

The Regents of the University of California

SPECIAL COMMITTEE ON ATHLETICS

May 14, 2024

The Special Committee on Athletics met on the above date at the UC Merced Conference Center, Merced campus and by teleconference meeting conducted in accordance with California Government Code §§ 11133.

Members present: Regents Ellis, Hernandez, Park, Robinson, Sherman, and Tesfai; Ex officio members Drake and Leib; Chancellors Block and Christ

In attendance: Regents Cohen and Raznick, Regent-designate Beharry, Faculty Representative Cheung, Staff Advisor Mackness, Secretary and Chief of Staff Lyall, Deputy General Counsel Woodall, Executive Vice President and Chief Financial Officer Brostrom, Vice President Brown, Chancellors Khosla, Muñoz, and Wilcox, and Recording Secretary Li

The meeting convened at 3:45 p.m. with Special Committee Chair Hernandez presiding.

1. APPROVAL OF MINUTES OF PREVIOUS MEETING

Upon motion duly made and seconded, the minutes of the meetings of October 11, 2023 and January 23, 2024 were approved, Regents Drake, Ellis, Hernandez, Leib, Park, Robinson, Sherman, and Tesfai voting “aye.”¹

2. UCLA AND UC BERKELEY FINANCIAL CONTRIBUTION

To assist UC Berkeley with its transition to the Atlantic Coast Conference (ACC), the President of the University recommended the following mitigation measure:

That the Regents authorize the transfer of \$10 million a year from UCLA to the Berkeley campus from 2024–25 through 2029–30, the term of UCLA’s existing Big Ten Conference contract. In the event that there is a significant change in revenues and/or expenses for either campus, exceeding ten percent over 2024–25 pro forma assumptions, UCLA’s contribution commitment will return to the Regents for further evaluation and potential action.

[Background material was provided to Regents in advance of the meeting, and a copy is on file in the Office of the Secretary and Chief of Staff.]

Executive Vice President and Chief Financial Officer Brostrom stated that, in December 2022, the Regents endorsed UCLA’s decision to leave the Pacific-12 (Pac-12) Conference and join the Big Ten Conference, under the condition that UCLA make an annual payment

¹ Roll call vote required by the Bagley-Keene Open Meeting Act [Government Code §11123(b)(1)(D)] for all meetings held by teleconference.

to UC Berkeley in the range of \$2 million to \$10 million, depending on both campuses' media rights packages from their respective conferences. The Pac-12 has since collapsed, with eight schools joining other conferences and two remaining. In September 2023, UC Berkeley accepted an offer to join the Atlantic Coast Conference (ACC). UCLA was projected to receive over \$60 million in media rights revenues in a full payout and UCB was projected to receive about \$11 million in a partial payout. Given this disparity, the President recommended a transfer of \$10 million from UCLA to UC Berkeley through 2029–30, which was also when the Big Ten contract would end. If there is a ten percent variance in either the projected revenues or expenses for either campus' athletic department, this agreement would be brought back to the Regents for reconsideration.

Regent Ellis expressed reservation about taking this action. The University has not played “Robin Hood” like this before. When he was a UC Merced student, there had been calls to close the Merced campus in order to save the UC system. In Regent Ellis' view, this followed the same philosophy of compelling one campus to make another whole. UC had found other ways to address these issues in the past. Mr. Brostrom responded that there were several ways that UC redistributes non-State funding to campuses. For instance, self-help financial aid was distributed evenly among the campuses and then redistributed to campuses with more Pell Grant recipients.

Regent Park stated that some cross-subsidies at UC were more visible than others. She asked Chancellor Christ what action UC Berkeley has taken to address its deficit since dissolution of the Pac-12. Chancellor Christ replied that UC Berkeley has developed a financial plan with five aspects: centralizing athletic scholarships in the financial aid office; raising a \$100 million endowment for men's and women's Olympic sports; increasing the revenues generated from events at California Memorial Stadium; dissolving some funds functioning as endowments and taking out the maximum amount from athletic endowments per decision by the Regents and the campus foundation; and the proposed contribution from UCLA that reflected the stark inequities of the media deals.

Regent Park expressed support for the action but believed that this would be revisited in the next year or two given the seismic shifts occurring in college athletics. Chancellor Christ agreed that the landscape was turbulent and that there were difficult choices ahead. She had previously sought a decades-long solution to budget challenges in athletics but was now thinking more in the short term.

Regent Sherman asked how UC had arrived at a calculation of \$10 million. Mr. Brostrom replied that this was the top of the range. When the Regents endorsed UCLA's decision to leave the Pac-12, UC Berkeley was still a member of that conference and thought it could enter into a media deal worth around \$40 million. With the decision to join the ACC and the lower media payout, the situation has deteriorated dramatically for UC Berkeley.

Regent Sherman asked what the payout had been for UCLA and UCB when both were members of the Pac-12. Mr. Brostrom responded that both had received about \$34 million.

Regent Sherman stated his understanding that the aggregate media payout had increased from \$68 million to about \$70 million. Mr. Brostrom stated that, had UCLA and the University of Southern California remained in the Pac-12, the media deal could have been around \$40 million.

Regent Tesfai shared that he was not initially in favor of this payment because he believed that one of the member schools would have eventually left the Pac-12. Regent Tesfai did not support an annual contribution of \$10 million because it would hurt UCLA as it joins a more competitive conference. Mr. Brostrom acknowledged that UCLA was in a difficult financial situation as well. Even with a high media payout, the campus would incur increased expenses and face other challenges.

Regent Sherman moved to amend the recommendation such that UCLA's contribution commitment returns to the Regents for further evaluation after one year given the changing landscape. Regent Leib stated his belief that one year was too short. Regent Sherman replied that the Regents could decide that \$10 million is still appropriate one year from now. Regent Tesfai stated that he would support such an amendment.

Regent Robinson underscored the complexity of the situation. The Big Ten offered UCLA a top-of-the-market media deal, and the University did not feel that it had the leverage to keep UCLA and UCB together, so it waited for a better media deal but one did not materialize in time. The Pac-12 was further destabilized out of fear that another school would leave if not UCLA, and schools left anyway. This forced the University to find a conference for UC Berkeley, and UC had to make the operating assumption that a \$10 million deal was possible. Because this was modeled for multiple years, Regent Robinson did not agree that the transfer should end in one year. Mr. Brostrom indicated that UC had a revenue and expense threshold. If pro forma revenues or expenses change by ten percent, this item would be brought back to the Committee.

Regent Leib shared that he had received letters from people who were quite upset about this matter. During earlier discussion about UCLA's departure, a potential imbalance was observed, and one sometimes must rise about principle. Regent Leib emphasized the importance of a transfer, but the discrepancy between UCLA and UCB has grown much larger than the \$2 million to \$10 million initially discussed. He suggested revisiting the item after two to three years to give enough time for planning.

Regent Robinson agreed that more time would be needed for planning and stated that he would support revisiting the item after three years.

Regent Park asked whether the suggestion would amend the item to a period of three years in addition to the current trigger of ten percent. Committee Chair Hernandez clarified that the suggestion would amend the item to three transfers. Mr. Brostrom explained that the trigger would still be in effect and could be activated next year, for instance.

Regent Leib moved to amend the recommendation such that UCLA's contribution commitment return to the Regents for further evaluation in 2026–27. He invited both chancellors to share their thoughts.

Chancellor Christ stated that, if the *In re College Athlete NIL (House)* settlement is reached, it would take effect in 2025–26 at the earliest.

Upon motion duly made and seconded, the Special Committee approved the amendment to the recommendation.

Upon motion duly made and seconded, the Special Committee approved the President's recommendation as amended and voted to present it to the Board, Regents Drake, Hernandez, Leib, Park, Robinson, Sherman, and Tesfai voting "aye" and Regent Ellis voting "no."

3. **STRATEGIC CAMPUS ATHLETICS OVERVIEW: UC MERCED**

[Background material was provided to Regents in advance of the meeting, and a copy is on file in the Office of the Secretary and Chief of Staff.]

Chancellor Muñoz began his remarks by underscoring the power of athletic competition to create a vibrant culture for both athletes and non-athletes and to draw community members to campus. Athletics engaged local youth, giving them the experience of being at a university, and parents, who were interested in bringing their children to a university. UC Merced Athletics was held to high standards, and student-athletes were regarded as students first. The philosophy statement of UCM Athletics prioritized academic excellence that is complemented by the athletic experience, as well as student well-being and community engagement. UCM was currently a member of the National Association of Intercollegiate Athletics (NAIA) and part of the California Pacific (CAL PAC) Conference, winning four CAL PAC championships this spring and five last year. Earlier this month, CAL PAC named UCM students Alexandra Lopez and Brycen Miller Scholar-Athletes of the Year and UC Merced Executive Director of Athletics and Recreation David Dunham Athletic Director of the Year. The campus has begun the process of transition to the National Collegiate Athletics Association (NCAA) Division II, having received a unanimous vote from members of the California Collegiate Athletic Association.

Mr. Dunham remarked that the transition to NCAA Division II made sense, given drastic changes in CAL PAC; four member schools moved to another conference and two institutions closed for financial reasons. He shared a list of competitive sports offered at UC Merced and their accomplishments. For example, UCM cross country runners have qualified for national championships every year that UCM was eligible. The men's and women's track teams have won their conference championships for the past two years. UCM student-athletes have been awarded over 20 Academic All-America honors.

UC Merced Associate Director of Athletics Payton Williams provided demographic information for the campus' 224 student-athletes across 12 sports. Forty-seven percent

were first-generation students, and 47 percent identified as Hispanic, seven percent as Asian Pacific Islander, 11 percent as African American, 20 percent as white, and 12 percent as multi-racial. One percent of student-athletes were international students. Student-athletes had a higher average grade point average and four-year graduation rate than the general student body, and 53 percent of student-athletes were in the School of Social Sciences, Humanities and Arts, 23 percent in the School of Engineering, and 13 percent in the School of Natural Sciences. The majority of student-athletes majored in management and business economics. Over 200 student-athletes have been recognized as NAIA Scholar-Athletes, and 26 were named Arthur Ashe Junior Sports Scholars this year, the most within the UC system and fifth most nationally.

Mr. Dunham stated that UCM Athletics was primarily funded through student fees, with the largest expenses in staffing, followed by facilities operation and team and programmatic expenses for team travel. Opportunities included community engagement, such as Read Across America and a pen pal program of student-athletes and elementary and middle school students, as well as the transition to NCAA Division II. UC Merced applied for Division II membership in February and would learn the status of its application in July. If accepted, UCM would enter as a provisional member this fall and become a full member in 2027. The theme of Division II membership would be “life in the balance” as a student, an athlete, and a community member. Division II limited the amount of time spent on sports and prepared students for life after college athletics. Postseason competition would be more regional, which meant less time spent traveling to games. In the three years during which UCM is a provisional member, student-athletes would not be eligible for postseason competition, but the campus planned to apply for a waiver after two years. One consideration for UCM Athletics during this transition period was the change in the college athletics landscape and the challenges in Division I that would trickle down to Division II. Another consideration was fundraising. UCM alumni gave at high rates, but they were young, so the gifts were modest. The campus intended to expand fundraising as it grows its athletic program.

Chancellor Muñoz noted that the UCM Athletics budget and revenue did not exceed its expenses. There was positive community reaction to UCM’s announcement of its transition to Division II, including discussion about a potential multi-million-dollar gift.

Regent Ellis recalled voting for the Intercollegiate Athletics Fee when he was a student. At the time, there were students who wanted UCM to join the NCAA, but the campus needed to grow. Given the success the campus has experienced and the quality of the coaching staff and program, he believed UCM was now ready to join the NCAA. UCM Athletics also demonstrated how it prioritized academics. Alumni saw the importance of supporting athletics despite not having the same connection to athletics when they were students. He asked what alumni could do to help the program and what philanthropic goals the campus wished to reach when it is a full member of the NCAA. Chancellor Muñoz replied that alumni could help introduce potential donors to the campus. There were facilities he wished to add that would serve student-athletes and the general campus. For instance, commencement could be held in a venue that would shield participants from the elements.

third-party brand deal. UC Berkeley quarterback Fernando Mendoza partnered with a local burrito shop to raise funds for multiple sclerosis. NCAA member institutions had to develop guardrails while attempting to maintain competitive equity. Pay-for-play improper recruiting inducements were still prohibited. Student-athletes were now able to hire agents, lawyers, accountants, and brand managers to help them make sound legal decisions. Almost all Division I programs had NIL collectives that pooled funds to support student-athletes and were often founded by prominent alumni or influential supporters. Controversies surrounding collectives were related to pay-for-play and recruiting.

Mr. Larson explained that, while these reforms enhanced the student-athlete experience and gave student-athletes more rights and benefits, they also presented significant challenges for universities and industry. The combination of NIL collectives, the Transfer Portal, and deregulation has created a form of free agency in college sports. Student-athletes were transferring more frequently and looking for the best deal from an NIL collective. Up to 20 percent of college football teams were now transfers, up from six percent in 2019. UC Berkeley was now bringing in more college football players due to turnover, which made building team culture more difficult. Not all credits were transferable, which increased time to degree, and high transfer rates put pressure on admissions offices. The issue of transfer has been exacerbated now that NIL could be used as a recruiting inducement. After the attorneys general in Tennessee and Virginia sued the NCAA, a federal judge issued an injunction prohibiting the NCAA from enforcing NIL rules related to collectives. There were over 30 different State NIL laws, so there was no uniformity, and more State Legislatures were passing laws to help schools in their own state. NIL also presented competitive and gender equity concerns. Unlike most professional leagues, there was no salary cap for NIL collectives to ensure competitive equity. Schools with more robust NIL collectives were signing top recruits, placing pressure on other schools to do the same. The majority of collective funds were going to men's basketball and football players, and NIL collectives were not bound by Title IX requirements unless a school is providing significant assistance to the collective. Recently, female student-athletes at the University of Oregon sued the school for supporting an NIL collective whose funds were going mostly to male athletes.

Ms. Adkins stated that, over the last six months, NCAA leadership and membership have proposed fixes for NIL guardrails. Project D1, proposed in December 2023 by NCAA President Charlie Baker, would allow Division I schools with larger budgets to directly compensate student-athletes and enter into NIL deals. In April, members voted to adopt NIL rules that would allow schools to facilitate or negotiate deals for student-athletes but not directly compensate them. Also in April, a new law in Virginia would allow its universities to enter into NIL deals directly with student-athletes, in direct conflict with the NCAA rules. California State Senator Nancy Skinner introduced a bill that sought more transparency from NIL collective deals. Over ten federal bills have been drafted. U.S. Senators Cory Booker and Richard Blumenthal drafted a bill that would prohibit recruiting inducements and establish federal oversight of collegiate athletics, and Senator Ted Cruz drafted a bill that would create a standard contract for NIL deals, create a database of NIL agents, and empower the NCAA to enforce its NIL rules.

Ms. Munger-Rivera summarized the ways that reforms have enhanced the student-athlete experience. On the other hand, she asked how schools could provide more economic value to student-athletes while also maintaining competitive balance; whether the educational component of the student-athlete experience is being devalued; how the continued evolution of college athletics would affect Olympic sports and gender equity, and who would be making the decisions. Ms. Munger-Rivera stressed the importance of prioritizing the rights of student-athletes, upholding principles of fairness and equity, and embracing innovation and reform to ensure long-term sustainability and integrity of collegiate athletics.

Committee Chair Hernandez expressed concern about the transferability of academic credits amidst unlimited transfer and as student-athletes pursue a professional career that might not materialize. He suggested that there be a minimum grade point average requirement in order to transfer. Ms. Munger-Rivera stated that academics shared his concerns. A secondary issue was the transferring student-athlete's major options. Graduation and academic progress rates skyrocketed after the NCAA implemented academic benchmarks. These benchmarks were still in place, but unlimited transfer could undo the progress that student-athletes have made.

Regent Park asked why there was limited appetite to intervene at the federal level. It seemed as if the NCAA was at odds with States, courts, and potentially the U.S. Department of Education, depending on how Title IX is interpreted. Ms. Adkins replied that federal intervention seemed unlikely in the current Congress. Mr. Larson added that, on one side of the political spectrum, there was a desire for traditional sports, NCAA antitrust protection, and limits on NIL. On the other side was a group who wanted student-athletes to be employees who would have protections and could collectively bargain. Finding a bipartisan solution would be challenging.

Regent Park asked how easy it would be for institutions to comply with the requirements of multiple entities in this changing landscape. She remarked that the NCAA seemed to hold the least power. UC Berkeley Deputy Campus Counsel Julie Conner replied that existing mechanisms for enforcement did exist. Title IX was enforced in Oregon because student-athletes brought a complaint directly. Ms. Conner agreed that there was no effective NCAA enforcement. No entity, including the NCAA, wished to be seen as opposing student-athletes. Existing NCAA mechanisms seemed to target student-athletes instead of institutions and would not be able to enforce Title IX without legislative support. Antitrust lawsuits have been filed to stop NCAA enforcement, and the NCAA has lost every time. The level of activity of regional Offices of Civil Rights varied.

Regent Park asked if that liability extended past NCAA to its members. Ms. Conner responded that this was unclear. However, if the NCAA declared bankruptcy, member institutions would still have to pay damages. UCLA Interim Deputy Campus Counsel Robert Swerdlow added that, in addition to the NCAA, conferences could be defendants and be directly liable.

Regent Park stated her understanding that members would not have a shield if conferences are named in a lawsuit. Mr. Swerdlow replied that this was an open legal question that has not been tested. The question was whether, if conferences could not make good on a judgment, there would be grounds to enforce against the members. Based on legal analysis UC has conducted in a privileged setting, there seemed to be some protection.

Regent Tesfai noted that student-athletes had been advocating for some of the benefits brought about by recent reforms since the 1960s. Universities always seemed to be on the defensive. He perceived dysfunction as the amateur model of athletics has grown into a big business. Responding to external stakeholders with litigation did not seem sustainable; universities and conferences needed to determine how they could work with student-athletes to create a system that is proactive and withstands forthcoming challenges. Even legislation could be subject to litigation. He asked what UC could do. Mr. Larson expressed appreciation for the invitation to discuss this issue. The UC system was influential around the world. Campuses wished to partner with University leadership to find solutions.

Committee Chair Hernandez predicted turbulent times to come. The University must try to be nimble, adjust, and make the best of the current situation.

The meeting adjourned at 5:35 p.m.

Attest:

Secretary and Chief of Staff