

AGB BOARD OF DIRECTORS' STATEMENT ON

Governing Boards' Responsibilities for

INTERCOLLEGIATE

ATHLETICS

*governing board's fiduciary responsibilities for athletic programs are **co-equal** and indistinct from those that apply to other **components** of an institution's work. The board should delegate the conduct and control of the athletic department to the institution's chief executive office, but to **fulfill** its **fiduciary** role the board must ensure the **adequacy** and implementation of institution policies, including those related to **intercollegiate athletics**. **This guidance** applies equally to governing boards of **multi-campus** systems, though their processes for policy making may be **distinctive**.*

ABOUT AGB

Since 1921, the Association of Governing Boards of Universities and Colleges (AGB) has had one mission: to strengthen and protect this country's unique form of institutional governance through its research, services, and advocacy. Serving more than 1,300 member boards, 1,900 institutions, and 40,000 individuals, AGB is the only national organization providing university and college presidents, board chairs, trustees, and board professionals of both public and private institutions and institutionally related foundations with resources that enhance their effectiveness.

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Intercollegiate Athletics**

Introduction

The Association of Governing Boards of Universities and Colleges (AGB), which provides counsel to higher education governing bodies and chief executive officers, has been formally engaged in addressing best practices in the governance of intercollegiate athletics since 2001. Through a series of well-considered formal statements and guidelines, data, advocacy efforts, direct consulting, and other initiatives, AGB helps boards—alongside institutions' chief executives and organizations such as the NCAA, athletics conferences, and others—understand and engage in effective fiduciary practices regarding intercollegiate athletics. Earlier AGB Board of Directors' statements on governing boards' accountability for athletics, issued most recently in 2009, have provided valuable guidance to governing boards for being appropriately accountable for their institutions' athletics programs.

Yet challenges associated with college sports have continued to increase dramatically—including growing costs, complexities related to conference play, student-athlete academic performance and health and safety risks, and rising tolerance for long-term liabilities in coaching and athletics personnel contracts, as well as some high-profile athletics scandals and ethical violations. Many in higher education perceive an ever-widening gulf between athletic and academic cultures. No governing board, regardless of its institution's athletics division, can afford to ignore its ultimate fiduciary responsibility for that part of the institution's business carried out by the athletics department. Effective board engagement and accountability is imperative for bridging that gulf.

Since at least the 1980s, college sports have constituted an enrollment strategy at both large and small institutions. Athletic events are often important occasions for campus engagement with local, regional, and even national stakeholders. At virtually all institutions offering athletics, those programs present high-value opportunities for community-building on campus. The prospective benefits attached to these programs are prodigious. Nonetheless, the risks associated with college sports, both financial and reputational, require consistent attention from higher education's leaders, including governing boards.

Some of the highest-profile failures in contemporary higher education leadership are related to college sports. Instances of sexual misconduct by athletics department personnel or within athletics facilities—and serious injury or even the death of a student-athlete—violate these institutions’ recognized missions and purposes. Among the fundamental responsibilities of higher education’s leaders, at any level of athletic competition, none is greater than the protection of students and minors on campus. The role of college sports extends well beyond the playing field in any institution, and governing boards cannot afford to miss the bigger picture. Board members must temper their dispositions as fans and boosters in light of their formal fiduciary responsibilities.

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While the present AGB statement is appropriately focused on institution and multi-campus system board engagement, the AGB Board of Directors believes it is important to encourage those external bodies holding substantial influence in the business of intercollegiate athletics—the NCAA, NAIA, athletic conferences, and perhaps others—to recognize that higher education’s fiduciary bodies remain as accountable for intercollegiate athletics as they are for institutional finances, academic quality, and student success. The AGB Board of Directors continues to call upon these bodies to include voices from among higher education’s 40,000 fiduciaries within their own governance structures.

The AGB Board of Directors, which is composed predominantly of college and university board members, approved this statement in August 2018. The statement presents three principles for governing board accountability for intercollegiate athletics.

We commend the following principles as a framework for sound governance practice to boards and institutional leadership.

1. While delegating administrative responsibility to the institution’s chief executive officer, the governing board is ultimately accountable for athletics policy in keeping with its fiduciary responsibilities.
2. The governing board must accept accountability for upholding the integrity of the athletics program and ensuring it advances the institution’s educational mission.

3. Governing boards must develop systematic approaches for upholding their responsibilities regarding athletics and apply themselves diligently to that work.

Principle 1. While delegating administrative responsibility to the institution's chief executive officer, the governing board is ultimately accountable for athletics policy in keeping with its fiduciary responsibilities.

The board's fiduciary responsibility regarding athletics programs is not distinct from its fiduciary responsibility for other aspects of an institution or system. A governing board's responsibility to ensure the adequacy and implementation of policies related to intercollegiate athletics is just as essential as its responsibilities for academic programs, institution finances, and education quality and student success. A governing board should formally delegate the conduct and control of the athletics department to the institution's chief executive officer but should not presume that this delegation limits the board's scope of accountability. This guidance applies equally to governing boards of public systems, though their processes for policy implementation and review will differ from those of single-institution boards.

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Part of the governing board's accountability is to ensure that the institution's chief executive officer is attentive to the strategy and operations of athletics programs. To do this, the board must periodically review information about the primary areas of athletics policy: finance, student-athlete health and safety, admissions and academic policies and progress, institutional compliance, ethical behavior, and athletics personnel. The mission and goals of the athletics department must contribute to, and be accounted for, within the institution's overall strategic plan,¹ and the governing board must be assured that the mission of the athletics department is being met. From the vantage of the governing board, which holds the entire institution in trust, none of an institution's programs, including athletics, should be an end unto itself.

¹ Some institutions have found a strategic plan for the athletics department, aligned in a subsidiary way with the institution's strategic plan, to be beneficial.

Regardless of the size or complexity of their finances, almost all athletics departments are subsidized by the institution's operating budget.² Board members must monitor the running average and current-year subsidies to athletics departments from all sources, and they need to engage substantively with questions about appropriate student fees and transfers from institutional operating budgets for support of athletics programs. These programs can benefit college and university missions in many ways, but many of the benefits arising from investments in athletics are indirect. For example, athletics programs can have positive effects on prestige, political capital, donor support, and student enrollment. Ultimately, it is up to the board, working with its chief executive, to determine the most appropriate application of resources in pursuit of the institution's mission. A thoughtful agenda of board member orientation and ongoing education is indispensable to fulfillment of these responsibilities.

No matter what the level of intercollegiate competition, the governing board should express curiosity and become familiar with the policy agendas of membership groups organizing intercollegiate play, including the NCAA, the NAIA, relevant athletics conferences, and perhaps others. As fiduciaries, boards can help set their institutions up for success by insisting these partner organizations maintain high policy standards and good governance policies.

QUESTIONS FOR BOARDS TO CONSIDER

- Does our institution orient trustees to their responsibilities concerning intercollegiate athletics? What does this program include?
- How can the board make clear its support for the chief executive officer's management of the institution's athletics program? Is the chief executive officer providing the leadership necessary to implement the standards and expectations articulated by the board?
- How does the board monitor its members' engagement related to athletics? Is there a process for addressing situations in which board members exceed their proper authority in the area of intercollegiate athletics?
- Has the board approved a strategic plan that makes explicit the ways in which the athletics department is expected to advance the institution's mission? Does it include meaningful benchmarks for the board to monitor, and does the board make use of the data and updates it receives?³
- Are the policies of the NCAA, the NAIA, or relevant athletics conferences consistent with the work of the board and administration regarding finance, academic integrity, and student well-being?

² See knightcommission.org/finances-college-sports/.

³ At the Division I level, governing board chairs should be aware of—and ask to review—university-level data collected through the Institutional Performance Program (IPP), which replaced the NCAA Athletics Certification Program. See ncaa.org/governance/division-i-institutional-performance-program-ipp. It would be entirely appropriate for the board chair to have that access.

Principle 2. The governing board must accept accountability for upholding the integrity of the athletics program and ensuring it advances the institution's educational mission.

While intercollegiate athletics programs must be sensitive to the institution's business model, the most important measure of success for such programs should be the degree to which they further the institution's overall educational mission. Only the governing body can hold the chief executive responsible for establishing expectations for the athletics department that go beyond wins and losses. The board must be confident that the athletics program reflects the institution's values and does not undermine them.

The governing body must also ensure that student-athletes are held to the same academic and behavioral standards all students are required to meet, and athletes have the same opportunities as other students for a well-balanced academic, social, and athletics experience. The board must be confident that admissions policies set student-athletes up for educational success. Special facilities and dedicated support for student-athletes should reflect the institution's strong commitment to these students' learning, rather than separate and special treatment. Athletic commitments that require significant time away from class or away from campus life, or those that effectively preclude participation in internships, service-learning, and other educational experiences, should be understood as impediments to student learning.

The periodic review of data that show academic progress of all student-athletes, including those in major revenue sports, forms a basic responsibility of the governing board. Boards need to evaluate graduation rates and other indicators of educational quality adopted by the institution, and athletes should be among the groups for distinct analysis. The board must hold the chief executive accountable for delivering insightful information on trends and anomalies in student-athlete enrollment, academic progress, and degree completion.

Some governing boards perceive intercollegiate athletics programs to be somewhat removed from the educational mission of the institution. Governing boards must be confident that all stakeholders understand these programs are integral to that mission. They affect the makeup of the student body, campus climate, and ultimately the nature of educational effectiveness both inside and outside of the classroom.

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QUESTIONS FOR BOARDS TO CONSIDER

- What benchmarks should be used to gauge the success of the athletics department? Are they consistent with the institution's mission and values?
- What is the impact of intercollegiate athletics on campus climate? How does athletics affect admissions, social life, academic values, and the composition of the student body?
- Is the board or a board committee monitoring the fundraising efforts for intercollegiate athletics programs? Is the institution maintaining an appropriate balance in its fundraising priorities for athletics and academics? Are fundraising efforts for athletics and academics integrated with or discrete from one another?

Principle 3. Governing boards must develop systematic approaches for upholding their responsibilities regarding athletics and apply themselves diligently to that work.

Intercollegiate athletics programs are in various ways cost centers, revenue centers, and risk centers for colleges and universities. And while they are not of themselves mission centers, they influence the educational mission in meaningful ways. Effective fiduciary governing bodies must become broadly informed about these programs and must accept ultimate accountability for them. Perhaps nowhere has this been more tragically proven over the past decade than in a small number of institutions that have had athletics-related ethical violations affecting student safety. Boards must organize their accountability for athletics to deliver consistent and reliable results.

Most governing boards do not maintain committees focused exclusively on athletics.⁴ If the board decides to have a standing or ad hoc committee on intercollegiate athletics, then it must be keenly aware of the need to: a) ensure impartiality toward athletics among all members of the committee and b) share discussion of financial, academic, reputational risk assessment, and mission considerations, whose impact extends well beyond the athletics department and therefore becomes relevant to other committees of the board. The way in which a board positions itself for accountability in this area is an important decision, and one that should be made with awareness of the risks and rewards of having a single board committee for an area of the institution's work holding broad implications.

⁴ AGB survey data suggest about 7 percent of public governing boards and 6 percent of independent institution governing boards maintain a standing committee on athletics. A majority of those institutions are engaged in Division I intercollegiate athletic competition.

Among the areas in need of regular attention, boards must:

- Identify and manage personnel and facilities risks by ensuring the currency and implementation of policies related to the use of campus athletics facilities (including youth camps and other activities that are adjunct to the intercollegiate athletics program and imply athletics staff engagement with minors, faculty, development personnel, the board, and perhaps others).
- Ensure that institutional strategy accounts for risks inherent to sport (e.g., those involving concussions and other serious injuries) and periodic board discussions of student well-being are informed by relevant medical research, as well as summary data on the institution's athletics-related student health risks.
- Review year-end balances to inform annual intercollegiate athletics budgeting and ensure that process occurs as a component of the institution's budgeting process, not separately.
- Review and monitor outcomes related to the institution's plans for gender equity in athletics programs under Title IX—and make certain that the institution, its personnel, and its facilities are complying at all times with laws and regulations pertaining to sexual misconduct.⁵
- Ensure that donor and sponsorship support of intercollegiate athletics reflects institutional priorities, and those revenues remain under institutional control.
- Consider for approval all proposals for significant athletics capital expenditures, including any future debt service commitment as part of the regular financial planning of the governing board.

For governing boards of institutions with revenue-generating sports, head coaches' contracts in those sports have become increasingly fraught with high-dollar guarantees and buy-out clauses that amount to long-term financial liabilities for the institution. Boards responsible for these institutions must have policies that require governing board approval of the institution's largest salaries, and they should strongly consider including meaningful athlete academic success goals within coaches' incentive structures. Governing boards concerned

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⁵ For further guidance, see agb.org/statements/2015/agb-statement-on-sexual-misconduct.

that their policies are inadequate or potentially risky should require a post-audit of the institution's financial commitments to the athletics department's highest-paid personnel. Further, it is the board's responsibility to make certain that institutional policies governing extramural consulting, sponsorships, and outside business interests of employees are applied consistently across the institution. At whatever level of athletics the institution competes, higher education leaders, including boards, must guarantee, above all, the safety of students and minors on campus.

QUESTIONS FOR BOARDS TO CONSIDER

- With which committee(s) of the board does the monitoring of intercollegiate athletics reside? Who is responsible for providing the board with information pertaining to intercollegiate athletics? When and how is that information provided?
- Does the chief executive officer convey to the athletics director expectations concerning compliance and ethical conduct? How effectively is the commitment to compliance with institutional, conference, and NCAA rules and regulations communicated to coaches, administrators, students, faculty, boosters, and alumni?
- Are thorough background checks, including records of NCAA compliance, conducted of prospective athletics department employees? Is there a clear policy that protects whistleblowers from punitive action, and are students, employees, and others aware of it?
- What is the philosophy concerning the background, qualifications, and compensation of our coaches and athletics director? Is it well-aligned with other institutional policies?
- Do coaches and administrators accept their responsibilities to be educators? How is this communicated to them?

A NOTE ON PROPER GOVERNING BOARD ENGAGEMENT WITH INTERCOLLEGIATE ATHLETICS

Governing boards and board members must understand the scope and limits of their authority related to intercollegiate athletics. The governing board can add best value to the institution through diligence at the policy level, not operational activity. Unless explicitly empowered to act on behalf of the full board, no committee, subgroup, or individual board member holds legal authority to direct action or promulgate a specific policy. Select examples of appropriate and inappropriate board behavior include:

APPROPRIATE	INAPPROPRIATE
Reviewing and approving institutional budgets in alignment with annual and longer-term strategy	Seeking special appropriations for favored teams or facilities, or inserting board members into conference or broadcasting negotiations
Charging the chief executive with vigorous, continuous pursuit of student safety and educational quality; monitoring progress on benchmarks	Making special allowances or otherwise exempting any program or department from ethical and educational principles that guide the institution
Ensuring clear and consistent reporting lines such that: 1) all coaches report to the athletics director and 2) compliance officers with responsibility for athletics report to a university chief compliance officer	Developing expectations of specific employees, explicitly or implicitly; seeking program-level information or assurances of any kind outside the boardroom
Verifying that employment and compensation policies are being implemented consistently and with full fidelity; where such policies exist, reviewing and considering for approval employee compensation above set thresholds, including for athletics personnel	Becoming involved in individual contract negotiations for any employee of the institution below the level of chief executive, including coaches and athletics directors
Working closely with the chief executive to refine a holistic and aspirational set of goals and indicators of success for the athletics program overall	Encouraging the chief executive to make a coaching personnel change related to insufficient athletic success

Conclusion

Governing boards are neither more nor less accountable for intercollegiate athletics programs than for any other aspect of a college or university. In consideration of the significant financial, mission, and reputational risks associated with these programs today, boards are pressed to attend more substantively to athletics than ever before.

While the vast majority of colleges and universities are committed to a program of intercollegiate athletics, the goals and strategies underlying those programs vary widely. Where the value of intercollegiate athletics is taken for granted, these programs are capable of distorting, rather than enabling, the educational mission of the institution—and in some instances, student-athletes have suffered while benefitting the institution. It is ultimately the board's responsibility to ensure the athletics program reflects and advances the institution's mission.

AGB's 2012 report, *Trust, Accountability, and Integrity: Board Responsibilities for Intercollegiate Athletics*⁶, concluded:

The findings of our survey and insights of our advisory group have strengthened our conviction that the presence of administrative or managerial oversight alone is not sufficient to counter the forces that cause athletics to equal and even overshadow the academic purposes of an institution. Boards are the natural agents to provide that presence because of the fiduciary responsibility they have for their institutions.

We stand firmly behind that assertion, even as we recognize a harsh reality: athletics programs historically invite governing board and board member overreach to a greater degree than any other aspect of the institution's work. In the end, we call upon all boards to treat intercollegiate athletics programs with a level of seriousness that has been too frequently lacking.

⁶ See agb.org/reports/2012/trust-accountability-and-integrity-board-responsibilities-intercollegiate-athletics.

Across levels of competition, and regardless of the size and complexity of departmental budgets, governing boards cannot delegate their responsibility for ensuring that athletics contributes to institutions' educational missions, and no other entity can do their job. At a time of competitiveness for limited resources, heightened visibility, and declining trust in colleges and universities, attention by higher education's fiduciaries to the challenges of intercollegiate athletics is essential. Boards must develop systematic approaches to carry out informed oversight of athletics and hold themselves accountable for results.

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Board Statement of Commitment and Accountability for Intercollegiate Athletics

The Association of Governing Boards of Universities and Colleges (AGB) commends this statement of commitment and accountability as principles of engagement with the important topic of intercollegiate athletics. We urge boards to review and discuss it annually—and formally commit to upholding it.

This board...

1. Delegates administrative responsibility for intercollegiate athletics to our chief executive officer but recognizes its ultimate accountability for athletics policy and effective fiduciary oversight of athletics. We hold the chief executive responsible for establishing expectations for intercollegiate athletics that go beyond wins and losses.
2. Shall monitor the finances and business model of the institution's athletics program, including compensation, fundraising, capital expenditures, and debt-service commitments.
3. Affirms its accountability for upholding the integrity of the athletics program and ensuring it advances our institution's educational mission. To that end, we shall ensure that student-athletes are held to the same academic and behavioral standards that all students are required to meet, and athletes have the same opportunities as other students for a well-balanced academic, social, and athletic experience.
4. Shall periodically review information about the primary areas of athletics policy and ensure that the mission and goals of the athletics department are consistent with our institution's overall mission and goals.
5. Shall ensure that the chief executive officer conveys to the athletics director (AD) our institutional expectations for compliance and ethical conduct—and the AD will clearly communicate these expectations to coaches, administrators, students, faculty, boosters, and alumni.
6. Shall ensure that thorough background checks, including records of NCAA/NAIA and conference compliance, are conducted of prospective athletics department employees. We further shall ensure our institution has a clear policy that protects whistleblowers from punitive action.

7. Shall monitor policies related to the use of campus athletics facilities, including youth camps and other activities adjunct to the intercollegiate athletics program.
8. Shall ensure that institutional policy accounts for physical safety risks inherent to sport and we will remain aware of the well-being of our student-athletes, informed by relevant medical research.
9. Shall review and monitor outcomes related to our institution’s plans for gender equity in athletics programs under Title IX—and will closely monitor our athletics program’s concerns for complying at all times with laws and regulations pertaining to sexual misconduct.
10. Shall ensure that donor and sponsorship support of intercollegiate athletics reflects our institutional priorities and those revenues remain under institutional control.

Signature of the Board Chair

Date

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