

**Faculty Board on Athletics
Meeting of November 13, 2015
8:30 am-10:30 pm, 500 Main Building**

Members present: Patricia Bellia (Chair), Alexa Baltus, James Brockmole, Ann Firth, John Gaski, Patrick Holmes, Dan Kelly, Sean Kelsey, Mary Ann McDowell, Robin Rhodes, Michael Stanistic, Jack Swarbrick, Erin Hoffmann Harding, Kevin Vaughan

Member excused: Ann Tenbrunsel

Athletics Liaisons: Jill Bodensteiner, Missy Conboy, Michael Harranty, Beth Hunter

Observers and Guests: Mik Aoki (Head Coach, Baseball), Brandon Roach (Associate General Counsel), Claire Leatherwood (Recorder)

1. Call to order and opening prayer

Professor Bellia called the meeting to order and offered the opening prayer.

2. Minutes of October 2, 2015, meeting

After technical changes, the minutes of October 2, 2015, were unanimously approved.

3. Chair's Announcements

Professor Bellia announced captaincy approvals for the following sports: men's basketball, women's basketball, women's lacrosse, and women's swimming.

Professor Bellia announced that the rowing and softball schedules were both approved. Additionally, Professor Bellia announced a change to the football class miss schedule to accommodate an earlier start time for the Pittsburgh game. The football team used a full day of missed class for the Pittsburgh game rather than the previously scheduled full day of missed class for the Boston College game, resulting in no additional missed class time. Other than this change, the missed class schedule for football remains the same.

4. Baseball Scheduling Request from Mik Aoki, Head Coach, Baseball

Professor Bellia introduced the next item on the agenda, reiterating the current policy of the Faculty Board on Athletics (FBA) on class misses relating to team schedules and welcoming Mik Aoki, Head Baseball Coach, who was requesting additional class misses totaling five class misses for the Monday/Wednesday/Friday (MWF) sequence and four class misses for the Tuesday/Thursday (TTh) sequence. Coach Aoki offered various factors driving him to request these additional class misses: weather during the

earlier part of the season restricting the team's ability to practice and play outdoors, most conferences, including the Atlantic Coast Conference (ACC), no longer scheduling double headers, the fact that the academic calendar is accelerated for the spring 2015 semester compared to the baseball schedule, his desire to give his student-athletes and staff Easter Sunday off, and the lack of lights at Michigan State's stadium which requires an earlier game start time. Coach Aoki noted both that the entire team would not travel for each away game, allowing some members of the squad to remain in class, and that he does not anticipate requiring the same number of additional misses in upcoming seasons.

In response to a question from Professor Brockmole, Coach Aoki stated that it would be very difficult to actively limit the missed classes of each individual player so that no player was over the amount listed in the FBA guidelines. Professor Brockmole asked if the coaching staff imposes mandatory study time during team travel and if a member of the Academic Services for Student-Athletes (ASSA) staff travels with the team to provide additional guidance. Coach Aoki replied that the team has travelled with a member of the ASSA staff, usually during periods of high academic stress, like the period immediately preceding an exam period, but does not do so on a regular basis throughout the season. Noting that some professors have attendance policies that impose a firm limit on the number of classes a student can miss, Professor Rhodes asked if either student-athletes or professors voice concerns about baseball student-athletes missing too much class. Coach Aoki replied that he has not personally received any of those comments. Professor Bellia noted that the Undergraduate Academic Code does not allow professors to restrict the number of excused misses a student may have, although it does allow professors to restrict the number of unexcused absences. Additionally, Professor Bellia commented that student-athletes are encouraged to be proactive in meeting and discussing anticipated class misses with professors very early in the semester. Mr. Holmes commented that, when possible, he and his staff work with student-athletes who are likely to have a significant number of Friday class misses to schedule the bulk of their courses in the MW and TTh sequences so as to avoid conflicts on Friday. He and his staff also look at ways to use technology creatively to better assist the travelling student-athletes.

Professor Brockmole asked if it were possible to provide opportunities for the observance and celebration of Easter while travelling for away competition, by travelling with a priest or arranging to attend Mass, for example, so that the weekend series could be played Friday/Saturday/Sunday rather than requiring student-athletes to miss additional class time by moving the series to a Thursday/Friday/Saturday schedule. Coach Aoki replied that yes, it was certainly possible to do this in future schedules. Coach Aoki also noted that baseball does not require additional missed classes for post-season play, as is the case for numerous sports, because the post-season schedule does not begin until after the conclusion of the final exam period.

Professor Bellia thanked Coach Aoki for his presentation and request. Coach Aoki thanked the FBA and left the room.

Professor Gaski moved to approve the additional class misses and Professor Kelsey seconded the motion. Professor Brockmole stated the he was concerned about teams missing additional classes over and above the recommended guidelines for the sake of not having to play on Easter Sunday. Professor Bellia added that the FBA's own policies may create a situation where there is a potential incompatibility between the class miss policy, which limits the number of classes student-athletes may miss, and the policy restricting home play during Easter weekend, which prohibits intercollegiate competition on campus during certain time blocks on Easter weekend. Mr. Swarbrick stated his desire for further discussion of this issue within the FBA in order to provide increased guidance regarding this balance to all of Notre Dame's spring sports as they develop their competition schedules. Ms. Conboy noted that, due to increasing schedule demands from multiple schools within the ACC, it was becoming less likely to have all of Notre Dame's scheduling requests (such as requests to play on the road during Easter weekend) granted. Additionally, Ms. Conboy also raised a point for further discussion relating to whether the FBA should consider requiring a team to play at home once every four years in order to allow student-athletes to experience Easter weekend on Notre Dame's campus at least once during their time as students.

Professor Bellia conveyed concerns expressed by Professor Tenbrunsel, who was unable to attend today's meeting, about the request. After further discussion, Professor Bellia called for a vote on the motion to approve the additional class misses for the baseball team as requested by Coach Aoki; the motion was approved unanimously.

5. Update on Legal Developments in Intercollegiate Athletics from Brandon Roach, Associate General Counsel

Professor Bellia welcomed Brandon Roach, General Counsel's Office, to report on the multiple legal challenges facing the NCAA in the areas of amateurism and concussion-related litigation.

Mr. Roach noted that the current public discussion and perception of the ongoing status of amateurism in intercollegiate athletics is being fueled in part by legal actions related to this subject. He provided a brief overview of the history and current status of several significant cases:

- The *O'Bannon* case, a class action case involving the use of an athlete's name, image and/or likeness
- *Alston v. NCAA* and *Jenkins v. NCAA*, class action cases asserting that NCAA amateurism rules violate antitrust laws by limiting the benefits universities can provide to student-athletes
- *Northwestern University v. College Athletes Players Association*, an administrative proceeding under labor law where student-athletes asserted a right to unionize as employees
- Concussion-related litigation

Mr. Roach took questions following his presentation, at the conclusion of which Professor Bellia thanked Mr. Roach for his report on this important topic.

6. Requests for Waivers of On-Campus Housing Requirement presented by the Student Welfare Subcommittee

Following Mr. Roach's report, Professor Bellia introduced the next item on the agenda, the two requests for waivers of the on-campus housing requirement:

1. Request by an early enrollee to move off-campus after his or her fifth semester
2. Request by a current junior to move off-campus due to medical concerns

The requests were bifurcated into two separate motions.

Upon separation of the requests, the early enrollee's request was considered first. Professor Bellia reminded members that the FBA revised the on-campus housing requirement last year to create a waiver process by which an early enrollee who demonstrates appropriate progress toward degree can ask to move off-campus after five semesters. The current request is similar to the four requests the FBA approved last year. Professor Gaski, in moving to consider this request, noted that the Student Welfare Subcommittee unanimously recommends approval. The motion passed unanimously.

Professor Bellia re-introduced the current junior's request to move off-campus due to medical concerns, noting that it was the first time that a request of this type had gone through a new review process involving a recommendation from University Health Services (UHS). She observed that staff members in the Office of Student Affairs and UHS were evaluating how well the process worked and how it could be improved. In this case, UHS recommended approval of the waiver, but other concerns surfaced within Student Affairs. After discussion, Professor Gaski moved that the FBA delegate its authority to make this decision to those personnel who have or could obtain the relevant information (Ms. Harding, Professor Bellia, and Ms. Bodensteiner); Professors Kelsey and McDowell seconded and the motion passed unanimously.

7. Update on NCAA Legislation

Professor Bellia then provided the FBA with a report on pending NCAA legislative proposals. Professor Bellia noted that autonomy legislation will be voted on in January and non-autonomy legislation will be voted on in April, although institutional positions are due to the ACC by December 1. Professor Bellia highlighted two different areas of proposed legislation currently up for discussion: time demands legislation and academic misconduct legislation.

Professor Bellia then outlined three proposals included under the time demands legislation header. Additionally, Professor Bellia discussed the institution's view that these proposals, as written, represent a piecemeal approach to reviewing this legislative area as opposed to conducting a more comprehensive review of the relevant bylaws.

Furthermore, Professor Bellia highlighted that the proposals in question do not address the difference in the practical realities of the time demands of different sports.

Following the discussion of the time demands legislation, Professor Bellia introduced the pending academic misconduct legislation. Although institutions will not vote on the proposal until April, the proposal will be discussed in January, and the window of opportunity to effect change in this area is now. Professor Bellia highlighted that this proposal would unify all academic misconduct prohibitions under Bylaw 14 and noted that the current use of the term “extra benefits” to describe receipt of impermissible academic aid would be changed to “impermissible academic assistance.” Furthermore, Professor Bellia discussed that, absent an impact on a student-athlete’s eligibility, assistance by a fellow student, even one who is employed by or associated with the athletics department, will not trigger an NCAA violation unless the assisting student is directed by a non-student staff member or is employed in providing academic support. However, Professor Bellia and Ms. Conboy emphasized that the draft legislation continues to create strict liability for situations in which academic misconduct retroactively results in an erroneous certification of eligibility. That is, regardless of whether the actors assisting the student-athlete were under the purview of the athletics department, the legislation holds the institution responsible for an erroneous certification of eligibility, even when the certifying individuals did not know and had no reason to know at the time of certification that academic misconduct had occurred. Ms. Bodensteiner and Mr. Swarbrick observed that Notre Dame has shared its concerns about this proposal with other institutions and has suggested possible alternatives. FBA members should be aware of the possibility that Notre Dame ultimately might oppose this legislative proposal.

Finally, Professor Bellia noted that there is a potential need for a discussion related to the institution’s transfer policy if some of the proposed NCAA legislation regarding transfers is passed.

8. Adjournment

Prior to adjourning the meeting, Professor Bellia noted that the next FBA meeting is scheduled for Friday, December 11, at 9:00 a.m. in room 500 of the Main Building.

The meeting was adjourned.