

**Faculty Board on Athletics
Meeting of December 2, 2009
500 Main Building**

Members present: Patricia Bellia (Chair), Stephen Fallon, Thomas Frecka, Umesh Garg, Patrick Holmes, William Kelley, Tracy Kijewski-Correa, Mary Ann McDowell, Richard Pierce, Rev. Mark Poorman, C.S.C., Clark Power, Kevin Richards (student representative), Robin Rhodes, Frances Shavers

Member absent: Jack Swarbrick

Board Liaisons present: Missy Conboy, Charmelle Green

Board Liaison absent: William Scholl

Observers and Guests: Jill Bodensteiner, Associate Athletics Director, Compliance and Legal Affairs; Patrick Clauss, Associate Director, University Writing Program; John Duffy, Director, University Writing Program; Prof. Nicole MacLaughlin; Adam Sargent, Associate Director, Academic Services for Student-Athletes; Tracey Thomas (Recorder); Jen Vining-Smith, Assistant Athletics Director, Compliance

1. Call to order and opening prayer: Prof. Bellia called the meeting to order at 12:15 p.m. and asked Prof. William Kelley to give the opening prayer.

2. Minutes of November 11, 2009: After technical changes, the minutes for the November 11, 2009, meeting were unanimously approved.

3. Chair's announcements: Prof. Bellia noted that she has approved the schedule for Women's Swimming and Diving, a revised schedule that remained within the class miss limits. She will imminently approve the Women's Lacrosse schedule, which will exceed the class miss limit by one half-day, as the team will travel to compete in a prestigious competition.

Prof. Bellia gave a brief report on the ongoing topic of notification of honor code violations. The University Committee on the Academic Code of Honor, which met on November 18, considered the proposal by the FBA to have notification of violations flow to coaches. This meeting concluded without resolution, as members, who were sympathetic to the proposal, still need to develop a general policy for information flow. Members were concerned that sharing information with coaches about student-athletes' honor code violations might necessitate broader policy changes, such as changes to permit the sharing information with ROTC leaders or Deans. The Committee apparently considered whether to allow the Family and Educational Rights and Privacy Act (FERPA) to provide the framework for information sharing—a far more permissive approach than currently exists. Committee members raised the concern that faculty members' knowledge that information would be more widely shared might make faculty members more reluctant to report honor code violations.

Prof. Bellia noted that she discussed the issues with Associate Provost Dennis Jacobs both before and after the November 18 meeting, including whether the General Counsel might be able to

craft language that is more permissive than the current approach but short of what FERPA would allow. In particular, Prof. Bellia had urged a structure like that for drug testing, under which the Director of Athletics functions as gatekeeper and can share information with coaches as he deems appropriate. Prof. Bellia said that she would continue to monitor the issue. The University Committee on the Academic Code of Honor will not meet again until Spring 2010. Because policy changes require approval by the Academic Council, it will not be possible to make any policy change before Fall 2010.

4. Writing Programs and Resources for At-Risk Students: John Duffy, Director, University Writing Program; Patrick Clauss, Associate Director, University Writing Program; and Prof. Nicole MacLaughlin

Prof. Bellia introduced the guests from the University Writing Program who have been invited to give a report on university writing programs that support development of effective writing and academic skills for student-athletes, among other students. These programs have achieved success on a small scale. One question for the Board is whether the programs could be extended to serve a broader range of at-risk students, including more student-athletes.

Prof. Bellia asked Patrick Holmes, Director of Academic Services for Student-Athletes, to provide some contextual data on athletes' SAT scores. Mr. Holmes began by indicating that the Operating Principles of the NCAA require institutions "to develop specific academic support programs to address the unique needs of student-athletes with entering academic profiles lower than those of the general student body." Mr. Holmes identified particular categories of students who struggle to transition to Notre Dame in numerous ways.

Mr. Holmes noted that his office has worked closely with the University Writing Program to develop some of the programming offered by the University to ensure a better transition for student-athletes. Adam Sargent, also in attendance, is the primary contact, working with the University Writing Program and with Kevin Rooney of First Year of Studies. Mr. Holmes said that these efforts have led to some success with "outside-of-the-box" thinking. In response to a question, Mr. Holmes said that a formal report to the NCAA on institutional academic support programs occurs in connection with the certification process; Notre Dame last participated in certification in 2004. Ms. Conboy offered to provide a copy of the report included in the last certification process, which summarizes University academic support programs for student-athletes through 2004.

Prof. John Duffy provided some background concerning the University Writing Program. He noted that the program serves half of all incoming freshmen in composition courses, where the mission is to teach academic writing as a form of ethical practice, a foundation for public discourse. The program, which has several full-time faculty members, including Prof. Nicole MacLaughlin and Prof. Patrick Clauss, and approximately 23 part-time or adjunct instructors, offers about 70 sections of First-Year Composition (FYC) each year, with an average of 16 students per class. In addition, the Writing Center offers a tutorial service to all campus students, serving about 3000 undergraduates each year.

The program also offers a summer writing course, which fulfills the FYC requirement in a compressed seven-week session. This course has been offered in each of the last three summers, increasing to two sections in Summer 2008. Each class serves 18 students, including both Upward Bound students and student-athletes. Profs. Clauss and MacLaughlin each taught a section of this course in Summer 2009.

Prof. Clauss reported on the method of this course, which is part of the summer “bridge” program. The course involves small group work in split sessions of nine students as well as whole class work in the computer studio, where students work on specific writing tasks in conjunction with ongoing writing projects. Prof. Clauss called this “interventionist” teaching because the instructors are able to get deeply involved in the writing process with each student, building day-by-day on the skills being practiced and acquired. In addition to the classroom work, students visited the library and the Snite Museum and viewed films in DeBartolo Performing Arts Center. One difference for students in taking this FYC course in the summer is that the contact time with instructors is much greater, and the student population is quite different than during the school year. The result is an opportunity, not available during a regular semester offering, to acculturate students in university social and academic behaviors. For instance, students are required to make use of faculty office hours and practice appropriate ways to interact with faculty, as they discuss, for instance, appropriate classroom behaviors.

Prof. Clauss and Prof. MacLaughlin reported the strong success of the summer course, noting that the students showed marked growth in their academic skills. Still, they acknowledged that more support should be offered to student-athletes during the academic year. As a pilot project, Prof. MacLaughlin offered a one-credit writing tutorial with a studio component in Spring 2009. In Fall 2009 she offered two sections of this course. This course provides intensive one-on-one and group writing instruction to under-prepared students who are immersed in the same challenging curriculum experienced by every Notre Dame first-year student. With support from Prof. MacLaughlin and an experienced undergraduate, enrolled students work on writing assignments they receive in other first-year courses, and the lesson plans are entirely driven by the needs of the students. Prof. MacLaughlin called it a third space, not simply tutoring or classroom teaching, where strong mentoring relationships develop and part of the curriculum is to discuss explicitly university social and academic expectations, such as messages faculty might receive from student behaviors. The course builds through the many stages of the writing process, and finishes with attention to understanding and responding to the feedback provided by faculty.

Through a student profile, FYC composition instructors are asked to nominate potential candidates for the course, who are asked to apply. Profs. MacLaughlin, Clauss, and Duffy then assess the students’ suitability and writing samples before selecting the final group of students. The central goal is to provide students with a stronger sense of their strengths as writers, with an articulation of future writing goals, and with an awareness of processes in place to work toward completion of those goals.

Prof. Pierce thanked the guests for their informative presentation and asked what kind of support FBA could offer them. Mr. Sargent said the funding for this program needs to be addressed. Currently the funding is patchwork; in addition, further funding would be needed for expansion

and for ongoing research and development. Prof. MacLaughlin said her goal is a state-of-the-art program, and she agreed that the first step is to document with data the extent of need. Mr. Sargent said that the tangible success of this program should lead to a prioritization of funding to support its development.

Prof. Duffy said that Prof. MacLaughlin's pilot program, involving 16 students, is only a beginning. It is too early to have any tracking data on the effects on academic success of these students. A larger pilot would facilitate more effective data collection. Based on Mr. Holmes's SAT data, Prof. Duffy noted the high likelihood that over 50 student-athletes could benefit from this sort of academic support. Prof. Duffy said that "we are here to express our conviction that this program is helpful and could be potentially more helpful if it had a broader scope." A pilot program of two to three years, working with the same students and instructors in the same time-intensive, high student contact approach, would be an ideal plan.

Mr. Sargent concurred with this assessment. He called the program invaluable and agreed that many student-athletes would profit from more support. He noted that this program is particularly efficient in obtaining gains for the student both in writing skills and in university culture skills. He said that an excellent satellite program from the Writing Center operates in all athlete structured study spaces; however, this program cannot meet all the varied needs of student-athletes, needs that Mr. Sargent stressed the University is obligated to meet so that graduating athletes are properly prepared for post-collegiate life.

In response to questions, Mr. Sargent said that while many of the students with the lowest SAT scores would benefit from increased support programming, not all of them are aware of their own needs. In addition, there is a need for continued skill development beyond the first year; instructors cannot accomplish everything they need to in the first year. He stressed again the efficiency of this pilot program in producing improvements for students; he said non-student-athletes would similarly benefit from this program, which instills confidence in students to be able to engage in a competitive academic environment.

Prof. Kelley said that in light of the data offered by Mr. Holmes, the program discussed should be supported. Prof. Duffy agreed that this program, including the summer bridge course and the studio writing course, provides the kind of one-on-one mentoring that ideally would be provided to all students who can be identified as having a higher level of need.

Prof. Bellia thanked all the guests for their presentation and said the first order of business is to develop a procedure for expanding and institutionalizing this kind of support. She suggested a meeting with the Academic Integrity subcommittee and University Writing personnel to discuss the scope and membership of a working group of concerned constituencies to begin addressing further developments.

5. Proposed NCAA Legislation—Jill Bodensteiner, Associate Athletics Director, Compliance and Legal Affairs, Jen Vining-Smith, Assistant Athletics Director, Compliance

Prof. Bellia welcomed Ms. Bodensteiner and Ms. Vining-Smith to give a report on upcoming proposed NCAA legislation. Ms. Bodensteiner provided a brief background of the process.

Proposals come to the NCAA from many institutions on a yearly basis. There are a series of deadlines for submitting, commenting on, and lobbying for proposals in anticipation of the formal vote on each proposal, scheduled for January 15, 2010. In preparation, the Big East conference has scheduled a straw vote from its members on December 15. The Compliance Office is working with coaches to develop responses to this year's 100 proposals. Today Ms. Bodensteiner and Ms. Vining-Smith will address two sets of proposals that are high profile or have academic implications.

The proposals labeled numbers 2009-98 through 2009-102, in Packet II, concern Men's Basketball. Within the NCAA, the Basketball Focus Group (BFG), composed of three NCAA enforcement staff, has been charged with addressing problems in Men's Basketball. BFG has made a series of recommendations, which can be ranked in tiers. The first tier presents new interpretations of existing NCAA provisions. The second tier concerns legislation put forward this year, including 2009-98 through 2009-102. The third and fourth tiers concern future legislation.

Proposal 2009-99 is the most important under consideration. This rule addresses the blurring of the line between legitimate hiring decisions within a men's basketball program and the provision of recruiting inducements. The proposed rule would preclude an institution's hiring, in any noncoaching staff position, of individuals associated with a prospective student-athlete. The limitation would apply during the two-year period before the prospective student-athlete's anticipated enrollment and during the two-year period after the prospective student-athlete's actual enrollment. The current limitation applies only to the institution's employment of the student-athlete's former coach; the new rule would not be limited to former coaches of the athlete. Ms. Bodensteiner noted Coach Mike Brey's support of this recommendation; Ms. Bodensteiner noted that Notre Dame does not employ individuals "associated with" with prospective student-athletes.

Proposal 2009-102 presents some difficult restrictions for Notre Dame, although Coach Brey has indicated that he would support this piece of legislation if necessary because he is in support of the clean-up being done by BFG. This proposed rule would limit those who could work at summer sports camps held at the institution to enrolled student-athletes and current institutional staff members. In the summer, Notre Dame student-athletes attend summer classes, which interferes with the opportunity to work at the sports camps. Typically, Notre Dame might employ athletes from other local institutions, such as Bethel, to work at the sports camps; the proposed legislation would prohibit this practice. Coach Brey has indicated that it would be very difficult for Notre Dame to comply with such a rule and maintain its summer youth programs, but that he is in full support of the work being done by BFG and would accept such a rule if adopted.

Prof. Fallon asked about the rationale for Proposal 2009-101, which would permit recruiting at basketball camps and clinics. Ms. Vining-Smith explained that this proposed legislation, first, recognizes the reality that recruiting already occurs at clinics, and, second, affirms that it is acceptable for coaches to have face-to-face contact with prospective student-athletes. This new rule recognizes that clinics are a good opportunity for coaches to talk with prospective recruits without the interference of 'hangers-on.'

In Packet I, Ms. Bodensteiner discussed Proposal 2009-29, which addresses the appeals process for denials of (1) a student's request to permit another institution to contact the student-athlete about transferring; or (2) a student's request for a one-time transfer exception. This legislation would require revisions to the procedures used by Notre Dame to process appeals from denials of transfer requests. Currently, the Notre Dame process takes approximately 40 days (10 days for the student-athlete to request an appeal from a denial and 30 days to conduct the hearing). The new rule would require the hearing to occur within 15 days of the denial and would deem the request approved if it does not. Ms. Vining-Smith said the intent behind this proposed rule is to protect students from unfair treatment.

Members discussed the various issues that might affect the process, including the definition of a "business day"; when transfer requests are typically made (such as during summer or holiday breaks); the difficulty of bringing together the required three non-ex officio members of the FBA in a short time frame; whether enough time has been allotted for both a hearing and the provision of an answer to the student; and whether Notre Dame's break periods, which are longer than those of other NCAA institutions, might lead to increased harm from such a rule.

Prof. Bellia noted that a problematic element of the rule is that the request for permission to contact or the transfer release is automatically granted if the appeals process is not completed within the required time frame. She also noted that the former FBA chair, Dr. Don Pope-Davis, had advised lengthening the appeals process because of the consistent difficulty of completing the hearing process, which often occurs in January. Ms. Conboy noted the requirement that the institution provide an initial response within seven days of receiving the request. She said that Notre Dame coaches are responsive to the need to move quickly, but she questioned the advisability of making a rapid response an absolute must in all circumstances. She noted, for instance, the circumstance of an athlete requesting to transfer in order to play for an opponent's team.

Ms. Vining-Smith said that part of the rationale for the rule change included the fact that many institutions do not have effective response systems in place already, even though Notre Dame does. Ms. Vining-Smith said that the legislation has preliminary support from the Legislative Council, indicating a likelihood of passing. Prof. Kijewski-Correa asked if Notre Dame could modify its own rule to include a requirement of "due notice" by the student athlete. Ms. Vining-Smith said that because the proposed rule runs the 15-day clock from the time the student-athlete invokes the right of appeal, she believed that such an amendment would not be inconsistent with the NCAA rule, should it be approved.

Prof. Bellia drew the discussion to a conclusion by asking if the Compliance Office needed a formal vote. Ms. Bodensteiner said she was satisfied to be guided by the advice given by members on these proposed rules. Prof. Bellia thanked the guests for their report.

6. Procedures Surrounding the Search for a New Head Football Coach

[At its December 2, 2009, meeting, the Faculty Board on Athletics discussed certain issues surrounding the search for a new head football coach. Those discussions resulted in a letter to

the Director of Athletics summarizing the Board's position. The Board subsequently voted to include the text of the letter in its official minutes, in lieu of an account of its discussion. The text of the letter, transmitted on December 2, 2009, is appended below.]

As time had expired, Prof. Bellia thanked members for their participation. The meeting was unanimously adjourned.

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APPENDIX

December 2, 2009

Jack Swarbrick
Director of Athletics
University of Notre Dame
C113 Joyce Center
Notre Dame, IN 46556

Dear Jack,

At today's scheduled Faculty Board on Athletics meeting, members of the Board requested discussion of certain aspects of the search for a new head football coach. Because you were understandably unable to attend the meeting and discuss these issues, the Board asked me to convey the following on its behalf.

First, members noted that our Statement of Principles on Intercollegiate Athletics provides that the University's faculty athletics representative "serves on search committees for . . . head coaches." The Board expects that the current search for a head football coach will include its Chair in a manner consistent with the spirit of this provision.

Second, the Board wished to call to your attention the Division 1A Athletic Directors' Association memorandum of acceptable standards for head football coach searches and to express its agreement with the spirit of that document. The memorandum addresses the need for appropriate procedures to ensure that a search yields a diverse slate of candidates. We know that you share a commitment to diversity in the hiring of coaches and athletics administrators. After the search for a new head football coach concludes, the Board wishes to open a discussion about what protocol might best serve Notre Dame's commitment to diversity in the hiring of athletics personnel, including coaches. In connection with that discussion, the Board would be grateful for a report on the protocol implemented in the current search, including the efforts to ensure consideration of a diverse group of candidates.

On behalf of the Board, I thank you for your consideration of these issues during this busy time.

Sincerely,

Patricia L. Bellia
Professor of Law and Notre Dame Presidential Fellow
NCAA Faculty Athletics Representative and Chair, Faculty
Board on Athletics