

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

S

2

SENATE BILL 636
Education/Higher Education Committee Substitute Adopted 5/1/23

Short Title: School Athletic Transparency. (Public)

Sponsors:

Referred to:

April 6, 2023

A BILL TO BE ENTITLED
AN ACT TO REVISE OVERSIGHT OF HIGH SCHOOL INTERSCHOLASTIC ATHLETICS.
The General Assembly of North Carolina enacts:

**PART I. REVISE OVERSIGHT OF HIGH SCHOOL INTERSCHOLASTIC
ATHLETICS**

SECTION 1.(a) Article 29E of Chapter 115C of the General Statutes reads as
rewritten:

"Article 29E.

"High School Interscholastic Athletic Activities.

"Part 1. Definitions.

"§ 115C-407.50. Definitions.

The following definitions apply in this Article:

(1) Administering organization. – A nonprofit organization that has entered into
and is in compliance with a memorandum of understanding with the State
Board of Education to administer and enforce the adopted rules and
requirements of this Article for interscholastic athletic activities at the high
school level.

...

(6) Parent. – The parent or legal guardian of a student participating or seeking to
participate in interscholastic athletic activities.

(7) Participating school. – A high school that elects to offer interscholastic athletic
activities.

"Part 2. Oversight of Interscholastic Athletic Activities.

"§ 115C-407.55. Rules for high school interscholastic athletic activities.

The State Board of Education shall adopt rules governing high school interscholastic athletic
activities conducted by public school units that include the following:

(1) Student participation rules. – These rules shall govern student eligibility to
participate in interscholastic athletic activities and activities. The adoption of
these rules shall not be delegated to an administering organization. The rules
shall include, at a minimum, academic standards, enrollment the following:

a. Academic standards.

b. Enrollment and transfer requirements, attendance requirements,
medical requirements, including the following:

1. A student who is not domiciled in a local school administrative
unit but enrolls in that unit pursuant to G.S. 115C-366(d) shall



- not be eligible to participate in interscholastic athletic activities in that unit if the student's enrollment in that unit is solely for athletic participation purposes. A student determined to be ineligible under this sub-sub-subdivision shall be ineligible to participate in postseason play for one year following discovery of the violation.
2. A student who receives priority enrollment as the child of a full-time employee of a charter school pursuant to G.S. 115C-218.45(f)(3) shall not be eligible to participate in interscholastic athletics for that charter school if the Office of Charter Schools determines that the parent's employment was a fraudulent basis for the student's priority enrollment. A student determined to be ineligible under this sub-sub-subdivision shall be ineligible to participate in postseason play for one year following discovery of the violation.
- c. Attendance requirements.
- d. Medical eligibility requirements, recruiting limitations, and hardship exceptions.
- e. Biological participation requirements.
- f. Recruiting limitations.
- g. Hardship exceptions.
- (2) Student health and safety rules. – These rules shall govern requirements to ensure student health and safety during participation in interscholastic athletic activities, including rules related to concussions and emergency action plans as required by ~~G.S. 115C-12(23)~~. G.S. 115C-407.57 and G.S. 115C-407.58. The adoption of these rules shall not be delegated to an administering organization.
- (3) Penalty rules. – These rules shall establish a system of demerits for infractions of student participation rules and gameplay rules which may result in reprimands, probations, suspensions, forfeitures of contests, forfeitures of titles, and ~~disqualifications~~. disqualifications but shall not result in monetary penalties of any kind. The State Board may by rule delegate the authority to establish all or a portion of the penalty rules to an administering organization.
- (4) Appeals rules. – These rules shall establish an appeals process that provides due process to students, parents, and participating schools for enforcement of ~~rules that provides for rules~~. The adoption of these rules may not be delegated to an administering organization. The rules shall require the following:
- a. The Superintendent of Public Instruction shall appoint an independent appeals board, notice board.
- b. Notice of the infraction and the appeals process shall be provided to the party that receives the penalty, and an penalty.
- c. An opportunity to be heard before the independent appeals board-board shall be given to the entity that receives the penalty.
- d. A student and that student's parent shall be allowed to appeal a penalty resulting from the application of any rule that restricts an individual student from participating in a season, game, or series of games, and shall be provided a written copy of the rule that is the basis for the penalty.
- (5) Administrative rules. – These rules shall govern classifications of schools into divisions and conferences, administration of games, and requirements for

coaching, officiating, sportsmanship, and scheduling of seasons. The State Board may by rule delegate the authority to establish all or a portion of the administrative rules to an administering organization.

(6) Gameplay rules. – These rules shall be adopted in accordance with the requirements of the governing organization for each sport, including the requirements of the National Federation of State High School Associations. The State Board may by rule delegate the authority to establish all or a portion of the gameplay rules to an administering organization.

(7) Fees. – These rules shall establish the fees and other amounts that may be charged to a participating school for participation in interscholastic athletic activities. ~~The State Board may by rule delegate the authority to establish all or a portion of the fees to an administering organization.~~ The adoption of these rules shall not be delegated to an administering organization.

(8) Administering organization rules. – These rules shall require that to be designated as an administering organization, a nonprofit must enter into and remain compliant with a memorandum of understanding with the State Board. The adoption of these rules shall not be delegated to an administering organization. The rules shall also require the following:

a. The State Board may, by majority vote, invalidate any rule or regulation adopted by the administering organization.

b. The administering organization be audited annually by a reputable independent auditing firm, engage in open meetings as set out in the memorandum of understanding, and provide the State Board access to records of the administering organization, including financial information, annual audit reports, and any matters related to or impacting participating schools.

c. The administering organization shall enter into written agreements with each participating school.

d. The memorandum of understanding shall incorporate by reference any subsequent changes to rules or statutes made after the parties enter into the memorandum.

(9) Reporting rules. – These rules shall establish a process for reporting issues or concerns related to the administration of interscholastic athletic ~~activities.~~ activities, including intimidation or harassment of the participating school or its employees or students by an administering organization. The adoption of these rules may not be delegated to an administering organization.

"Part 3. Memorandum of Understanding.

"§ 115C-407.60. Administration and enforcement of high school interscholastic athletic activity rules.

(a) ~~The State Board of Education~~ Superintendent of Public Instruction may enter into a memorandum of understanding for a term of four years with one or more nonprofit organizations to administer and enforce the requirements of this Article and the rules adopted by the State Board for interscholastic athletic activities at the high school level. A memorandum of understanding shall include the requirements of G.S. 115C-407.61 and shall comply with the requirements of this Article. If the State Board by rule delegates the authority to establish certain rules to an administering organization, as provided in G.S. 115C-407.55, the administering organization shall not be required to comply with the requirements of Chapter 150B of the General Statutes in establishing those rules.

(a1) The State Auditor is authorized to conduct audits of any administering organization in the same manner as for State agencies in accordance with Article 5A of Chapter 147 of the General Statutes, if the State Auditor deems an audit necessary.

(b) If the ~~State Board Superintendent~~ is unable to enter into a memorandum of understanding, the State Board shall assign the administration of high school interscholastic athletic activities to the ~~Department Superintendent~~ of Public Instruction and establish fees sufficient to support the administration of the program.

(c) An administering organization is a public body for the purposes of Article 33C of Chapter 143 of the General Statutes.

"§ 115C-407.61. Memorandum of understanding requirements.

(a) If the Superintendent of Public Instruction enters into a memorandum of understanding with a nonprofit organization as provided in G.S. 115C-407.60, the memorandum shall require that organization to do the following in accordance with the requirements of this Article to maintain the authority to administer and enforce the requirements for high school interscholastic athletic activities:

- (1) Apply, enforce, and administer all rules adopted by the State Board.
- (2) If delegated by the State Board, adopt, apply, enforce, and administer administrative rules, gameplay rules, and penalty rules. A rule shall not be adopted by an administering organization until the organization has provided for publication of the proposed rule on the organization's website and provided the opportunity to the public for notice and comment on the rule. All adopted rules shall be provided within 15 days to the Superintendent for review. If the Superintendent determines that the rule adopted by an administering organization is unenforceable, the Superintendent shall notify the State Board and the administering organization shall not enforce the rule. Upon notice from the Superintendent, the State Board may either require the administering organization to revise the rule and resubmit it to the Superintendent or may rescind the delegation of authority and adopt a rule by emergency rule.
- (3) Make publicly available at no cost on the administering organization's website the following:
 - a. The organization's handbook for participating schools.
 - b. All student participation rules.
 - c. All gameplay rules.
 - d. Information on the appeals process, including specific information on how to make an appeal.
- (4) Agree to adopt requirements for membership of the nonprofit board that require equal representation on the board from each educational district established as provided in G.S. 115C-65.
- (5) Adopt an ethics policy that requires board members to avoid conflicts of interest and the appearance of impropriety.
- (6) Agree to adopt procedures for its operations that are comparable to those of Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Superintendent. The procedures may provide for the confidentiality of personnel files comparable to Article 7 of Chapter 126 of the General Statutes.
- (7) Apply the standards established by the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, to all student records containing personally identifiable information in the possession of the administering organization. The administering organization shall be authorized to display and share student information designated by a participating school as directory information unless the participating school indicates that a parent has opted out of disclosure of that information. Other than directory information, all student records containing personally identifiable information held by the administering organization are not public records and should not be released

under procedures adopted in accordance with subdivision (6) of this subsection.

(8) Enter into contracts with participating schools as to the monetary requirements for participation, including the payment of reasonable annual fees by participating schools as needed to support the duties of the administering association. Annual fees may vary based on the division to which the school is assigned. All fees shall be in compliance with the State Board's fee rules.

(9) Agree to reduce annual fees to participating schools by a minimum of twenty percent (20%) when the total fund balance for the administering organization is two hundred fifty percent (250%) of the administering organization's total expenses from the prior fiscal year. The administering organization may increase annual fees to participating schools, consistent with the State Board's rules on fees, when the total fund balance is one hundred fifty percent (150%) of the organization's total expenses from the prior fiscal year.

(10) Agree to retain no more than thirty-three percent (33%) of the net proceeds of any State tournament game.

(11) Agree to be audited annually by a reputable independent auditing firm and to be audited by the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes, if the State Auditor deems an audit necessary.

(12) Agree to not engage in any of the following activities:

a. Solicit grant funding and sponsorships from third-party organizations, other than for State tournament games.

b. Provide grants to schools regulated by the administering organization.

c. Provide scholarships to players, except when funded by donor-directed funds.

d. Designate the use of specific or preferred vendors or require the use of any single-source or vendor specific contracts.

e. Retain a percentage of gate receipts for games other than State tournament games.

f. Regulate or control the intellectual property of schools, including team logos, mascots, and audio or video of any game other than the State tournament games.

g. Restrict the recording of audio or video at a State tournament game by any parent of a student participating in the game or any employee of the school participating in the game.

h. Retain any portion of receipts collected from ticket sales, concessions, or sale of merchandise by a participating school.

i. Retaliate against participating schools, or the employees or students of those schools, for reporting to the administering organization, the State Board, or any other government entity on any of the following topics. For the purposes of this sub-subdivision, "retaliate" does not include the application of a penalty rule that is appealable to an independent appeals board.

1. Violations of laws or rules.

2. Fraud.

3. Misappropriation of resources.

4. Substantial and specific danger to student or employee health and safety.

5. Gross mismanagement or abuse of authority.

- j. Prohibit or restrict a participating school from scheduling a nonconference game during the regular season or take any portion of ticket seasons from those games.
- (13) Report annually by December 1 to the Superintendent of Public Instruction and the State Board of Education on the following:
- a. Activities during the prior school year and recommendations and findings regarding improvement of high school interscholastic athletics.
- b. A copy of both the most recent annual audit conducted by the independent auditing firm and any audit conducted by the State Auditor.
- c. A schedule of current fees charged to participating schools.
- d. The amount of fees and gate receipts collected.
- e. The current fund balance for the administering organization.

(b) The Superintendent may terminate any memorandum of understanding for noncompliance with this Article or the terms of the memorandum of understanding. In the event of termination of a memorandum of understanding, the nonprofit organization shall return to each participating school a pro rata share of the funds paid by that school for the year as provided in the participating school's contract with the organization.

"Part 4. Public School Unit Conduct of Interscholastic Athletic Activities.

"§ 115C-407.65. Conduct of high school interscholastic athletic activities by public school units.

(a) All public school units with participating schools shall conduct high school interscholastic athletic activities in accordance with the rules adopted by the State Board of Education and as administered and enforced by either an administering organization that is in compliance with the memorandum of understanding or the ~~Department~~ Superintendent of Public Instruction. Public school units shall not be regulated by any other entities for regular and postseason high school interscholastic athletics.

(b) Participating schools shall purchase catastrophic insurance for high school interscholastic athletic activities as provided in Part 2 of Article 31A of Chapter 58 of the General Statutes.

"§ 115C-407.70. Middle school interscholastic athletic activities.

(a) The State Board of Education shall adopt rules governing middle school interscholastic athletic activities conducted by public school units consistent with the requirements of G.S.115C-407.55 for student participation rules, student health and safety rules, penalty rules, appeals rules, administrative rules, gameplay rules, fee rules, and reporting rules.

(b) The rules adopted by the State Board of Education for interscholastic athletic activities at the middle school level shall be administered by the Superintendent of Public Instruction.

(c) All public school units with schools that participate in middle school interscholastic athletics shall conduct middle school interscholastic athletic activities in accordance with the rules adopted by the State Board of Education and as administered and enforced by the Superintendent of Public Instruction.

"Part 5. Public School Unit Reports.

"§ 115C-407.75. Public school units annual interscholastic athletic reports.

(a) Each public school unit with one or more participating schools shall annually report by June 15 the following information to the Superintendent of Public Instruction and the State Board of Education:

- (1) The total dollar amount spent on interscholastic athletic activities, by the following categories:
- a. Administering association fees.

- b. Salaries or stipends for coaches and faculties for duties associated solely with interscholastic athletics.
- c. Capital costs, including new construction, repair and renovation, and maintenance costs for existing athletic facilities.
- d. Uniform and equipment costs.
- e. Travel and transportation costs.
- f. Officiating costs.
- g. Other identified costs.

(2) The total dollar amount received from interscholastic athletic activities, including funds held in special funds of individual schools, by the following categories:

- a. Gate receipts.
- b. Concession sales.
- c. Merchandise sales or sales of items directly related to interscholastic athletics, including apparel and audiovisual materials.
- d. Student fees.
- e. Monetary and in-kind contributions from third-party organizations.
- f. State or local funding expended on capital costs for athletic facilities.
- g. Other identified sources of funds.

(b) The Superintendent of Public Instruction shall provide a summary of the reports by public school units and a copy of each public school unit report to the Joint Legislative Education Oversight Committee no later than October 15 annually."

SECTION 1.(b) G.S. 143-318.10(b) reads as rewritten:

"(b) As used in this Article, "public body" means any elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, constituent institutions of The University of North Carolina, or other political subdivisions or public corporations in the State that (i) is composed of two or more members and (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function. In addition, "public body" ~~means the~~ means the following:

- (1) The governing board of a "public hospital" as defined in ~~G.S. 159-39~~ and the G.S. 159-39.
- (2) The governing board of any nonprofit corporation to which a hospital facility has been sold or conveyed pursuant to G.S. 131E-8, any subsidiary of such nonprofit corporation, and any nonprofit corporation owning the corporation to which the hospital facility has been sold or conveyed.
- (3) An administering organization as defined in G.S. 115C-407.50(1)."

SECTION 1.(c) In accordance with the requirement that the memorandum of understanding incorporate by reference subsequent changes to statutes made after the parties enter into the memorandum of understanding, the Superintendent of Public Instruction shall be substituted for the State Board of Education in any memorandum of understanding existing as of the date this act becomes law.

PART II. RECODIFICATION AND REORGANIZATION OF CURRENT INTERSCHOLASTIC ATHLETICS STATUTES

SECTION 2.(a) G.S. 115C-12(23) reads as rewritten:

"(23) Power to Adopt Rules for Interscholastic Athletic Activities. – The State Board of Education shall adopt rules governing interscholastic athletic activities conducted by ~~local boards of education, public school units,~~ including eligibility for student participation, in accordance with ~~this~~

subdivision and Article 29E of this Chapter. With regard to middle schools and high schools, the rules shall provide for the following:

a. ~~All coaches, school nurses, athletic directors, first responders, volunteers, students who participate in interscholastic athletic activities, and the parents of those students shall receive, on an annual basis, a concussion and head injury information sheet. School employees, first responders, volunteers, and students must sign the sheet and return it to the coach before they can participate in interscholastic athletic activities, including tryouts, practices, or competition. Parents must sign the sheet and return it to the coach before their children can participate in any such interscholastic athletic activities. The signed sheets shall be maintained in accordance with sub-subdivision d. of this subdivision.~~

~~For the purpose of this subdivision, a concussion is a traumatic brain injury caused by a direct or indirect impact to the head that results in disruption of normal brain function, which may or may not result in loss of consciousness.~~

b. ~~If a student participating in an interscholastic athletic activity exhibits signs or symptoms consistent with concussion, the student shall be removed from the activity at that time and shall not be allowed to return to play or practice that day. The student shall not return to play or practice on a subsequent day until the student is evaluated by and receives written clearance for such participation from (i) a physician licensed under Article 1 of Chapter 90 of the General Statutes with training in concussion management, (ii) a neuropsychologist licensed under Article 18A of Chapter 90 of the General Statutes with training in concussion management and working in consultation with a physician licensed under Article 1 of Chapter 90 of the General Statutes, (iii) an athletic trainer licensed under Article 34 of Chapter 90 of the General Statutes, (iv) a physician assistant, consistent with the limitations of G.S. 90-18.1, or (v) a nurse practitioner, consistent with the limitations of G.S. 90-18.2.~~

c. ~~Each school shall develop a venue specific emergency action plan to deal with serious injuries and acute medical conditions in which the condition of the patient may deteriorate rapidly. The plan shall include a delineation of roles, methods of communication, available emergency equipment, and access to and plan for emergency transport. This plan must be (i) in writing, (ii) reviewed by an athletic trainer licensed in North Carolina, (iii) approved by the principal of the school, (iv) distributed to all appropriate personnel, (v) posted conspicuously at all venues, and (vi) reviewed and rehearsed annually by all licensed athletic trainers, first responders, coaches, school nurses, athletic directors, and volunteers for interscholastic athletic activities.~~

d. ~~Each school shall maintain complete and accurate records of its compliance with the requirements of this subdivision pertaining to head injuries."~~

SECTION 2.(b) Part 2 of Article 29E of Chapter 115C of the General Statutes, as enacted by this act, is amended by adding a new section to read:

"§ 115C-407.57. Rules on concussions and head injuries.

(a) For the purpose of this section, a concussion is a traumatic brain injury caused by a direct or indirect impact to the head that results in disruption of normal brain function which may or may not result in loss of consciousness.

(b) With regard to middle schools and high schools, the State Board of Education shall adopt rules that provide for the following:

(1) All coaches, school nurses, athletic directors, first responders, volunteers, students who participate in interscholastic athletic activities, and the parents of those students shall receive, on an annual basis, a concussion and head injury information sheet. School employees, first responders, volunteers, and students must sign the sheet and return it to the coach before they can participate in interscholastic athletic activities, including tryouts, practices, or competition. Parents must sign the sheet and return it to the coach before their children can participate in any such interscholastic athletic activities. The signed sheets shall be maintained in accordance with subsection (c) of this section.

(2) If a student participating in an interscholastic athletic activity exhibits signs or symptoms consistent with a concussion, the student shall be removed from the activity at that time and shall not be allowed to return to play or practice that day. The student shall not return to play or practice on a subsequent day until the student is evaluated by and receives written clearance for such participation from one of the following:

a. A physician licensed under Article 1 of Chapter 90 of the General Statutes with training in concussion management.

b. A neuropsychologist licensed under Article 18A of Chapter 90 of the General Statutes with training in concussion management and working in consultation with a physician licensed under Article 1 of Chapter 90 of the General Statutes.

c. An athletic trainer licensed under Article 34 of Chapter 90 of the General Statutes.

d. A physician assistant, consistent with the limitations of G.S. 90-18.1.

e. A nurse practitioner, consistent with the limitations of G.S. 90-18.2.

(c) Each middle and high school shall maintain complete and accurate records of its compliance with the requirements of this section."

SECTION 2.(c) Part 2 of Article 29E of Chapter 115C of the General Statutes, as enacted by this act, is amended by adding a new section to read:

"§ 115C-407.58. Emergency action plans.

(a) With regard to middle schools and high schools, the State Board of Education shall adopt a rule that requires each school to develop a venue-specific emergency action plan to deal with serious injuries and acute medical conditions in which the condition of the patient may deteriorate rapidly. The plan shall include a delineation of roles, methods of communication, available emergency equipment, and access to and plan for emergency transport.

(b) The rule required by subsection (a) of this section shall require the plan to be at least the following:

(1) In writing.

(2) Reviewed by an athletic trainer licensed in North Carolina.

(3) Approved by the principal of the school.

(4) Distributed to all appropriate personnel.

(5) Posted conspicuously at all venues.

(6) Reviewed and rehearsed annually by all licensed athletic trainers, first responders, coaches, school nurses, athletic directors, and volunteers for interscholastic athletic activities."

PART III. IMPLEMENTATION

SECTION 3.(a) The State Board of Education shall review and adopt new or revised emergency rules on interscholastic athletics for use in the 2023-2024 school year in accordance with the requirements of Article 29E of Chapter 115C of the General Statutes, as enacted by this act, no later than August 1, 2023. Notwithstanding G.S. 150B-21.1A, no findings of need shall be required for an emergency rule adopted for the 2023-2024 school year, an emergency rule adopted as provided in this subsection shall be effective until June 30, 2024, and the State Board of Education shall not be required to adopt temporary rules to replace an emergency rule for use in the 2023-2024 school year. The State Board shall submit all emergency rules in accordance with the requirements in 26 NCAC 02C.

SECTION 3.(b) The State Board of Education shall adopt new or revised permanent rules for use beginning with the 2024-2025 school year and thereafter.

SECTION 3.(c) The Superintendent of Public Instruction, in consultation with any administering organization, shall study and make findings and recommendations on the following issues and report on its findings and recommendations to the Joint Legislative Education Oversight Committee by April 1, 2024:

- (1) Whether an administering organization should be responsible for overseeing the conduct of middle school interscholastic athletics for public school units. The Superintendent shall include in the deliberations an examination of the potential costs to public school units for oversight of middle school interscholastic athletics by an administering organization. The Superintendent shall establish workgroups of athletic directors, principals, and coaches employed by schools serving students in grades six through eight and parents of students in grades six through eight to provide input on this recommendation.
- (2) Factors that should be considered in (i) home school students' participation in interscholastic athletics, including how to address insurance and liability issues for those students while participating in interscholastic athletics, (ii) cooperative innovative high school students' participation in interscholastic athletics, and (iii) nonpublic schools. The Superintendent shall establish workgroups of athletic directors, principals, and parents of students in home schools, cooperative innovative high schools, and nonpublic schools to provide input on this recommendation.

SECTION 3.(d) Notwithstanding the requirements of G.S. 115C-407.75, as enacted by this act, all public school units shall submit the first annual interscholastic athletic report to the Superintendent of Public Instruction and the State Board of Education no later than July 15, 2024, and shall include data from the 2019-2020, 2020-2021, 2021-2022, 2022-2023, and 2023-2024 school years.

SECTION 3.(e) This act is effective when it becomes law. Sections 1 and 2 of this act apply beginning with the 2023-2024 school year and thereafter.