

**Faculty Board on Athletics
Meeting of November 10, 2021
1:00pm-2:30pm—2173 Eck Hall of Law**

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

Members Excused: None

Athletics Liaisons: Missy Conboy, Jody Sadler

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

1. Opening Prayer

Professor Bellia called the meeting to order at 1:01 pm, and Father Gerry Olinger offered the opening prayer.

2. Minutes of Meeting of October 5, 2021

Professor Susan Ohmer moved to approve the minutes of the Meeting of October 5, 2021, and Professor Corey Angst seconded the motion. The Board unanimously voted to approve the minutes.

3. Chair's Announcements

Schedule Approvals. Professor Bellia announced that she approved the following schedules on behalf of the Board: women's lacrosse (spring); men's golf (spring); men's and women's fencing; indoor track & field; men's soccer (post-season); and, after consultation with Academic Services for Student-Athletes (ASSA), Atlantic Coast Conference (ACC) media day travel for two men's and women's basketball student-athletes.

Captaincy Approvals. Professor Bellia announced that she approved the following captaincy requests: hockey and men's and women's cross country.

4. Insight from the Office of General Counsel on the recent Memorandum from the General Counsel of the National Labor Relations Board

Professor Bellia introduced the topic and Matt Lahey, Associate General Counsel at the University, and then invited the Board members to introduce themselves.

Mr. Lahey framed the key issue: that the General Counsel of the National Labor Relations Board (NLRB) had issued a memorandum taking the position that, for purposes of the National Labor Relations Act (NLRA), student-athletes are in fact employees of the institutions

for which they compete. While the memorandum is not binding on the NLRB, it gives an indication of the NLRB's possible direction on this question. Mr. Lahey explored the potential impact on the University of a determination that student-athletes are employees. He explained that the NLRA affords employees certain rights and protections related to the terms and conditions of employment. Mr. Lahey explored the perceived rationale of the General Counsel's memo and the different positions surrounding this issue. He shared several concerns with a possible determination that student-athletes are employees, including nuances related to the potential application of the NLRA framework to different groups of student-athletes (e.g., scholarship versus non-scholarship student-athletes; full versus partial grant-in-aid (GIA) student-athletes). Mr. Lahey described the other key points in the memo and their implications. He summarized the status of this matter from a legal perspective and forecasted the possible evolution.

In response to a question from Professor Mary Ann McDowell, Mr. Lahey described potential implications for treating student-athletes as employees. In reply to a question from Professor Bellia about a different statute, the Fair Labor Standards Act (FLSA), Mr. Lahey discussed recent court cases and the interplay of the issues under the FLSA and the NLRA. In answer to a question from Professor Ohmer, Mr. Lahey discussed various elements of the academic day and how the evolving legal framework could affect them. Discussion among the Board ensued, with members raising questions surrounding how professors manage their classrooms and the need for possible changes.

Mr. Lahey addressed questions from Professor Angst about the joint employer context and about the application of this framework to elements of a student-athlete's GIA. In response to a question from Professor Bellia, Mr. Lahey provided several recommendations as to how faculty could respond if students raised this topic. In answer to a question from Professor Kevin Vaughn, Mr. Lahey addressed possible timelines for the evolution of this issue, with Mr. Jack Swarbrick providing additional context. In reply to a question from Professor Randy Kozel, Mr. Lahey commented on the composition of the NLRB and its operations. In response to questions from Professors Jeff Kantor and Tracy Kijewski-Correa, Mr. Lahey discussed the potential application of this issue to other groups of students.

5. Compliance Annual Report

Professor Bellia invited Ms. Heidi Uebelhor to present the 2020-21 Compliance Annual Report. Ms. Uebelhor described the types of data that the Compliance Office tracks. She noted that the pandemic affected many of the data points captured in the report.

Ms. Uebelhor shared information on the demographics of Notre Dame student-athletes. She pointed out several statistics, ranging from the gender breakdown to the percentage of students who qualified for federal financial aid assistance. Ms. Uebelhor offered additional context around the GIA and squad size numbers as well as the distribution of funds from the Student Assistance Fund (SAF).

Ms. Uebelhor described an increase in the number of transfers in the 2020-21 academic year compared to previous years, attributable in large part to the extra year of eligibility the

NCAA provided to student-athletes because of the impact of COVID-19. She explained a recent change in NCAA legislation that allows student-athletes to transfer and be eligible to compete immediately upon enrollment at another institution.

In response to a question from Professor McDowell about the specifics of this rule, Ms. Uebelhor replied that student-athletes can only take advantage of the rule once during their undergraduate careers. In reply to a question from Professor Angst about the discrepancy between the number of incoming and outgoing transfer student-athletes, Mr. Swarbrick explained that some of the discrepancy is a function of timing related to when a student-athlete provides notice that he or she may transfer. Ms. Uebelhor added that some coaches, rather than recruiting a transfer to fill a spot, will use the scholarship dollars vacated by the transferring student-athlete for existing members of their team. She also offered that many of the incoming transfers at the graduate level are from the Ivy League as that conference did not historically allow students to use a season of eligibility after the student's fourth year of enrollment.

Professor Bellia added that another element affecting the number of incoming transfer student-athletes is the University's process for determining how many of the student-athletes' credits will transfer. She noted that this will be an issue for the Academic Integrity Subcommittee to consider in the coming months. Mr. Pat Holmes noted additional difficulties that immediate eligibility creates on this front: under the prior system, a student who was serving a year in residence before competing could cure any progress-toward-degree problems during that timeframe. In response to a question from Professor Kantor, Ms. Uebelhor said that her office will have a better sense of the effect these elements will have on student-athlete outcomes after another year of data. Professor Kantor shared his experience with transfer students participating in a specific academic program and noted some of the challenges to integrating these students. In reply to a question from Ms. Ann Firth, Mr. Swarbrick discussed the impact transfers can have on team culture.

Ms. Uebelhor discussed the rules framework that governs GIA agreements and explained the context around the numbers of GIAs awarded and those that were non-renewed. She shared information on the SAF, including details on the NCAA's funding mechanism and the average amount of monies the University distributes from this fund. Ms. Uebelhor commented on how the pandemic affected the funds received. She provided information on the types of things usually funded by the SAF.

In reply to a question from Professor McDowell, Ms. Uebelhor described the process that the Compliance Office uses to determine whether a student-athlete qualifies for SAF monies. In response to questions from Professor Bellia and Father Olinger about unmet need and the interaction of the SAF with other campus resources, Ms. Uebelhor shared that the Compliance Office works closely with other departments that provide resources to students to ensure a coordinated response. She noted that the portion of the SAF that supports summer school was dramatically reduced to cover other critical needs.

Ms. Uebelhor shared information on recruiting statistics and emphasized that the pandemic significantly skewed these numbers as there was almost no in-person recruiting during the 2020-21 academic year.

Ms. Uebelhor described the NCAA's waiver framework and shared information on the waiver requests the University made in the 2020-21 academic year. She noted that many of those filed in 2020-21 related to student-athletes participating in the 2020 Olympics or taking leaves of absence from the University due to COVID-19.

In response to a question from Professor Ohmer, Ms. Uebelhor explained the graduation rate and academic progress reporting requirements, to which Mr. Holmes provided additional context. In reply to a question from Professor Bellia, Ms. Uebelhor commented that the fewer number of waivers filed compared to previous years was attributable in large part to the additional flexibility and rule interpretation the NCAA granted to individual institutions because of COVID-19.

Ms. Uebelhor discussed the violations committed by the University during the 2020-21 academic year and explained the various designations of violations. She highlighted a level 2 violation committed by a former assistant football coach and discussed the consequences, including the fact that the University is on probation with the NCAA through January of 2022. In response to a question from Professor McDowell, Ms. Uebelhor described the breakdown of violations that the Compliance Office's monitoring efforts uncovered, those that coaching staffs self-reported, and those that third parties directly reported to the NCAA. In reply to a question from Professor McDowell, Ms. Uebelhor gave several examples illustrating the types of violations that are most common.

Ms. Uebelhor concluded her report by discussing additional impacts of COVID-19 on student-athletes as well as the global representation of the student-athletes.

6. Academic Reports

Professor Bellia invited Mr. Holmes to present ASSA's annual report on the academic outcomes of student-athletes (fifth year student-athletes) enrolled while completing a fifth year of eligibility (Fifth Year Report). Mr. Holmes emphasized the dramatic increase in the number of fifth year student-athletes enrolled in University programs, mainly attributable to the additional year of eligibility the NCAA provided to student-athletes due to COVID-19. He offered various statistics to illustrate this point.

Mr. Holmes discussed the academic outcomes of the fifth year student-athletes and noted the success, including the high rate of degree completion, of the student-athletes in masters programs. He shared several data points, including the semester and cumulative grade-point averages (GPAs) of this cohort. He highlighted that the majority of these degree-seeking fifth year student-athletes are enrolled in one-year graduate programs offered by the Mendoza College of Business (MCOB) and discussed some of the tensions created by the dramatic increase in the number of student-athletes participating in these programs.

Mr. Holmes shared information surrounding the academic outcomes of non-degree seeking graduate student-athletes, including GPAs and credit hours. He discussed the impact that the academic engagement of this group can have on data points such as the Academic Progress

Rate (APR). In answer to a question from Ms. Missy Conboy, Mr. Holmes explained some of the elements student-athletes weigh when considering various degree- and non-degree-seeking academic paths for their fifth year. Professor Bellia provided context by offering several examples. Discussion ensued, with further comments from Professor McDowell and Ms. Conboy about the possibility of student-athletes delaying the completion of their undergraduate degrees.

In response to a question from Professor Kantor, Professor Bellia explained the Board's policy and the Graduate School Academic Code. A graduate non-degree student, among other things, generally must enroll in at least one course at the 60000 level or above to satisfy Board and Graduate School requirements. Professor Angst commented on the difference between the University's policies and the NCAA minimum requirements for remaining eligible.

Professor Angst shared points from discussions among MCOB faculty regarding the dramatic increase in fifth year student-athletes in graduate programs and noted the marked increase of student-athletes with undergraduate degrees from institutions in the Ivy League. Professor Bellia connected a large portion of this increase in the number of transfers from Ivy League institutions to the more stringent Ivy League rules for use of athletics eligibility. Professor Angst commented on the high incidence of transfer student-athletes completing their graduate degree program as well as the level of academic engagement from non-degree seeking students. Professor Bellia commented on the fact that the non-degree-seeking student-athletes enrolled in a wide variety of courses, rather than being clustered in a small handful of courses. In reply to a question from Ms. Uebelhor, Mr. Holmes discussed the educational goals of those enrolled as non-degree seeking student-athletes.

8. Adjournment

Professor Bellia adjourned the meeting at 2:31pm.