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ATHLETICS

Florida Universities Have Turned Athletics Departments Into Quasi-Private Arms. What Does That Mean for Public Accountability?

By Will Jarvis | JUNE 17, 2019

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Lance King, Getty Images

Florida State Seminoles huddle during a basketball game against the Duke Blue Devils at Donald L. Tucker Center in January in Tallahassee, Fla.

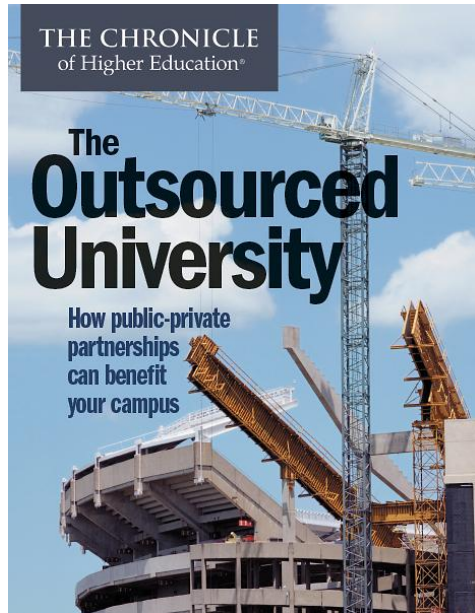
Affiliated nonprofit groups have long existed on campuses in the form of fund-raising arms and university foundations, but Florida State University this month became the third public institution in the Sunshine State to transform its athletics department into a direct-support organization — a quasi-private status that limits public oversight while granting the department sovereign immunity as a governmental entity.

The Florida State University Athletics Association, set to begin operations this fall, will join the University Athletic Association (University of Florida) and the University of Central Florida Athletics Association as DSOs operating athletics departments.

An FSU spokesperson said the move would offer better coordination between athletics and its fund-raising arm, Seminole Boosters Inc., a direct-support organization that funds athletics scholarships and infrastructure projects. John Thrasher, the university's

president, cited budgeting, strategy, and communications as driving factors in the decision.

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But open-records advocates worry the move to a quasi-private corporation is the latest in a university landscape shifting away from public oversight. Florida law exempts DSOs — which are intended to “receive, hold, invest, and administer property and to make expenditures to or for the benefit of a state university” — from public-records laws. That means sex discrimination in salaries, academic malfeasance, self-reported NCAA violations, contract buyouts, and leaders’ decision making in athletics scandals could all be shielded from public oversight.

“When the Sunshine Laws are such a point of pride and so strong in Florida, to be a bottom feeder when it comes to higher education, it’s an embarrassment,” said Frank D. LoMonte, director of the University of Florida’s Brechner Center for Freedom of Information.

Thrasher told *The Chronicle* that the new organization would “absolutely not” change its policies in handling open-records requests and, asked if the university would release contract and salary information, said they have and will continue to do so, despite not being legally obliged.

“The whole purpose of having fund raising and athletics working together is to support our student athletes,” Thrasher said. “And we want to do that every way we can. ... I think it’ll be a better organization, more efficient, and a slimmer, trimmer organization that gets things done better than we have in the past.”

Florida State athletics brought in about \$145 million in revenue for the 2017-18 year, and Seminole Boosters annually reports revenues of \$40 million to \$50 million. If anything, LoMonte said, the money flowing in athletics points to a need for more public scrutiny, not less.

“If you picked out the two areas of a public university that need the most public oversight, it would be athletics and fund raising,” LoMonte said. “It’s the two areas where the most things can possibly go wrong and are most prone to scandal, and those are the two things the Florida legislature expressly carved out to be free from public oversight.”

Diane Roberts, a professor of English at Florida State University, said she “had no reason not to believe [Thrasher], that secrecy is not the motivation here.”

But Roberts, a self-described “obsessed” Seminoles football fan and author of the book *Tribal: College Football and the Secret Heart of America*, wondered about the long-term consequences of privatization and what might happen when leaders lacks similar virtue.

“This depends on who’s running everything,” she said. “The current athletic director won’t be here forever. The current president won’t be here forever.”

'A Sword and a Shield'

The University of Florida, where the athletics department has operated as a direct-support organization since 1929, complies with most open-records requests but reserves the right to deny any by state law. The University of Central Florida has been less forthcoming — refusing, for example, to release its coaches' contracts and any benefits associated with them. A 2015 *Orlando Sentinel* column noted that UCF's general counsel had argued “the contracts are not only exempt from the public record, but a court ruling made it illegal for the university to release them.”

Yet after Ereck Plancher, a Central Florida football player, collapsed and died after a 2008 off-season workout, the university benefited from its status as a governmental organization. A jury had found the athletics association — which had \$21 million in liability-insurance coverage — to be negligent in the 19-year-old's death and had awarded the family \$10 million.

The university appealed the decision, citing sovereign immunity, a legal doctrine limiting the liability of a governmental entity. Because the university's president at the time, John Hitt, controlled the organization, the Florida Supreme Court ruled in favor of the university, which awarded the family \$200,000, the maximum payout for state agencies.

They use direct-support organization status “as a sword and a shield to get around certain limitations and restrictions on what they'd be allowed to do if they were purely a public entity,” said Jeff Murphy, a lawyer who represented the Plancher family. “But then, when they do something that may be negligent or subject them to liability, they want to hide behind the cap. Something about that just doesn't seem right to me.”

Florida State is the latest to take advantage of the quasi-private loophole, but it won't be the last. In a five-year strategic plan published in 2016, the University of South Florida's athletics department described as a goal that, by 2021, it, too, would shift to a direct-support organization.

The organizations were “originally authorized to raise money on behalf of state programs,” according to a 1987 State Senate Committee review of the entities, but their functions were — and continue to be — multipurposed. “In some cases,” the review stated, “direct-support organizations actually are operating state programs, with state funds, outside of the laws and regulations governing state agencies.”

Brian Flahaven, a senior director with the Council for Advancement and Support of Education, said such affiliate organizations have long helped with fund-raising, endowment, and real-estate ventures.

“The corpus [of direct-support organizations] traditionally has been to raise money to support the programs of the university,” said Barbara Petersen, president of Florida’s First Amendment Foundation. “In this particular case, the university has turned the administration of one of its departments over to a private, nonprofit organization.”

‘Live or Die by Their Reputation’

Athletics has long been a financial and cultural juggernaut on college campuses. A 2018 ESPN report found that, in 39 states, NCAA coaches — all in either football or men’s basketball — were the highest-paid public employees. In Florida that employee was the former Seminoles football coach Jimbo Fisher, who made \$5.7 million in 2017.

National reputations — and enrollment — can also crash or soar thanks to the actions of the athletics department.

“They know they are under a microscope,” LoMonte said. “If word gets out that there’s some sort of problem, it might cause people to second-guess their donations or second-guess signing on as a recruit. They live or die by their reputation, and that’s why they’re so protective of it.”

Secrecy is something of a staple in elite NCAA athletics programs, but in 2016 Georgia legislators created a law further diminishing access to public information. Supported by the University of Georgia’s football coach, Kirby Smart, the legislation extended the open-records-request response time for public-university athletics departments from three days to 90 days — citing in-state recruiting competition as the reason.

In Pennsylvania a statute exempted Pennsylvania State University from releasing campus police reports, which could have revealed a 1998 sexual-misconduct report on Jerry Sandusky, the former assistant football coach convicted of child sexual abuse and rape in 2012. As a 2012 Poynter article noted, the “closed culture” on campus “protected abusers, failed to protect victims, and survived by closing its records to journalists who might have exposed it.”

Amy Sanders, an associate professor of journalism at the University of Texas at Austin, has written extensively on the privatization of public entities, and she warned that laws protecting Florida’s quasi-private groups make investigations much more difficult for the public to demand and for journalists to undertake.

“The most important thing to remember, regardless of how you feel about college athletics, is that these are students involved in athletic pursuits,” Sanders said. “And a number of these policies directly inhibit public oversight on how students are being treated, what’s being expected of them, and how the sports teams they play for are being managed.”

Will the average Florida State fan care about this legal shield?

“No,” Roberts said. “They ought to care because the money we deal with in big-time college football, as you know, is huge. ... I would like to say this: This may be the beginning of privatizing college football to the extent where we pay players and disentangle the whole thing from a pretense of education. This might be the beginning, and it’s possible I look back and go, *Yeah, maybe that was a good thing after all.*”

Will Jarvis is an editorial intern at The Chronicle. Follow him on Twitter @willyfrederick, or email him at will.jarvis@chronicle.com.

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1255 23rd Street, N.W.
Washington, D.C. 20037