

UC Legal - Office of the General Counsel

TO MEMBERS OF THE SPECIAL COMMITTEE ON ATHLETICS:

## DISCUSSION ITEM

*For Meeting of October 11, 2023*

### OVERVIEW OF UNIVERSITY OF CALIFORNIA ATHLETICS DELEGATIONS OF AUTHORITY

#### EXECUTIVE SUMMARY

The Office of the General Counsel will provide an overview of the University's delegations of authority generally, with a particular focus on those delegations related to athletics.

#### BACKGROUND

##### Board of Regents Overall Authority and Authority to Delegate

Article IX, Section 9 of the California Constitution provides that the corporation known as The Regents of the University of California, in the form of the Board of Regents, expressly is authorized to "delegate to its committees or to the faculty of the university, or to others, such authority or functions as it may deem wise."

Regents Bylaw 22.1 implements this provision, recapping the broad authority of the Board of Regents to manage the University's affairs, its authority to delegate portions of its authority as it deems appropriate, and its ability to rescind such delegations:

Pursuant to Article IX Section 9 of the Constitution of the State of California, **the full powers of organization and government of the University inhere in and originate with the Board, which has the authority to delegate those powers as it determines to be in the best interest of the University. Any authority delegated by the Board may be rescinded by action of the Board.** The Regents hereby delegate authority to the President of the University to oversee the operation of the University, in accordance with policies and directives adopted by the Board, and as further specified in Bylaw 30 (President of the University). This delegation is subject to the powers specifically reserved to the Regents in Bylaw 22.2 below (Reserved Powers), in Committee Charters, and in Regents Policies requiring that matters be approved or otherwise acted on by the Board. (Emphasis added).

Consistent with this framework, the Regents have delegated broad authority to the President and to the Chancellors to manage the affairs of the University and to the Principal Officers of the

Regents (the Secretary and Chief of Staff, General Counsel, Chief Compliance and Audit Officer, and Chief Investment Officer) in their respective areas of responsibility, *except* in specified areas deemed to be of particular importance by the Regents. In these areas, the Regents expressly have reserved authority for themselves to act.

Bylaw 22.2 includes a list of subjects for which authority is reserved to the Regents, although other reserved areas of authority are contained in Regents Policies and other governing documents. For example, in addition to reserving authority over the operation of the Board and its Committees, Bylaw 22.2 reserves to the Board of Regents approval authority over matters with strategic importance to the University such as:

- approving criteria for University admissions, upon recommendation of the Academic Senate;
- establishing or eliminating colleges, schools, graduate divisions and organized multi-campus research units;
- dismissal of tenured faculty;
- approval of the University budget and requests for State appropriations;
- setting tuition and other specified student fees;
- capital projects and external financing above certain thresholds specified in Regents Policy;
- appointment of and compensation for specified senior administrators;
- settlements of claims and litigation above certain thresholds specified in Regents Policy;
- bidding on prime contracts to operate a National Laboratory;
- participation by the University in certain other entities such as corporations or partnerships, etc.

There are no reservations to the Board of Regents in Bylaw 22.2 specifically focused on athletics, but the general reservations regarding matters such as capital projects, compensation, student fees, and participations in corporations may come into play in various athletics-related contexts.

#### Delegations of Authority to the President and Chancellors

Bylaw 22.1 delegates broad authority from the Board of Regents to the President to oversee the operations of the University, subject only to those powers specifically reserved to the Board in Bylaw 22.2, in Committee Charters, and in Regents Policies to the extent that those policies require that matters be approved or otherwise acted on by the Board. Bylaw 22.1 expressly provides that the Board of Regents may rescind any authority it has delegated by action of the Board.

Bylaw 30 further recognizes the President as the executive head of the University, with “full authority and responsibility over the administration of all affairs and operations of the University, except those activities within the responsibility of the Principal Officers.” In the execution of these responsibilities, the President “implements the policies and objectives of the

Board, and keeps the Board informed of all significant developments affecting the University.” The President may delegate any of the duties of the office except service as an *ex officio* Regent.

Bylaw 31 recognizes the Chancellors as the executive heads of their campuses who set the policies, goals, and strategic direction for their campuses. They are responsible for “implementing the policies and objectives of the Board and of the President of the University, and apprising the Board and the President of the University of significant developments affecting their campuses and the University.” They are responsible for “the organization, internal administration, operation, financial management, and discipline of their campuses within the budget and policies approved by the Board and/or the President of the University.”

The Chancellors also exercise authority delegated to them by the President through formal Delegation of Authority letters, which are maintained centrally and are publicly available on the University’s systemwide policies websites.

Both Bylaw 30 and 31 require the President and Chancellors to inform the Board of “significant developments” affecting a campus or the University, including athletics-related developments. This process typically involves consultation by the President with the Board Chair or other Board leadership, after which Board leadership determines whether and how the matter should be communicated to the full Board.

#### Delegation of Authority to Board Leadership to Act via Interim Action

Bylaw 27.5 delegates authority from the Board of Regents to the Chair of the Board and the Chair of the Standing Committee with jurisdiction over the matter to take action on matters that would otherwise require Board approval, but where there is time sensitivity that requires action between Regents meetings. Bylaw 27.5 also permits interim action by the Governance Committee, in lieu of the more typical interim approval by the Board and Committee Chairs, for matters requiring action between meetings of the Board. The Board is not required to ratify such actions, but the Board receives notice of all actions approved through this interim action process in the materials of the next regular Regents meeting.

The purpose of this longstanding delegation of authority is to permit Board leadership to act on urgent matters without the University suffering the negative consequences of delay. In the athletics context, approval of athletic coach contracts can sometimes require approval via interim action due to time sensitivities.

#### Athletics Delegations of Authority and Regents Policy on Student Athletes

Most actions related to University athletics programs fall within the broad delegations of authority in Bylaws 30 and 31 to the President and Chancellors to oversee the day-to-day operations of the University and their respective campuses. The following athletics-related matters are subject to specific governance or delegation provisions.

Athletic Coach/Athletic Director Compensation.

- The Board of Regents has delegated approval authority for athletic coach/athletic director compensation over the Indexed Compensation Level (ICL) to the President, subject to a variety of parameters. (Approved in July 2007 and amended in September 2008).
- For example, the President has been delegated the authority to approve increases up to 30 percent for annual guaranteed compensation, a one-time signing bonus of no more than 33 percent of the first year's guaranteed compensation, and deferred compensation totaling no more than the equivalent of the first year's guaranteed compensation.
- The President has formally re-delegated this authority to the Chancellors, other than approval for direct reports to the Chancellor. (Presidential Delegation of Authority DA 2203).
- The Board of Regents has reserved approval authority for compensation actions beyond the specified parameters, for any actions involving an exception to policy, and for any contract where the funding comes from sources other than athletic department revenues (including athletic equipment supplier agreements) or private fundraising.
- Compensation approved under this delegation is reported to the Board on an annual basis.

Athletic Conference Agreements.

- In connection with the President's general approval authority over the administration of the University, the President has delegated to Chancellors the authority to approve "service agreements required with outside organizations, agencies, and individuals to implement approved programs and activities," other than agreements otherwise reserved to the President or the Regents. (Presidential Delegation of Authority DA 1058).
- The delegation in DA 1058 includes a list of the types of agreements contemplated for approval by Chancellors (or their designees), and expressly includes approval authority for "Intercollegiate athletic agreements (except coaching contracts)."

Regents Policy 3501: Policy on Student Athletes.

- In May 2016, the Board of Regents approved the Regents Policy on Student Athletes, which contains three directives to campuses and several guiding principles.
- The three policy directives from the Board to campuses are:
  - Athletic Directors at Division I and Division II campuses shall report directly to the Chancellor of their campus.

- Because of the time required for travel and practice schedules, student-athletes shall receive priority registration through the established institutional priority registration process at each campus.
  - For those campuses that provide athletic scholarships, if a student sustains an incapacitating injury while participating in intercollegiate athletic activities and is medically unable to continue his/her athletic commitments, the campus shall not revoke financial aid or scholarships, and shall provide the student-athlete with an equivalent grant or scholarship to finish his/her degree.
- The guiding principles include, for example: student-athlete academic performance should be considered in performance evaluations for athletic directors and coaches; athletic coaches should have no decision-making authority in the admissions of student-athletes; and athletic departments should ensure access to specialized supports related to academic advising, career preparation, and student mental health.