

BOARD OF REGENTS
BRIEFING PAPER

1. Agenda Item Title: Policy Proposal – athletic department annual reports and approve of employment agreements for athletic department personnel; including head athletic coaches and athletic directors.
- Meeting Date: June 1, 2017 meeting of the Committee on Athletics

2. BACKGROUND & POLICY CONTEXT OF ISSUE:

In September of 2016 the Board approved a new policy authorizing institution presidents to approve all employment agreements for athletic department personnel – including head athletic coaches and athletic directors. That policy is codified in Title 4, Chapter 24, Section 1, Subsections 9 and 10 of the *Handbook*. At its last meeting the Athletics Committee discussed the effectiveness of that policy. The Committee’s discussion focused on three issues: (1) strengthening the Funds Disclosure the institutions are required to provide, (2) clarifying the deadline for submission of the certifications and disclosures the institutions are required to provide, and (3) prohibiting public announcements of hires until the employment contract has been fully executed.

The attached Policy Proposal makes minor amendments to Title 4, Chapter 24, Section 1, Subsections 9 and 10 intended to address the above issues. In addition, the attached Policy Proposal integrates the Balanced Budget Statement and Funds Disclosures that must be submitted by each institutions athletic department into the annual Report that are reviewed by the Athletics Committee. Integrating those documents into the Annual Reports is intended to enable the Athletics Committee to provide better oversight and have a clearer understanding of how the employment contracts for athletic department personnel impact the overall budgets of the athletic departments.

3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

That the Committee review, discuss, and possibly approve, the attached Policy Proposal. The Policy Proposal amends the Board’s current policy that (1) governs athletic department Annual Reports and (2) authorizes institution presidents to approve employment agreements for athletic department personnel – including athletic directors and athletic coaches. The amendments reflected in the attached Policy Proposal are consistent with the Committee’s discussion at its last meeting.

4. IMPETUS (WHY NOW?):

In September of 2016 the Board approved a new policy authorizing institution presidents to approve all employment agreements for athletic personnel – including head athletic coaches and athletic directors. At its last meeting the Committee discussed possible amendments to that policy. The attached Policy Proposal would enact amendments consistent with the Committee’s discussion.

5. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- It is appropriate to periodically review the policy to determine whether any changes or revisions are needed to ensure that the policy is fulfilling its intent.
- The attached Policy Proposal was developed in response the Committee’s discussion at its last meeting about possible changes to the policy authorizing presidents to approve employment agreements for athletic personnel.

6. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

The policy authorizing president to approve employment contract for athletic personnel (athletic directions and coaches) was approved by the Board in September of 2016. More time is needed to determine whether any changes or revisions to the policy are needed. Therefore, this agenda item is premature.

7. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:

Take no action or provide other direction to System and institutional staff.

8. COMPLIANCE WITH BOARD POLICY:

- Consistent With Current Board Policy: Title #____ Chapter #____ Section #____
- Amends Current Board Policy: Title #____ Chapter #____ Section #____
- Amends Current Procedures & Guidelines Manual: Chapter #____ Section #____
- Other: Review of current Board policy – Title 4, Chapter 24, Section 1, Subsection 9 and 10 of the *Handbook*.
- Fiscal Impact: Yes____ No
Explain:_____

POLICY PROPOSAL - HANDBOOK
TITLE 4, CHAPTER 24, SECTIONS 1 – Policies Concerning NSHE
Intercollegiate Athletics

Making certain revisions to subsection 10 (Athletic Directors and Coaches).

Additions appear in ***boldface italics***; deletions are [~~stricken~~ and bracketed]

9. Board of Regents Reports

a. At the first regular Board meeting after the beginning of each new fiscal year, the Board shall conduct a complete review of the athletic **department** budget, [~~including state and non-state sources, of each institution participating in intercollegiate athletics, including the amount of institutional support for each revenue-generating sport. The Board shall also review each such institution's athletic~~] mission statement, **and** five year **strategic plan (the "Annual Report")**. [~~and the annual report of any assistant coaches hired pursuant to this Section. The Board shall also review conference, NCAA and NJCAA rules.~~]

b. [~~During that same meeting, the Board shall review reports on~~] **The Annual Report shall also include** the following [~~issues~~]:

- i. Information on the number of special admissions for student-athletes compared with the rest of the student body, declared majors of student athletes and graduation rates of athletes;
- ii. **The Balanced Budget Statement described in Section 1.5.e of this Chapter and a description of how the growth of the athletic department budget compares to the growth of the budget for the institution as a whole**[~~Information regarding the extent to which, financial or otherwise, each institution subsidizes intercollegiate athletics with gifts, sponsorships, allocated revenues or dedicated student fees and how the growth of these sources compares with the overall growth of institutional expenditures~~];
- iii. **A description of the** [~~To evaluate the~~] internal controls of the respective athletics department [~~if~~] **and whether** an audit or periodic risk assessment was conducted by **institution or** NSHE internal audit staff during the previous year; and
- iv. **A summary of** [~~Intercollegiate~~] athletic related capital expenditures from all sources, including but not limited to, gifts, state Capital Improvement Projects and bonds, and [~~the level of~~] athletic department reserves.
- v. **Information on** [~~D~~] diversity and equal opportunity in the hiring of athletic department coaches and compliance with applicable institution and Board policies related thereto, including, the methods used to obtain diverse applicant pools[~~-~~]; **and**

- vi. **A summary of the fundraising activities of the department for the previous year;**
- vii. **An accounting of the any donor or third-party funds included in any Funds Disclosure issued pursuant to Section 1.10.d of this Chapter but not received by the institution.**

c. The Board shall review the following reports, or any successor reports, as they are prepared throughout the year:

- i. The annual Equity in Athletics Disclosure Act report to the United States Department of Education filed on or about October 15th;
- ii. The annual Statement of Revenues and Expenditures filed with the NCAA on or about January 31st;
- iii. The annual summary of self-reported and other reported Level 3 and 4 violations and corrective actions, along with conference and NCAA responses filed on or about July 15th;
- iv. All reports of Level 1 and 2 violations when they occur, with follow-up communications on conference and NCAA actions; and
- v. Any corresponding NJCAA reports.

10. Athletic Directors and Coaches

a. Athletic Directors. Institution Presidents may appoint an athletic director and, subject to the requirements of this subsection 10, are authorized to execute an employment contract related to such appointment. Institution Presidents shall not make joint appointments to the position of athletic director and the athletic director shall at all times report directly to the institution President. The institution President shall negotiate the employment contract for the appointed athletic director with the assistance of institution counsel. The institution President may authorize the athletic director to appoint certain assistant athletic directors or other personnel necessary to the operation of the athletic department, upon such conditions that may be established for the hiring of such personnel and subject to any and all applicable requirements and policies established by the institution and the Board, including without limitation, those related to equal opportunity and diversity.

b. Athletic Coaches. If authorized by the institution President, athletic directors may appoint and execute employment contracts for head athletic coaches and assistant athletic coaches provided the contract: (a) does not exceed twenty-four (24) months in length (including any option periods); and (b) does not exceed \$200,000.00 in total compensation per year (collectively the "AD Threshold"). Institution Presidents shall appoint and are exclusively authorized to execute employment contracts for all head athletic coaches and assistant coaches that exceed the AD Threshold. For purposes of the AD Threshold, "total compensation" does not include standard fringe benefits available to all NSHE employees, including but not limited to retirement

contributions, insurance, travel, out-of-pocket expense reimbursement, annual and sick leave, and outside income from sources including but not limited to commercial endorsements of products and services, income from written and video materials, summer camps or apparel and equipment endorsements. The hiring of all athletic personnel shall be subject to all applicable requirements and policies established by the institution and the Board, including without limitation, those related to equal opportunity and diversity.

c. **Contract Certification**~~[s and Disclosures]~~. At the time an employment contract for: (i) an athletic director; or (ii) any athletic coach that exceeds the AD Threshold is executed, the institution President shall certify that:

(1) the financial terms of the employment contract are reasonable in the context of the market for the position and the appointee's professional reputation and expertise;

(2) the institution has, or reasonably expects to have, the funds necessary to pay all sums that may be owed to the athletic director or coach under the employment contract; and

(3) the institution President has conducted a reasonable and thorough background investigation on the athletic director or coach, including verification of any degrees or academic credentials claimed by such athletic director or coach (the "Contract Certification").

d. **Funds Disclosure.** At the time an employment contract for: (i) an athletic director; or (ii) any athletic coach that exceeds the AD Threshold, is executed, the institution shall provide a description of the source of all funds anticipated to be used to pay all sums that may be owed under the contract (the "Funds Disclosure"). As part of the Funds Disclosure, the institution President shall certify that all donor or third-party funds described in the Funds Disclosure are: (i) in possession of the institution; or (ii) backed by legally enforceable pledge or gift agreements. **The Funds Disclosure must also include a detailed analysis of the impact the employment contract will have on the budget and financial condition of the athletic department.**

e. **Diversity Report.** At the time an employment contract for: (i) an athletic director; or (ii) any athletic coach that exceeds the AD Threshold, is executed, the institution shall provide a report outlining the methods used to obtain a diverse pool of candidates for the position and compliance with applicable institution and Board policies related to diversity and equal opportunity (the "Diversity Report").

f. **Submission of Certifications and Disclosures.** The institution President shall provide the Contract Certification, the Funds Disclosure, and the Diversity Report to the Chancellor and the Chief of Staff of the Board of Regents: **(i) within thirty (30) days after the execution of any initial employment contract for an athletic director or any athletic coach that exceeds the AD Threshold; and (ii) within twenty-four (24) hours after the execution of any amendment or renewal of an employment contract with an athletic director or athletic coach who is a**

current employee that exceeds the AD Threshold. The President shall be held personally responsible by the Board of Regents **for the accuracy of the** ~~regarding the~~ Contract Certification, Funds Disclosure, and the Diversity Report, and any failure to comply **with requirements related to those documents** shall be cause for disciplinary action against the President.

g[d]. Form of Employment Contract. In negotiating any employment contract for an athletic director or athletic coach, the institution President and institution counsel shall utilize the contract template, checklist, and guidelines, if any, applicable to that position approved by the Board as set forth in the procedures established by the Chancellor's Office. Any and all variations from the applicable contract template must be noted in the checklist and shall include a detailed explanation of the reasons and bases for the variation. The institution President shall, within twenty four (24) hours after the execution of any employment contract, provide a copy of the **signed employment** contract and contract checklist to the Chancellor and Chief of Staff of the Board of Regents. **No public announcement or confirmation of hiring may be made by the institution until the signed employment contract and contract checklist is provided to the Chancellor and Chief of Staff. In addition, the prospective athletic director or coach shall not undertake or assume any activities or duties of the position until he or she has executed the employment contract.**

h[e]. No Involvement in Search Process. The Board and individual Regents shall not be involved in the search process related to the positions of athletic director, athletic coach, or any other athletic department personnel. Members of the Board may refer the name of a potential candidate in writing to the Chancellor who in turn shall provide the referral in writing to the institution President without attribution of the source of the referral. Members of the Board shall not formally nominate a candidate, and shall not serve formally or informally on any search committee or in any way attempt to influence the search process for athletic directors, athletic coaches or other athletic personnel.

i[f]. Compliance with other policies. The search process and appointment of all athletic directors, athletic coaches, and other athletic personnel shall comply with all other applicable requirements and policies of the institution and Board, including those related to equal opportunity and diversity.