

University Athletics Committee
January 21, 2021 – Meeting Highlights
3:30 – 5:00 p.m.
Zoom

Present: Susan Short presiding, Danny White (for Whit Babcock), Allison Bowersock, Tom Burbey, Bob Denton, Patrick Finley, Ron Fricker, Heather Gumbert, Joseph Kozak, David Crotts (for Ken Miller), Bridget Ryan-Berman, Becki Smith, Kenneth Stiles, Ester Talamazzi, Anna Taylor, Joseph Tront, Brad Wurthman

Absent with Notice: Katie Boes, Tom Crow, Patrick Finley, Rachel Holloway, Art Keown, Mike Madigan, Joe Marcy, Michael Nappier, Jay Poole, Chris Wise (for Frank Shushok), Eric Wiseman

Guests: Sarah Armstrong, Kelsey DeShambo, Matt Goff, Mike Goforth, Brett Griesemer, Derek Gwinn, Mark Rogers, M.D., Danny White

Susan Short called the meeting to order at 3:30 p.m. A quorum was present.

1. Adoption of Agenda

A motion was made and seconded to adopt the agenda. The motion carried.

2. Announcement of approval and posting of minutes of December 17, 2020.

Susan Short noted that these minutes have been voted on electronically and can be publicly accessed on the Governance Information System on the Web (<http://www.governance.vt.edu>).

3. Old Business – N/A

4. New Business – N/A

5. Presentations

A. Danny White, Senior Associate AD SA Services/University Affairs, provided the [Athletic Director Update](#) (attached). He shared topics discussed at the most recent senior administrator meeting (1-8-21). These included:

- Creative Solutions/Strategic Communication Update – Brian Cox
- Performance Center Update – Danny White

- Creativity & Innovation District Living – Chris Helms
- Inclement Weather Policy – Bridget Brugger-McSorley
- Opt Out Update - Bridget Brugger-McSorley
- SWA Update – Reyna Gilbert-Lowry
- Game Operations Communications Plan – All

Danny White shared February's student athletes' schedule which is color coded and full of events. All spring, winter, and fall sports (except for football) are competing now as a result of not being able to compete in the fall and winter.

Sarah Armstrong plans to send a memo to faculty members through Navigate explaining the increase in student athletes' participation this spring with all sports competing now except for football.

Joe Tront asked how many students opted out. There were a few in the fall and not very many for spring so far. We are not sure what our peers are experiencing because we don't have access to their numbers.

- B. Mike Goforth, Associate Athletics Director, Sports Medicine, gave a presentation on Sports Medicine – Athletics COVID Update (attached). Assisting with the presentation were: Dr. Mark Rogers, Chief Medical Officer; Kelsey DeShambo, Athletic Trainer; Brett Griesemer, Senior Director Sports Medicine. Highlights from this presentation included the following:

- Physicians have a holistic approach to student athletes' health (mind and body)
- "Stay positive, test negative"
- Knowledge is power, acknowledge the uncertainties
- Working close with campus partners, all have been incredibly helpful - especially Dean of Students Office, Student Life, and Student Health, Dr. Rogers, and Department of Health
- Following protocols to keep everyone as safe as possible
- Constant changing and passing information along to groups, stay within NCAA and NAAC guidelines
- With a footprint across nine states, some states have different recommendations. The conference came up with a general consensus.
- Weekly updates of COVID numbers of where students are being sent
- Direct contact with testing labs, test 6-7 days per week and getting results. Constant contact with the health department.

- Athletics is currently testing as many as 100 students per week. The Athletics staff take care of swabbing and transporting to labs.

Questions:

Joe Tront – *Is there a plan for student athletes to get vaccinated?* Dr. Rogers has been advocating to see how quickly students can be vaccinated.

Heather Gumbert – *How many student athletes have gotten COVID?* About 250 since the start. Not seeing any evidence of transmission through sports. It comes from all over, sharing spaces (homes), not really from sports, especially outdoor sports.

Have there been any hospitalizations? One third of the cases have been asymptomatic. Most experience mild symptoms for 3-5 days. A handful were very sick requiring IV. For anyone who tests positive, further testing of EKGs, bloodwork, and ultrasounds on hearts are conducted. No problems have been found yet.

Bob Denton – not a fan of NCAA, skeptical of the long-term effects of COVID, somewhat concerned.

Ken Stiles asked if they know what will be done in the fall. Some think that the governor will reinstate the emergency status at the end of June. Mike Goforth replied we are at week 45 and if we have to go back to week 6, at least we know we can do this. We just have to keep going and keep safe.

C. Derek Gwinn, Associate Athletics Director, Compliance, gave a presentation on Compliance – Name, Image, and Likeness (NIL) (attached).

- NIL rights would permit college athletes to benefit from the use of their name, image, or likeness.
- After two years of discussion, the NCAA Division I Council voted on January 11 to delay enacting legislation on NIL rights. Future date will be determined.
- A third party that will help with this is important. We want to avoid a business reaching out to a student directly. Everything would need to go through a third-party process, determining an athlete's worth, and offers from businesses.
- Some are skeptical of how this will work out.

- NIL rights have gained so much momentum that what the schools want is a moot point.
- University presidents have input into the NCAA.

D. Joseph Tront, Faculty Representative to NCAA, gave an update on NCAA (letter attached)

- Regarding NIL, Department of Justice letter came through recently.
- Antitrust law boxes us in as a university.
- A lot of problems with NIL, a lot of difficulties.
- Upcoming clinic in March on gambling – a problem in athletes, especially for basketball.
- Old and new gambling rules.

6. Other Items

Sarah Armstrong – 18 of our 20 sports ended fall 2020 with above 3.4 GPA. The overall average GPA was 3.23.

7. Announcements

Meeting dates for 2021 (All meetings will be from 3:30-5:00 p.m. and will be conducted via Zoom):

- Thursday, February 11, 2021
- Thursday, March 11, 2021
- Thursday, April 8, 2021
- Tentative: Thursday, May 13, 2021

8. Adjournment

There being no further business, a motion was made to adjourn the meeting at 5:04 p.m.



University Athletics Committee

Athletic Director Update

December 17, 2020

Sport Administrator meeting – 1/8/21



- ✗ Creative Solutions/Strat. Comm. Update – Brian Cox
 - ✗ Performance Center Update – Danny White
 - ✗ Creativity & Innovation District Living – Chris Helms
 - ✗ Inclement Weather Policy – Bridget Brugger-McSorley
 - ✗ Opt Out Update - Bridget Brugger-McSorley
 - ✗ SWA Update – Reyna Gilbert-Lowry
 - ✗ Game Ops. Communications Plan - All
-

VIRGINIA TECH SENIOR STAFF C/ATHLETICS

<p>1 PM - Men's Tennis at North Carolina 2 PM - Women's Basketball vs. North Carolina</p> <p style="text-align: right;">31</p>	<p>1 PM - Men's Tennis vs. Old Dominion</p> <p style="text-align: center;">FEBRUARY</p> <p style="text-align: right;">1</p>	<p><i>Groundhog Day</i></p> <p style="text-align: right;">2</p>	<p>7 PM - Men's Basketball at Pitt</p> <p style="text-align: right;">3</p>	<p>7 PM - Women's Basketball at Pitt</p> <p style="text-align: right;">4</p>	<p><i>Spring Break Day (Offices Open)</i> 3 PM - Men's Tennis at Kentucky Swim/Dive hosts VT Invitational Indoor Track & Field hosts Doc Hale Elite Meet 8 PM - Wrestling vs. NC State</p> <p style="text-align: right;">5</p>	<p>Noon - Men's Basketball at Miami Swim/Dive hosts VT Invitational Indoor Track & Field hosts Doc Hale Elite Meet 10 AM - Women's Tennis vs. VCU</p> <p style="text-align: right;">6</p>
<p><i>Super Bowl LV</i> Men's Golf at Oldfield Invitational (Bluffton, S.C.) Women's Golf at Heros Ladies Intercol. (Sarasota, Fla.) Swim/Dive hosts VT Invitational 10 AM - Men's Tennis vs. Middle Tennessee 2 PM - Women's Tennis vs. Old Dominion</p> <p style="text-align: right;">7</p>	<p>Women's Golf at Heros Ladies Intercol. (Sarasota, Fla.) Men's Golf at Oldfield Invitational (Bluffton, S.C.) 5 PM - Women's Tennis vs. Radford</p> <p style="text-align: right;">8</p>	<p>Women's Golf at Heros Ladies Intercol. (Sarasota, Fla.) Men's Golf at Oldfield Invitational (Bluffton, S.C.) 8:30 PM - Men's Basketball vs. Florida State</p> <p style="text-align: right;">9</p>	<p style="text-align: right;">10</p>	<p>6 PM - Women's Basketball at Miami</p> <p style="text-align: right;">11</p>	<p>Indoor Track & Field at Clemson Indoor Track & Field at Wake Forest Indoor Track & Field at VMI Softball at Kennesaw State 4 PM - Lacrosse vs. Liberty 6 PM - Wrestling vs. Pitt</p> <p style="text-align: right;">12</p>	<p>Indoor Track & Field at Clemson Indoor Track & Field at Wake Forest Softball at Kennesaw State 11 AM - Women's Tennis vs. Furman Noon - Men's Basketball vs. Louisville 2 PM - Men's Tennis vs. Davidson</p> <p style="text-align: right;">13</p>
<p><i>Valentine's Day</i> Softball at Kennesaw State 2 PM - Women's Basketball at Boston College Noon - Women's Tennis vs. Xavier 1 PM - Men's Soccer vs. TBA</p> <p style="text-align: right;">14</p>	<p><i>President's Day (Staff Holiday)</i></p> <p style="text-align: right;">15</p>	<p>7 PM - Men's Basketball at North Carolina</p> <p style="text-align: right;">16</p>	<p>Women's Swimming & Diving at ACC Championship (Greensboro) 5 PM - Lacrosse vs. James Madison (Lane)</p> <p style="text-align: right;">17</p>	<p>Women's Swimming & Diving at ACC Championship (Greensboro) 1:30 PM - Softball at Clemson (DH)</p> <p style="text-align: right;">18</p>	<p>Women's Swimming & Diving at ACC Championship (Greensboro) Indoor Track & Field at Wake Forest 1 PM - Softball at Clemson 5 PM - Men's Soccer at VCU (Scrimmage) Indoor Track & Field hosts VT Challenge 3 PM - Women's Tennis vs. North Carolina 4 PM - Baseball vs. Kent State</p> <p style="text-align: right;">19</p>	<p>Women's Swimming & Diving at ACC Championship (Greensboro) Indoor Track & Field at Wake Forest 11 AM - Softball vs. Florida State (DH) (Atlanta, Ga.) Noon - Men's Basketball at Florida State Indoor Track & Field hosts VT Challenge Men's Soccer vs. TBA 1 PM - Baseball vs. Kent State</p> <p style="text-align: right;">20</p>
<p>Women's Golf at Palmetta Spring Intercol. (Kiawah Island, S.C.) Men's Tennis at Boston College 1 PM - Lacrosse at Duke 11 AM - Softball vs. Florida State (Atlanta, Ga.) Noon - Women's Basketball vs. Syracuse Noon - Women's Tennis vs. Duke 1 PM - Baseball vs. Kent State</p> <p style="text-align: right;">21</p>	<p>Women's Golf at Palmetta Spring Intercol. (Kiawah Island, S.C.) 2 PM - Men's Soccer at Virginia (Scrimmage)</p> <p style="text-align: right;">22</p>	<p>4 PM - Baseball vs. Radford 7 PM - Men's Basketball vs. Georgia Tech</p> <p style="text-align: right;">23</p>	<p>Men's Swimming & Diving at ACC Championship (Greensboro) Softball at Radford 3 PM - Men's Tennis vs. James Madison</p> <p style="text-align: right;">24</p>	<p><i>Spring Break Day (Offices Open)</i> Men's Swimming & Diving at ACC Championship (Greensboro) Indoor Track & Field at ACC Championships (Clemson) 6 PM - Women's Basketball at Clemson</p> <p style="text-align: right;">25</p>	<p>Men's Swimming & Diving at ACC Championship (Greensboro) Indoor Track & Field at ACC Championships (Clemson) Women's Tennis at Syracuse Men's Tennis at Wake Forest Baseball at Miami</p> <p style="text-align: right;">26</p>	<p>Men's Swimming & Diving at ACC Championship (Greensboro) Indoor Track & Field at ACC Championships (Clemson) Baseball at Miami 3 PM - Lacrosse at Wake Forest Noon - Men's Basketball vs. Wake Forest</p> <p style="text-align: right;">27</p>
<p>Wrestling at ACC Championships (NC State) Men's Golf at Pinehurst Invite Women's Tennis at Boston College Men's Tennis at NC State Baseball at Miami 1 PM - Men's Soccer at Coastal Carolina</p> <p style="text-align: right;">28</p>	<p>Men's Golf at Pinehurst Invite</p> <p style="text-align: center;">MARCH</p> <p style="text-align: right;">1</p>	<p>Men's Golf at Pinehurst Invite</p> <p style="text-align: right;">2</p>	<p>Women's Basketball ACC Championship (Greensboro)</p> <p style="text-align: right;">3</p>	<p>Women's Basketball ACC Championship (Greensboro)</p> <p style="text-align: right;">4</p>	<p>Women's Basketball ACC Championship (Greensboro) 5 PM - Volleyball at Louisville Noon - Women's Tennis vs. Louisville 4 PM - Baseball vs. North Carolina 6 PM - Softball vs. Boston College</p> <p style="text-align: right;">5</p>	<p>Women's Basketball ACC Championship (Greensboro) Noon - Lacrosse at Notre Dame 2 PM - Men's Basketball at NC State 2 PM - Volleyball vs. Wake Forest (Louisville) Noon - Women's Tennis vs. Notre Dame 1 PM - Men's Soccer vs. Duke 1 PM - Softball vs. Boston College (DH) 3 PM - Baseball vs. North Carolina</p> <p style="text-align: right;">6</p>
<p><i>Daylight Saving Time Begins (+1 Hour)</i> Women's Basketball ACC Championship (Greensboro) Women's Soccer at Charlotte Noon - Softball vs. Boston College 1 PM - Baseball vs. North Carolina 2:30 PM - Men's Tennis vs. Miami</p> <p style="text-align: right;">7</p>	<p>2:30 PM - Men's Tennis vs. Florida State</p> <p style="text-align: right;">8</p>	<p>Men's Basketball ACC Championship (Greensboro) Softball at Virginia 4 PM - Baseball vs. VCU</p> <p style="text-align: right;">9</p>	<p>Men's Basketball ACC Championship (Greensboro) 3 PM - Baseball vs. VCU</p> <p style="text-align: right;">10</p>	<p>Men's Basketball ACC Championship (Greensboro) Diving at NCAA Zones (Greensboro) 5 PM - Lacrosse vs. North Carolina</p> <p style="text-align: right;">11</p>	<p>Men's Basketball ACC Championship (Greensboro) Indoor Track & Field at NCAA Championship (Fayetteville, Ark.) Diving at NCAA Zones (Greensboro) Swimming at National Invitational (Cincinnati) Softball at NC State 3 PM - Men's Tennis vs. Clemson 4 PM - Baseball vs. Florida State</p> <p style="text-align: right;">12</p>	<p>Men's Basketball ACC Championship (Greensboro) Indoor Track & Field at NCAA Championship (Greensboro) Diving at NCAA Zones (Greensboro) Swimming at National Invitational (Cincinnati) Men's Golf at General Hackler (Myrtle Beach) Women's Golf at Valspar Augusta Invite (Augusta) Softball at NC State (DH) 1 PM - Women's Tennis at Virginia 2 PM - Volleyball vs. Notre Dame (Tallahassee) 1 PM - Lacrosse vs. North Carolina 3 PM - Baseball vs. Florida State 5 PM - Men's Soccer vs. Clemson</p> <p style="text-align: right;">13</p>

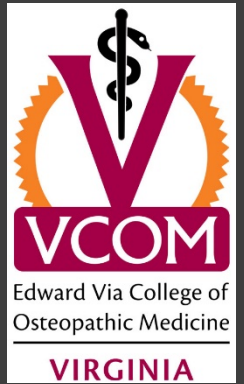


Q & A





Athletics COVID Update

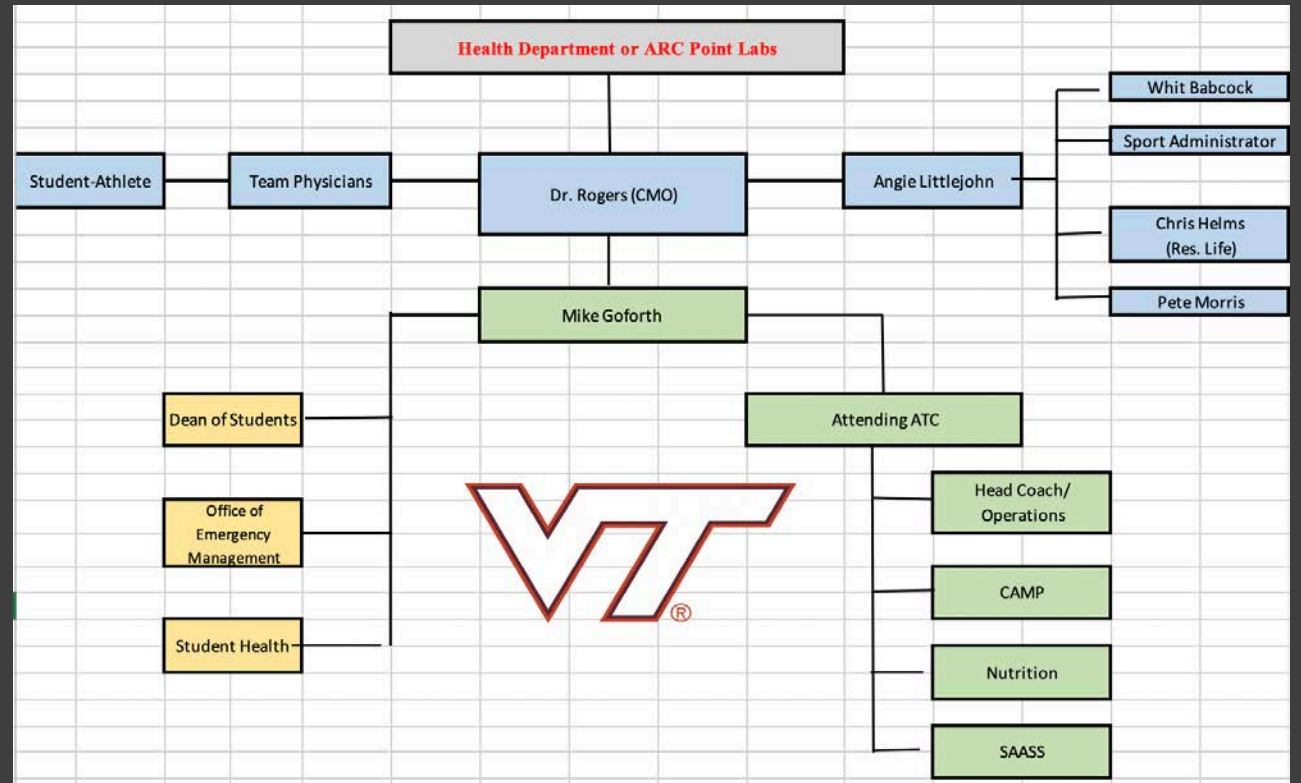


- **VTAD Sports Science TEAM**

- Sports Medicine Physicians
- Strength And Conditioning
- Sports Psychology/Counseling
- Nutrition
- Sports Medicine Athletic Trainers

- **VT Community**

- VT IMT and IRT
- Student Health
- VCOM
- Carilion
- Dean of Students, Student Affairs
- Department of Health



2021 VT COVID 19 PROTOCOL HIGHLIGHTS



- **Education**
 - Knowledge is POWER
- **Recognition**
 - Initial Screening
 - Daily Screening
 - Testing (NCAA,ACC,VT)
 - Initial
 - 2 Week F/U
 - Concentrated Surveillance
 - Symptomatic (Fever)
 - Positives (150 Day Guidelines)
 - Isolation Period/Location/Notification
 - Return to Play Workup (Physical/Mental)
 - Cardiac (labs, EKG, Echo)
 - Re-Acclimitization
 - Risk Levels
 - Sport/ADLs
- **Provision of PPE**
- **Social Distancing**
- **Contact Tracing**
 - 6', 15 min, mask?
- **Code of Conduct**

STAY POSITIVE AND TEST NEGATIVE!

Updates

- Current Numbers
 - 221 results were local (VT, SSHC)
 - 23 results were from back home
- Testing
 - On average testing every weekday and at least 1 weekend day.
 - Fall 1000 per week, Winter Spring 500 per week
 - PCR and Antigen Capabilities
- Vaccinations
- Testing for past positives and recently vaccinated individuals.
- ACC MAG
- IMT Continues to meet weekly
- Q and I Steering Committee to meet weekly

Institution	Location- City/County	Daily New Cases/100K- 1/17(*)	Total Cases/100K- 1/17(#)
Boston College	Chestnut Hill, MA/ Suffolk	80.3	8036
Clemson	Clemson, SC/ Pickens	136.7	10365
Duke	Durham, NC/ Durham	58	5434
Florida State	Tallahassee, FL/ Leon	74.5	7969
Georgia Tech	Atlanta, GA/ Fulton	58.4	6459
Miami	Coral Gables, FL/ Miami-Dade	94	12582
NC State	Raleigh, NC/ Wake	87.1	5059
Notre Dame	South Bend, IN/ St. Joseph	52.9	9817
Pitt	Pittsburgh, PA/ Allegheny	47.2	5253
Syracuse	Syracuse, NY/ Onondaga	69.1	5853
UNC	Chapel Hill, NC/ Orange	40.8	4052
UVA	Charlottesville, VA/ Albemarle	37.6	3180
Virginia Tech	Blacksburg, VA/ Montgomery	39	5883
Wake Forest	Winston-Salem, NC/ Forsyth	69.3	6461
US Cumulative Rate/100K- per CDC		70	



VIRGINIA TECH
ATHLETICS

UAC

January 21, 2021

NIL Update

2019

- California introduces Senate Bill
- NCAA BoD appoints working group (*NIL Solutions Group*)
 - **October** - Guiding principles outlined by BoD

2020

- **April** - NIL Solutions Group presents Legislative Concepts
- **October** – Proposals entered into legislative cycle
 - Feedback collected for any necessary adjustments prior to January vote



NCAA DI Council – January 11, 2021

- Vote Postponed – Date TBD
 - Permit NIL for Student-Athletes and Prospects
 - Permit use of agents for NIL only
 - Require disclosure of all NIL activity





Judge ruling

Required the NCAA to allow for certain types of academic benefits related to education

Appeal

NCAA requesting a review to define those benefits



3 Major Bills Introduced

The Fairness In Collegiate Athletics Act

Student Athlete Level Playing Field Act

College Athletes Bill of Rights



NIL Proposals

Tabled proposals until results of Alston case and Congress votes become more clear



Derek Gwinn



Reyna Gilbert-Lowry



Chris Helms



Brad Wurthman



Bridget Brugger-McSorley



Matt Transue



Samantha Stewart



JC Whidden



Payton Brooks

NIL Committee

Student-Athletes

- Brand Education
- Brand Development
- Brand Management



Recruiting

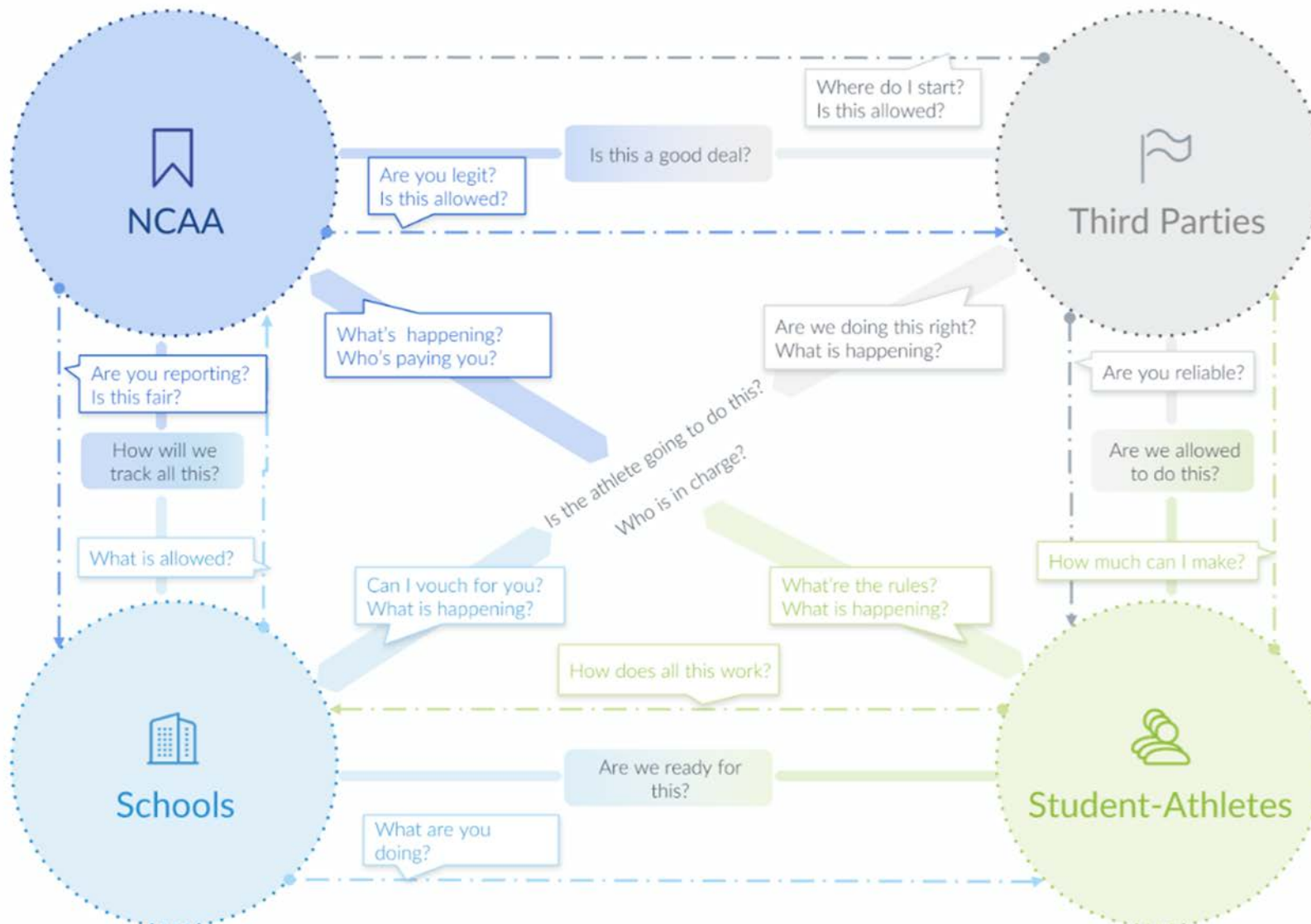
- Provide coaches with recruiting tools
 - Recruit presentations
 - Social media valuations



Internal vs External

- What can people in our department provide?
- Where do we need help?





- **Service**
- **Education**
- **Monitor**
- **Protect**





U.S. DEPARTMENT OF JUSTICE
Antitrust Division

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Assistant Attorney General

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(202) 514-2401 / (202) 616-2645 (Fax)

January 8, 2021

Via Electronic Mail

Dr. Mark A. Emmert
President, National Collegiate Athletic Association
P.O. Box 6222
Indianapolis, IN 46202
memmert@ncaa.org

Re: NCAA Restrictions on College Athlete Transfers and Use of Name, Image
and Likeness

Dear Dr. Emmert:

The Antitrust Division of the United States Department of Justice (Division) writes to address concerns regarding the National Collegiate Athletic Association's (NCAA) policies with respect to collegiate athlete transfer (Transfer) and name, image and likeness (NIL) rules. The Division has been monitoring closely the NCAA's ongoing efforts to review and revise these rules, including reports that the NCAA may vote on rules changes at its annual convention next week.¹ The Division is also aware of recent reports that the NCAA may seek legislation that would grant the NCAA immunity from the antitrust laws.² We urge you to ensure that whatever rules the NCAA ultimately adopts will allow college athletes to benefit from robust competition for their talents.

The Division recognizes the NCAA's role in maintaining academic and athletic standards for college athletes. As you are aware, however, the NCAA's rules are not immune from the antitrust laws. The antitrust laws have been and remain an important

¹ Steve Berkowitz and Dan Wolken, *NCAA Votes on Landmark Name, Images and Likeness Rules Changes Could Be Delayed*, USA Today (Jan. 8, 2021), <https://www.usatoday.com/story/sports/ncaaf/2021/01/08/ncaa-votes-name-image-and-likeness-rules-changes-could-delayed/6591709002/>.

² See, e.g., Michelle Hosick, *DI board backs transfer proposal, suspends academic penalties*, NCAA, (Oct. 28, 2020), <http://www.ncaa.org/about/resources/media-center/news/di-board-backs-transfer-proposal-suspends-academic-penalties>. While the Division expresses no views on the need for any such legislation, should Congress deem such legislative immunity necessary, we would anticipate it will be the narrowest possible immunity and one that would contemplate a collective representation of college athletes' rights as a condition of any such immunity.

force for protecting and improving college athletes' welfare.³ College athletes, like any other American, deserve competition on and off the field.

As you know, the Division has engaged with the NCAA in the past on whether various NCAA rules and conduct risk violating the antitrust laws. For example, we worked with the NCAA to revise its rules to permit schools to offer college athletes multi-year scholarships, and on discussions around rules that banned football "satellite camps." Our expectation is that our engagement with the NCAA over its transfer rules will likewise result in the NCAA's removal of unnecessary anticompetitive barriers that stand in the way of college athletes transferring between schools. Of course, the Division stands ready to enforce the antitrust laws if necessary.

Transfer Rules

As you consider the NCAA's rule changes, several issues warrant consideration. First, the NCAA currently requires a college athlete to notify their current school that they want to transfer before contacting (or being contacted by) other schools. Once the college athlete provides that notice, however, schools "can reduce or stop giving them athletics aid at the end of the term."⁴ Thus, college athletes must risk losing their current scholarship – not to mention alienating their coaches – in order even to explore the possibility of transferring to a new school. The NCAA and its Transfer Working Group should consider seriously whether these rules, taken together, unreasonably deter students from entering the transfer process and, as a result, leave college athletes without a competitive alternative to their current school.

Additionally, students who enter the transfer process generally are required to spend "an academic year in residence" before they can compete at a new school. The Division has concerns that this rule may unnecessarily discourage students from transferring. While students in certain sports are eligible for a one-time exception from the year-long prohibition from playing their sport, even these college athletes must first obtain permission from the school *from which they transfer* in order to avoid sitting out from athletic competition for a year. Requiring permission to play without sitting a season out seems tantamount to requiring permission to transfer, a system the NCAA purports to have abandoned. The Division applauds the NCAA's proposal to eliminate this requirement and to broaden the one-time transfer exception so it is available for students in all sports. If the year-in-residence rule is truly animated by a concern over students' academic welfare, however, the NCAA should consider whether another approach is more narrowly tailored to that end.

³ See, e.g., *O'Bannon v. Nat'l Collegiate Athletic Ass'n*, 802 F.3d 1049, 1079 (9th Cir. 2015) ("[C]ourts cannot and must not shy away from requiring the NCAA to play by the Sherman Act's rules.").

⁴ See NCAA, *What the NCAA Transfer Portal Is . . . and What It Isn't*, Champion Magazine (Fall 2019), <http://www.ncaa.org/static/champion/what-the-ncaa-transfer-portal-is/>.

NIL Rules

The Division also has followed the NCAA's lengthy review of its policies with respect to collegiate athletes' use of NIL. Your comments on the NCAA's NIL policies, however, appear to suggest a possible misunderstanding of antitrust law. Speaking at the Aspen Institute, you indicated that the antitrust laws, and some court decisions interpreting those laws, require that any benefits college athletes receive must be tethered to education.⁵ The antitrust laws do no such thing. By contrast, courts have recognized that "loosening or abandoning the [NCAA's] compensation rules" might be procompetitive, *i.e.*, the type of conduct that the antitrust laws were designed to promote.⁶ While courts have acknowledged that "offering [college athletes] cash sums untethered to educational expenses" would be "a quantum leap" from the NCAA's current practice, they have never suggested that the NCAA cannot take this step because of the antitrust laws.⁷

Pursuing a goal of promoting amateurism does not insulate the NCAA's rules from scrutiny under the antitrust laws.⁸ Any restraints on competition must reflect a careful balancing of the proffered procompetitive justification against any resulting harm to competition.⁹ The antitrust laws limit the NCAA's ability to restrict competition among college athletes, coaches, and schools.¹⁰ For example, if the NCAA adopted a rule that fixes the price at which students can license their NIL, *e.g.*, based on what the NCAA determines to be a "fair" market value, such a rule may raise concerns under the antitrust laws.

Ultimately, the antitrust laws demand that college athletes, like everyone else in our free market economy, benefit appropriately from competition. As I noted in my August 2018 speech at Notre Dame Law School, I applaud the NCAA's willingness to reform potentially anticompetitive rules and practices, and appreciate your attention to the Division's concerns as you consider the NCAA's rules. The Division stands by to support any NCAA efforts to do so with respect to its transfer rules, NIL, or any other matters. Meanwhile, we remain committed to enforcing the nation's antitrust laws on behalf of college athletes and consumers.

⁵ Remarks of Mark Emmert at the Aspen Institute (Dec. 17, 2019), <https://www.aspeninstitute.org/events/future-of-college-sports-governments-role-in-athlete-pay/>.

⁶ *O'Bannon*, 802 F.3d at 1073.

⁷ *Id.* at 1078–79.

⁸ *Id.* at 1079.

⁹ *Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Oklahoma*, 468 U.S. 85, 104 (1984).

¹⁰ *See Law v. Nat'l Collegiate Athletic Ass'n*, 134 F.3d 1010, 1023 (10th Cir. 1998) (rule capping annual compensation for Division I coaches was unlawful).

Mark Emmert
January 8, 2021
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If you would like to discuss these issues further, please feel free to contact me or my colleague, David Lawrence, Chief, Competition Policy & Advocacy Section, at 202-532-4698 or David.Lawrence@usdoj.gov.

Sincerely,



Makan Delrahim

cc: Donald Remy
Chief Operating Officer & Chief Legal Officer
National Collegiate Athletic Association

David Lawrence
Chief, Competition Policy and Advocacy Section
U.S. Department of Justice