

**Faculty Board on Athletics
Meeting of September 15, 2021
1:00pm-2:30pm—2108 Eck Hall of Law**

Members Present: Patricia Bellia (Chair), Corey Angst, Alex Blachly, Jaimie Bleck, Malcolm Chaka, Ann Firth, Rev. Gerry Olinger, Patrick Holmes, Jeff Kantor, Tracy Kijewski-Correa, Randy Kozel, Susan Ohmer, Richard Pierce, Jack Swarbrick, Kevin Vaughan

Members Excused: Mary Ann McDowell

Athletics Liaisons: Missy Conboy

Guests: Heidi Uebelhor, Associate Athletics Director; Claire Leatherwood Slebonick, Assistant Athletics Director and Recorder

1. Opening Prayer

Professor Patricia Bellia called the meeting to order at 1:01pm. Professor Randy Kozel offered the opening prayer.

2. Minutes of Meeting of April 28, 2021

With no changes to the Minutes of the Meeting of April 22, 2021 (Minutes), Professor Susan Ohmer moved to approve the Minutes; Professor Corey Angst seconded the motion. All present and voting members voted to approve the Minutes.

3. Chair's Announcements

New Members. Professor Bellia welcomed and introduced the new members, Jeff Kantor, Malcolm Chaka, and Reverend Gerry Olinger, C.S.C. The continuing Board members, Athletics liaisons, and guests introduced themselves.

Schedule Approvals. Professor Bellia informed the Board of the schedules she approved on its behalf: fall schedules for rowing, men's and women's tennis, softball, football, men's soccer (original and revised), cross country, and cheerleading; winter schedules for women's basketball, swimming and diving, and men's basketball (partial); and spring schedules for men's and women's golf. She also provisionally approved hockey's schedule, subject to further discussion by the Board at this meeting, and noted that the spring rowing and baseball schedules will raise the same issue as hockey's winter schedule.

Captaincy Approvals. Professor Bellia announced that she approved captains for the following sports: men's basketball, football, men's soccer, rowing, and cheerleading.

Fifth Year Updates. Professor Bellia shared that she and Professor Angst jointly reviewed and approved four Fifth Year Petitions (Petitions). She described that the exchange surrounding

those Petitions identified some issues with the Petition process. Professor Bellia informed the Board of a forthcoming meeting to address those issues.

Annual Report. Professor Bellia noted that she included the Board's Annual Report in this meeting's materials.

4. Impact of Changes in Academic Calendar to Sports Schedules

Professor Bellia introduced the University's revised academic calendar and its impact on sports schedules for the Board's consideration. She described the usual cadence of the Reading and Exam Days and contrasted that with the revised academic calendar, which creates two sets of paired Reading and Exam Days. The University experimented with this concept with the revised academic calendars implemented in Fall 2020 and Spring 2021 and, due to positive feedback, extended this aspect of the revised academic calendars for the 2021-2022 academic year.

Professor Bellia described the impact this change has on the Athletics department's sports schedules given the Board's policy that regular season contests not occur on Exam Days (Policy). She highlighted how the University's perpetual academic calendar rules generate calendars up to three years in advance, which are then shared with the University's athletic conferences, including the ACC and the Big Ten (for hockey). Professor Bellia shared that the effect of this academic calendar change for 2021-2022 is to create a conflict with athletic schedules issued by the sports' respective conference offices, the development of which were already well underway at the time of the academic calendar revision.

Professor Bellia listed the sports with scheduling issues as a consequence of this change, which included men's and women's basketball, hockey, rowing and baseball. She shared that men's and women's basketball managed to navigate around this issue as the games in question were non-conference contests, but that the other sports were unable to adjust their schedules to accommodate the revised academic calendar. Professor Bellia described the fruitless efforts of the hockey coaching staff to work with the conference office and the team's opponent to adjust the schedule to move the affected game.

Professor Bellia summarized the issues before the Board: (i) whether the Board should waive its Policy; and (ii) whether the Board should extend its established procedure for rescheduling exams that conflict with post-season contests to the regular-season contests at issue here.

Ms. Missy Conboy provided background information about the conference scheduling process and the difficulty of changing a schedule once it is determined.

Professor Bellia added that this anticipates a question about how this matter should be handled in future years should the University continue with the revised academic calendar and noted that there is no resolution yet from the Academic Council as to whether this change will be permanent.

Discussion among the Board ensued. Professor Tracy Kijewski-Correa expressed an interest in building more flexibility into the Board's policies to accommodate future changes to academic calendars.

In response to a questions from Mr. Pat Holmes about possible alternative dates for the hockey games in question, Professor Bellia explained the intricacies of the Big Ten hockey schedule and the equity implications inherent in always giving the same team a bye at the end of the regular season. Mr. Jack Swarbrick emphasized Professor Bellia's comments.

Professor Jeff Kantor summarized the proposals for the Board's consideration and Professor Alex Blachly asked for clarification about a potential waiver of the Board's Policy. Professor Bellia answered by restating the proposals, explaining that the proposals would waive the application of its existing Policy as well as borrow the Board's existing procedures for rescheduling of exams in conflict with post-season contests to these the three discrete circumstances before it. She noted that information on students' exam schedules is not yet available in the Registrar's system, making it difficult to determine how many conflicts will have to be resolved should the Board vote in favor of adopting these proposals.

The Board discussed a concern about whether the occurrence of the game on an Exam Day would be distracting for other students, with Professors Blachly, Ohmer and Bellia commenting on the matter. Professor Richard Pierce inquired about whether these proposals would extend to the students who support athletic teams, such as student managers and members of the band and cheer programs. Professor Bellia responded by saying that the competitions might require the participation of some student managers. Mr. Swarbrick assured the Board that the members of the band and cheer programs would take any exams as scheduled.

Professor Bellia noted her belief that the academic calendar should revert to its traditional cadence and shared her intention to advocate that position with the committee addressing this issue.

In response to a question from Reverend Gerry Olinger, Professor Bellia explained that representatives from Athletics shared the revised academic calendar with the conferences as soon as it was known to them, but that, because the schedule development was already well underway, the conferences were unable to accommodate the new exam dates. She noted that, should the new format be retained, it would become the baseline from which the conferences would work in future years. Professor Bellia expressed skepticism that the Big Ten would always be able to accommodate the exam dates under the new format, should that format become permanent, because of the equity issue surrounding the provision of a bye to the same school each year at the end of the season. Mr. Swarbrick echoed this comment.

In response to a question from Ms. Conboy, Professor Bellia explained that baseball and softball, to date, have avoided regular season competition on exam dates, but that baseball and rowing are implicated in ways similar to hockey for the coming spring semester. She described the nuances of both rowing's and baseball's schedule conflicts with the revised academic calendar. Professor Angst voiced his opinion that preserving time to study on Reading Days should be prioritized when considering rescheduling options and inquired as to how many issues

the rescheduling of exams typically engenders with professors. Mr. Holmes responded to Professor Angst's question as well as one from Professor Kantor about when rescheduled exams usually occur by commenting that rescheduling exams is usually a smooth process and that there are few restrictions on when they are rescheduled. Professor Bellia added that, at times, professors will change the format of the exam to mitigate concerns surrounding the integrity of exams offered at different times—a practice that creates some challenges under the Academic Code.

In reply to a question from Ms. Conboy, Professor Bellia clarified that the Board (1) could vote to implement a one-year waiver of the Board's Policy and a one-year application of its post-season exam conflict rescheduling procedures to the regular season contests in question; or (2) could consider a broader change of its Policy as Professor Kijewski-Correa proposed. Professor Ohmer shared her view that it would be appropriate to consider Professor Kijewski-Correa's proposal after reviewing data from a one-year waiver and application of procedures as described above. Professor Bellia noted that the Board could ask for a report detailing this information.

In response to a comment from Professor Pierce, Professor Bellia described the circumstances that led to the provisional approval of the hockey schedule and its subsequent release.

The Board continued to discuss the matter. Professor Kantor and Mr. Holmes commented on the merits of applying the post-season rescheduling procedures to the regular-season contests in question. Professor Randy Kozel shared his support of this approach. In reply to a question from Ms. Conboy, Professor Bellia noted that the Board's policies that attach to competition on Reading Days would attach in the same way for contests on Exam Days.

Professor Bellia restated the proposal before the Board: to implement a one-year waiver of the Board's Policy prohibiting regular-season contests on Exam Days; to allow for a one-year application of its post-season exam conflict rescheduling procedures to regular season contests; and to require that the Board's rules surrounding Reading Day contests apply to competitions on Exam Days. Professor Ohmer moved to vote on this proposal and Professor Angst seconded the motion. The Board voted unanimously to adopt this proposal for the 2021-22 academic year.

5. Changes in the Intercollegiate Athletics Landscape

Professor Bellia invited Mr. Swarbrick to update the Board on changes within the intercollegiate athletics landscape.

Industry changes. Mr. Swarbrick informed the Board on several significant changes within the industry, including the recent U.S. Supreme Court decision in *Alston v. NCAA* (*Alston*). He described the holding in the case, its impact thus far on athletic conferences and the University, and potential future implications of this decision.

Name, Image, and Likeness (NIL). Mr. Swarbrick briefly explained the evolution of the concept known as NIL and the University's longtime support of the concept. He described the

impact of a lack of NIL regulation from either the NCAA or Congress. Mr. Swarbrick provided several examples that illustrate the unevenness this lack of a national standard has created across institutions and highlighted how the current situation demonstrates the need for national legislation. Mr. Swarbrick shared information on the University's efforts to work with representatives from Congress and others to develop broad-based NIL rules.

Mr. Swarbrick discussed the University's approach to implementing NIL for its student-athletes. He informed the Board about the campus Working Group and touted the collaboration among various parties to develop the University's policies. He shared details about how the Athletics Department is supporting student-athletes in this space and described the evolution of the Student Welfare and Development office into the GLD (Grow, Lead, Do) Center.

Mr. Swarbrick provided information on NIL trends to date, explaining the demographics of those student-athletes who are most notably capitalizing on NIL opportunities.

Transfer Legislation and Portal. Mr. Swarbrick reminded the Board of the recent change in NCAA legislation removing the restriction on a student-athlete's ability to transfer once during their collegiate career. He shared nuances of the NCAA legislation and explained the financial aid implications of a student-athlete entering the transfer portal. Mr. Swarbrick forecast likely impacts of the change in legislation on institutional rosters and in recruiting.

Professor Bellia noted that many student-athletes matriculating at colleges in the fall of 2021 were unable to visit prior to enrolling due to COVID-19 restrictions, which could increase the number of transfers.

Mr. Swarbrick concluded his report by noting many things are changing within the intercollegiate athletics landscape that are making institutional staff consider the changing relationship with student-athletes and how those changing relationships might be managed in ways that remain consistent with University values. He then invited questions from the Board on these or any other topics.

In response to a question from Professor Kantor, Mr. Swarbrick further explained the definition of educational benefits as articulated in the *Alston* decision. He elaborated on the Atlantic Coast Conference's (ACC) initial response and on-going discussions on this matter. Ms. Conboy provided an additional illustrative example concerning the application of the *Alston* decision on institutional support of internships for student-athletes.

In response to questions from Professor Ohmer regarding the streaming on Peacock of the institution's first football game of the 2021 campaign versus Toledo, Mr. Swarbrick shared information on the genesis of and the reasons underlying the decision to move the Toledo game from a linear broadcast to a streaming service. He offered insights about what the Athletics Department learned from experience and implications for future broadcasts. Mr. Swarbrick also provided information about the involvement of people affiliated with the institution's Fighting Irish Media department in the production of the broadcast and surrounding programming.

In reply to a question from Mr. Malcolm Chaka, Mr. Swarbrick expounded on the role of the University within the ACC given the *Alston* decision. He provided more context around the role of the University within other industry groups, such as the College Football Playoff committee, and the opportunity for the institution to influence national legislation. Mr. Swarbrick answered a question from Professor Koziel about the potential impact on institutional partnerships of NIL deals with individual student-athletes. In response to a question from Professor Ohmer about potential inequities in student-athletes' backgrounds affecting their ability to take advantage of NIL opportunities, Mr. Swarbrick provided additional detail about the GLD Center's approach and its provision of services to student-athletes.

Mr. Swarbrick, in response to a question from Professor Blachly, described the Athletics Department's plans to simulcast the football games on Peacock while offering linear broadcasts in the future. Mr. Swarbrick provided context around fan attendance at the Toledo game and noted the additional dynamic of fan travel during the pandemic. In reply to a question from Professor Pierce, Mr. Swarbrick described the mobile ticketing experience, in place for the first time at the Toledo game, as well as general staffing challenges and the resulting impact on the fan experience. Mr. Swarbrick provided information around the mobile parking pass experience in response to a question from Professor Kantor.

In reply to a question from Professor Kantor, Mr. Swarbrick shared insights into gambling on college sports, the impact on student-athletes, and the growth of the industry since betting on college sports became legal.

6. Selection of Subcommittee Chairs

Professor Bellia invited the members of the Board's Academic Integrity and Student Welfare Subcommittees to select their Chairs. The members of the subcommittees selected Professor Angst and Professor Ohmer to serve in those respective roles.

7. Adjournment

Professor Bellia adjourned the meeting at 2:29 pm.