how it will be done.

The University of Hawai'i believes in the importance of continuing to make advancements for our student athletes and has actively participated in recent changes such as student-athlete stipends and improved nutrition. There is more that we need to do and hopefully the new NCAA initiative will improve the collegiate experience.

While the recent developments regarding the NIL issues are important to address, it is imperative that we look after the interests of all of our student athletes and carefully avoid unintended consequences, but also implement any changes to provide the benefits intended.

It is for those reasons that the University of Hawai'i's recommendation is that Hawai'i-specific legislation be held off for now to allow it to benefit from the further definition of the issue that is ongoing. Allowing the time to have the issue develop more fully will benefit the eventual introduction of any needed legislation so that it better benefits the University of Hawai'i's student-athletes.

The University of Hawai'i at Mānoa Athletics Department and the University of Hawai'i at Hilo Athletics Department respectfully request that HB 2665 be held and thank you for your consideration of this joint testimony.

1 (1) No provision of the contract shall conflict with a
2 provision of the student-athlete's team contract; and

3 (2) The student-athlete shall disclose the contract to an
4 official of the postsecondary educational institution
5 who shall be designated by the postsecondary
6 educational institution.

7 (b) A postsecondary educational institution asserting a
8 conflict described in paragraph (a)(1) shall disclose the
9 relevant contractual provisions that are in conflict to the
10 student-athlete or the student-athlete's professional
11 representative.

12 (c) A team contract of a postsecondary educational
13 institution's athletic program shall not prohibit a student-
14 athlete from using the student-athlete's name, image, or
15 likeness for a commercial purpose while the student-athlete is
16 not engaged in an official team activity. Any provision in a
17 team contract contrary to this subsection shall be void and
18 unenforceable.

19 (d) All professional representation obtained by a student-
20 athlete related to a contract under this chapter shall be



H.B. NO. 1682

1 provided by an athlete agent registered pursuant to section
2 481E-5 or 481E-7.

3 (e) All legal representation obtained by a student-athlete
4 related to a contract under this chapter shall be provided by an
5 attorney licensed by the supreme court pursuant to chapter 605.

6 **§ -3 Postsecondary educational institutions, athletic**
7 **associations, conferences; prohibitions.** (a) A postsecondary
8 educational institution, athletic association, conference, or
9 other group or organization with authority over intercollegiate
10 athletics shall not:

11 (1) Prohibit a student-athlete from earning compensation
12 as a result of the use of the student-athlete's name,
13 image, or likeness;

14 (2) Uphold or enforce any rule, requirement, standard, or
15 other limitation prohibiting a student-athlete from
16 earning compensation as a result of the use of the
17 student-athlete's name, image, or likeness;

18 (3) Provide a student-athlete with compensation in
19 relation to the athlete's name, image, or likeness;
20 provided that a scholarship from the postsecondary
21 educational institution in which a student-athlete is



1 enrolled that provides the student-athlete with the
 2 cost of attendance at that institution shall not be
 3 considered compensation for purposes of this chapter;
 4 or

5 (4) Prohibit a student-athlete from obtaining
 6 representation in relation to contracts or legal
 7 matters, including, professional representation by an
 8 athlete agent or legal representation by an attorney.

9 (b) Any decision by a postsecondary educational
 10 institution, athletic association, conference, or other group or
 11 organization having authority over intercollegiate athletics to
 12 reduce, revoke, or otherwise amend a student-athlete's athletic
 13 scholarship shall not consider whether the student-athlete
 14 earned compensation from the use of the student-athlete's name,
 15 image, or likeness or whether the student-athlete obtained
 16 professional or legal representation.

17 **§ -4 Athletic associations and conferences;**
 18 **prohibitions.** No athletic association, conference, or other
 19 group or organization having authority over intercollegiate
 20 athletics shall prohibit a postsecondary educational institution
 21 from participating in intercollegiate athletics as a result of



H.B. NO. 1682

1 the compensation of a student-athlete for the use of the
2 student-athlete's name, image, or likeness."

3 SECTION 2: This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

6 SECTION 3. This Act shall take effect on January 1, 2021.

7

INTRODUCED BY: Calmont Ay

Samuel S. Kay
Jon Ward

Roschell Lopez
[Signature]

Rida Cabonilla Ara Keen

S. Cox
[Signature]

JAN 14 2020



H.B. NO. 1682

Report Title:

University; College: Athletics; Student-Athletes; Compensation

Description:

Authorizes a student-athlete to enter into a contract providing compensation to the student-athlete for use of the student-athlete's name, image, or likeness. Establishes various provisions prohibiting schools, athletic associations, and conferences from discriminating against student-athletes who receive compensation. Effective 1/1/2021.

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