



Thursday, February 25, 2021

Senate Bill 439 –Jordan McNair Safe and Fair Play Act Testimony
Maryland Senate Education, Health, and Environmental Affairs Committee
Robert Page, USM Associate Vice Chancellor for Financial Affairs

Chair Pinsky, Vice Chair Kagan and members of the committee, the University System of Maryland (USM) offers the following testimony to be considered in the deliberations over the proposed Senate Bill 439.

The USM Board of Regents places the highest priority on the health and well-being of all its students—including those who participate in intercollegiate athletics. Over the past year the Board has worked with leadership at USM institutions to identify issues and areas for improvement, and institutions have responded with enhancements to programs related to the care and training of student-athletes.

The USM shares the values, intentions and motivations behind Senate Bill 439. The past 32 months have been tragic and difficult for all impacted by the passing of Jordan McNair. The System continues to work to improve oversight of intercollegiate athletics, and USM institutions have worked diligently to adopt and implement the recommendations of both internal and independent reviews of athletics and the associated medical care provided to student-athletes, not just at University of Maryland, College Park (UMCP), but at each of the USM institutions with athletics programs.

In November 2020, the Board of Regents, led by Chair Linda Gooden, approved the establishment, effective July 1, 2021, of a new Board of Regents standing committee on Intercollegiate Athletics and Student-athlete Health and Welfare, addressing the recommendation of the Association of Governing Boards to improve transparency of oversight of intercollegiate athletics, while also expanding the scope of oversight of athletics and student-athlete issues of health and well-being, areas also the focus of provisions of the proposed Senate Bill 439.

Provisions relating to student-athletes use of name, likeness, or image

The USM and its institutions share the values and intent of the proposed legislation relating to student-athletes' ability to benefit from the use of name, likeness, and image. Across the country, a number of states are considering, or already have adopted, legislation relating to student-athletes' use of their names, likeness, or image. At the same time, there is strong interest in Congress to adopt federal legislation that would affect and compel NCAA and conference rule changes, and some legislative action is expected. The prospect of a patchwork of federal law and individual, differing state requirements is concerning to the USM, and we believe that any

legislative initiative is best handled at a federal, rather than state, level so that there is a clear and consistent set of standards devoid of conflicts between differing legislative initiatives in different legislative bodies.

Further, the implementation of rule changes adopted by the NCAA and the various conferences are matters where institutional decision-making will balance the concerns and needs of the entire campus community.

Lastly, issues like the impact of compensation received by student-athletes for the use of name, likeness, or image may have implications for federal financial aid processes and calculations, and potentially accreditation matters that are better addressed through federal legislative processes.

The NCAA is currently considering updates to its name, image and likeness rules, working in conjunction with the US Justice Department. There is a concern that the proposed Senate Bill 439 would put USM institutions at odds with NCAA rules, jeopardize NCAA membership status and therefore jeopardize the revenue distributed by the NCAA or athletic conferences. The potential for conflicts between state and NCAA requirements could also result in potential legal costs to navigate the differences between Maryland state law and NCAA rules. Additionally, Congress is currently reviewing possible federal legislation and the US Supreme Court has agreed to hear a case that could be impactful. The proposed legislation should adopt a recognition of the timing, relevance and authority of rule-setting at the federal level, and by the NCAA.

Provisions mandating student-athlete scholarships and additional benefits

Several terms and provisions should be redefined, and / or taken into account practically. The definition of Graduation Success Rate should be defined to conform with the calculation used by institutions established by the NCAA. The proposed bill defines the graduation success rate as similar to the Federal Graduation Rate. We believe that using the Graduation Success Rate, as used by the NCAA in its expectations of institutions, would be more consistent and reduce conflicts and inconsistency. Further there should be some recognition that in applying the criteria at the individual sport level, that there will be wide variability in the impact of one or two student-athletes falling short academically between a sport with five team members, as compared with sports with large numbers of student-athletes like football. There should be some recognition of the small team size in assessing the minimum graduation success rate.

There are questions as yet unanswered about the implications of some provisions of the proposed bill in terms of financial aid requirements.

Other provisions in the Senate Bill 439 mandate or require particular scholarship and student-athlete funding arrangements, or require additional reporting processes for Title IX specifically focused on intercollegiate athletics, or increase insurance spending specifically for student-athletes. Most USM institutions fund intercollegiate athletics principally through mandatory student athletics or activities fees, and work within long-standing state public policy expectations and Board of Regents policy requirements that spending be restricted to resources of the athletic

program, forcing increases in student activity or athletics fees charged to all students. The provisions requiring institutions to cover health insurance and copays, and the separate, athletic department specific reporting on compliance with Title IX requirements should be removed to avoid increases in student fees funding intercollegiate athletics.

The USM has institutions that participate in NCAA Division 1, others that participate in NCAA Division 2 and yet others that participate in NCAA Division 3. Where NCAA rules prohibit or limit particular scholarship and student-athlete benefits or funding, the requirements of the proposed bill would place the institution in conflict between state requirements imposed by the proposed bill, and requirements of the NCAA for institutions participating in NCAA Divisions 2 or 3. Exceptions for the provisions of the legislation mandating scholarships and other student-athlete support for those institutions participating in NCAA divisions where a conflict with NCAA requirements should be included.

The proposed legislation could also result in athletic departments and individual student-athletes competing for the same sponsorships in circumstances where an organization or company decides to invest their marketing dollars in the student-athletes instead of institution athletic departments. These issues, in addition to other provisions of Senate Bill 439 could reduce outside revenue for the athletic department and increase expenses. Most USM institutions with athletic departments have limited access to new revenue sources and as a result, the proposed Senate Bill 439 could result in increased pressure to raise student fees to resolve the resulting funding gap associated with reduced marketing resources or increased costs. USM institutions should, subject to NCAA and federal constraints, be allowed to adopt rules governing access of the institution and its student-athletes to common marketing resources.

In summary, the University System of Maryland appreciates the collaborative effort to introduce a bill that reflects common values and goals and the progress being achieved in adjusting the previously introduced House Bill 125, which the System believes addresses all of the issues raised, but reflecting the concerns and exceptions detailed above, the University System of Maryland requests the committee report unfavorably on Senate Bill 439.