

**Faculty Board on Athletics  
Meeting of October 5, 2021  
12:00pm-1:30pm—500 Main Building**

**Members Present:** Patricia Bellia (Chair), Corey Angst, Alex Blachly, Malcolm Chaka, Ann Firth, Patrick Holmes, Jeff Kantor, Tracy Kijewski-Correa, Randy Kozel, Richard Pierce, Jack Swarbrick, Kevin Vaughan, Mary Ann McDowell

**Members Excused:** Jaimie Bleck, Rev. Gerry Olinger, Susan Ohmer

**Athletics Liaisons:** Jody Sadler

**Guests:** Heidi Uebelhor, Associate Athletics Director; Claire Leatherwood Slebonick, Assistant Athletics Director and Recorder; Brian Coughlin, Associate Vice President for Student Development

**1. Opening Prayer**

Professor Patricia Bellia called the meeting to order at 12:06 pm and offered the opening prayer.

**2. Minutes of Meeting of September 15, 2021**

Professor Bellia noted a change to the cheerleading captaincy announcements in the Minutes of the Meeting of September 15, 2021 (Minutes). Inclusive of that change, Professor Corey Angst moved to approve the Minutes and Professor Jeff Kantor seconded the motion. The Board voted unanimously to approve the Minutes.

**3. Chair's Announcements**

*Schedule Approvals.* Professor Bellia announced approval of fall schedules for women's lacrosse and baseball and the full schedule for men's basketball.

*Captaincy Approvals.* Professor Bellia announced the approval of captains for cheerleading.

**4. Athletic Director's 2020-21 Report**

Mr. Jack Swarbrick presented the Athletic Director's Report on the 2020-21 academic year (Report) to the Board. He noted that while the Report usually includes a whole host of metrics, the current iteration does not due to the COVID-19 interruption of regular sports activity. Instead, Mr. Swarbrick shared four key achievements from 2020-21: (i) how the University and Athletic Department led within higher education and athletics circles; (ii) how the University and Athletic Department actively and intentionally worked through the opportunities presented by the pandemic and the social justice movement; (iii) how the student-athletes

performed in competition, with a number of impressive post-season performances; and (iv) how athletics became a rallying point for the community in an otherwise incredibly difficult year. Mr. Swarbrick noted the remarkable significance for and likely long-lasting impact of the preceding eighteen months on college athletics.

Professors Kantor and Tracy Kijewski-Correa commented on the importance of the Notre Dame football team's win over Clemson in the fall of 2020 for the morale of the community.

In response to a question from Professor Kantor, Mr. Swarbrick answered that only one Notre Dame football game this year is exclusive to NBC's streaming service, Peacock, and that all other games in the 2021 season will be simulcast. Mr. Swarbrick stated that it was important to try an exclusive-to-streaming distribution strategy. In reply to a question from Professor Angst, Mr. Swarbrick offered insight into how the decision to stream the game versus Toledo was made. In answer to a question from Professor Kijewski-Correa, Mr. Swarbrick commented that customer satisfaction with the game day experience has improved each week. Mr. Swarbrick thanked the security team provided by the Notre Dame Police Department and Chief Keri Kei Shibata for their good work relating to football game days.

## **5. Changes in the Intercollegiate Athletics Landscape**

*Memorandum of General Counsel of the National Labor Relations Board.* Professor Bellia provided background information about the recent Memorandum of General Counsel of the National Labor Relations Board (NLRB) concerning whether or not student-athletes are employees (NLRB Memo). She described the position of the General Counsel of the NLRB within the NLRB structure and the significance of this development.

Mr. Swarbrick provided insight into possible scenarios, such as the likelihood of labor organizing efforts at private schools, and discussed the NLRB Memo's categorization of the term "student-athlete" as a violation of the National Labor Relations Act (NLRA). He shared his belief that there will be a period of uncertainty while the issue works its way through various administrative and legal paths but that there will ultimately be a global solution that forges a way forward for college athletics.

In response to questions from Professor Angst, Mr. Swarbrick commented on the practical elements of labor organizing. Mr. Swarbrick replied to a question from Professor Kantor about a potential change to the relationship between the student and the instructor should student-athletes become employees. The Board, including Professors Kijewski-Correa and Mary Ann McDowell, discussed various elements of this dynamic.

In answer to a question from Professor Randy Kozel, Professor Bellia discussed possible jurisdictional issues raised in the NLRB Memo. Mr. Swarbrick shared additional context on these jurisdictional questions and forecast possible implications. Professor Bellia commented on the General Counsel's assertion that the term "student-athlete" is a possible violation of the NLRA and other cases that bear on this point. In reply to a question from Professor Kantor, Mr. Swarbrick discussed the rationale behind why the use of a descriptive term raises these questions. In response to questions from Professor McDowell, Mr. Swarbrick stated that there is

much that is still much unknown about this issue. Mr. Swarbrick, in answer to a question from Professor Kevin Vaughn, shared various examples of things that student-athletes could bargain for should they be deemed employees and then successfully organize into a labor union.

Professor Bellia queried the Board as to whether the Board needed to educate faculty on the changing landscape of college sports and, if so, how they should do so. The Board discussed this question, with Professors Kijewski-Correa and Richard Pierce offering opinions on the efficacy of different methods. Ms. Ann Firth suggested the Board seek a recommendation on this point from the Office of General Counsel. Professor Bellia clarified that her question was aimed more towards identifying what faculty needed to know more generally about this period of change within intercollegiate athletics rather than any one specific issue. The Board continued to discuss this question including the merits of various suggestions, such as a Town Hall-style meeting, and the need to have a plan to communicate with the faculty.

## **6. Report on Travel/Competition on Reading Days and in Exam Window**

Professor Bellia reminded the Board of its policy regarding competition on a study day and the requirement that sport administrators submit a plan in advance for how the team will provide appropriate time for academic work when competing on a study day. Professor Bellia recalled to the Board that the study day and exam windows were different than usual in the last academic year due to the COVID-19 changes to the academic calendar. She shared the impact of these changes and the affected sports: football, volleyball, hockey in the fall and softball in the spring.

Professor Bellia reported on how teams accommodated the study day and whether there were any adverse impacts. She shared that volleyball and hockey both had home games, neither team was required to participate in any ancillary activities, both teams had a full day off on the alternative study, day and, while the Academic Services for Student-Athletes (ASSA) counselor for volleyball reported a high level of stress before the weekend, there were no problems reported for either team. Professor Bellia noted that football traveled to an away game and, because COVID-19 protocols prevented an ASSA counselor from traveling with the team, conducted study hall on campus prior to departing for the game. She reported no adverse impacts. She explained that softball was in post-season and that while the ASSA counselor reported no adverse impact, the ASSA counselor noted a high degree of stress primarily due to timing associated with when the excusal notices are sent (i.e., not until after the team's selection is confirmed) in relation to when the exams were originally scheduled.

In response to a comment from Professor Kantor regarding the future of the exam schedule, Professor Bellia noted that the University has formed an advisory committee to evaluate the exam schedule and that one of the Board's members, Professor Kozel, has been selected to serve on this committee.

## **7. Report of Subcommittee**

Professor Bellia updated the Board on a meeting held with ASSA regarding the Board's fifth year process and underlying philosophy. Professor Angst noted that it was helpful for him,

as the Chair of the Academic Integrity Subcommittee, to participate in this meeting and receive more information on how the process is conducted and the constraints on the stakeholders. He discussed the challenges associated with student-athletes appropriately completing the Board's fifth year process when they are applying for a non-degree program. Professor Angst identified as a primary line of inquiry whether or not a procedural change in the process might be warranted to ease these challenges.

Professor Bellia noted that various people are working to ensure the actual degree programs are open to as many students as possible so that fewer students turn to the non-degree seeking program. She identified several of the structural challenges currently part of the degree programs that renders the non-degree program attractive, including scheduling conflicts between the degree programs and sports schedules. Professor Bellia shared several ideas that could address some of these issues and, along with Professor Angst, discussed possible next steps.

## **8. Adjournment**

With a final assurance from Mr. Swarbrick that he and others would work with the Office of the General Counsel and President to determine the best strategy for communicating with faculty about the evolving landscape of intercollegiate athletics, Professor Bellia adjourned the meeting at 1:15 pm.