

**Faculty Board on Athletics  
Meeting of November 16, 2012  
500 Main Building**

**Members present:** Patricia Bellia (Chair), Eileen Botting, Stephen Fallon, Ann Firth, Maudess Fulton (student representative), Umesh Garg, John Gaski, Erin Hoffmann Harding, Richard Pierce, Michael Stanistic, Ann Tenbrunsel

**Members excused:** Patrick Holmes, William Kelley, James McKenna, Jack Swarbrick

**Observers and Guests:** Jill Bodensteiner (Associate Athletics Director for Compliance and Legal Affairs), Jennifer Vining-Smith (Assistant Athletics Director for Compliance), Brent Moberg (Director of Compliance), Heidi Uebelhor (Director of Compliance), Tracey Thomas (Recorder)

**1. Call to Order and Opening Prayer:**

Prof. Patricia Bellia called the meeting to order and invited Professor Stephen Fallon to give the opening prayer.

**2. Approval of the October 26, 2012, Minutes**

The minutes of the October 26, 2012 meeting were unanimously approved subject to any minor changes made by Mr. Patrick Holmes.

**3. Chair's Announcements**

Prof. Bellia announced the following schedule approvals: softball (spring 2013), a revised hockey schedule which did not change class misses, women's lacrosse (spring 2013), with an extra half-day class miss in the MWF sequence due to flight arrangements.

Prof. Bellia also approved post-season travel to conference tournaments and NCAA competition for women's soccer, men's soccer, volleyball, and cross-country.

Prof. Bellia approved captains for cheerleading.

**4. Compliance Issues / Freeh Report Review**

Prof. Bellia invited Jill Bodensteiner and her team, Jennifer Vining-Smith, Brent Moberg, and Heidi Uebelhor, to provide a report on compliance issues and to summarize her office's involvement in the University's review of the Freeh Report concerning Penn State.

Ms. Bodensteiner listed three items for today's presentation:

- A. Inform members of current NCAA reform efforts.
- B. Provide an overview of the Compliance Office's Annual Report
- C. Give a brief report of local actions arising from the release of the Freeh Report.

## A. NCAA Reform Efforts

Ms. Bodensteiner reminded members that in 2011, new NCAA president Mark Emmert called a presidents' retreat to examine the state of intercollegiate athletics. Even before the news of the Penn State scandal, it was concluded that "there is a lot broken" in intercollegiate athletics.

Five working groups, including some newly formed ones and some existing committees, were charged with responding to the issues raised at the retreat.

1. *Enforcement Working Group*: The Enforcement Working Group (EWG) was charged with reviewing the enforcement system. The recommendations of the EWG were adopted on October 30, 2012, by the Board of Directors. Beginning August 1, 2013, a totally new model of enforcement will be implemented. New procedures will expedite the hearing process, which had grown far too cumbersome and quite expensive. In addition, the Committee on Infractions will be substantially changed. This committee is overworked under the current model, and many members lack compliance experience on campuses. The result has been some poorly conceived penalties that have had little corrective power. One goal will be to increase the level of experience among committee members. Notre Dame is fortunate to have Missy Conboy sitting on this committee; she brings extensive compliance experience to the position.

Another change includes the current categories of "secondary violations" and "major violations." These will be replaced by Level 1, 2, 3, 4 categories. In addition, there will be guidelines issued that provide a standard penalty ranges for violations, somewhat analogous to the rubric that the federal sentencing guidelines provide in the criminal context. Added to the NCAA penalty guidelines will be options to increase or decrease the standard penalty for aggravating and mitigating circumstances, respectively.

The new model focuses heavily on head coach responsibility for violations. To this end, there will be suspensions for head coaches of teams that engage in certain kinds of violations. The hope is that these measures will stop violations and the disregard of violations.

Ms. Bodensteiner summarized these changes as "relatively effective" measures that should help to curb violations.

2. *Rules Working Group*: As all agree, the 426-page rules book is far too big; the Rules Working Group (RWG) was charged with making recommendations for paring it back to meaningful rules. The RWG is going through the rules by-law by by-law. It is difficult to make rules for Division I teams with budgets that vary so dramatically. This difficulty has led some people to speculate about the creation of a fourth division of intercollegiate athletics. At present, a survey is being drafted to collect feedback from coaches about the proposed rule changes.

The most drastic changes will probably occur to recruiting. With deregulation will come an increase in opportunities to text, more contact with student-athletes, and contact at an earlier stage. There are pros and cons to these kinds of changes. A con is that the quality of life of both prospects and coaches will be affected by the increase in contact.

In response to a question about the timetable for official visits to campus, Ms. Bodensteiner noted that if anything, recruitment of secondary students is moving to earlier and earlier ages. This presents a problem to the institution in terms of the safety and security of minors on campus, particularly for residential visits. The NCAA has yet to address this issue; it is burdensome to monitor. On the other hand, it can be argued that it is better to get information to the student-athletes early in their high school careers so that they can make informed decisions that are not rushed.

Ms. Bodensteiner reported that Notre Dame coaches are split in their response to this issue. It is difficult for Notre Dame to influence the direction of legislation since there isn't agreement across institutions. Ms. Vining-Smith noted that minor student-athletes are already visiting campus on unofficial visits. One concern is how these students pay for these visits; when Notre Dame pays for the official visit, there is more control and monitoring. Ms. Bodensteiner also noted that the official visit, paid for by the institution, has become "something of a victory lap" rather than a decision point for student-athletes, as many have already committed to the institution. Is this the best way to spend Athletics Department money?

In response to a question by Ms. Firth, Ms. Bodensteiner noted that the earlier recruiting affects the question of a good academic fit. It is simply too hard to know for sure what a student-athlete's academic performance will be based on a few semesters of high school coursework. A plus is that the institution's academic standards can be communicated earlier with the earlier contact. Ms. Bodensteiner said this is an issue to keep an eye on.

3. *Resource Allocation Working Group*: this group was charged with examining the ways Division I athletic departments spend their funds. All recommended proposals of the Resource Allocation Working Group were rejected by the NCAA membership. The proposed changes were insignificant ones and/or ones that would unnecessarily harm student-athletes without providing substantive economic savings. For example, it was proposed to end foreign tours by athletic teams. This is disadvantageous to student athletes who often are prevented from taking advantage of study abroad programs because of their athletic commitments, and funds for these trips are often raised by individual programs rather than coming out of athletics operating budgets.

4. *Student-Athlete Well-Being Working Group*: Jack Swarbrick was a member of this working group, which was charged with examining the welfare of student-athletes. A hotly debated recommendation would have allowed institutions to provide student-athletes with a miscellaneous expense payment of approximately \$2000.00/year. There were several variations of this proposal; ultimately, it was felt that none worked effectively. Currently, this idea has "fallen off the table." Notre Dame did not believe a workable proposal was put forth. Under most variations, the Pell Grants of the neediest students would simply be replaced with institution-provided funding. Under some versions, students who were not among the neediest students were provided with more funds. While the concept of funding the gap between a full scholarship and the full cost of attendance is a laudable one, the idea is difficult to flesh out satisfactorily due to federal financial aid regulations and the inability of institutions with large budget differences to reach agreement.

Prof. Bellia asked about the peculiar situation wherein some schools instituted a payment during the period between the Board of Directors' approval and the membership override vote. Ms. Bodensteiner explained that the Board of Directors implemented the proposal and then subjected it to a vote of the members, which rejected it. In the interim, some institutions did implement the idea, so that some student-athletes received payments with the start of the 2012-2013 academic year. This did not happen at Notre Dame.

The second significant issue considered by this working group was the institution of multi-year grants-in-aid (GIAs). Under the proposal approved by the NCAA, institutions are permitted (but not required) to offer incoming freshmen multi-year GIAs that might cover a student-athlete for four or even five years. Before this point, NCAA rules have allowed only single-year grants-in-aid.

The Compliance staff polled their counterparts at other schools at a recent Big East meeting. Surprisingly, most peer institutions did not move to multi-year GIAs; Notre Dame, Villanova, and SMU are some of the schools that did make use of multi-year GIAs. At Notre Dame, coaches are permitted to make individual decisions on each squad, so teams are implementing both multi-year and single-year GIAs. Because of an NCAA rule interpretation, the new rule contains a disadvantage for student-athletes on partial scholarship. Specifically, student-athletes are not allowed to relinquish a multi-year GIA in favor of a more beneficial financial aid offer from the financial aid office once that GIA has been accepted, even in the case of changed financial circumstances. Although Notre Dame could seek a waiver on behalf of a student-athlete in such a case, there is no guarantee that the waiver would be granted. As a result, coaches have tended not to offer multi-year GIAs for student-athletes in equivalency sports who receive partial aid. Of course, the FBA's policy on reduction, cancellation, and nonrenewal of athletics-related financial aid essentially treats all GIA offers as multi-year offers. Thus, coaches' decisions not to offer multi-year GIAs here have no significant impact on student-athletes.

5. *Committee on Academic Performance*: This working group dealt with three main issues.

a. The initial eligibility standards for incoming freshmen were raised, starting with the August 1, 2016, class (i.e., this current year's high school freshmen). The changes increase the GPA/test score scale that a student-athlete must meet to have access to competition in the first year. The changes create the concept of an "academic red shirt"—a student-athlete who can practice and receive aid but not compete in the first year. Had this rule been in place in 2009, roughly 39% of recruited football student-athletes and 42% of recruited men's basketball student-athletes in Division I would not have been academically eligible to play.

b. An additional change will front-load the core courses requirement for high school students so that they have to meet measures along the course of the high school career and cannot delay all the required courses until the last semesters. The changes should ensure that entering student-athletes are on course to achieve the initial eligibility standards and to graduate from high school.

c. Changes to Academic Progress Rate (APR) requirements were made, including more penalties. The standard for access to post-season competition was raised to 930. The 930 standard matches a graduation rate of about 50%. Mr. Holmes, who closely tracks the APR, has stated that Notre Dame team APRs are regularly at or above 970, so there is not much concern here.

## B. 2011-2012 Compliance Office Annual Report

Ms. Bodensteiner distributed and summarized the Athletics Compliance Office Annual Report.

The total number of student-athletes at Notre Dame in the 2011-2012 academic year was 740. Of this, 191 student-athletes received full GIAs; 309 did not receive any aid at all. Athletics spent \$15.6 million on scholarships. \$9.5 million was given to male student-athletes, while \$6.1 million was given to female student-athletes. The NCAA limits male scholarships to 186 and female to 136 in the sports that Notre Dame sponsors.

Notre Dame processed 24 non-renewals of GIAs in this period; non-renewals are rare at Notre Dame. Most of these involve “technicalities”—the student-athlete went pro, accepted a stronger aid package from the Office of Financial Aid, transferred, or graduated with eligibility still remaining. Very occasionally a coach will offer a deserving non-scholarship student-athlete money that is unexpectedly available, with the clear understanding that this is a one-time offer that will not be renewed in the following season.

Compliance is working hard to encourage student-athletes to complete FAFSA and Pell Grant applications. Student-athletes who do not go through this process are leaving money on the table. In response to the “education blitz,” a record number of student-athletes filed for and received federal support. A significant effect of this increase in federal support is to increase the Student-Athlete Opportunity Funds (SAOF) provided by the NCAA to the institution. In addition, Compliance uses receipt of a federal Pell Grant as the basis for distribution of certain SAOF monies to student-athletes.

Ms. Bodensteiner gave some details on the SAOF funds. In 2011-2012, Notre Dame received \$412,000. These funds are used to provide a \$500.00 clothing card to student-athletes who are Pell Grant eligible, to be spent only on the student (receipts are required). This provides, for example, suits for students and winter coats for students from southern climates. The funds are also used to assist in emergency situations. Student-athletes who need help getting home for a funeral, for instance, can draw on these funds. The funds have also been used to provide a loaner laptop to every student-athlete who needs one; this program has been a significant success. Almost \$200,000 of the 2011-2012 funds covered summer scholarships for student-athletes who pursued summer school courses.

Prof. Bellia asked if the SAOF funds could cover the use of technology—for example, to tape classes to help student-athletes who are traveling to keep up with their courses. While the answer is yes, SAOF funds could be used in this way, Ms. Vining-Smith noted that Compliance regularly pursues funds supplied by the NCAA for academic purposes to the NCAA’s Academic

Enhancement Fund, which is maintained by the Office of Academic Services for Student-Athletes, since SAOF funds can be used for so many other necessary uses. Compliance is committed to distributing every penny of the fund every year, “to get it into the hands of those who need it.” Compliance has increased education to coaches and student-athletes about these funds; there has been an increase in the use for emergency travel as a result. Another area of increase is in support for applications to graduate school—application fees and test fees, in particular.

In response to the question of taping classes, Ms. Bodensteiner added that Compliance has been considering using funds to purchase iPads for student-athlete use. iPads would have an athletic-related function for coaches and student-athletes, who can and will access game films almost immediately after games conclude. More importantly, student-athletes would benefit from the convenience of having all their texts on one slim machine rather than having to travel with a full set of textbooks, and would likely gain additional academic-related benefits.

Another area Compliance reports on is the recruiting process. Prospective student-athletes make both official and unofficial visits to campus. Different teams use these visits differently; coaches have different philosophies about the function of visits. Ms. Harding mentioned the need to develop a system for monitoring minors who are in the residence halls for overnight visits, both official and unofficial.

Each year, Notre Dame reports several secondary violations. Because of the complexity of the rule book, it is nearly impossible to have zero violations. For example, many of the violations in 2011-2012 were attributable either to new interpretations, or glitches with digital media, such as the posting of video that inadvertently shows a recruit in the background. The kinks are being worked out, and the relationship between Compliance and those working with digital media is very strong.

There are three ways for violations to be identified to Compliance: 1. third parties calling in; 2. self-reports by a coach; 3. use of the monitoring system, Jump Forward. Ten of the 19 violations were found through the monitoring system. Ms. Vining-Smith noted that the highest number of violations should be identified through a combination of monitoring and self-reporting. The culture should be one of self-reporting; the relationship between Compliance and the coaching staffs is strong, with a good working situation in terms of the rules.

Ms. Bodensteiner gave a brief review of the Jump Forward system, which is a software package that monitors contacts with recruits in real time. Coaches have applications on their phones that trigger a warning message when one member of the coaching staff has already contacted a prospective student within a particular time-frame. In addition, the software enables Compliance to keep all necessary forms on each student-athlete in electronic form, saving some 18,000 pages of paper this year.

Notre Dame submitted 86 waivers to the NCAA in this period, of which 83 were accepted. 53 were preapproved waivers.

On the topic of rules education, Compliance has greatly increased its efforts to educate student-athletes, coaches and administrators on NCAA rules. It conducts two meetings annually with student-athletes. Compliance also meets with rectors in the residence halls, admissions staff, and development to provide education in NCAA rules. While more can be done, education has greatly increased. The office has made creative and entertaining use of videos to educate. It also has an “Ask a Question” link on its website where it gets a fair number of legitimate questions, including from other universities seeking rules information. Ms. Vining-Smith noted that Compliance now has a Twitter account, which is getting use.

In conclusion, Ms. Bodensteiner noted that she is committed to expanding and improving the Annual Report and welcomes feedback from FBA members.

Ms. Bodensteiner invited comments. Prof. Bellia asked about the office’s waivers experience with the NCAA, noting that it appears that it sometimes it takes extraordinary effort to get waivers approved. She cited two difficult cases in the previous year. Ms. Bodensteiner agreed that those two cases were particularly challenging. However, it bears remembering that Notre Dame filed 86 waivers last year and had 83 of them granted. She noted that after a particularly difficult case involving a men’s basketball student-athlete, the NCAA released a new rule interpretation that essentially mirrored that case. Thus, now, that case would be easily decided in favor of the request.

Prof. Ann Tenbrunsel asked about compliance with Title IX, based on the portion of the Compliance report focusing on respective numbers of male and female student-athletes. Ms. Bodensteiner noted that while Title IX has greatly benefited female athletes, implementation of the very detailed regulations creates various challenges. For example, the participation opportunity requirements are ever-changing and difficult to follow. Currently, there are three options for compliance with the participation opportunities requirement of Title IX, including (1) providing participation opportunities substantially proportionate to undergraduate student enrollment; (2) demonstrating a history and continuing practice of program expansion; or (3) effectively accommodating the interest and ability of the underrepresented sex. Through the years, Notre Dame has relied on all three, with a recent focus on ensuring compliance with the first and third options. As part of its compliance with part three, Notre Dame has been surveying students about athletic participation for 12 years; the results have been relatively stable, and this information is helpful to club and rec sports organizers as well as for evaluation of Title IX compliance. Notably, although sports like women’s lacrosse are growing very fast, several women’s sports are stagnant or decreasing in numbers nationally. There are only 39 national programs in field hockey; women’s ice hockey, gymnastics and bowling are not growing. Sand volleyball was recently introduced as an emerging women’s sport; others under consideration for the future include competitive cheer and triathlon.

### C. Freeh Report

Following the July 2012 release of the Freeh Report on the scandal at Penn State University, two groups at Notre Dame conducted reviews of the report. Father Jenkins asked one of the Notre Dame groups, which was chaired by John Affleck-Graves and included Marianne Corr, Roger

Mahoney, and Bill Shaw, to take a high level review of the report and of the institutional recommendations contained in Chapter 10 of the report. This group reported out to Father Jenkins on October 12, 2012, with three recommendations, one of which was that the University as a whole review its policies and procedures with regard to minors on campus. Marianne Corr is chairing a group to carry out that recommendation, and Ms. Bodensteiner is a member.

The second group charged with reviewing the Freeh Report, co-chaired by Ms. Bodensteiner and Brandon Roach, was asked to take an operational level review of the report's recommendations. The review involves personnel from Athletics (summer camps and compliance), Risk Management, Student Affairs, and Notre Dame Security and Police. The review is nearly completed; it is certain that the recommendations of this group are going to "mesh" with the recommendations of the first group. An example of the kind of topic which is being reviewed is the access to and security of all athletics facilities.

Ms. Bodensteiner noted that even if every policy is properly in place, if "the custodian" is afraid to report an incident, the policy fails. Culture is critical. Therefore, "we need to keep working to create a culture in which no one is afraid." Mr. Swarbrick's approach of having one sports administrator for each team is helpful in creating a strong relationship that will encourage open communication.

Prof. Bellia mentioned that Marianne Corr, General Counsel, has been invited to report to FBA on the outcomes of her review group once that review is complete.

Prof. Bellia thanked Ms. Bodensteiner for the depth of this report. This information provides FBA with confidence about institutional control issues in athletics.

## **5. Proposed Captaincy Approval Form**

Prof. Bellia introduced the discussion by reviewing past business. In 2010, the Office of Student Affairs changed its sanctions rubric so as to decouple the sanction of disciplinary probation from the sanction prohibiting extracurricular participation. Previously, students on disciplinary probation could not receive clearance to participate in extracurricular activities, and Student Affairs would not clear such individuals to serve as captains. The decoupling of the sanctions creates a need for the FBA to reconsider its criteria for approval of captaincies.

Two possible changes emerged from discussions within the Student Welfare Subcommittee and with Ms. Harding. The first change involves a new form for coaches. Because some of the FBA standards are subjective—"high standards of conduct and strong leadership"—the new form is designed to prompt coaches to provide more detailed information about how the student-athlete meets those standards. The current form asks no specific information from the coach; the newly proposed form quotes the standards of FBA policy for captains and asks coaches to provide information about how the proposed captain has met these standards. The coach is also asked to anticipate any concerns. Second, there is a question about whether Student Affairs should actually be signing off on the form itself, or whether it simply should be providing pertinent disciplinary information to the Chair for her consideration (and possible transmittal to the full committee). The current language requires that the captaincy be "cleared by the Office of

Student Affairs,” but clearance is no longer a meaningful concept, since disciplinary probation is no longer a bar to clearance.

Members discussed these proposed changes. Ms. Firth asked if any other office contributes information to the captaincy decision-making process. Prof. Bellia said the GPA standard was removed from the procedure recently and a “good academic threshold” was established. She noted, however, that she consults with the Office of Academic Services for Student-Athletes in some cases if she has a concern that the student’s academic record might be inconsistent with strong leadership.

The group was in general agreement about removing Student Affairs clearance, and instead seeking relevant disciplinary information from Student Affairs. Ms. Harding requested guidance about the level of information desired by FBA. As a starting point, Ms. Harding and Prof. Bellia had discussed that Student Affairs would notify the Chair of all current and past instances resulting in a sanction of disciplinary probation (or something more). There was a lengthy discussion about the level of information that FBA would want to get from Student Affairs: all disciplinary instances, significant as well as minor instances, instances that result in penalties, current as well as former instances.

Prof. Pierce stated that “it is not unreasonable to have no violations” of Res Life rules. He favored having information about more violations, not just those resulting in a sanction of disciplinary probation. Professors Stanisic and Fallon concurred; Prof. Fallon noted that FBA still has discretion to respond to the information provided by Student Affairs.

Ms. Bodensteiner raised the issue of context for reports of disciplinary incidents; she said context is helpful where the mere fact that a student might have committed a violation of the University Standards of Conduct might be unhelpful. Ms. Harding agreed that a broad guideline to Student Affairs would result in a large, amorphous body of unfiltered information that might not be helpful. It was agreed that FBA wants information only about incidents in which the student in question was found “responsible” for the incident. Members also agreed that they continue to be comfortable with the Chair making the decision on captains, with this heightened level of information. It was noted that the Chair is delegated to approve captaincies and that the Chair can bring any decision back to the full Board for its advice and approval. Prof. Bellia observed that the policy can be tried and revised if need be.

Prof. Gaski noted that an increased level of information to FBA might negatively incentivize coaches to nominate only student-athletes with spotless records. Prof. Bellia agreed and suggested that FBA will need to encourage coaches to continue to nominate those students they perceive to be the best “leaders.” Ms. Bodensteiner said that “good education” to coaches and sports administrators would help on this issue. She noted that some coaches are currently making nominations under standards that do not mesh with the FBA policy, dismissing candidates because of a single conduct violation. Prof. Pierce noted that the FBA policy does not require “spotless” conduct, and he emphasized the need to communicate the Board’s standard to coaches.

Prof. Bellia asked for a motion on the proposal before the Board to change the language of the captaincy standard to delete the requirement of Student Affairs clearance. The proposal was moved and seconded; the proposal was unanimously approved.

Ms. Harding said she would confirm with General Counsel that the kind of information requested is permitted to be transmitted to FBA.

## **6. Coaches' Meeting—Off-Campus Housing Policy**

Prof. Bellia reported that at the meeting of head coaches last week, the coaches discussed the issue of the FBA off-campus living policy. Most coaches are in favor of keeping the policy as is, with their main concern being about the safety of the student-athletes. A related concern is for the student-athletes' property: since sports schedules are publicized, it is easily known when a student-athlete will be gone. Cars are vulnerable to break-ins. Prof. Bellia noted that she is in discussion with Student Affairs about what information that office has to offer about the safety of off-campus housing locations in South Bend, so as to ensure that student-athletes and coaches are receiving relevant information.

Prof. Garg asked about the general stance of Student Affairs toward off-campus living, noting that under previous administrators, Student Affairs was strongly opposed to broadening the class of student-athletes who are permitted to live off-campus. Ms. Harding said she has not implemented a change in policy, and that she is personally a "big supporter" of staying on campus. However, it is clear that a percentage of students in general are interested in off-campus living. Under those circumstances, it is difficult to justify treating student-athletes differently from the general student population. Student Affairs is reviewing its policy generally and has begun benchmarking peer institutions' off-campus living policies. She said that she "does not have a strong opinion about student-athletes living off campus." The review of policy generally may result in a change in policy for student-athletes, but the policy that currently governs student-athletes is an FBA policy rather than a Student Affairs policy.

Ms. Bodensteiner noted that the FBA policy is problematic to some coaches, who argue that student-athletes on partial scholarship should be allowed to make financial decisions independent of the FBA rule. Others, however, ask not to be given yet another way to treat students on partial aid differently than full GIA student-athletes.

This topic will be revisited if and when the Office of Student Affairs makes a policy change.

As time had expired, Prof. Bellia thanked members and guests for an informative meeting, and the meeting was adjourned.

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