

STATE OF NORTH CAROLINA

COUNTY OF WAKE

**MEMORANDUM OF UNDERSTANDING BETWEEN THE NORTH
CAROLINA STATE BOARD OF EDUCATION AND THE NORTH
CAROLINA HIGH SCHOOL ATHLETIC ASSOCIATION REGARDING
THE CONDUCT OF HIGH SCHOOL INTERSCHOLASTIC ATHLETICS**

This Memorandum of Understanding (“MOU”) is hereby entered into by and between the North Carolina State Board of Education (“State Board”) and the North Carolina High School Athletic Association, Inc. (“NCHSAA”). The State Board and the NCHSAA are collectively referred to herein as the “Parties.”

WHEREAS, the State Board is a Constitutional Body, created by Article IX, Section 4 of the North Carolina Constitution; and

WHEREAS, the North Carolina Constitution further provides, in Article IX, Section 5, that the State Board “shall supervise and administer the free public school system and the educational funds provided for its support, . . . and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly”; and is vested with the general supervision and administration of the free public school system; and

WHEREAS, the State Board is authorized and required by N.C. Gen. Stat. § 115C-12(23) and Article 29E of Chapter 115C of the North Carolina General Statutes to adopt rules governing interscholastic athletic activities, including eligibility for student participation, and;

WHEREAS, the State Board, pursuant to N.C. Gen. Stat. § 115C-12(23) and Article 29E of Chapter 115C of the North Carolina General Statutes also may authorize a designated organization to apply and enforce the State Board’s Rules governing participation in interscholastic athletic activities at the high school level; and

WHEREAS, the State Board has adopted Rules governing interscholastic athletic activities, including those regulating the eligibility of students to participate in interscholastic athletic activities conducted by participating schools; and

WHEREAS, the NCHSAA is a nonprofit corporation organized and existing under North Carolina law, formed for the educational purpose of coordinating athletic activities among high schools in North Carolina; and

WHEREAS, the State Board and the NCHSAA desire to enter into an agreement for the administration of interscholastic high school athletic activities;

NOW, THEREFORE, the Parties hereby agree as follows:

I. INTERSCHOLASTIC ATHLETIC ACTIVITIES

A. Oversight of athletic activities. The NCHSAA shall administer and enforce all Rules adopted by the State Board (“Rules”) to govern interscholastic athletics at the high school level. The NCHSAA shall oversee the conduct of interscholastic athletic activities among its member high schools (“participating schools”). The NCHSAA shall take all actions necessary to facilitate the oversight of interscholastic athletic activities; provided, however, that the NCHSAA’s actions shall be consistent with all State Board Rules and the terms of this MOU.

B. Rules and regulations. The NCHSAA shall adopt, apply, and enforce rules and regulations as set forth below. For the 2021-2022 school year, the rules and regulations set forth in the NCSHAA’s Bylaws and Handbook shall apply. Beginning with the first full school year after the Effective Date of this MOU, the NCHSAA shall not adopt a rule or regulation until the proposed rule or regulation has been published on the NCHSAA’s website and the NCHSAA has allowed a reasonable opportunity to the public for notice and comment on the rule or regulation. All rules and regulations established by the NCHSAA must be consistent with State Board Rules. The State Board may, by majority vote, deem any rule or regulation adopted by the NCHSAA invalid and unenforceable.

1. Student participation regulations. The NCHSAA shall enforce the State Board Rules regarding student eligibility to participate in interscholastic athletic activities and establish any additional rules or regulations necessary to enforce the State Board’s student participation Rules, provided that the NCHSAA may waive any student eligibility requirement in the State Board student participation Rules if the NCHSAA finds (a) that the

requirement fails to accomplish its purpose; or (b) that the requirement works an undue hardship on a student who has lost eligibility due to circumstances that make participation impossible, such as the prolonged illness or injury. The NCHSAA shall make the State Board's participation Rules and the NCHSAA regulations publicly available at no cost on the NCHSAA's website.

2. Administrative rules and regulations. The NCHSAA shall adopt, apply, and enforce rules and regulations governing the classifications of schools into divisions and conferences, administration of games, and requirements for coaching, officiating, sportsmanship, and scheduling of seasons. The NCHSAA shall make the administrative rules and regulations publicly available at no cost on the NCHSAA's website.
3. Gameplay rules and regulations. The NCHSAA shall adopt, apply, and enforce rules and regulations for the conduct of athletic competition in accordance with the requirements of the governing organization, including the requirements of the National Federation of State High School Associations, for each sport. The NCHSAA shall make information about how to access the gameplay rules and regulations publicly available at no cost on the NCHSAA's website.
4. Penalty rules and regulations. The NCHSAA shall enforce the State Board's penalty Rules and shall adopt, apply, and enforce rules and regulations governing the penalties for infractions of student participation, gameplay, and administrative rules and regulations. The penalty rules and regulations shall establish a system of demerits for infractions of student participation, administrative and gameplay rules and regulations; such infractions may result in reprimands, probations, suspensions, forfeitures of contests, forfeitures of titles, and disqualifications. The NCHSAA shall not impose any fines or monetary penalties of any kind. The NCHSAA shall make the State Board penalty Rules and the NCHSAA penalty rules and regulations publicly available at no cost on the NCHSAA's website.

C. Classification. The NCHSAA shall establish classifications of participating schools in a fair, impartial, and transparent manner, based primarily on average daily membership.

D. Conferences. The NCHSAA shall align participating schools into conferences in a fair, impartial, and transparent manner, based primarily on geographic location of the schools, division classification, and average daily membership.

E. Appeals. The NCHSAA shall coordinate and administer the appeals process as established by the State Board and in accordance with the following requirements:

1. Levels of appeal.

a. Final decision of NCHSAA. Any dispute, inquiry, or report about a suspected violation of the State Board Rules or the NCHSAA rules or regulations referred to in Section I.B of this MOU shall first be directed to the Commissioner of the NCHSAA. The Commissioner, or the Commissioner's designee, shall provide a ruling on any such issue, including, if applicable, the imposition of a penalty allowed by the State Board and/or NCHSAA penalty rules and regulations. If this ruling is given orally then, as soon as is reasonably possible thereafter, this ruling, and the basis for the decision, shall be reduced to writing and immediately provided to the participating school(s) affected by the ruling. In the written ruling, the NCHSAA shall advise the impacted schools that they are required to notify all impacted students. Written notification to the impacted schools shall constitute receipt of the ruling for purposes of determining the time to appeal. This ruling shall be the final decision of the NCHSAA.

b. Appeal by PSU to Independent Appeals Board. A public school unit ("PSU") aggrieved by a final decision of the NCHSAA regarding matters covered in Section I.B. above may file an appeal with the State Board's Office of

General Counsel within five days after receipt of the NCHSAA's final decision.

- (1) The PSU's appeal shall:
 - (a) be in writing;
 - (b) include a description of the facts of the dispute;
 - (c) include any evidence submitted to the NCHSAA; and
 - (d) present an argument explaining why the PSU believes the NCHSAA's final decision was not based on substantial evidence or the applicable law, policy, regulation, State Board Rule or rules or regulations of the NCHSAA.
- (2) The NCHSAA must respond to the PSU's submissions within five days.
- (3) No later than thirty days after the State Board's receipt of the appeal, a panel of the Independent Appeals Board (as defined in Section I.E.2 below) shall review the appeal, and any response by the NCHSAA and issue its decision. The panel shall affirm the NCHSAA's final decision unless a majority of the panel determines that the NCHSAA's final decision is not supported by substantial evidence or an applicable law, policy, regulation, State Board Rule or NCHSAA rule or regulation.
- (4) The timeline for hearing and responding to appeals may be shortened by the panel as necessary to make timely decisions that impact the ability of a student or coach to participate in an athletic contest.
- (5) A decision of a panel of the Independent Appeals Board will be final.

2. Independent Appeals Board.

- a. The State Board will appoint an Independent Appeals Board to hear and act upon appeals from final decisions of the NCHSAA regarding matters addressed in Section I.B. above.
- b. The Independent Appeals Board shall be composed of professional educators, who have experience overseeing or implementing high school interscholastic athletic programs. Current members of the NCHSAA Board of Directors are not eligible for membership on the Independent Appeals Board. However, past NCHSAA Board members who can serve as fair and impartial members of the Independent Appeals Board will be encouraged to serve. Decisions on who will be appointed to the Independent Appeals Board are within the sole discretion of the State Board.
- c. The members of the Independent Appeals Board will receive training, conducted jointly by the State Board the NCHSAA, and any other administering organization with an MOU with the State Board, as to their duties and responsibilities, including the obligation to avoid conflicts of interest, to remain independent and impartial and to recuse themselves from considering a matter if they believe that they cannot be impartial or have a conflict of interest. The Independent Appeals Board will also receive training on the application of State Board Rules and administering organizations' rules and regulations.
- d. The NCHSAA agrees that, apart from communications required or permitted by this MOU, its representatives, employees or agents will not communicate with the Independent Appeals Board members about the substance of an appeal or lobby for a specific conclusion to the appeal prior to a hearing or decision. The State Board shall also prohibit PSUs from communication with

the Independent Appeals Board about a matter under consideration except as permitted by this MOU.

3. Procedures for appeal. The NCHSAA shall make available on its website the procedures, including deadlines and other requirements, for appeals.

F. Complaints and Non-retaliation. The NCHSAA shall not retaliate against any participating school, the employees or students of those schools, or any other person for reporting, in good faith, to the NCHSAA, State Board, or any government entity any concerns about the NCHSAA's administration of high school interscholastic athletics, including the following: suspected violations of laws or rules; circumstances giving rise to a substantial and specific danger to student or school personnel health and safety; fraud; misappropriation of resources; or gross mismanagement or abuse of authority. The Department of Public Instruction ("DPI") shall designate an individual or division within DPI to receive such complaints and process them. The NCHSAA will be given an opportunity to respond and/or address concerns or complaints submitted to DPI. The application of penalties not challenged on appeal, or upheld upon review under the appeals process, shall not be considered retaliation.

II. MEMBERSHIP AND GOVERNANCE

A. Board of Directors Ethics Policy. The NCHSAA shall have at all times a policy that requires the members of its Board of Directors to avoid conflicts of interest and the appearance of impropriety. All members of the Board of Directors must agree to the NCHSAA's policy

B. Membership. PSUs may allow their high schools to become members of the NCHSAA.

1. NCHSAA Handbook. For each school year, the NCHSAA shall adopt a handbook for participating schools ("NCHSAA Handbook"). The NCHSAA shall make its current Handbook publicly available at no cost on the NCHSAA's website.

2. Membership dues. The NCHSAA may set membership dues for participating schools not to exceed \$1 per student enrolled in the participating school.
3. Gate receipts. The NCHSAA shall not retain any amount of gate receipts or ticket sales for any games except for playoff and state championship games. The NCHSAA shall annually establish the percentage of net proceeds from playoff and state championship games, by sport, that it will retain. Net proceeds shall be defined as those proceeds remaining after the participating and hosting schools and the NCHSAA have been reimbursed for the reasonable costs of hosting and/or participating in the event. The State Board reserves the right to reject the NCHSAA's annual determination of the net proceeds from gate receipts that it may retain if finds the monies being retained are unnecessary or excessive. As used in this MOU, "playoff and state championship games" shall mean any playoff contest in a bracketed team sport and any regional or state event in an individual sport.
4. Other receipts. The NCHSAA shall not retain any portion of receipts collected from concessions or sale of merchandise by a participating school.
5. Intellectual property. The NCHSAA shall not regulate or control the intellectual property of PSUs whose schools participate in NCHSAA activities, including team logos, mascots, and audio or video of any game other than playoff or state championship games.
6. Non-commercial recordings. The NCHSAA shall not restrict the recording of audio or video for personal, non-commercial use at any game, including playoff or state championship games, by any parent of a student participating in the game or any employee of the school competing in the game or event.
7. Insurance. The NCHSAA shall inform its membership annually of the requirement that covered students and school personnel participating in interscholastic athletic activities have catastrophic insurance. Further the NCHSAA shall provide

information about the availability of such insurance through the Office of the Commissioner of Insurance.

8. Vendors, sponsors, brands, and products. The NCHSAA may provide participating schools information on available opportunities from vendors and sponsors of the NCHSAA. However, the NCHSAA shall not require participating schools to use designated vendors, sponsors, brands, or products other than for playoff or state championship games and then only when necessary to ensure consistency and fair play.
9. Game attendance. The NCHSAA shall work with participating schools to make reasonable efforts to establish mechanisms for parents and guardians and participating school personnel to view athletic competitions when emergency or catastrophic conditions limit in-person attendance at competitions.
10. FERPA. The NCHSAA shall apply the standards established by the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g, to all student records containing personally identifiable information in the possession of the NCHSAA. The NCHSAA may publish student information provided by a participating school as directory information unless the participating school indicates that a parent or guardian has opted out of disclosure of that information.

III. SCHOLARSHIPS, GRANTS, AND PROGRAMS

The NCHSAA and the State Board recognize that interscholastic athletic activities play a valuable role in high school education. Grants and scholarships may broaden access to interscholastic athletic competition for participating schools and student-athletes. In furtherance of its mission to support education through interscholastic athletic activities, the NCHSAA may, (i) provide need-based grants to participating schools; (ii) provide scholarships to student-athletes to attend institutions of higher learning; and (iii) provide funding for leadership development opportunities and special programs that support the NCHSAA’s mission. The NCHSAA agrees to prioritize the use of donor-directed scholarship endowment monies. The NCHSAA agrees to allow the State Board access to information about the decision-making process for awarding grants, scholarships, and funding for programs.

IV. ACCESS AND REPORTING

The Parties agree that communication and transparency will facilitate cooperation between them in furtherance of the common goal of supporting education through high school interscholastic athletics. The Parties therefore agree as follows:

- A. Annual audit. The NCHSAA shall engage a reputable independent auditing firm to perform an annual audit and shall submit the audit to the State Board no later than March 15 each year. The NCHSAA shall make a copy of the most recent annual audit report publicly available at no cost on its website.
- B. State Auditor. The NCHSAA agrees that the State Auditor shall have the authority to audit the NCHSAA pursuant to Article 5A of Chapter 147 of the General Statutes.
- C. Annual report. No later than December 1 of each calendar year, the NCHSAA shall report to the State Board on the following:
 1. Activities during the prior school year and recommendations and findings regarding improvement of high school interscholastic athletics;
 2. A schedule of current fees charged by the NCHSAA to participating schools;
 3. The current balance of funds held by the NCHSAA; and
 4. From the prior fiscal year:
 - a. The total of the NCHSAA's expenses, including the percentage of that total expended on personnel costs;
 - b. The amount of fees and gate receipts collected;
 - c. The amount of grants and scholarships provided to participating schools and student-athletes, by school;

- d. The amount of disbursements to participating schools, by school; and
 - e. The identity of sponsors and monetary amount received from each sponsorship
- D. Access to meetings and records. The NCHSAA shall provide notice of, and access to, all meetings of its membership to all participating schools. The NCHSAA also shall broadcast electronically the meetings of its membership and its Board of Directors in a manner accessible to the public to be announced on its website; provided, however, that the NCHSAA Board of Directors may go into closed session to consider any of the matters covered by G.S. Section 143-318.11(a)

V. TERM

- A. Term. This MOU shall continue in effect for four (4) years from the Effective Date, unless sooner terminated according to this Section V.
- B. Renewal. This MOU is renewable for successive terms of four (4) years by agreement of the Parties. If either of the Parties does not intend to renew this MOU, that party shall give written notice to the other party at least twelve (12) months prior to the expiration of the term of the MOU then in effect.
- C. Termination. If the State Board determines that the NCHSAA has failed to comply with the requirements of this MOU, the State Board may terminate the MOU upon written notice to the NCHSAA and an opportunity to respond. In the written notice, the State Board shall identify all provisions of the MOU with which the State Board believes the NCHSAA has failed to comply and shall state the facts and circumstances giving rise to each such failure. The State Board shall notify the NCHSAA that it has an opportunity to respond to the written notice, and to cure all identified failures within thirty (30) days of receiving the written notice; provided, however, that in the case of a failure that cannot reasonably be cured within thirty (30) days, the State Board shall notify the NCHSAA that it must make reasonable, good faith efforts to cure the failure and must report to the State Board on those efforts within thirty (30) days of receiving the written notice. If the NCHSAA timely cures such identified failures, or as to failures that cannot

reasonably be cured within thirty (30) days, the NCHSAA demonstrates that it is engaged in reasonable, good faith efforts to cure, the State Board shall not terminate the MOU. If the NCHSAA does not cure or make good faith efforts to cure within thirty (30) days, the State Board shall then have cause to terminate the MOU. Any termination shall not be effective for ninety (90) days from the date on which cause for termination arises. In the event of termination of the MOU during the academic year, the NCHSAA shall return to each participating school a prorated portion of the funds paid by that school for the year as provided by the participating school's contract with the NCHSAA.

VI. NOTICES

Any notice required to be given by one of the Parties to the other party under this MOU shall be sufficient if given in writing, by electronic mail addressed as follows:

A. If to the State Board:

Allison Schafer
General Counsel
State Board of Education
301 N. Wilmington Street
Raleigh, NC 27601
Email: Allison.Schafer@dpi.nc.gov

B. If to the NCHSAA:

Marilyn Q. Tucker
North Carolina High School Athletic Association
P.O. Box 3216
Chapel Hill, NC 27515
que@nchsaa.org

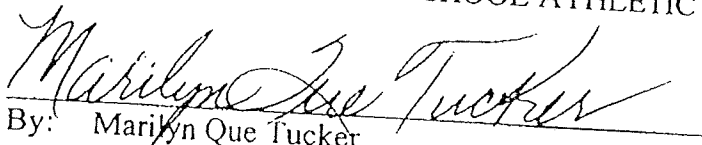
With a copy to:

Paul K. Sun, Jr./Kelly Margolis Dagger
Ellis & Winters, LLP
P.O. 33550
Raleigh NC 27636
Paul.sun@elliswinters.com
Kelly.dagger@elliswinters.com

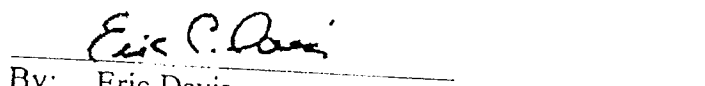
VII. SIGNATURES

Approved this ___ day of March,

NORTH CAROLINA HIGH SCHOOL ATHLETIC ASSOCIATION



By: Marilyn Que Tucker
Commissioner

NORTH CAROLINA STATE BOARD OF EDUCATION


By: Eric Davis
Chairman

ATTEST:

OFFICE OF THE NORTH CAROLINA STATE SUPERINTENDENT


By: Catherine Truitt
State Superintendent of Public Instruction