Faculty Board on Athletics
Meeting of February 27, 2015
11:30 am-1:30 pm, 500 Main Building

Members present: Patricia Bellia (Chair), James Brockmole, Ann Firth, John Gaski, Erin Hoffmann Harding, Jessica Hellmann, Patrick Holmes, Dan Kelly, Thomas Noble, Jaime Pensado, Michael Stanisic, Christopher Stewart, Ann Tenbrunsel

Athletics Liaisons: Beth Hunter, Jill Bodensteiner

Observers and Guests: Rev. John Jenkins, C.S.C, Tracey Thomas (Recorder)

1. Call to order and opening prayer

Professor Bellia called the meeting to order and welcomed Father John Jenkins, who had been invited to speak to the board. In honor of Father Theodore Hesburgh, who had passed away the previous evening, Professor Bellia offered a prayer of Father Hesburgh's as the opening prayer.

2. Minutes of the February 6, 2015 meeting

The minutes of February 6, 2015 were unanimously approved.

3. Chair's announcements

Professor Bellia reported that she has approved a revised schedule for indoor track and field, with no impact on class misses; and a revised schedule for women's basketball, which added a Wednesday class miss to a schedule that previously involved no misses in the Monday-Wednesday-Friday sequence. She approved the fall 2015 men's soccer schedule. She also approved post-season travel schedules for men's and women's indoor track and field and men's and women's swimming and diving. She anticipated approving the women's basketball team's travel for the ACC championship. The men's team would be competing during spring break. She also approved travel for the cheerleaders who would be accompanying the women's basketball team. Finally, she approved a new hockey captain, as one captain has been sidelined due to an injury.

Ms. Bodensteiner reported on airline trouble encountered by the Department of Athletics recently. Our teams use the same charter company as most other schools, and that company had a recent engine failure on an aircraft carrying the Wisconsin basketball team, forcing an emergency landing in Pittsburgh. In light of the uncertainty surrounding the safety of charter travel with this charter company, Athletics is seeking alternative flight arrangements for some of its already scheduled charter flights. Ms. Bodensteiner is uncertain whether suitable replacement flights will be found, and what impact new flight arrangements might have on teams' class misses.

4. Meeting with Rev. John Jenkins

a. Support for Student-Athletes

Father Jenkins thanked the Board for inviting him to speak with them. He spoke briefly of the ideals of Father Theodore Hesburgh, who passed away yesterday, as an enduring guide to the University and its constituent members.

Father Jenkins provided a summary to the Board of the steps he has taken in the aftermath of the recent well publicized incidents of honor code violations by student-athletes. Father Jenkins has conducted a series of interviews with key people who would have insight into the incidents, including from the Department of Athletics, the football program, Academic Services for Student-Athletes, and Admissions. In all these conversations, Father Jenkins sought insight into the academic environment experienced by student-athletes and sought guidance about the steps to take going forward to encourage student honesty and to provide support to them in all their endeavors. Athletics reports to Father Jenkins, and he is committed to reinvigorating the support system being provided to student-athletes. In this effort he will be working closely with Provost Tom Burish, Professor Bellia as the Faculty Athletics Representative (FAR), and Director of Athletics Jack Swarbrick.

Professor Rhodes asked what role will be played by the report compiled by Professor Bellia and Mr. Swarbrick from the task force on at-risk student-athletes. Father Jenkins noted that while recommendations from the report have begun to be implemented, that effort will need to continue and to expand. Accountability will be important. The report recommended an individualized approach to student-athlete support, which is being embraced in the implementation of services.

Professor Bellia observed that implementation of the task force's recommendations is progressing. Among the most important recommendations was to implement individual case management plans. Development of a stronger faculty mentorship program was another significant recommendation of the task force. She noted that a review that she and the Provost conducted after the completion of the honor code violation process revealed similar areas for focus as did the task force; this was a positive confirmation that the University has identified the significant areas to target efforts. Professor Bellia affirmed Father Jenkins' point that a shared philosophical approach is key to success. All the stakeholders need to support a shared statement of principles for the benefit of the student-athletes.

Professor Hellmann asked Father Jenkins to address the ways in which Board can contribute to the effort to provide support to student-athletes. She noted that the Board has already pursued initiatives for at-risk students. Father Jenkins observed that helping to bring all forces together with a unified focus is one contribution for the Board. Supporting Professor Bellia as she provides significant contributions to the ongoing plans is another contribution. Keeping Father Jenkins informed as to the successes and failures

of efforts to improve services is a third contribution. The Board's independence will be a valuable asset in the upcoming work.

Professor Noble asked if Father Jenkins has received information from colleagues at other institutions that might be helpful in identifying the strengths and weaknesses of the Notre Dame environment with regard to at-risk students. Father Jenkins agreed that there may be successful models to be studied. Professor Bellia noted that other institutions perceive Notre Dame as setting the bar for leadership in these kinds of areas. Ms. Bodensteiner reminded members that studies show that 68% of college students have cheated; the problem is pervasive.

Professor Brockmole asked whether any changes have already been implemented. Father Jenkins reported that conversations with football staff have resulted in a staff-wide commitment to accountability for poor academic decisions. Student-athletes understand that there will be consequences for failing to meet academic goals.

Professor Bellia thanked Father Jenkins for speaking with the Board about this topic of such great importance to student-athletes.

b. Reappointment of Professor Bellia as Chair of the FBA and as FAR

Professor Bellia left the meeting while Father Jenkins sought the input of Board members concerning the possible reappointment of Professor Bellia as Chair of the FBA and as FAR.

Following this discussion, Father Jenkins expressed a desire to reappoint Professor Bellia. He thanked members for their work; he affirmed that he is finding a strong willingness in University personnel to work together to provide meaningful support to the University's student-athletes.

5. Student Welfare Subcommittee

a. Revision to Grant-in-Aid Appeals Policy

Professor John Gaski, chair of the Student Welfare subcommittee, invited Ms. Bodensteiner to provide background for proposed revisions to the policy on appeals of the cancellation, reduction, and non-renewal of grant-in-aid.

Ms. Bodensteiner provided an overview of NCAA policy on financial aid for student-athletes. There are two types of sports: head-count sports and equivalency sports. In a head-count sport, every scholarship is a full scholarship. In an equivalency sport, the coach has the flexibility to allocate a set number of scholarships across student-athletes. Notre Dame sponsors five head-count sports: football, volleyball, women's tennis, and men's and women's basketball. The remaining sports are equivalency sports. In equivalency sports, the NCAA establishes the total number of scholarships that a coach can allocate across the team.

In 2012, the NCAA changed its policy on multi-year awards for scholarships, in light of considerations of student-athlete well-being. Until 2012, schools could only offer one-year scholarships. Under the new rule, teams are permitted (but not required) to offer either one year or multi-year scholarships.

Within the ACC and nationwide, there is a lot of discussion about how to implement this guideline. At Notre Dame, coaches are given discretion. The main reason for discretion is that in the case a partial scholarship, a student-athlete might also be considering a financial aid award from the Financial Aid office of the institution. Since individual circumstances can vary from year to year, granting a one-year award preserves flexibility, because it allows the student annually to weigh the advantages of the scholarship and the financial aid awards. Under NCAA rules, if a multi-year award is accepted, it cannot be relinquished in favor of a more generous package from the Financial Aid office (absent a waiver).

For both one-year and multi-year awards, the NCAA has limited an institution's ability to reduce or cancel aid during the period of the award. For example, an institution can reduce or cancel aid during the period of the award if a student renders himself or herself ineligible, engages in serious misconduct as determined by the institution's disciplinary authority, or violates a non-athletic portion of the GIA agreement. Despite these limitations on reduction and cancellation, the NCAA for years did not weigh in on nonrenewal of awards. As a result, schools could decline to renew an agreement for any reason, including based on a student-athlete's athletic performance or injury. Notre Dame has long set the bar higher than that, and has not permitted its coaches to decline to renew aid on the basis of injury or performance.

In January 2015, the five "autonomy" conferences adopted a rule stating that no institution can decline to renew a scholarship based on athletic performance or injury. This approach mirrors Notre Dame's longtime practice. The revised rule provides an exception for student-athletes who did not receive aid during the first year of enrollment. This approach allows coaches to reward walk-on student-athletes for a year if they have aid available, without fear that the failure to renew that aid the following year will be deemed an impermissible nonrenewal based on athletic performance.

Notre Dame has 730 student-athletes, of which approximately 230 are on partial scholarships, 300 have no scholarships, and 200 have full scholarships. Most of the 200 full-scholarship students have multi-year agreements. The 230 or 240 one-year grants are mainly in the equivalency sports.

Following this overview, Professor Bellia offered some comments on the specific changes proposed. Many of the changes were designed to better align the policy with NCAA rules. Others were based on an accumulation of experience with appeal hearings over time.

The first major change involves the deletion of the specific grounds for reductions, cancellation, and non-renewal. With the option to offer multi-year agreements, and now with the NCAA rule constraining non-renewals, the articulation of grounds for reduction, cancellation, and non-renewal in the policy itself no longer makes sense. Instead, the proposed policy now states that the bases for reduction, cancellation, and non-renewal are stated in the grant-in-aid agreements. The proposed policy also states that any expansion of the grounds for reduction, cancellation, or non-renewal are subject to review by the Faculty Athletics Representative, and at his or her discretion, by the Faculty Board on Athletics.

The second significant change relates to a student who does not have an athletics grant-in-aid agreement, but who was promised aid. Such a student should have the right to appeal the failure to provide the aid. The proposed change stems from an actual case in which a student-athlete did not receive aid in the first year but had been promised aid for the sophomore, junior, and senior years. The coach's decision to remove the student-athlete from the team and to decline to provide aid was not technically subject to appeal, but Professor Bellia and the Department of Athletics agreed that an appeal ought to be provided. The proposed policy would correct this deficiency by stating that if a student athlete "credibly" alleges that promised aid was not forthcoming, he or she can submit a request for a hearing to the FAR within 15 days or receiving notice that he or she is not receiving the aid.

In terms of the hearing itself, the proposed policy reaffirms that the Director of Financial Aid should chair the hearing. The policy also seeks to ensure that the Director's role in the hearing panel will not affect a subsequent request for non-athletically-based aid; the proposed policy states that "[t]he Office of Financial Aid shall use standards applicable to all students in determining the student-athlete's eligibility for federal, institutional, or other financial aid." The proposed policy alters the role of the Assistant or Associate Athletics Director by making that individual a technical resource rather than a member of the hearing panel. Finally, the proposed policy states that the panel chair has discretion to permit the student's Appeal Advisor to participate in a hearing "to clarify or supplement" the student-athlete's presentation.

Ms. Harding complimented the changes that have been made to the document. She asked how the 15-day requirement to submit proof of a credible allegation will be determined. Professor Bellia stated that the 15-day clock begins when the student-athlete learns of the non-renewal. Ms. Bodensteiner stated that this information is conveyed to student-athletes in different ways, which means there must be some flexibility in interpreting this provision. After discussion, the language was changed to read:

> A student-athlete who alleges that he/she failed to receive athletics aid promised by a coach or other member of the Department of Athletics must submit a written request for a hearing to the FAR within fifteen (15) days of ~~being notified~~becoming aware that he/she is not receiving the allegedly promised athletics aid. The FAR may accept an appeal request outside of the fifteen-day window if fairness to the student-athlete so requires. The FAR shall promptly

determine whether the student-athlete's allegation is credible and, if so, shall notify the student-athlete of his or her opportunity for a hearing and right to an Appeal Advisor.

Professor Noble asked about the pressures on recruiting in equivalency sports, where different institutions might compete in scholarship offers. Ms. Bodensteiner acknowledged that this is a major challenge for our coaches. He asked whether, at other institutions, there can be collusion between those offering athletics aid and those offering financial aid not based on athletics ability. Ms. Bodensteiner noted that that institutions rely on the professional judgment and ethics of financial aid officers to avoid such collusion. She noted that there have been preliminary discussions of allowing student-athletes to accept both athletics-related aid and non-athletics-related aid. Separate guidelines for the two types of offers could create a manageable system.

Professor Brockmole asked what happens if an appeal committee concludes that the student has been wrongly denied aid, but the coach has no more scholarships to provide. Is there a way to remedy the harm to the student in that situation? Professor Bellia stated that if an improper cancellation, reduction, or non-renewal occurs, it is acknowledged and must be repaired, even if that means creating an NCAA violation with an overaward of scholarships. The result of that violation may be that the institution loses a scholarship for some period of time down the road.

Professor Kelly asked whether, independent of these changes, the subcommittee had considered some of the other issues that have arisen in non-renewal and cancellation hearings. For example, a case in which he had been involved raised the question about how the coach had articulated "team rules," a violation of which could prompt the non-renewal of aid. Professor Bellia stated that the subcommittee was considering, but had not reached closure upon, various other issues outside of the four corners of the policy. Members discussed the use of the phrase "stated" team rules in the original policy and in the GIA agreements. The language "stated" is presumed to cover both written and verbal team rules; this issue has not been addressed by NCAA revisions as yet. Ms. Hunter and Ms. Bodensteiner noted that Notre Dame coaches have a range of team rules and methods for conveying those rules. In addition, some teams allow team captains to set some team rules. The final arbiter of whether a violation of a "stated team rule" occurred is the appeals panel.

Ms. Bodensteiner offered one friendly amendment to the policy: in her view, the phrase "student-athlete's athletic performance, contribution to the team, or injury" should be revised to track the revised NCAA language more closely. She proposed the phrase "student-athlete's athletic ability; contribution to the team; or injury, illness, or physical or mental condition."

Professor Kelly and Professor Brockmole commented that some of the language in the first paragraph could be deleted, both to improve the flow and to clarify that Notre Dame's policy is driven not by the high cost of a Notre Dame education but because protecting student-athlete aid is the right thing to do. Accordingly, the deletion of the

following language was proposed: "The cost of a Notre Dame education significantly exceeds that of many of its peers in NCAA Division I athletics. For this reason…"

The policy revisions were presented to the Board for a vote of approval. The vote was unanimous in favor of the changes recommended by the Student Welfare subcommittee, as amended. Professor Bellia thanked the subcommittee for its work and Ms. Bodensteiner for her guidance. [A revised version of the policy is attached to these minutes.]

b. Student-Athletes Requests for Waivers of On-Campus Housing Policy

Professor Gaski presented the recommendation of the subommittee on three requests by student-athletes for waivers of the on-campus housing policy.

Two of the requests bring to the Board a policy question that needs to be addressed, as in the near future more student-athletes who are in similar circumstances may make the same request. In the last decade, the football program has enrolled a handful of student-athletes a semester early, in January of the year before typical matriculation. Two student requests before the Board today are from early enrollees who request a waiver of the on-campus housing rule that stipulates six semesters of on-campus living before a student-athlete can move off-campus. The requests point out that a student who enrolls in January is likely to identify socially with members of the class that enrolled in the previous fall. In addition, at the beginning of the fifth semester on campus, the early enrollee student is a mid-year junior who may have only two semesters left before graduation. The subcommittee recommends approval of these two requests.

Members discussed the details of these two requests. Academic progress is a significant consideration for the Board in granting such requests. Approving the request will not eliminate the requirements that the Office of Student Affairs and the coach support the application to move off-campus.

Members unanimously approved the two requests from early enrollees to waive the six-semester on-campus requirement.

Members next considered a third request. Factual circumstances resulted in the subcommittee not recommending this request. A motion to approve the request failed for lack of a second.

Members discussed the issues that will need to be considered by the subcommittee when it reconsiders the policy in light of the situation of early enrollees who want to live off-campus for a full year prior to graduation. Student-athletes have been early enrolling since 2005. Today's requests are the first to come to the Board (with the exception of a request several years ago that was submitted and then withdrawn). It is expected that there will continue to be similar requests.

Student-athletes have made the case that they identify more strongly with the class that enrolled in the prior fall rather than the class that enrolled the fall after them. Ms. Harding noted that assessment of academic progress is a significant consideration when granting these requests; therefore, until there is a clearer policy, the requests should be handled on a case-by-case basis.

It was noted that in the case of a student who seeks a fifth year of athletics eligibility, approving this kind of request could potentially give the early enrollee five out of ten semesters off campus (as opposed to four out of ten semesters for a student who enrolled in the fall). Professor Bellia stated that the subcommittee would factor this issue into its review of the policy.

Professor Bellia informed members that the March 20, 2015, meeting will be rescheduled as several important issues for consideration are not yet ripe for discussion. [The meeting was subsequently rescheduled for April 17, 2015.]

Athletics-Related Financial-Aid Policy and Hearing Procedures
(amended February 2015)

Introduction

Notre Dame has traditionally respected and honored the impressive service and commitment of the student-athlete to the good of the broader university community. Consequently, Notre Dame has sought to protect the security and well-being of its student-athletes, including in matters pertaining to athletics-related financial aid. A student-athlete's athletic ability, performance, or contribution to the team; injury, illness, or physical or mental condition; or any other athletics reason is not an appropriate ground for the reduction, cancellation, or non-renewal of athletics-related financial aid.

Reduction, Cancellation, and Non-Renewal of Athletics Aid

An NCAA Division I institution may offer a student-athlete either a one-year or a multi-year athletics grant-in-aid agreement. At Notre Dame, it is within the coach's discretion to elect which form of agreement to offer a student-athlete. The bases for reduction, cancellation, or non-renewal of athletics-related financial aid are limited, and differ slightly depending on whether the student-athlete has a one-year grant-in-aid agreement or a multi-year grant-in-aid agreement. The bases for reduction, cancellation, and non-renewal are specified in the grant-in-aid agreements. Any expansion of the grounds for reduction, cancellation, or non-renewal of athletics-related financial aid in the grant-in-aid agreements is subject to review by the Faculty Athletics Representative (FAR) and, at his or her discretion, by the Faculty Board on Athletics.

The administration of the Department of Athletics has treated seriously those rare cases in which reductions, cancellations, or non-renewals of athletics-related financial aid have been proposed; such cases involve student-welfare issues that warrant careful deliberation, complete fairness, and appreciation of the decision's crucial effects on the student-athlete's ability and desire to remain and flourish at Notre Dame.

Right to a Hearing and Hearing Procedures

A student-athlete whose athletics-related financial aid is reduced, cancelled, or not renewed is informed in writing by the Director of Financial Aid that he or she, upon written request to the Faculty Athletics Representative (FAR), has an opportunity for a hearing. The written request for a hearing must be received by the FAR within fifteen (15) days of the University's written notification of the reduction, cancellation, or non-renewal of the student-athlete's athletics-related financial aid. Upon request for an appeals hearing, the FAR shall notify the student-athlete of his or her right to an

Appeal Advisor.

On occasion, a student-athlete who does not have an athletics grant-in-aid agreement credibly alleges that he or she failed to receive athletics aid promised by a coach or other member of the Department of Athletics. Such a student-athlete is also entitled to a hearing under this Policy. A student-athlete who alleges that he/she failed to receive athletics aid promised by a coach or other member of the Department of Athletics must submit a written request for a hearing to the FAR within fifteen (15) days of becoming aware that he/she is not receiving the allegedly promised athletics aid. The FAR may accept an appeal request outside of the fifteen-day window if fairness to the student-athlete so requires. The FAR shall promptly determine whether the student-athlete's allegation is credible and, if so, shall notify the student-athlete of his or her opportunity for a hearing and right to an Appeal Advisor.

If the student-athlete notifies the FAR that he or she would like to utilize an Appeal Advisor, the FAR will choose one from a standing pool of potential Appeal Advisors. The pool will consist of the current student representative on the Faculty Board on Athletics and past members of the Faculty Board on Athletics. The Appeal Advisor must contact the student-athlete within five (5) days of being assigned.

A hearing is conducted no later than thirty (30) days after the FAR receives the written request for a hearing. The FAR appoints two non-ex officio faculty members of the Faculty Board on Athletics and a graduate student as voting members of the hearing panel. An Associate Vice President for Student Affairs or his/her designee also serves as a voting member of the hearing panel. The Director of Financial Aid or his/her designee serves both as a voting member and as the chair of the hearing panel. The hearing panel shall have access to the Assistant or Associate Director of Athletics responsible for NCAA compliance, as a technical resource concerning NCAA, conference, and Department of Athletics rules and regulations for the voting members of the hearing panel, but this individual does not attend the hearing and is not a member of the hearing panel.

No later than seven (7) days prior to the hearing, the student-athlete and representative(s) of the Department of Athletics must provide to the chair of the hearing panel every document or other exhibit they plan to use at the hearing, and the names of any witnesses they intend to call and a description of the relevancy of such witnesses to the hearing. The hearing panel may refuse to hear the testimony of any witnesses not so disclosed or to consider any exhibits not so disclosed. The chair of the hearing panel promptly distributes to the other party copies of all materials submitted by each party.

At the hearing, the student-athlete appealing the decision and representative(s) of the Department of Athletics are given an opportunity to argue for or against the decision under appeal. The hearing is informal. No rules of evidence apply. Neither the student-athlete nor the representative(s) of the Department of Athletics may proceed through legal counsel at the hearing. They may, however, seek the advice of legal counsel or be

represented by legal counsel outside the hearing. At the hearing, both parties are afforded a reasonable opportunity to present pertinent documentary evidence and to outline the relevance of planned witness testimony (live or written). The hearing panel may question any and all witnesses, examine documentary evidence, and summon other witnesses as it deems appropriate. The student-athlete may choose to be present for and respond to any and all witness or party testimony. If requested by the student-athlete, the Appeal Advisor may attend the hearing. The Appeal Advisor is generally available only as a resource for the student-athlete and not as a participant in questioning or testimony; in his/her discretion and at the student-athlete's request, the Chair may allow the Appeal Advisor to participate to clarify or supplement the student-athlete's presentation. Members of the Department of Athletics who were responsible for the decision under appeal may choose to appear together. Otherwise, no witness or party is present during the testimony of any other witness or party, and the hearings are open only to the hearing panel and to the parties or witnesses while they testify.

After the presentation of all the evidence and testimony, the members of the hearing panel deliberate in closed session. The hearing panel's deliberations remain confidential unless disclosure is required by law. The hearing panel decides whether the decision under appeal was reasonable and fair, and therefore not arbitrary. The hearing panel may accept, reject, or modify the decision of the Department of Athletics. It puts forward a single vote, positive or negative, regarding the appeal.

Within ten (10) days after the hearing, the chair of the hearing panel transmits a written copy of its decision to the student-athlete and to the Department of Athletics. The decision of the hearing panel is final and may not be appealed. In a case in which the FAR and the chair of the hearing panel determine that fairness requires expediting an appeal, the FAR, the chair of the hearing panel, and the Assistant or Associate Director of Athletics responsible for NCAA compliance may agree to adjust the procedures set forth above as necessary (and only as necessary) to complete the hearing without prejudice to the parties and in conformity with NCAA rules.

Nothing in these policies and procedures prohibits or prevents the student-athlete and the Department of Athletics from resolving their dispute by mutual agreement at any time. If such an agreement is reached, the student-athlete or the Department of Athletics promptly notifies the hearing panel, in writing, and the pending review is dismissed.

A student-athlete who unsuccessfully appeals the reduction, cancellation, or non-renewal of athletics-related financial aid is encouraged to contact the Office of Financial Aid for assistance. The Office of Financial Aid shall use standards applicable to all students in determining the student-athlete's eligibility for federal, institutional, or other financial aid.