

**Faculty Board on Athletics
Meeting of December 12, 2016
4:00 pm-5:30 pm, 2130 Eck Hall of Law**

Members present: Patricia Bellia (Chair), James Brockmole, John Gaski, Erin Hoffmann Harding, Patrick Holmes, Dan Kelly, Sean Kelsey, Mary Ann McDowell, Susan Ohmer, Jaime Pensado, Michael Stanistic, Kevin Vaughan

Members excused: Alexa Baltes, Ann Firth, Jack Swarbrick

Athletics liaisons: Jill Bodensteiner, Missy Conboy, Beth Hunter

Guests: Tom Burish, Provost, Claire Leatherwood Slebonick (recorder)

1. Call to Order and Opening Prayer

Professor Patricia Bellia called the meeting to order and invited Professor Sean Kelsey to offer the opening prayer.

2. Minutes of Meeting of November 9, 2016

With minor changes to page four under agenda item four, *Compliance Office Annual Report –Jill Bodensteiner, Senior Associate Athletics Director*, the Board unanimously approved the minutes of the meeting of November 9, 2016.

3. Chair’s Announcements

Following the approval of the minutes, Professor Bellia made a series of chair’s announcements, beginning with an update on schedules. She noted that she approved the following schedules: men’s and women’s basketball, hockey (revised), men’s and women’s lacrosse, softball (revised), women’s swimming and diving, and men’s and women’s outdoor track and field. Professor Bellia explained that although the full men’s and women’s outdoor track and field schedule would require more than the permitted number of class misses, no single student-athlete will be missing more than the allowable number of classes. Professor Bellia also announced that she would soon be receiving a report on reading day competition and will share it with the full Board.

Finally, Professor Bellia shared that she approved captaincies for men’s tennis and two additional captains for women’s basketball. She noted that she had cleared a list of candidates for football captaincies. The football program announced its captains during the Echoes celebration.

4. NCAA Infractions Report

Professor Bellia updated the Board on the University's pending NCAA infractions case. She highlighted three bylaws, Bylaw 10, Bylaw 16, and Bylaw 19, and described how they relate to the case. Bylaw 10 covers "unethical conduct," and the NCAA has interpreted that Bylaw to cover student-athlete academic misconduct that leads to an erroneous certification of eligibility, if the student-athlete subsequently competes. Bylaw 16 covers the receipt of extra benefits, and the NCAA has interpreted that Bylaw to cover situations in which an institutional staff member (including a student employee) provides impermissible academic assistance to a student-athlete. Bylaw 19 establishes the procedures by which the NCAA processes infractions cases. That Bylaw also establishes an array of potential penalties, including the discretionary vacation of team records penalty that Notre Dame is contesting in this case.

Professor Bellia discussed five overlapping phases of the case that occurred over the last two years:

- The Office of the General Counsel's investigation of the case. This phase began in August 2014, shortly after staff of the Office of Academic Services for Student-Athletes reported a suspicion that a student-athlete had engaged in academic improprieties. This phase concluded early in 2015.
- The Honor Code process. The University processed allegations against current students through its Honor Code process. Regarding the five student-athletes who were withheld from all athletics activities beginning in August 2014, this process concluded in November 2014, when all five student-athletes exhausted their appeals.
- The NCAA interpretive process. The case involved two significant interpretive questions: (a) whether Bylaw 10 covers situations in which an institution properly certifies a student-athlete as eligible based on all available information, but a subsequent grade change associated with an honor code violation retroactively undermines that certification; and (b) whether Bylaw 16's extra benefits framework applies to situations in which a student-athlete receives improper academic assistance from a staff member, with no retroactive impact on the student-athlete's certification of eligibility.

Notre Dame had no opportunity to contest the Bylaw 10 interpretation, which NCAA staff viewed as settled. In response to a question from Professor Mary Ann McDowell regarding the erroneous certification of eligibility, Professor Bellia stated that there is precedent for the position that even if the institution does everything correctly at the time of certification, the certification could still be retroactively rendered erroneous.

Notre Dame strongly contested the Bylaw 16 interpretation. In part, the University argued that the interpretation was inconsistent with an April 2014 interpretation narrowing the scope of Bylaw 10 in academic misconduct cases. NCAA staff, in effect, sought to restore the pre-2014 interpretation by recharacterizing certain violations as Bylaw 16 violations—a result that would be substantively and procedurally improper. While Notre Dame's interpretive request was pending, the NCAA Legislative Council approved the NCAA staff's approach in another case. In August 2015, the

NCAA Legislative Council ultimately affirmed the application of this interpretation to Notre Dame's case.

- The NCAA Enforcement Staff investigation and Summary Disposition Process: Professor Bellia discussed the institution's engagement with the NCAA Enforcement Staff throughout this process, describing when the NCAA was first informed of the potential violation in August 2014, the institution's receipt of a Notice of Inquiry in May 2015, the institution's receipt of a Notice of Allegations (NOA) in November 2015, and the submission of the Summary Disposition Report (SDR) in March 2016.

In the SDR, Notre Dame and the NCAA Enforcement Staff agreed that Bylaw 10 and Bylaw 16 violations occurred, agreed on the facts supporting the violations, and agreed that the NCAA should process the case as "Level II-Mitigated" as to the University. Importantly, the NCAA staff and Notre Dame agreed that the case involved no lack of institutional control, no failure to monitor, and no failure of head coach responsibility to create an atmosphere of compliance or monitor staff members. The NCAA and Notre Dame agreed on certain aggravating and mitigating factors, and Notre Dame submitted certain additional mitigating factors (including exemplary cooperation) for the Committee on Infractions' consideration. Finally, Notre Dame proposed certain penalties, including payment of a \$5000 fine and the vacation of individual records.

- Committee on Infractions Review. Professor Bellia then discussed the role of the Committee on Infractions (COI), noting that in July 2016 the COI accepted the facts and violations outlined in the SDR. The COI sought to impose four penalties beyond those Notre Dame submitted: one year of probation, vacation of team records for students involved in Bylaw 10 violations, disassociation of the student trainer who provided the impermissible academic assistance, and additional administrative reporting requirements. The University chose to contest the vacation of team records penalty, which led to an expedited hearing in September 2016.

Professor Bellia offered several reasons why the institution decided to appeal the vacation of team records penalty: (1) the belief that attaching a vacation of team records penalty to an institution's academic decisions represents a fundamental incursion on institutional academic autonomy; (2) the disproportionate nature of the penalty in relation to the violation; and (3) the incongruous fit of past Committee on Infractions precedent to the facts of Notre Dame's case.

Several members asked questions related to the prevalence of the discretionary vacation of team records penalty. Professor Bellia observed that the Committee on Infractions frequently does impose a vacation of team records penalty when academic misconduct results in ineligible competition. All such cases, however, involve one or more factors not present in this case: a finding of lack of institutional control, failure to monitor, or failure of head coach responsibility; direct involvement or knowledge of a coach; direct involvement of a high-ranking administrator or an individual with a special role in protecting student-athlete academic integrity (e.g., academic counselor or academic tutor); or a specific finding that the institution knew or should have known of the underlying academic misconduct before it certified the student-athlete's eligibility.

Members asked about the Enforcement Staff's failure to agree upon, and the Committee on Infractions' failure to award, a mitigating factor for exemplary cooperation. Professor Bellia and Ms. Bodensteiner responded that it is difficult to say why Notre Dame did not receive exemplary cooperation. Available Committee on Infractions cases simply do not provide much explanation for why some institutions receive exemplary cooperation and others do not, other than that the institution must go above and beyond the level of cooperation expected of all institutions.

Professor Dan Kelly noted that a review of the Honor Code is among the corrective measures Notre Dame is obligated to undertake. Professor Kelly asked for a status update on the review process. Professor Bellia responded that the review was initially expected to be complete by the end of the 2015-2016 academic year. In response to a question from Professor Mary Ann McDowell, Professor Bellia confirmed that although the process is ongoing, the review is not proceeding as initially envisioned. In response to a comment from Professor James Brockmole, Professor Bellia confirmed that the facts of this case revealed some gaps in the Honor Code that need to be addressed.

In response to a question from Professor John Gaski about whether the NCAA ought to have treated the student athletic trainer involved in this case as an institutional employee, Professor Bellia noted that the NCAA membership had since dramatically revised the institutional staff member definition as it relates to academic misconduct. In particular, the academic misconduct legislation finalized in spring 2016 excludes student employees from that definition, unless the student employee provides academic services to student-athletes or acts at the direction of an institutional staff member.

Professor Ohmer asked about a timeframe for the next steps in the process, to which Claire Leatherwood Slebonick replied that it could be as late as mid-March before the Infractions Appeals Committee meeting is scheduled. Professor Bellia then described the abuse of discretion standard the institution must meet to win its appeal.

In response to a question from Professor Brockmole, Professor Bellia described the implementation of several recommendations from a skip-level review conducted by Father John Jenkins and an external review of the Office of Academic Services for Student-Athletes. Ms. Bodensteiner added that Athletics Compliance Office has been more proactive in educating the Honesty Committees, has realigned a staff member to focus solely on academics, and has enhanced the education for student tutors and student-athletes.

In concluding this discussion, Professor Bellia reiterated that the behavior underlying the case was highly improper. That does not go to the question of whether the NCAA should or should not insert itself into matters of academic autonomy.

5. Academic and Graduation Rate Reports (Pat Holmes)

Professor Bellia invited Mr. Holmes to give his academic and graduation rate reports. Mr. Holmes thanked Professor Bellia and began his reports by discussing the Graduation Success Rate (GSR), which the NCAA released in the first week of November. Mr. Holmes pointed out

that Notre Dame's GSR continues to be strong, highlighting that Notre Dame's 98% has either been first or tied for first within the Football Bowl Subdivision (FBS) rankings for the tenth consecutive year. Mr. Holmes then proceeded to offer several statistics from the GSR report: Notre Dame is first among the rate for female student-athletes and is tied with Vanderbilt for the rate among male student-athletes; and Notre Dame is number one in percentage of teams with a GSR of 100, with eighteen out of twenty-two programs hitting 100.

Mr. Holmes then discussed the difference between the Federal Graduation Rate (Fed Rate) and the GSR, emphasizing that the Fed Rate is a rate applicable to all students while the GSR only encompasses student-athletes and that the rates measure the impact of transfers differently. Mr. Holmes offered additional information to aid in the reading of the report, further describing the student population included in each rate. Mr. Holmes directed the Board's attention to the numbers of men's basketball and football and compared Notre Dame's results to other institutions' scores.

In response to a question from Professor McDowell, Mr. Holmes acknowledged that Stanford had very good retention numbers. Mr. Holmes explained that whether or not a student leaves in good academic standing is determined by the standards of the institution, which leads to variable measures across institutions; Mr. Holmes reminded the Board that Notre Dame's institutional standards related to whether or not a student is in good standing are higher than the NCAA minima.

Mr. Holmes directed the Board's attention to the report on student-athletes who have remained at Notre Dame for nine or more semesters, reminding the Board of the application process. He stated that student-athletes in their fifth year of athletics eligibility can be non-degree-seeking graduate students, in addition to being degree-seeking graduates or undergraduates. Mr. Holmes noted that those student-athletes who are degree-seeking typically complete the degree programs.

Professor McDowell asked whether or not the Student-Welfare Subcommittee should consider the conflict between the Global Health program's strict course requirements and practice times, given the popularity of this program with graduate student-athletes.

With limited time remaining, Professor Bellia collected the copies of Mr. Holmes reports so that he could complete his reports at the next meeting.

6. Request for Waiver of On-Campus Housing Requirement

Professor Bellia put before the Board the unanimous recommendation from the Student-Welfare Subcommittee to grant a request for a waiver of the on-campus housing requirement, sharing that a doctor has recommended that the student-athlete move off-campus housing due to a childhood ear disease that is affected by the student's repeated respiratory infections. Air-conditioned dorm housing has not improved the student's condition. Professor Mary Ann McDowell moved to approve the request, with all voting members in favor, none opposed, and no abstentions.

7. Adjournment

Professor Bellia reserved the Governance update for the following meeting and adjourned the meeting at 5:31 p.m.