

Head Coaches' and Athletic Directors' Contracts Changed

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. Changed

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. **CHANGED 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.