

**Faculty Board on Athletics
Meeting of April 28, 2021
2:00pm-3:30pm—Via ZOOM**

Members Present: Patricia Bellia (Chair), Corey Angst, Alex Blachly, Jaimie Bleck, Lauren Hanna, Erin Hoffmann Harding, Patrick Holmes, Tracy Kijewski-Correa, Randy Kozel, Mary Ann McDowell, Susan Ohmer, Richard Pierce, Aaron Striegel, Jack Swarbrick, Kevin Vaughan

Members Excused: Ann Firth

Athletics Liaisons: Missy Conboy, Jody Sadler, Angie Torain

Guests: Brandon Roach, Associate General Counsel; Heidi Uebelhor, Associate Athletics Director; Claire Leatherwood Slebonick, Assistant Athletics Director and Recorder

1. Opening Prayer

Professor Patricia Bellia called the meeting to order a 2:02 pm and asked Claire Leatherwood Slebonick to offer the opening prayer.

2. Minutes of Meeting of March 24, 2021

With no changes to the Minutes of the Meeting of March 24, 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

Sports Schedule Approvals. Professor Bellia shared a number of schedule approval updates with the Board, including a weather-related change in the baseball schedule and two situations in volleyball and softball in which an individual student-athlete needed a different class miss accommodation than had been originally requested.

NCAA Champions. Professor Bellia congratulated the Fencing program for winning the NCAA Championship.

O.S.C.A.R.S. Professor Bellia alerted the Board that the O.S.C.A.R.S., the Athletics Department student-athlete award showcase, will be virtual with a digital release over the course of several days in early May. She reminded the Board that the Byron V. Kanaley Awards are announced during this showcase and encouraged the Board to follow the social media accounts of the Student Welfare and Development Office to watch.

4. Updates on the Name, Image and Likeness Landscape

Name, Image and Likeness. Professor Bellia invited Mr. Jack Swarbrick to update the Board on the Name, Image and Likeness (NIL) landscape.

Mr. Swarbrick shared his belief that there will be as much change in college athletics over the next twenty months as there has been over the last twenty years and that the changes will be widespread. He offered insight into various factors that are driving and influencing these changes. Mr. Swarbrick described the facts of the *In re NCAA Athletic Grant-In-Aid Cap Antitrust Litigation*, its current posture, and its intersection with the NIL landscape.

Mr. Swarbrick shared insights regarding federal and state legislation, including information on the bills introduced during the last session of Congress and those pending in the current session. He highlighted some commonalities between the bills and offered details of some of the more high-profile bills. Mr. Swarbrick stated his view that the lack of consistency between various state laws is untenable. He identified the difficulty the NCAA faces in enforcing its rules that are in conflict with state laws and emphasized the need for Congress to pass federal legislation.

Mr. Swarbrick described the current legislative posture of the NCAA, including possible components of an NCAA NIL rule and potential guardrails built into the rule. He offered various examples of what would and would not be allowed under potential NCAA rules, underscoring that whatever actions the NCAA takes in this space will be informed by a decision in the *In re NCAA Athletic Grant-In-Aid Cap Antitrust Litigation* and any actions taken by Congress.

Mr. Swarbrick shared his views on the categories of value creation that could become available to student-athletes and identified other potential impacts, issues, and consequences resulting from student-athlete engagement in these opportunities.

Mr. Swarbrick provided information on the University's approach to NIL, including historical context surrounding past University positions. He shared that the Athletics Department (Athletics) remains focused less on brand building and more whole-person development, and highlighted specific structural supports that will aid Athletics in this area. Mr. Swarbrick described various challenges as well as the University's internal NIL policy.

Mr. Swarbrick concluded his presentation and invited questions. In response to a question from Professor Angst, Mr. Swarbrick shared that determining the fair market value (FMV) of an autograph or other student-athlete NIL activity will be initially difficult to do. In reply to a question from Professor Mary Ann McDowell, Mr. Swarbrick stated that the financial impact of NIL on Athletics is not yet known. In reply to a question from Professor Aaron Striegel, Mr. Swarbrick addressed the possible impact of Senator Cory Booker's NIL bill as well as potential issues surrounding the amplification of individual student-athletes through conference media and the impact this could have on the individual student-athlete's NIL opportunities.

In response to a question from Professor Bellia, Mr. Swarbrick described the NIL-related educational possibilities for student-athletes available through existing classes and campus resources. Professor Ohmer remarked on the opportunities within and for the Film, Television and Theatre major. Professor Jaimie Bleck asked Mr. Swarbrick to share his thoughts on how to help student-athletes manage the additional demands on their time stemming from their engagement in NIL opportunities. Mr. Swarbrick responded by discussing current time

management concerns of Notre Dame student-athletes and how these issues may unfold as student-athletes engage in NIL opportunities.

In response to a question from Ms. Lauren Hanna about group licensing, Mr. Swarbrick described the NCAA's current position on group licensing as well as his views on the matter.

Professor Bellia inquired as to whether Mr. Swarbrick foresaw any adjustments to the expected policy against allowing student-athletes to use university marks as part of their NIL activities. Mr. Swarbrick replied with his insight into the matter and explained why he is in favor of rules that would allow universities to grant student-athletes the ability to use university marks.

5. Report of Academic Integrity Subcommittee

Petitions for Use of Athletic Eligibility while enrolled in a Fifth Year of Undergraduate Coursework or as a Graduate Student (Fifth Year Petitions). Professor Bellia asked Professor Angst, Chair of the Academic Integrity Subcommittee (Subcommittee), to present the Subcommittee's recommendation on pending Fifth Year Petitions. Professor Angst reminded the Board of its criteria and process for Fifth Year Petitions. He shared the Subcommittee's recommendation for approving the four petitions currently pending before the Board. The Board unanimously accepted the Subcommittee's recommendation and approved the four petitions.

6. Academic Reports

Professor Bellia invited Mr. Pat Holmes to present various academic reports.

Academic Performance of Student-Athletes using a Fifth Year of Eligibility Report (Academic Performance of Fifth Years Report). Mr. Holmes presented the Academic Performance of Fifth Years Report. He pointed out the increasing number of student-athletes enrolled as fifth year students before breaking down specific elements of the report. He highlighted the overall very solid academic performance of the cohort, including the GPA of this cohort and how it compared to that of past years' cohorts. Mr. Holmes offered additional context on the number of degree-seeking and non-degree-seeking student-athletes and on those student-athletes in this cohort who were mid-year enrollees. He highlighted the increasing number of female student-athletes in this cohort. Professor Ohmer commented approvingly on the number of student-athletes who pursued and completed graduate degrees.

In response to a question from Professor Bellia, Mr. Holmes shared that COVID-19 created additional challenges in this space primarily in regard to scheduling as start times for many graduate classes were pushed back to later in the afternoon, thereby causing conflicts with practice times. Mr. Holmes believes this pressure will be alleviated in future years as classes return to normal start times.

Mr. Holmes emphasized the dramatic increase in opportunity for many more student-athletes to use their last seasons of athletics eligibility in either a fifth year of undergraduate coursework or as graduate students as a result of COVID-19 and the associated NCAA rules changes.

Student-Athlete Fall 2020 Grade Report. Mr. Holmes presented the Student-Athlete Fall 2020 Grade Report. He discussed a summary of student-athlete GPAs and noted the student-athlete average semester GPA was the highest it had ever been during a standard semester and significantly higher than in previous fall semesters. Mr. Holmes shared that although the average semester GPAs for all students also increased, student-athletes' GPAs increased at rates higher than the general student body.

In response to a question from Professor Ohmer, Mr. Holmes clarified various acronyms and abbreviations.

Mr. Holmes provided additional insight into how the pandemic, with its curtailment of many professional sport seasons, enabled the degree completion of several former student-athletes and current professional athletes during the fall 2020 semester. He highlighted the cooperation of various campus partners to facilitate this opportunity and shared the impact this will have on future University federal graduation rates.

Mr. Holmes continued his discussion of the increase in the number of student-athletes using their final year or years of athletics eligibility while enrolled in graduate programs. He provided various statistics comparing the number of total enrollees in specific programs from Fall 2020 to past years. He described the impact of COVID-19 and the attendant NCAA rules changes that enable more students to take advantage of this opportunity as well as how the University's coaching staffs have used this opportunity to effectively recruit outstanding student-athletes to the University. Mr. Holmes also discussed the support provided by the staff within the Mendoza College of Business to the coaching staffs to assist with their recruitment efforts.

Ms. Jody Sadler shared her experience as the Baseball administrator and noted that while it can be difficult for coaches to effectively manage their rosters with the additional years of eligibility available to so many student-athletes, there is an abundance of interest from both student-athletes and coaches in doing so while pursuing graduate degrees. Mr. Holmes noted that it is possible for some students to be admitted to graduate programs only to later discover that they do not have a roster spot due to the difficulties inherent in managing such fluid rosters.

In response to a question from Professor Bellia about whether graduate program admissions are aware of the fluidity in, and resulting difficulty from, rosters, Mr. Holmes shared that he believes the graduate programs generally desire a high yield from the admitted students category into matriculated students. Ms. Conboy commented that involved parties could discuss how to best communicate about roster fluidity.

7. Adjournment

Professor Bellia adjourned the meeting at 3:26 pm and wished everyone a good end to the semester.