Memorandum

To: UNCG Board of Trustees Athletics Committee

From: Steve Serck, University Counsel

RE: Policies Governing Athletics

Date: October 28, 2011

As you requested, I reviewed the Board of Governors and Board of Trustees Codes and any relevant System, General Administration and UNCG policies. I have prepared this memorandum in response to the following questions:

i. What is role and scope of the Board in relation to athletics and GA delegation of authority to the Chancellor? What do the University code and the UNCG Board Code say?

ii. What existing policies and documents exist that were issued with by Board of Governors, Chancellor, President, or trustees?

iii. What are the various compliance requirements through GA and the NCAA?

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Appendix 1 - DELEGATIONS OF DUTY AND AUTHORITY TO BOARDS OF TRUSTEES

Pursuant to authority vested in it by the General Statutes, and consistent with the provisions of The Code of the University of North Carolina, the Board of Governors hereby delegates to the boards of trustees of the constituent institutions of the University of North Carolina the following duties and powers:...

IX. TUITION, FEES AND DEPOSITS...

E. Fee Recommendations

Subject to policies prescribed by the Board of Governors, each board of trustees, in consultation with the chancellor, shall recommend to the president the amounts to be charged at the constituent institution for application, athletics, health services, student activities, educational and technology, retirement of debt incurred for capital improvements projects authorized by the General Assembly, course, and special fees. In carrying out this responsibility, each board of trustees and the chancellor shall ascertain that the benefits of the activity or service are commensurate with the recommended fee which is required to support the activity or service. Recommended fees should be consistent with the philosophy set forth in the North Carolina Constitution which states that the benefits of the University of North Carolina should be extended to the people of the state free of expense, as far as practicable.

XIII. INTERCOLLEGIATE ATHLETICS

Subject to such policies as may be prescribed by the Board of Governors and the board of trustees, the chancellor shall be responsible for the establishment and supervision of the institution's program of intercollegiate athletics.

The UNC Policy Manual
1100.1
Adopted 10/11/85
Replaced 05/09/03

Intercollegiate Athletics

1. The Board of Governors has delegated the responsibility for intercollegiate athletics to the chancellors under the Code's Delegation of Duty and Authority. That delegation is subject to the requirements and mandates in this policy.

2. The chancellors shall ensure that all athletes admitted to the institution are capable of progressive academic success and graduation within six years.

1 The complete Board of Governors Code and Policy Manual may be found at http://www.northcarolina.edu/policy/index.php.
3. The chancellors shall ensure that the policies for admission of student athletes are reviewed by appropriate members or bodies of the faculty and that any recommendations or advice from those members or bodies are received and considered.

4. The chancellors shall ensure that exceptions or waivers for the admission of student athletes are reviewed by appropriate members or bodies of the faculty and that any recommendations concerning these applicants are received and considered by the chancellors in a timely manner.

5. The chancellors shall ensure that student athletes follow a coherent course of study that is designed to accomplish reasonable progress toward a baccalaureate degree.

6. Chancellors shall ensure that the tutorial and remedial programs for student athletes will be administered by appropriate academic offices in cooperation with athletic department officials.

7. The chancellors shall ensure that athletes who are not making satisfactory academic progress are not allowed to continue as team players.

8. The chancellors shall ensure that a mandatory drug-testing program for student athletes is implemented and monitored.

9. The chancellors shall ensure that formal awareness programs on the dangers of gambling in athletics is implemented.

10. The chancellors shall ensure that the institutions conform with NCAA standards.

11. The chancellors shall ensure that all foundations, clubs, and associations established primarily to raise money on behalf of constituent institutions are audited annually and that those audits are reviewed by the institutional Boards of Trustees and are forwarded to the President.

12. The chancellors shall ensure that the position of director of athletics is separate and distinct from the position of a coach of any sport.

13. The chancellors shall submit an annual report to the Board of Trustees of the constituent institutions with a copy to the President, who will report to the Board of Governors. The annual report shall be designed according to criteria and format defined by the Office of the President and shall include the following elements:
   a. organization and philosophy of athletics programs;
   b. the admission policy for student athletes including the definitions utilized for exceptions to campus-based criteria;
   c. student-athlete exceptions to the minimum course requirements set by the Board of Governors and defined in Policy 700.1.1 and Regulation 700.1.1[R];
   d. the student-athlete profiles for admitted student athletes including SAT/ACT scores, high school grade point averages and NCAA classifications;
   e. information about the majors or programs of study chosen by student athletes;
   f. academic progression information for student athletes and six-year graduation rates; and
   g. information about “booster” club organizations and procedures.
14. The chancellors shall report to the Board of Trustees the student-athlete exceptions to the institution’s undergraduate admissions criteria.

15. The chancellors shall ensure that the annual report is forwarded to appropriate members or bodies of the faculty and that any response from such members or bodies is received and considered by the chancellors.

The UNC Policy Manual
1100.3
Adopted 05/11/90
Amended 10/12/07

Head Coaches’ and Athletic Directors’ Contracts

The Board of Governors recognizes the importance of intercollegiate athletics to the University’s constituent institutions. The Board emphasizes that a constituent institution’s athletic program must be (1) consistent with and complementary to the academic mission of the university, (2) fiscally sound such that the athletic program does not take resources away from the academic program of the institution and the institution does not undertake any financial obligation for which it does not have funds available from appropriate sources to fulfill, and (3) under the control of the chancellor of the constituent institution.

Consistent with the requirements set forth in the Delegations of Duty and Authority to the Boards of Trustees contained in the Appendix to The Code, no contract of employment between an institution and a head athletic coach or an athletic director which is for a term longer than one year shall be valid unless and until all terms and conditions of the contracts have been approved by the Board of Trustees.

A. Required Element of Contracts.

While determination of the terms and conditions of contracts for head coaches and athletic directors lies in the discretion of the boards of trustees, the Board of Governors seeks to assure the priority of academics in the athletic program, the fiscal soundness of the program, and sufficient institutional control of the program free from undue influence of outside sources. In all instances, contracts with head coaches and athletic directors must have provisions that comply with the following principles:

1. Academic Values. Fostering educational values and maintaining a program of integrity must be an integral part of the contracts of all coaches and athletic directors. In particular, contracts must address the constituent institution’s policy on the recruitment and retention of qualified student athletes and the necessity that athletes progress toward a degree in a defined academic program. The coach and athletic director must have a clear obligation to contribute to the academic progress of team members under his or her supervision.

2. Compliance with NCAA Rules. Each contract must clearly acknowledge that the athletic program under the direction of the coach, or the programs under the direction of the athletic director, must comply with the policies of the constituent institution and of the NCAA and that the failure of the program to so comply will, at the option of the institution, be deemed a violation of the
provisions of the coach’s or athletic director’s contract that is grounds for termination of the contract.

3. No Automatic Extensions. "Roll-over" or "evergreen" contracts, by which the term of the contract is automatically renewed on an annual or other periodic basis, are contrary to sound personnel policies. Any renewal of a contract must be advertent, based upon a deliberate assessment of performance by the chancellor and board of trustees, and not automatic.

4. Outside Compensation. Employment contracts must clearly define the rights and obligations of a coach or athletic director who enters into outside agreements for compensated services, while addressing the interests of the constituent institution. Every contract must require the coach or athletic director to have the approval of the chancellor before entering into an agreement to earn athletically-related income or benefits from sources outside the constituent institution and to report all such income annually, through the athletic director, to the chancellor. Coaches and athletic directors must comply with the Board of Governors and constituent institution policies on external activities for pay for any outside income that is not athletically related.

5. Source of Funding. Student athletic fees may be used to pay a coach or athletic director’s base salary. State general funds and tuition may be used to pay only the instructional portion of a coach’s base salary. Funds available for paying the salaries EPA non-faculty personnel may be used to pay the base salary of an athletic director.

6. Contracts as Public Records. Every head coach and athletic director contract must state that, upon execution, it is a public record subject to disclosure under North Carolina’s Public Records Law.

B. Contract Terms that Require Board of Governors’ Approval

Certain terms in head coach and athletic director contracts have become common in the marketplace. While including these terms in an employment contract may be necessary to obtain the services of the candidate deemed to be the best qualified individual to serve the needs of the constituent institution, those terms may create additional financial risk for constituent institutions. In light of this risk, if a constituent institution proposes to include any of the following terms in a coach or athletic director contract, approval of the terms of the contract must be approved by the constituent institution’s board of trustees, and before executing the contract, the constituent institution must obtain approval of the terms of the contract by the President, and if the President approves the terms, on the President’s recommendation, by the Board of Governors:

1. Deferred Compensation. A provision to pay deferred compensation, including, for example, a direct deferred payment or an annuity. In considering a contract including deferred compensation, the constituent institution must provide the Board of Governors with the following information:
a. The source of the funds that the constituent institution will use to pay the deferred compensation. Neither State funds, tuition, nor student fees may be used for such deferred compensation.

b. Whether the funding for deferred compensation will come from an outside entity. If so, the outside entity must provide the funds to the constituent institution, not directly to the coach or athletic director.

c. If an outside entity is to be the source of funds, whether the funds have already been provided, whether the funds have been raised or pledged, or whether the funds remain to be raised. If such funds are not to be provided in advance, the constituent institution’s obligation to pay the deferred compensation must be contingent on the constituent institution’s receipt of the funds from the outside entity.

2. Buyout Clauses. Any buyout clause which obligates the constituent institution to pay more than the balance of the base salary the coach or athletic director would have earned during the remainder of the term of the contract had he or she remained employed plus any bonuses or deferred compensation already earned or vested in accordance with the terms of the contract. The amount of the payment required by such a clause must bear a clearly discernible relationship to the actual financial loss that would likely be incurred by the coach or athletic director if the contract were terminated without cause during its term.

3. Damage Mitigation Waiver. A provision waiving a requirement that the coach or athletic director mitigate his or her damages and set off actual earnings against the amount to be paid by the constituent institution.

4. Loss of Outside Income. A provision which obligates the constituent institution or any party related to the constituent institution to replace the loss of any outside compensation to the coach or athletic director.

C. Considerations for Approval by the Board of Governors.

When considering contract terms identified in Part B of this policy, the Board of Governors will consider, among other relevant factors:

1. The constituent institution’s ability to pay the compensation, benefits, or possible buy-out amounts provided for in the agreement.

2. The sources of funding the constituent institution will use in paying the compensation, benefits and buy-out amounts provided for in the contract.

3. If payments are to be made using funds from an outside entity, whether or not the outside funds have already been raised or whether or not pledges of funding have been committed.

4. Whether the constituent institution’s commitment to pay the required buy-out amount on termination is likely to have a significant financial impact on the athletic department or the constituent institution.
A chancellor is encouraged to consult with the President if the chancellor has any question about or desires any clarification of this policy.

Chancellors will forward to the President a copy of each contract entered into with a head coach or athletic director promptly after the contract is executed.

Effective date: This policy applies to contracts entered into after its adoption. It also applies to contract terms which have been substantively modified in contracts renewed, extended, or modified after its adoption.

II. UNCG Board of Trustees Code Provisions

203 B. Other Powers and Duties.

The Board of Trustees shall have the following duties and powers as delegated by the Board of Governors (Action of the Board of Governors, July 7, 1972):

1. Academic Administrative, and Head Coach Personnel.
   A. Appointment and Compensation.
      i. The Board of Trustees of The University of North Carolina at Greensboro on the recommendation of the Chancellor shall approve personnel actions as follows:
         a. conferral of tenure.
         b. appointments and reappointments of head athletic coaches.
         c. appointments, promotion, compensation, and retreat rights for the Provost and all Vice Chancellors.
         d. establish salary ranges for Deans and other similarly situated administrators that are not included in the annual Board of Governors' study establishing salary ranges. (Includes Tier I Senior Academic and Administrative Officer positions: all Deans, University Librarian, University Counsel, Executive Assistant to the Chancellor, and Assistant to the Chancellor.)
      ii. The Board of Trustees of The University of North Carolina at Greensboro has delegated to the Chancellor the authority to approve personnel actions as follows:
           a. appointments and reappointments of faculty.
           b. appointments and reappointments of EPA nonfaculty.
           c. promotions and salary adjustments of personnel in the above categories (a) and (b).
           d. establish salary ranges within different disciplines based on relevant data and fix the compensation for all faculty positions with permanent tenure.
           e. appoint and fix the compensation for faculty awarded the designation of Distinguished Professors (those positions which are funded in part by the Board of Governors' Distinguished Professors Endowment Trust Fund).
           f. appoint and fix the compensation (salary and non-salary) of Deans and other similarly situated administrators that are not included in the Board

2 The complete UNCG Board of Trustees Code may be found at http://policy.uncg.edu/code/
of Governors' study establishing salary ranges, (Includes Tier I Senior Academic and Administrative Officer positions: all Deans, University Librarian, University Counsel, Executive Assistant to the Chancellor, and Assistant to the Chancellor.)

g. award compensation from non-state sources consistent with policies established by the Board of Governors.

h. leaves of absence.

B. Discharge or Suspension.

Subject to regulations of the Board of Trustees and consistent with applicable policies of the Board of Governors, all discharges or suspensions of faculty members and administrative personnel, other than those subject to the State Personnel Act, shall be effected by the Chancellor. A discharged or suspended employee shall have such rights of appeal from the action of the Chancellor as may be prescribed by the University Code, policies of the Board of Governors, or regulations of the Board of Trustees.

XIII. Intercollegiate Athletics.

Subject to such policies as may be prescribed by the Board of Governors and the Board of Trustees, the Chancellor shall be responsible for the establishment and supervision of the institution's program of intercollegiate athletics.

III. NCAA Provisions

6.1 INSTITUTIONAL GOVERNANCE

6.1.1 President or Chancellor. A member institution’s president or chancellor has ultimate responsibility and final authority for the conduct of the intercollegiate athletics program and the actions of any board in control of that program. (Revised: 3/8/06)

6.1.2 Athletics Board. A board in control of athletics or an athletics advisory board, which has responsibility for advising or establishing athletics policies and making policy decisions, is not required. However, if such a board exists, it must conform to the following provisions:

6.1.2.1 Composition. Administration and/or faculty staff members shall constitute at least a majority of the board in control of athletics or an athletics advisory board, irrespective of the president or chancellor’s responsibility and authority or whether the athletics department is financed in whole or in part by student fees. If the board has a parliamentary requirement necessitating more than a simple majority in order to transact some or all of its business, then the administrative and faculty members shall be of sufficient number to constitute at least that majority. (Revised: 3/8/06)

6.1.2.1.1 Administrator Defined. An administrator (for purposes of this legislation) is an individual employed by the institution as a full-time administrative staff member who holds an academic appointment, is directly responsible to the institution’s president or chancellor or

serves as a chief administrative official (e.g., admissions director, finance officer, department head, or athletics department head). Other nonacademic staff members and individuals who are members of an institution’s board of trustees or similar governing body would not be considered to be administrators for purposes of this regulation. (Revised: 3/8/06)

6.1.2.1.2 Board Subcommittee. If a board subcommittee is appointed, it is not necessary for the subcommittee to have majority control by administration and/or faculty members (see Constitution 6.1.2.1), provided all actions of the subcommittee are approved by the entire board before becoming effective. However, if the subcommittee’s actions are effective permanently or become effective immediately and remain in effect until reviewed by the entire board at a later date, the subcommittee’s membership must satisfy the majority-control requirement.

6.1.2.1.3 Attendance. A parliamentary majority of administrators and faculty members of a board in control of athletics is not required to be present at any single meeting in order to conduct business.

6.1.2.2 Chair or Voting Delegate. Only an administrator or faculty member (as opposed to a student, alumnus or governing board member) may serve as chair of a member institution’s board in control of intercollegiate athletics or represent the board as the institution’s voting delegate at Conventions. Institutional representatives in these positions have responsibility for advising or establishing athletics policies and making policy decisions that require administrative and/or faculty control.

6.1.3 Faculty Athletics Representative. A member institution shall designate an individual to serve as faculty athletics representative. An individual so designated after January 12, 1989, shall be a member of the institution’s faculty or an administrator who holds faculty rank and shall not hold an administrative or coaching position in the athletics department. Duties of the faculty athletics representative shall be determined by the member institution. (Adopted: 1/11/89)

6.1.4 Student-Athlete Advisory Committee. Each institution shall establish a student-athlete advisory committee for its student-athletes. The composition and duties of the committee shall be determined by the institution.
(Adopted: 1/10/95 effective 8/1/95)