

**Faculty Board on Athletics
Meeting of October 11, 2010
500 Main Building**

Members present: Patricia Bellia (Chair), Eileen Botting, Rev. Tom Doyle, C.S.C., Thomas Frecka, Umesh Garg, Stephen Fallon, Patrick Holmes, William Kelley, Tracy Kijewski-Correa, Richard Pierce, Clark Power, Kevin Richards (student representative), Ann Tenbrunsel

Members excused: Frances Shavers, Jack Swarbrick

Board Liaisons present: Missy Conboy, Charmelle Green, William Scholl

Observers and Guests: Jill Bodensteiner (Associate Director of Athletics), Joe Russo (Director of Student Financial Strategies), Tracey Thomas (Recorder)

1. Call to order and opening prayer: Prof. Patricia Bellia called the meeting to order and invited Professor Eileen Botting to give the opening prayer.

2. Minutes of September 20, 2010, Meeting

The minutes of the September 20, 2010 meeting were unanimously approved. Prof. Bellia reminded members that the minutes are available in full to members and in an abbreviated form at the FBA website to those with a University-issued ID and password.

3. Chair's Announcements

Prof. Bellia announced schedule approvals for men's basketball, men's and women's fencing, and a revised softball schedule. She also approved captaincies for women's basketball, women's cross country, and hockey. Class absences for individual students were granted (under a separate procedure involving the Chair, Pat Holmes, and Father Doyle) for two women's tennis players (Kristy Frilling and Shannon Mathews) who recently participated in the All-American championships.

4. Compliance Update –Jill Bodensteiner, Associate Director of Athletics

Prof. Bellia welcomed Ms. Bodensteiner to the meeting, noting that a report on the Office of Compliance was provided in Fall, 2009, when Ms. Bodensteiner had only recently assumed the office of Associate Director of Athletics for Compliance. Today's report comes after more than a year in the position, and some of the changes discussed in 2009 have been instituted.

Ms. Bodensteiner reported that much is happening at the national level concerning compliance issues and rule formation; these changes affect institutions at the local level.

1. The NCAA has formed a task force for athletic directors in response to an impression that compliance efforts at the NCAA are "broken." Two issues give rise to this impression: A. Sanctions handed out seem to negatively impact the wrong people/groups. As an example, sanctions incurred in connection with Reggie Bush, USC, improperly taking gifts in 2005 are

being borne by athletes and athletics staff at USC today. B. The perception of loss of institutional control arises even if the violation is committed by a rogue booster or student athlete, despite the reality that an institution may have in place well designed and well functioning control mechanisms.

Ms. Bodensteiner reported that Notre Dame is “well placed” in relation to the task force, which includes two Big East members—the Athletics Director at the University of Connecticut and a senior administrator at Rutgers University.

2. The National Association of Athletics Compliance Coordinators is suggesting a set of “reasonable standards” to accompany the NCAA rules. These standards are meant to reflect “industry best practices.” One difficulty, however, is that institutions are already laboring under an enormous body of rules, and the reasonable standards might simply give institutions a second set of rules to monitor.

3. The newly installed president of the NCAA, Mark Emmert, is committed to evaluating the compliance process and making some meaningful changes. Ms. Bodensteiner reported that recent legislation changes at the NCAA are failing to meet the intended goals of these changes. For instance, there was a problem with the amount of money spent for recruiting services for men’s basketball, services that effectively provide access to high school athletes. Coaches felt intense pressure to subscribe to these services, and thus ran up huge bills. Changes were made to the rules to ease this problem. At the last minute, the changes were applied to all NCAA sports, which resulted in the need for monitoring of recruiting services for NCAA sports in which no problems had existed.

On the local front, Ms. Bodensteiner reported on several initiatives in the Office of Compliance:

1. There has been a persistent need to update technology being used in the office, and that has begun with a significant new program. The Compliance staff has recently been trained in new software, called Jump Forward, which provides the many forms required of NCAA athletes and also provides a detailed and functional monitoring system to assist in monitoring both athletes and coaches, as required by the NCAA. The owner of the company has extensive technology experience and is partnered with a major law firm that has experience working with NCAA rules and requirements.

Student athletes are required to submit numerous forms; with the new system, they get email messages reminders, and staff receive text message notifications when a form is missing or incomplete. Coaches can file visit data online through the software, and phone call tracking can be done efficiently and consistently. This last issue has been a major one for the Office of Compliance, as phone calls can be made by more than one member of the coaching staff and thus result in inadvertent violations of the rules. In addition, the task of monitoring this kind of rule is offloaded to software, a big benefit.

OIT has successfully solved certain BANNER interface problems that had existed with this new software, and the software will be formally rolled out in the upcoming weeks.

2. Assistant Athletics Director Jennifer Vining-Smith is compiling a list of high profile student-athletes whose athletic status warrants additional education and support from the Compliance Office to handle specific concerns such as agent contacts, extra benefits issues, endorsement concerns, appropriate choices in connection with the spring NFL combine, etc. This initiative was launched in part in response to feedback from Ms. Conboy's experience as a member of the NCAA Committee on Infractions.

3. In concert with Dean Ed Edmonds of the Law School, the Compliance Office is co-directing an externship in intercollegiate athletics and the law. A practical benefit of the externship program is that the five enrolled law students assist the compliance staff on a regular basis; a primary focus of the externs is to review and monitor the many forms that must be filed by student-athletes. In the next semester, six externs will be in place.

Ms. Bodensteiner gave a brief report on secondary violations Notre Dame has reported to the NCAA and/or Big East during the past quarter.

Prof. Kijewski-Correa, responding to the formation of a task force to review NCAA compliance issues, noted that because there is no punishment for agents, there is nothing to disincentivize them from committing violations. She asked if there is any plan to work with the NFL to punish agents, through loss of agent eligibility for instance. Ms. Bodensteiner said there are ongoing initiatives with the leaders of the major professional sports leagues to make changes. The NFL specifically has increased its response. In addition, many states have adopted the Uniform Agents' Act, thus taking more responsibility to police this behavior; Indiana is among these.

Prof. Fallon acknowledged that the problem of penalizing the wrong people when the NCAA metes out punishment for violations from previous years is clearly detrimental to current students. What is the alternative? Ms. Bodensteiner noted that the Infractions committee of the NCAA, of which Ms. Conboy is a member, struggles with what might constitute a fair sanction on an infraction which happened five years ago. There simply is not a satisfactory answer; all are aware that there are difficult calls to be made in these situations. Ms. Conboy added that penalties that would be distasteful to ND are not considered a problem by some institutions; for instance, probation is treated lightly by some. Some institutions even self-inflict probation as a way of anticipating a penalty. The result can be a lack of consistency in penalties. However, the committee is committed to not applying scholarship penalties in a way that affects current student-athletes.

Prof. Fallon asked about the NAACC "reasonable standards" idea, wondering if this would simply create a shadow rules regime. Ms. Bodensteiner agreed that there are clear problems with this plan, first and foremost the creation of a second mandatory set of rules which must be implemented. In a cost benefit analysis, she opined that true "safe harbors" would be a beneficial outcome. The NCAA, however, has resisted the creation of safe harbors.

In response to a question, Ms. Bodensteiner said the Jump Forward software, described above, has been adopted by about 40 institutions, including University of Kentucky and University of Michigan. These two big institutions have worked out some of the kinks in this new product, to

the benefit of other users; Abilene Christian University has also been a very active user. The company is quite flexible, able to produce custom applications quickly on request.

Father Doyle offered his support of the initiative to identify and support high profile student-athletes. He requested that Student Affairs have a place at the table in this discussion, as this office too is concerned to support this highly visible group of students. Ms. Bodensteiner noted that in the past there had been a professional sports counseling panel, which drew together a number of campus services. Currently this does not exist but the intention is to improve support in this area. More can be done, and FBA members may be called on for assistance.

Prof. Bill Kelley asked what kinds of penalties are imposed for minor infractions of the sort that Notre Dame self-reported to the NCAA. Ms. Bodensteiner responded that with self-reported violations, the institution also proposes its own penalty, with the assistance of NCAA guidelines. Some examples are repayment, further re-education, a letter of warning filed in a coach's file. NCAA has never rejected a penalty proposed by Notre Dame.

Prof. Frecka asked about training for coaches and players on rules compliance. Besides the twice yearly meeting with all student athletes, there are monthly coaches' re-education meetings and notifications to athletes, and the new Jump Forward software has the capability to allow the compliance staff to send text and email reminders regularly. Student athletes are not tested on their knowledge of rules; coaches are. Education has been beefed up for all stakeholders in NCAA rules. The office receives 15-30 calls daily about compliance issues.

5. Proposed Amendments to Revised Grant-In-Aid Appeals Policy

Prof. Bellia welcomed Joe Russo and Ms. Bodensteiner to the continuation of a discussion about revising the Grant-In-Aid appeals policy. She briefly reviewed the history of this policy. In August, 2010, a revision of the appeals policy was implemented. The first appeal filed under the policy was canceled at the last minute, but it revealed certain items for further revision. At the September 20, 2010 meeting, members voted unanimously to add to the policy a "safety valve" permitting the FAR to alter certain procedures when it is necessary, in fairness to the student-athlete and to the team in question, to expedite an appeal.

Another issue, with two prongs, involves language in the policy indicating who is permitted to be present at the hearing, and during which stages of the hearing. The first item at issue concerns whether an Appeal Advisor (recommended by NCAA best practices guidelines) can be present at the hearing. It was proposed that the language be amended to make clear that if the student athlete so requests, an appeal advisor can be present. Members voted unanimously to approve this change in language.

The second item at issue concerned which parties to the appeal can be present at the hearing witness testimony—and in particular whether a Department of Athletics representative should be present during the testimony of witnesses called on Athletics' behalf. Members expressed strong support for the protection of the student athletes in this appeal process, which was the spirit of the recent revision of the appeals process. Members discussed whether, from experience in prior cases, panelists in these appeals had adequate access to information about the case when

Athletics Department personnel are not present to question their own witnesses. The rules do not call for any closing remarks by participants; thus, this would not present an opportunity for Athletics to review details of the case. Two aspects of the hearing were identified as opportunities for panelists to establish the facts of the case. First, the opening remarks portion of the hearing represents the central opportunity for the parties clearly to state the facts of the case, to “set the stage” for the panel. Second, the written documentation must be carefully prepared to ensure that the Department’s position is well and clearly stated. Ms. Bodensteiner noted that she acts as a liaison to the Department, providing oversight during the construction of the document. In addition, she is present as nonvoting member of the panel. Members agreed that this sufficiently protects the student while also providing the Department with adequate opportunity to present its case. The panel is permitted to call additional witnesses, should it require more information.

Members voted unanimously to accept language clarifying that (1) Department of Athletics representatives would not be present during testimony of Athletics witnesses; but (2) Department of Athletics personnel responsible for the decision under appeal could appear together if desired. The revised policy is appended to the minutes.

6. Student Request for Waiver of Fifth-Year Eligibility Provision

Pat Holmes presented a written request from a fifth-year student-athlete for a waiver of one of the FBA’s fifth-year rules. (The waiver concerned the mix of classes the student was taking rather than the minimum number of credits required of fifth-year students.) Members discussed the unique aspects of this situation, which highlighted some of the disadvantages involved with fifth-year student-athletes, including the difficulty in receiving appropriate advising and the difficulty in securing seats in certain classes. Members voted to grant this exception, with one member opposed.

7. Football Scheduling—Bill Scholl, Deputy Director of Athletics

Prof. Bellia introduced the topic of future football schedules by explaining that the Faculty Senate has expressed interest in knowing the schedule with as much advance notice as possible because of the challenges of scheduling on-campus conferences during the fall semester. Bill Scholl has been invited to brief FBA members so that members can serve as liaison between the Department of Athletics and the faculty on this issue.

Mr. Scholl stated that the 2011 football schedule will be ready for public announcement in the third week of October, which is early by previous experience. In fact, it is possible that the 2012 schedule can be announced very soon as well, and the 2013-15 schedules are far along in the development process.

Mr. Scholl emphasized seven factors that affect the development of the football schedule:

1. Traditional opponents: As much as possible, some long-standing opponents will be protected (e.g. Purdue, Navy, USC).

2. Geography: Because of recruiting considerations, opponents in California, Texas, Florida and the northeast are highly attractive.
3. Shift to a 6-5-1 model of scheduling, away from the 7-4-1 model. The University is committed to a neutral site game, which has been successful in the past two years. The 7-4-1 schedule requires successfully negotiating with three teams that are willing to come to South Bend without requiring a future return engagement while the 6-5-1 model requires only one such opponent, providing for a better overall schedule quality.
4. Quality athletic experience: the schedule needs to present a quality entertainment experience for fans.
5. NBC: because ND has an exclusive contract with NBC, its football schedule must deliver a quality game for the network virtually every week.
6. Changing conference landscape: because the situation is fluid, the schedules cannot be set too far into the future, since significant conference changes may well happen.
7. BCS ambitions: the schedule must present genuine opportunities for ND to compete for a BCS slot with a legitimate championship goal.

Mr. Scholl commented that there are “a lot of moving parts” in this process. Prof. Botting noted that as little as a year’s notice would make the scheduling of conferences significantly easier. Mr. Scholl agreed this timeframe should be possible, but he reiterated that the conference landscape is changing so rapidly and steadily that to release schedules too far out would be futile. To have to pull back a schedule would be unfortunate. Even the most consistently reliable opponents cannot be viewed as “locked in” given the current conference environment. Because of the “moving parts” aspect, to make even one change to the schedule can cause a domino effect. Mr. Scholl emphasized that the change to a 6-5-1 model does consistently open up an additional home weekend for conferences. Further, he invited inquiries from any faculty or staff to confirm a specific date; if possible, that information will always be shared.

[The Department of Athletics released the 2011 and 2012 schedules on October 20, 2010.]

8. Draft Report to Academic Council

As time had expired, Prof. Bellia asked members to review the draft report to the Academic Council and email any suggested changes or corrections to her. Once the draft is finalized, she will circulate it via email for a vote of approval.

The meeting was adjourned.

APPENDIX

Athletics-Related Financial-Aid Hearing Procedures (revised October 2010)

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. The cost of a Notre Dame education significantly exceeds that of many of its peers in NCAA Division I athletics. For this reason, Notre Dame has strongly discouraged reductions, cancellations, or non-renewals of athletics-related financial aid. Notre Dame typically has not considered a student-athlete's athletic performance, contribution to the team, or injury as appropriate grounds for the reduction, cancellation, or non-renewal of athletics-related financial aid.

Institutional athletics-related financial aid may be reduced or canceled during the period of the award (per NCAA Bylaw 15.3.4.2) if the student-athlete:

- 1) renders himself or herself ineligible for intercollegiate competition;
- 2) fraudulently misrepresents any information on an application, letter of intent, or financial aid agreement;
- 3) engages in serious misconduct warranting substantial disciplinary penalty, including misconduct as determined by the University's regular student disciplinary authority; or
- 4) voluntarily (on his or her own initiative) withdraws from a sport at any time for personal reasons.

The University can decline to renew athletics-related financial aid based on the above criteria or based on repeated or egregious violation of stated University, Department of Athletics, or team rules or policies.

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.

A student-athlete whose athletics-related financial aid is reduced, cancelled, or not renewed by the Director of Athletics 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 will notify the student-athlete of his or her 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 sole non-voting member of the hearing panel is the Assistant or Associate Director of Athletics responsible for NCAA compliance, who serves only as a resource concerning NCAA, conference, and Department of Athletics rules and regulations for the voting members of the hearing panel and does not participate in questioning.

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, but only as a resource for the student-athlete and not as a participant in questioning or testimony. 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.