

FACULTY BOARD ON ATHLETICS

UNIVERSITY OF NOTRE DAME

Meeting of December 7, 2005
Civil Rights Reading Room, Law School

Members present: Prof. Fernand Dutile (Chair); Prof. Harvey Bender; Prof. Eileen Botting; Mr. Bobby Brown; Prof. Francis Castellino; Prof. Stephen Fallon; Mr. Patrick Holmes; Prof. David Kirkner; (Rev.) Mark Poorman, C.S.C.; Prof. F. Clark Power; and Prof. John Weber.

Members absent: Prof. Patricia Bellia; Prof. Donald Pope-Davis; Dr. Frances Shavers; and Dr. Kevin White.

Observers present: Mr. Michael Karwoski, associate athletics director; and Ms. Kitty Hoye, recorder.

Guests present: Dr. Christine Maziar, vice-president and associate provost; Rev. Hugh Page, dean of the first year of studies; and Mr. Daniel Saracino, assistant provost for enrollment.

1. Call to order and prayer: The Chair called the group to order at 3:05 p.m. Father Poorman led the group in prayer.

2. Minutes of previous meeting: Prof. Bender moved, with Prof. Castellino providing a second, that the minutes for the meeting of November 8, 2005, be approved. The motion unanimously carried.

3. Announcements: The Chair announced for the record that the Board had approved, by e-mail vote, the schedule for baseball for the spring of 2006. The schedule required a special vote of the Board due to its provision for a fourth class-miss day in the Monday-Wednesday-Friday sequence. The additional day became necessary during this transition year to the new scheduling format for baseball in the Big East Conference. That format calls for week-end scheduling of single games on Friday, Saturday and Sunday (the former profile: a doubleheader on Saturday and a single game on Sunday).

The Chair also announced that he had approved, on the Board's behalf, the captaincy proposals for the following teams: rowing (Meghan Boyle, Andrea Doud and Pamela Jefson); women's track and field (Okechi Ogbuokiri, Laura Huarte, Stephanie Madia and Megan Horn); and men's track and field (Garet Koxlien, Chris Jacques, Ryan Postel and Kurt Benninger). All proposed captains met the University's requirements with regard to grade-point average and approval of the Office of Student Affairs. The Board unanimously ratified these decisions of its Chair.

Today's scheduled tour of the Guglielmino Athletics Complex, the Chair announced, has been postponed. Mr. Stan Wilcox, the deputy athletics director slated to lead the tour, had instead been required to fly to Tempe, Arizona, to pursue preparations for Notre Dame's participation in the 2006 Fiesta Bowl. The Chair will re-schedule the tour.

The Chair reminded the Board that it would meet in special session the next morning at 8:30 a.m. in Room 331 of the Coleman-Morse Centers to consider proposed NCAA legislation.

4. Mid-year enrollment of student-athletes: The Chair called on Prof. Bender, head of the subcommittee on academic integrity, to shepherd discussion of the issue of mid-year enrollments for football players. Various members of the Faculty Board had expressed concerns about such enrollments, scheduled to begin at Notre Dame this coming January. These concerns ranged from the process by which the policy had been developed to the substance of the decision to enroll student-athletes at mid-year. Invited to the meeting to participate in the discussion: Dr. Christine Maziar, vice-president and associate provost; Rev. Hugh Page, dean of the first year of studies; and Mr. Daniel Saracino, assistant provost for enrollment. Dr. Maziar told the group that she appreciated the opportunity to speak with it. She stated that the decision to admit student-athletes at mid-year had been made prior to her arrival at Notre Dame in August 2004. Former provost Nathan Hatch had already communicated with Mr. Saracino about the possibility of considering "exceptional" student-athletes for early (January) matriculation. Under the arrangement, Mr. Saracino would consider only exceptional student-athletes who he believed could succeed at Notre Dame. Mr. Saracino began interviewing such prospects in the fall of 2004. That was, Dr. Maziar recalled, a very difficult time for the Notre Dame football program. Mr. Saracino had little warning of the events of that fall and took heavy criticism for admissions decisions he was making. Provost Hatch, seeking to better insulate Mr. Saracino from such criticism, asked that a broader group be involved in the decision-making process for early enrollment. That group included Dr. Eileen Kolman, former dean of the first year of studies, Father Poorman, and Dr. Maziar herself. The group met to consider one student-athlete but, once the "fall events" began to play out, took no further action. (Mr. Saracino recalled leaving that discussion thinking that the particular student-athlete under consideration did not fit the desired profile for early matriculation, but that, nonetheless, early admissions at Notre Dame were inevitable). Dr. Maziar, continuing, considered it beneficial that a larger group had been involved. Later that year the time came to consider who, among all entering student-athletes, might be invited for summer school under a new NCAA "bridge program" approving such summer enrollment for student-athletes in sports other than basketball (whose student-athletes had already enjoyed such enrollment for several years). The NCAA had decided on the program quite late and had provided very "sketchy" information on its parameters. Dr. Maziar convened and chaired a committee that included Father Poorman, Prof. Dutile, Mr. Saracino, Dr. Kolman, Mr. Kevin Rooney of the first year of studies, Mr. Holmes, associate athletics director Mr. Michael Karwoski, and then-associate athletics director Bernard Muir. That group developed criteria for the program, and a subset of that group then actually selected the student-athletes who were to be invited into the program. As fall took hold, the administration was once again called upon to consider mid-year matriculation for student-athletes in football. The summer committee had worked so well that it was determined to use the same device to assess mid-year matriculation. (Rev. Page and Mr. Stan Wilcox replaced Dr. Kolman and Mr. Muir, respectively, both of whom had left their former positions). Due entirely to an "oversight,"

the Chair of the Faculty Board had not been included. For this, Dr. Maziar apologized. The group considered nine candidates, but approved only three of them for early admission. Such admission for three others among the candidates was withheld pending personal interviews by Father Poorman, Mr. Saracino and Rev. Page, interviews aimed at further assessing the “social and emotional maturity” of the three student-athletes. Ultimately the committee found none of these three suitable for early admission. The committee felt very positive about its work, including the holistic assessment it had made of the candidates. Dr. Maziar expressed her appreciation to Mr. Wilcox for his receptiveness to the workings and concerns of the group, and stressed that no pressure had been brought to bear on the Provost’s Office with regard to particular candidates.

Reflecting on the twenty-two football student-athletes who had so far given verbal commitments to Notre Dame, Mr. Saracino stressed his satisfaction with their courses, grades and extra-curricular activities. The group impressed him as being stronger academically than past groups. It was good, he continued, that Father Poorman, a member of the Faculty Board on Athletics, had been involved in what proved to be a full and healthy discussion with regard to mid-year enrollments. Mr. Saracino did recognize the unfortunate oversight of not including in that discussion a faculty member from the Board.

Prof. Bender asked whether, when Dr. Maziar took office in August 2004, there remained any question about early matriculation for student-athletes at Notre Dame. Obviously, she responded, this was not the first issue she discussed with Dr. Hatch. But she could honestly say that there was no allusion to a formal “decision point” regarding early admits; it seemed clear to her that the decision on this score had already been made. Mr. Saracino, in response to a further question from Prof. Bender, stressed that Notre Dame had not really had a policy against such admits, though “urban legend” suggested that “we didn’t do this.” It’s important to remember, he emphasized, that these young men are finishing school early, they have a plan, and they are on track to succeed. Prof. Castellino noted his interest in the “maturity check” and all it entails. In any event, however, student-athletes seeking January matriculation must have positive reasons for doing so. Prof. Castellino strongly opposed the summer bridge program due to its “lack of an academic setting.” Since January admissions entail a real academic program, however, he found himself much more favorably inclined toward mid-year enrollment, at least as long as a serious assessment of the candidates’ maturity gets done. To Prof. Bender’s question regarding Rev. Page’s comfort with the program, the latter responded that three areas played a role in his positive assessment. First, could we provide adequate orientation? As long as the numbers remain low, and he thought they would, we can actually conduct “one-on-one” orientation counseling. This will be done by both him and Mr. Rooney. Second, could we offer appropriate advising? Again, with the numbers small, Mr. Rooney and he could manage well. Third, would there be an adequate offering of courses? The courses are there, but we do have to orient the faculty members involved with regard to the presence of first-semester students in their second-semester course. Rev. Page thought it his duty to see that such student-athletes succeed. Prof. Bender: Will such student-athletes identify with the class of 2009 or that of 2010? Rev. Page: That, and the related question of whether they will graduate in January or May, will depend upon a number of things, including the availability of summer courses. These student-athletes might be a little out of sequence, but that happens to many students who take summer courses or otherwise accumulate additional credits. Prof. Kirkner stated that in his discipline—

engineering, a January enrollment would present serious curricular difficulties. Will prospective mid-year enrollees be advised against engineering? So far, Rev. Page answered, the interest has gravitated toward arts and letters. Nonetheless, we do not want to see early admission become a common thing. Prof. Bender asked if such prospects will continue to be interviewed by the committee discussed earlier. Dr. Maziar stressed that the committee was a “review” committee, not an “interview” committee, although it might in some cases recommend an interview. Prof. Bender: Was the committee asked to consider the student-athletes’ athletic ability? No, Dr. Maziar replied; it considered only academically related credentials.

Prof. Fallon observed that he felt comforted neither by the explanation that the failure to invite the Chair of the Faculty Board to discussions on mid-year enrollment was an oversight, nor by the news that those discussions preceded Dr. Maziar’s arrival at Notre Dame. The real problem is that the issue did not at the outset come to the Faculty Board, which is charged with advising the president on matters concerning academic integrity and student welfare in the athletics program; the question of mid-year enrollment, Prof. Fallon argued, is precisely the kind of question that should be brought to the Board, a point with which Dr. Maziar concurred. Prof. Fallon worried that “we are on a slippery slope” and will increasingly be pressured to allow mid-year enrollments; if starting early has academic as well as athletic advantages, and if student-athletes see mid-year enrollment as a mark of status, it is difficult to see why requests to matriculate early would not multiply over time.

Dr. Maziar expressed the view that the NCAA must develop clear regulations on the subject. She feared that early enrollments would rip student-athletes from their families too early, families with whom they already have too little time. Coaches, she understood, feel the same way. We definitely do not want to promote mid-year enrollment as a fast track to the National Football League. Agreeing, Mr. Saracino predicted that Notre Dame would see only a couple of such student-athletes each year. For most, this opportunity does not afford a good match. He hopes to be clear in describing to coaches the type of student for whom such a program provides a beneficial possibility. The Chair asked if somewhat higher numbers might be better, not worse, since they would provide a larger peer group for such student-athletes and thus prevent their isolation. Mr. Saracino stated that Notre Dame was open to this possibility if the appropriate student-athletes applied. Remember, though, Dr. Maziar added, these student-athletes must also meet the criteria set up by First Year of Studies and by Residence Life. Prof. Bender: Are the housing problems daunting? Not really, replied Father Poorman; freshmen will go with freshmen. The orientation program of Residence Life will augment Rev. Page’s orientation program. Indeed, with one-on-one attention, chances are that these students will be better oriented than the August admittees. Prof. Power felt confident that Notre Dame would do its best to assure the success of these student-athletes, but worried about the policy itself. We need to talk with the high schools about this. What do adolescent-development experts think? The NCAA does need to discuss the issue fully and set out clear regulations. This is especially true in light of newspaper reports that the number of such early enrollees, while still small nationally, increases every year. Father Poorman agreed; the process of finishing high school is very important—it’s a rite of passage that gives closure. Experts say that taking part in senior-class events like the prom and graduation plays a crucial role in the student’s development. Prof. Weber: But are we glamorizing unduly the second semester of the senior year of high school? He reported that his wife, a former high-school teacher, thought the idea of early enrollment to be

an excellent one; these students don't do anything their second semester, they want out, and being at Notre Dame might be really good for them, she felt. Dr. Maziar suggested that the NCAA could bring all of this to a halt by declaring that spring practice constitutes use of one year of eligibility. Mr. Karwoski noted that the increase in the number of core courses required by the NCAA for college eligibility will itself reduce the number of student-athletes seeking early admission. Prof. Weber countered that the number of applications for mid-year enrollment will rise when more student-athletes learn of this possibility. In response to three questions from Prof. Botting, Dr. Maziar stated that someone from the Faculty Board—and chosen by the Board—will be officially involved in the early-admit process; certain practices and procedures, though not a “policy” per se, will be developed to guide the program; and the Faculty Board should play a role in reviewing the program. The Chair thanked Dr. Maziar, Rev. Page, and Mr. Saracino for their participation in the discussion.

5. Prior registration of student athletes: The Chair called on Prof. Bender, head of the subcommittee on academic integrity, who introduced the topic of prior registration for student-athletes. Prof. Bender pointed out the distinction between “priority” registration and “prior” registration. Under the former, one gets to register early in the regular registration period; under the latter, one gets to register before the registration period. Mr. Wilcox, in a memorandum to Dr. Shavers, asked that consideration be given to providing prior course registration for football players in the spring semester (they already enjoy prior registration for the fall, as basketball players—men and women—do for the spring). Such prior registration would allow players to be available for practice by 2 p.m. and, therefore, give them greater ability to be students. The documentation included a statement from Head Coach Charlie Weis, who saw this as a “quality of life” issue. Prof. Bender informed the Board that, in the interim, two of the “working deans, one in Arts & Letters and the other in the School of Business, raised concerns in connection with registration. Those deans met with the Chair of the Board, members of the subcommittee on academic integrity, and Mr. Peter D’Alonzo, a counselor in the Office of Academic Services for Student-Athletes assigned to the football program. The deans expressed concern at the lack of clear direction with regard to the registration of student-athletes; are these deans to accommodate student-athletes’ needs with regard to registration or both needs and wants? The deans also worried that coaches in too many sports were now counseling student-athletes to select only courses that meet prior to practice time. That, said the deans, makes it difficult to provide course registration that focuses on the students’ academic interests; are we depriving students of courses they should have or even majors that they might prefer? The deans also raised concerns about the substance and timing of academic counseling. Concerns raised from the business school centered on the large number of core classes that are offered only late in the day. Nonetheless, the situation becomes somewhat flexible if the student-athlete has one semester per year in which to choose courses from the whole day’s offerings. The football request would especially undermine that ability.

The Chair noted that, in a meeting he had with Coach Weis and several others the previous week, the coach had committed to having spring practice sessions only on Mondays, Wednesdays and Fridays. This would leave the Tuesday-Thursday class sequence, as well as the early parts of other days, open for class scheduling. This would, of course, greatly loosen scheduling restraints. That, said Father Poorman, is an important change: radical and significant. Indeed, many students—whether athletes or not—marshal their schedules so as to concentrate

their classes on a few days per week. Mr. Holmes noted that an additional benefit from the plan would be a reduction in the clustering of football players in certain courses.

Prof. Castellino noted that the tone of the documents troubled him; it suggests that football is sacred and that classes present the real problem. Aren't there other solutions? Why can't the dining hall stay open later to accommodate later practices? Mr. Karwoski: We have had discussions with the dining-hall staff before and the response has been that it is too costly to keep the lines open until 9 p.m. Father Poorman noted that one dining hall is open until nine o'clock and that, in any event, the "flex point system" allows students to go to Reckers twenty-four hours a day. Prof. Fallon noted that we should keep in mind the possibility of resentment among students in general over both priority and prior enrollment of student-athletes. The deans are entitled to a clear statement of what they should do in this regard. Moreover, the emphasis of prior registration should be placed on "need" and not on "want." Prof. Power said that gender-equity issues may lurk here. Giving prior registration to a hundred football players could roll back the clock. Shouldn't others, like a representative from the Office of General Counsel and one or more "working deans," be invited to address this? The Chair thought it made sense for the subcommittee on academic integrity to take a wide-ranging look at the issue. After all, the issue need not be settled today, since it is already too late to change the registration process for spring 2006. Whatever gets done, Father Poorman observed, the University should provide prior registration for fifth-year student-athletes who are unclassified graduate students. To keep these student-athletes "academically engaged," we require that they take nine hours per semester. This requirement can work well only with prior registration for them. The Chair concluded by stating that he would put this issue on the agenda for the next meeting.

6. Appeal procedures relating to one-time-transfer exception: The chair of the subcommittee on student welfare, Prof. Botting, proposed to the Board an amended version of a provision entitled *Denial of One-Time Transfer Exception: Hearing Procedures*. Under the proposal, that provision, constituting Section 4(1)(A)(4) of the *Articles of Administration of the University of Notre Dame Department of Athletics* and appearing in the current *FBA Manual*, would be renamed *Transfer-Release Hearing Procedures*. [That provision, as ultimately adopted by the Faculty Board on Athletics, appears as an appendix to these minutes.] Prof. Botting invited the Board's attention to several significant changes. First, a non-voting member, the director of the compliance group of the Department of Athletics, has been added to the appeals panel. The panel will inevitably be helped by the expertise thus provided with regard to the rules and regulations of the NCAA, athletics conferences, and the Department of Athletics. Second, the provision specifically gives the head coach of the team involved the right to appear before the panel. Third, the provision reconciles the process with the current administrative structure at Notre Dame. Accordingly, the written request for a hearing goes to the Chair of the Faculty Board on Athletics, not the Executive Vice-President. Fourth, the panel gets appointed by the Chair of the Faculty Board on Athletics, not the president. Finally, the provision specifies the criterion to be applied by the panel in considering the case under appeal: Have the rules and regulations of the NCAA, of any relevant conference, and of the University been applied to the student-athlete in a reasonable and fair manner? This criterion dramatically resembles the one previously used, but now appears in writing. Prof. Bender worried about jurisdictional matters. In a recent appeal, a panel of three members of the Faculty Board on Athletics decided the case, but no appeal came to the Board itself; is this panel a Board "committee"? Father

Poorman agreed with Prof. Bender that a jurisdictional problem lurked in the proposal; after all, although its predecessor appears in the *FBA Manual*, the provision comes from the *Articles of Administration of the Department of Athletics*. The Department of Athletics should adopt this provision. Prof. Fallon, however, saw the matter addressed by the provision as a student-welfare one and, therefore, one well within the Board's jurisdiction. Prof. Botting noted that she had grappled with the problem of jurisdiction. The short answer: It's a committee whose membership comprises three members of the Faculty Board. The Chair of the Faculty Board appoints those three members, but it is not a Faculty Board committee. The panel acts as an "aid" to the Department of Athletics. Of course, reporters and the like will often miss this distinction, but we should not unduly worry about that. Every other university surveyed uses faculty members for such purposes. To make the jurisdictional situation clearer, the Chair suggested—and the group agreed—to replace all references to the "Chair of the Faculty Board" with "Faculty Athletics Representative." Although at Notre Dame the same person holds both these positions, use of the latter term will lessen confusion about the panel's status. The Chair agreed that, indeed, amendments to the provision must be jointly approved by the Department of Athletics. The Department, fortunately, has worked directly with the Board's subcommittee to produce the provision. Prof. Fallon asked if the non-voting member called for by the provision participates in the deliberations. No, replied Mr. Karwoski. He noted that he himself serves in a similar capacity on a committee dealing with financial-aid appeals and provides counsel only when asked. At this point, the Board voted unanimously to adopt, as amended, the provision proposed by the subcommittee on student welfare.

7. New business: Pursuant to a question from the Chair, Mr. Holmes confirmed that fifth-year student-athletes have been made aware of the requirement that they achieve a 2.0 semester grade-point average in order to remain eligible for post-season competition. Mr. Holmes will ensure that the requirement is honored.

Prof. Weber informed the Board of a complaint he had received from a member of the faculty. Apparently, in connection with the first round of the NCAA Volleyball Championship, held at Notre Dame, this faculty member had received a note indicating that student-athletes on that team would not be in class during a practice scheduled for noon. (The team was not scheduled to play until 7 p.m.). Mr. Holmes responded that this situation resulted from NCAA regulations, which set the times for each team's practices at such events. Although Notre Dame restricts the number of class-days that can be missed for regular-season competition, Prof. Weber noted, these post-season events can bring the student-athlete's absences in one course up to five or six. The Chair agreed that the post-season success of our teams creates significant class-miss problems; alas, we cannot control post-season scheduling. Such conflicts with class attendance remain inevitable in college sports, whether one plays in Division I or in Division III. With regard to the Volleyball practice, however, it must be recognized that the impact on the student-athlete would be still more severe if the tournament were held elsewhere. At Prof. Weber's request, the Chair agreed to write to the faculty member to explain the situation.

The Chair reminded the group of its special breakfast meeting the next morning to consider proposed NCAA legislation.

Prof. Kirkner proposed an agenda item for the second semester. Since the 1980s, we have seen at Notre Dame more and more varsity sports, but fewer and fewer science and pre-professional students. Student-athletes who do start in the engineering program, for example, tend quickly to drop out. Is something forcing them out? Is the coach telling the student-athlete, “That’s a difficult program, so don’t take it”? The Chair asked whether the scheduling of lab sessions drives student-athletes’ decisions in this regard. Yes, Prof. Kirkner responded, lab sessions make it difficult for student-athletes to participate, but this issue, one of real concern, needs serious exploration. The Chair asked the subcommittee on academic integrity to take on the matter.

8. Adjournment: The Chair adjourned the meeting at 5:15 p.m.

APPENDIX

Joint proposal of the Faculty Board on Athletics and the Department of Athletics to replace the current “Denial of One-Time Transfer Exception: Hearing Procedures” on Page 20 of the *FBA Manual* with the following expanded and updated statement:

Transfer-Release Hearing Procedures (Section 4(1) (A) (4) of the Articles of Administration of the University of Notre Dame Department of Athletics):

If a student-athlete’s request for permission to communicate with another institution about transfer opportunities is denied by the Director of Athletics, or if a student-athlete is eligible for a one-time transfer exception and the student-athlete’s request for a one-time transfer exception is denied by the Director of Athletics, the student-athlete is informed, in writing, 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 ten (10) days of the University’s written denial of the student-athlete’s request.

A hearing is conducted no later than thirty (30) days after the FAR receives the written request for a hearing. The FAR appoints three non-*ex officio* members of the Faculty Board on Athletics as voting members of the hearing panel. The FAR designates one of these three voting members of the hearing panel as its chair. The chair of the hearing panel schedules the hearing. The sole non-voting member of the hearing panel is the Director of NCAA Compliance in the Department of Athletics, who serves as a resource concerning NCAA, conference, and Department of Athletics rules and regulations for the voting members of the hearing panel.

At the hearing, the student-athlete appealing the decision and representative(s) of the Department of Athletics, including the head coach of the student-athlete’s team or former team, 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 for the presentation of relevant witnesses and pertinent documentary evidence. The hearing panel has the right to question any and all witnesses, to examine documentary evidence and to summon other witnesses as it

deems necessary. No witness or party is present during the testimony of any other witness or party. The hearings are open only to the hearing panel and the parties or witnesses while they are testifying. The student-athlete and representative(s) of the Department of Athletics provide to the hearing panel every document or other exhibit to be used at the hearing, and the names of any witnesses they intend to call, no later than seven (7) days prior to the hearing. The hearing panel promptly distributes to the other party copies of all materials submitted by each party. The hearing panel may refuse to hear the testimony of any witnesses not so disclosed or to consider any exhibits not so disclosed.

After all the evidence and testimony are presented, the panel deliberates in closed session. Its deliberations are and remain confidential unless disclosure is required by law. The panel's role is to decide whether or not NCAA, conference, and University rules and regulations regarding the decision under appeal have been applied to the student-athlete's case in a reasonable and fair manner. The hearing panel may accept, reject or modify the decision of the Department of Athletics. It puts forward a single vote regarding the appeal, positive or negative. Within ten (10) days after the hearing concludes, the chair of the hearing panel transmits a written copy of its decision to the student-athlete and the Department of Athletics. The decision of the hearing panel is final and non-appealable.

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 so notifies the hearing panel, in writing, and the pending review is dismissed.
