

STATE OF NORTH CAROLINA

COUNTY OF WAKE

MEMORANDUM OF UNDERSTANDING BETWEEN THE NORTH CAROLINA STATE BOARD OF EDUCATION AND THE CAROLINA ATHLETIC ASSOCIATION FOR SCHOOLS OF CHOICE 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 Carolina Athletic Association For Schools Of Choice, Inc. (“CAASC”). 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 CAASC 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 CAASC 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 CAASC shall administer and enforce all Rules adopted by the State Board (“Rules”) to govern interscholastic athletics at the high school level. The CAASC shall oversee the conduct of interscholastic athletic activities among its member high schools (“participating schools”). The CAASC shall take all actions necessary to facilitate the oversight of interscholastic athletic activities; provided, however, that the CAASC’s actions shall be consistent with all State Board Rules and the terms of this MOU.

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

1. Student participation regulations. The CAASC shall establish any regulations necessary to enforce all State Board Rules governing student eligibility to participate in interscholastic athletic activities (“student participation regulations”). The CAASC shall make the student participation State Board Rules and CAASC regulations publicly available at no cost on the CAASC’s website.

2. Administrative regulations. The CAASC shall adopt, apply, and enforce regulations governing the classifications of schools into divisions and conferences, administration of games, and requirements for coaching, officiating, sportsmanship, and scheduling of seasons. The CAASC shall make the administrative regulations publicly available at no cost on the CAASC's website.
3. Gameplay regulations. The CAASC shall adopt, apply, and enforce regulations for the conduct of athletic competition in accordance with the requirements of the administering organization, including the requirements of the National Federation of State High School Associations, for each sport. The CAASC shall make information about how to access the gameplay regulations publicly available at no cost on the CAASC's website.
4. Penalty regulations. The CAASC shall adopt, apply, and enforce regulations governing the penalties for infractions of student participation, gameplay, and administrative regulations. The penalty rules shall establish a system of demerits for infractions of student participation rules and gameplay rules; such infractions may result in reprimands, probations, suspensions, forfeitures of contests, forfeitures of titles, and disqualifications. The CAASC shall make the penalty rules publicly available at no cost on the CAASC's website.

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

D. Conferences. The CAASC 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 CAASC 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. Initial ruling. Any dispute, inquiry, or report about a suspected violation of the student participation rules, administrative rules, or gameplay rules shall first be directed to the Executive Director of the CAASC. The Executive Director, or the Executive Director's designee, shall provide a ruling on any such issue, including, if applicable, the imposition of a penalty allowed by the penalty rules. 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. The CAASC shall require the school to notify all impacted students. Written notification of the ruling shall constitute notification of the ruling for purposes of determining the time to appeal.

b. Independent Appeal. The State Board of Education will appoint an Appeals Board to hear and act upon appeals from final decisions of administering organizations regarding student eligibility, penalties, fees imposed, retaliation, discrimination. Panels of no less than three members of the appeals board may hear and decide matters on behalf of the Board. A PSU aggrieved by a final decision of the administering organization may file an appeal with the State Board of Education's Office of General Counsel within 5 days after receipt of the administering organization's final decision. The PSU's appeal shall:

- (1) be in writing;
- (2) include a description of the facts of the dispute;
- (3) include any evidence submitted to the administering organization;
- (4) present an argument explaining why the PSU believe the administering organization's final decision was not based on substantial evidence or the applicable law, policy, regulation, or Rule of

the State Board of Education or administering organization.

- (5) The administering organization must respond to the PSU's submissions within 5 days.
- (6) No later than thirty days after the State Board of Education's receipt of the appeal, a panel of the Appeals Board shall review the appeal, and any response by the PSU and issue its decision. The panel shall affirm the administering organization's final decision unless a majority of the panel determines that the final decision is not supported by substantial evidence or an applicable law, policy, regulation, or Rule of the State Board of Education or administering organization.
- (7) The timeline for hearing and responding to appeals may be shortened and the written document submissions may be waived by the Appeal Board panel appointed to hear the matter as necessary to make timely decisions that impact the ability of a student or coach to participate in an athletic contest.
- (8) A decision of a panel of the appeals board will be final.

2. Independent Appeals Board.

- a. 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 CAASC's Board of Directors are not eligible for membership on the Committee. However, past CAASC Board members who can serve as fair and impartial members of the committee will be encouraged to serve.
- b. The members of the Appeals Panel will receive training, conducted jointly by the State Board, the CAASC, 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 Appeals Board will also receive training on the application of State Board Rules and administering organizations' regulations.

- c. The CAASC agrees that its representatives, employees or agents will not communicate with the Appeals Panel members about the substance of an appeal or lobby for a specific conclusion to the appeal prior to an independent appeals hearing.

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

F. Complaints and Non-retaliation. The CAASC 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 CAASC, State Board, or any government entity any concerns about the conduct of or decisions about the high school interscholastic program it administers, 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 shall designate an individual or division within the Department to receive such complaints and process them. The CAASC will be given an opportunity to respond and/or address concerns or complaints. 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 Director's Ethics The CAASC must have an Ethics Policy that requires its board members to avoid conflicts of interest and the appearance of impropriety. All members of the Board of Directors must agree to the organization's Ethics Policy

B. Membership. PSUs with high schools are eligible to allow their high schools to become members of the CAASC.

1. CAASC Handbook. For each school year, the CAASC shall adopt a handbook for participating schools ("CAASC Handbook"). The CAASC shall make its current Handbook publicly available at no cost on the CAASC's website.
2. Membership dues. The CAASC shall charge its members dues of \$1,000 for each participating school.
3. Gate receipts. The CAASC shall retain no amount of gate receipts or ticket sales for any games except for state tournament games. The CAASC shall annually establish the percentage of net proceeds from state tournament games, by sport, that it will retain. "Net proceeds" is defined as the amount remaining after all reasonable expenses incurred have been reimbursed to the participating schools and the CAASC. The State Board of Education reserves the right to reject the CAASC's annual determination of the net proceeds from gate receipts that it may retain if finds the monies being retained are unnecessary or excessive in light of the financial needs of the CAASC. As used in this MOU, "state tournament 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 CAASC shall not retain any portion of receipts collected from concessions or sale of merchandise by a participating school.

5. Intellectual property. The CAASC shall not regulate or control the intellectual property of PSUs whose schools participate in CAASC activities, including team logos, mascots, and audio or video of any game other than state tournament games.
6. Non-commercial recordings. The CAASC shall not restrict the recording of audio or video for personal, non-commercial use at any game, including state tournament games, by any parent of a student participating in the game or any employee of the school participating in the game.
7. Insurance. Under G.S. Section 58-31A-60, the Commissioner of Insurance has the duty to offer catastrophic insurance for covered students or school personnel participating in interscholastic athletic activities. The CAASC shall inform its membership of opportunities to purchase such insurance
8. Vendors, sponsors, brands, and products. The CAASC may provide participating schools information on available opportunities from vendors and sponsors of the CAASC. However, the CAASC shall not require participating schools to use designated vendors, sponsors, brands, or products other than for state tournament games when necessary to ensure consistency and fair play.
9. Game attendance. The CAASC shall work with participating schools to make reasonable efforts to establish mechanisms for parents and participating school personnel to view athletic competitions when emergency or catastrophic conditions limit in-person attendance at competitions.
10. FERPA. The CAASC 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 CAASC. The CAASC may publish student information provided by a participating school as directory information unless the participating school indicates that a parent has opted out of disclosure of that information.

III. SCHOLARSHIPS, GRANTS, AND PROGRAMS

The CAASC 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 CAASC 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 CAASC's mission. The CAASC 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 interscholastic athletic activities. The Parties therefore agree as follows:

- A. Annual audit. The CAASC shall submit to an annual audit by the North Carolina Office of the State Auditor ("State Auditor"), or an independent external auditor. 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 CAASC agrees that the State Auditor shall have the authority to audit the CAASC pursuant to Article 5A of Chapter 147 of the General Statutes.
- C. Annual report. No later than December 1 of each calendar year, the CAASC shall report to the State Board and the Joint Legislative Education Oversight Committee on the following:
 1. Activities during the prior school year and recommendations and findings regarding improvement of high school interscholastic athletics;
 2. A copy of the most recent audit conducted under Section IV.A of this MOU;

3. A schedule of current fees charged by the CAASC to participating schools;
4. The current balance of funds held by the CAASC; and
5. From the prior fiscal year:
 - a. The total of the CAASC'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 CAASC shall provide notice of, and access to, all meetings of its membership to all participating schools. The CAASC also shall broadcast the meetings of its membership and board of directors in a manner that is announced on its website and which may be viewed electronically by any members of the public; provided, however, that:

1. The CAASC shall maintain personnel information in confidence and shall not record such information in its publicly available meeting minutes or records;
2. The CAASC shall maintain information protected by FERPA in confidence and shall not record such information in its publicly available meeting minutes or records; and
3. The CAASC shall maintain attorney-client privileged information in confidence as necessary to protect the privilege

and shall not record such information in its publicly available meeting minutes or records.

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 CAASC has failed to comply with the requirements of this MOU, the State Board may terminate the MOU upon written notice to the CAASC 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 CAASC has failed to comply and shall state the facts and circumstances giving rise to each such failure. The State Board shall notify the CAASC 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 CAASC 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 CAASC timely cures such identified failures, or as to failures that cannot reasonably be cured within thirty (30) days, the CAASC demonstrates that it is engaged in reasonable, good faith efforts to cure, the State Board shall not terminate the MOU. If the CAASC does not cure or make reasonable 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 CAASC 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 CAASC.

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 CAASC:

Mark Kozlowski
Executive Director
Carolina Athletic Association for Schools of Choice
2591 Mid Salem Drive
Winston-Salem, NC 27103
Email: caa4sc@gmail.com

VII. SIGNATURES

Approved this ____ day of March,

CAROLINA ATHLETIC ASSOCIATION FOR SCHOOLS OF CHOICE

By: Mark Kozlowski
Executive Director

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