

MINUTES
Meeting of the Faculty of Arts and Sciences
December 2, 1986

The meeting was called to order by Mr. Selby at 3:35 p.m. in Rogers 100. Eighty-nine members were present.

CORRECTION TO MINUTES:

In the minutes of the faculty meeting of November 4, 1986, under Report of Administrative Officer, point 2, last sentence: change \$160,000 to \$370,000.

ANNOUNCEMENTS:

1. Mr. Selby introduced Nancy Marshall, the new University Librarian. Ms. Marshall noted that the library would be closed between December 24 and January 5.
2. Tom Finn noted that the College was now searching for a third Kenan professor, James Axtell and Ted Cohen being the two Kenan professors at present. About one hundred and seventy applications were received by the deadline, now past. Some glittering names are to be found among them. The search committee will be meeting soon, and will keep the faculty apprised of developments.

REPORTS OF ADMINISTRATIVE OFFICERS:

Recalling the questions concerning the College's drug testing policy for athletes which were raised at the last faculty meeting, Mr. Selby said that Athletic Director John Randolph and Dean of Students Sam Sadler were present today to review this policy and to respond to questions.

Mr. Randolph observed that the drug testing policy had evolved over a period of about a year and a half. The emphasis was intended to be on education, that is the perils of drug abuse. A drug education program was initiated last year. Bill Pincus, a certified substance abuse counselor from Eastern State Hospital, was a major participant in this.

The drug testing policy has been adopted for one year only. Its controversial nature is recognized. Student athletes wishing to participate in NCAA athletic events have been required to sign a consent form by the NCAA. Student Services, the certified advisor, the coaches and some athletes all thought the program worth trying. The drug testing policy was sent to the Attorney General's Office in July. Sincere apologies are made for not involving the Athletic Policy Advisory Committee in the decision making process. This occurred because when the policy was reviewed and released by the Attorney General's Office in late October it was already necessary to begin testing under the policy.

No concerns have been expressed by students who have been tested. They had read about the Virginia and Maryland situations and therefore were not surprised by this. After the Attorney General's Office approved the drug testing policy a copy of the regulations was distributed to each student athlete. A meeting was set up for purposes of discussing the policy with students, but none came. Subsequently, the women's soccer team and the men's football team each passed the drug tests successfully.

It is fair to say that the degree of controversy which has arisen was not expected. However, the Athletic department welcomes this critical review of the drug testing program and was intending to perform its own review in any case.

With reference to questions on legal counseling for students raised at the last faculty meeting, Mr. Sadler observed that two students had come to him on this matter and that he had referred them to Student Legal Services. He also told them that he would be willing to send on to the Attorney General's Office any questions they had. As to whether or not test information on illegal substances could be subpoenaed, the policy recommendation is that the results of tests not be revealed to the Athletic department, only to the College physician. A positive test result becomes a medical record, and therefore confidential. In the case of such a result, the student would be called in to discuss the matter. The student has the right to appeal the finding, and to request that the test be repeated at a different laboratory. Psychological Services and Student Services have agreed to act as counseling resources in such cases. The Attorney General's Office was asked to evaluate the policy, and returned it with several changes. As adopted the policy is in the form received from the Attorney General's Office.

Discussion began with Mr. Wiseman presenting the views of the Athletic Policy Advisory Committee. The committee had no warning that a drug testing policy was in the offing. After learning of it the committee met twice, intense discussions occurring, and made the following recommendations to the President (consistent with its function as his advisory body): (1) the committee should have been involved in the decision making process on drug testing, so that it could fulfill the responsibilities referred to, and (2) a special committee should be appointed to review the drug testing policy and to report back to the President by the end of the Spring semester. There are fears that testing without probable cause may be unconstitutional (Fourth Amendment). Another concern is that student athletes are being treated differently from other members of the student body. Nor is it clear that mandatory testing accomplishes the purpose of protecting students from harmful drugs. Moreover, the NCAA has not asked us to do this, and the policy adopted is an addition to the NCAA's guidelines. On the legal front, much appears to be unresolved; for example, a U.S. District Court judge in New Orleans recently referred to mandatory drug testing as degrading.

Mr. Kernodle asked whether all athletes in varsity sports or only those going to NCAA championships were being tested. Mr. Randolph said, only the latter, so that only a small fraction of student athletes were undergoing drug tests. Mr. Kernodle said he thought that this was yet another objection to the policy.

Mr. Schwartz asked Mr. Randolph, how could "education" be the main purpose of the program when such a small fraction of student athletes were being tested? Was not the main concern rather the potential for embarrassment to the College? Mr. Randolph replied that, nonetheless, every student athlete received drug education information and lectures. Also, they are being tested for illegal substances, and the College doesn't decide what substances are illegal. Mr. Selby asked, was it so that apart from post-season play (when all team members were tested) an athlete could be required to take a drug test either in connection with a random sampling procedure or for probable cause? Mr. Randolph said that this was the case; moreover, participation in the random sampling procedure was voluntary. No punitive action occurs following a refusal.

Mr. Shaver asked, who did the testing and when was it done? Mr. Randolph replied that tests were done at either Williamsburg Community Hospital or Riverside Community Hospital, that the College paid the medical technicians to perform the tests, and that the coaches were outside the process. Tests were mandated only when a student athlete qualified to represent the College at an NCAA championship. In response to further questions from Mr. Shaver, Mr. Randolph replied that the NCAA did not pay for or conduct drug tests itself until the championship stage or the playoff stage was reached, and then usually on a random basis. Indeed, the College could refrain from testing and leave this entirely to the NCAA.

In answer to a question from Mr. Wiseman, Mr. Randolph said that an entire team would not be disqualified in an NCAA event if one member were found to be using drugs, but that the team score would be affected. To a question from Mr. Johnston, Mr. Randolph said he wasn't sure if information in the hands of the NCAA was protected from subpoena. Mr. Johnston suggested that, therefore, we were not in a position to give legal advice to our athletes, and might be putting them at risk (did we have any choice?) by cooperating with the NCAA. The Attorney General's Office had, after all, only given us an opinion. We should explore these issues further. Mr. Randolph agreed that neither the NCAA nor the College had all the answers.

James Harris asked, if the Athletic Policy Advisory Committee had not been consulted, who had been? Mr. Randolph said that the prospective drug testing program had been discussed by himself, Mr. Pincus (certified substance abuse counselor), Mr. Sadler, a doctor at Student Health Services, members of the Athletic department sports medicine and administrative staff, Psychological Services and the coaches. The Athletic department also reviewed the drug testing policies at numerous other institutions. No formal committee drafted the policy. Mr. Sadler added that he simply sent it back to Mr. Randolph after seeing it.

Mr. Kreps asked about the cost of the drug tests. Mr. Randolph said that those the College was having performed cost \$7 per student, and that 20 athletes on the women's soccer team and 60 on the men's football team had been tested. The tests the NCAA administered cost about \$150 per student. The cost was related to the sophistication of the test. Mr. Kreps asked if the cost was also related to the accuracy of the test, and Mr. Selby wondered whether the difference actually reflected a difference in sophistication or rather the number of drugs being tested for. Mr. Hausman asked if the tests were only for illegal (i.e., "street") drugs, or also for things like steroids? Mr. Randolph answered that the policy was that we can test for any of the drugs on the NCAA list of banned substances, which includes both street drugs and steroids. In practice, we have been testing primarily for recreational or street drugs, and not for steroids because of the cost of such tests.

Mr. Rapoport asked whether any error inherent in the drug tests we were using was random or systematic, and suggested that the College should opt for more expensive and presumably better tests to minimize the possibility of mistakes. Mr. Randolph responded that there were approximately 120 banned substances, and while the tests did not check for all of these they were believed to be at least 97% reliable for those substances they could detect. Mr. Sadler reiterated the confidentiality of the test findings, and noted that when a positive test result occurred the student could ask for the test to be repeated, at another laboratory if desired and with a more sophisticated test employed. Thus there were procedural safeguards.

Mr. Kernodle asked under what circumstances a coach would find out about a positive drug test. Mr. Randolph said that this would occur after a student athlete followed the appeal procedure and still tested positive. Mr. Sadler confirmed, in response to another question, that a student had indeed waived the right to confidentiality on appealing and failing the second test. In response to a question from Mr. Johnston, Mr. Sadler indicated that if a student refused to take a second test, then this would appear on their record. Mr. Hausman noted that the printed regulations implied that such a refusal would be interpreted as a positive test result. Another speaker suggested that the problem with the policy was that it assumed guilt even before a case reached the NCAA. Mr. Aday said that he was surprised to learn that the tests we were arranging for cost only \$7 per student, since previous discussions (in the Athletic Policy Advisory Committee) had suggested that more sophisticated and expensive tests were needed. The whole matter deserved more study, as the committee was recommending. Mr. Wiseman added that at Duke the policy was to test only in the case of probable cause.

Mr. Willis moved a resolution: that the recommendations of the Athletic Policy Advisory Committee are endorsed, but that the report to the President should be made well before the end of the Spring semester. The motion was seconded.

An amendment to the resolution was offered and moved: that the College declines to participate in NCAA sports until the legal position of student athletes with respect to drug tests is clear. The amendment was seconded.

Mr. Wiseman said he thought the amendment made the resolution too complicated, and that the coupling to the NCAA was undesirable. Mr. Kreps asked if it could be assumed that there would be no further testing until the issue was resolved? Mr. Randolph said that there would be no mandatory pre-NCAA drug testing, since even in the case of certain Winter sports there would be no reason to test before March. Following these exchanges the amendment was withdrawn.

Mr. Baxter said he thought the concern should be not so much to speed up the policy review as to stop testing until the issue is resolved. Therefore, he offered and moved an amendment to the resolution: that the Athletic Director is urged to suspend testing. The amendment was seconded. Mr. Randolph asked, did he mean just mandatory testing? Mr. Baxter replied, the whole policy. Mr. Johnston objected that there would be a problem in March (Winter sports) when students would presumably be taking NCAA tests. So the intent of the original motion, to speed up the review process, should not be discarded. Mr. Wiseman observed that the NCAA was meeting the first week in January to discuss the question of individual versus team penalties for drug infractions. A suit had also been brought by the ACLU in Colorado. Thus some clarification might soon emerge.

Mr. Willis suggested that two motions be voted on, one urging the President to accept the recommendations of the Athletic Policy Advisory Committee, and another urging the President to suspend the drug testing policy pending the special committee's report. There were no objections to the proposed separation. The first motion (essentially the original resolution) was put to a vote, and passed without apparent dissent. After some further discussion, the second motion (urging the suspension of drug testing) was put to a vote, and also passed without apparent dissent.

NEW BUSINESS:

David Jones, on behalf of the Chairman's Group (Advisory Committee to the Dean), introduced a resolution (Appendix I) regarding the schedule for reporting final course grades to the Registrar. The Dean had asked for the views of the chairmen regarding the accelerated schedule for reporting, according to which the last grades were due on December 29. The general feeling was that this schedule is unrealistic in view of: (1) many instances of long final exams, in large courses, taken late in the exam period, (2) professional meetings in several fields which are held between Christmas and New Year, and (3) the fact that this period is a holiday period for faculty as it is for everyone else. Mr. Jones moved adoption of the resolution; the motion was seconded. Mr. Selby said that the Provost was aware of the problem and had asked the Associate Provost to look into the matter for the future.

Mr. McGlennon said that he thought the resolution worthwhile, but the substitute dates were still not optimal. It was better to make the last four dates (December 22, 22, 23 and 29 in the accelerated schedule; December 23, 29, 30 and January 5 in the resolution) each January 5, at noon. He moved an amendment to the resolution to this effect, which was seconded.

In response to a question from George Harris, Mr. Jones said that the resolution was meant as a statement of what the faculty intended to do; it did not pretend to be

administration policy. Mr. Hausman asked what the Registrar's opinion was? Ms. Bryant said that the new dates would cause some serious difficulties. One practical concern was the need to warn students in time that they had been dropped. There were already severe problems last year in this respect. If the resolution was approved the process of getting grades to the students and to the Academic Status Committee would be jeopardized. With a final due date of January 5, many other grades would probably also be turned in only on January 5. Mr. Selby observed that there was also a second part to the resolution (pledging the faculty to meet the list of deadline dates).

Mr. Jones said he believed in sanctions against faculty who failed to meet their grade deadlines. Mr. Selby observed that two years ago the Dean had placed letters of reprimand in the files of those faculty who had turned in grades late, and that this may have had an effect on salary increments. Another speaker opined that the needs of the students should come first in deciding policy on this matter. Mr. Funigiello asked, how long did it take from the time grades were handed into the Registrar to the time they were sent out to students? Ms. Bryant responded, one to one and a half days at a minimum. One technical problem was that the College did not have an optical scanner for processing machine-readable grade forms. Grades had to be key-punched for entry into the computer, necessitating additional time-consuming checking.

Mr. Greenia observed that some of the impetus for the accelerated schedule had come from the Student Association, which was unhappy that some students were informed only after returning last January that they could not enroll for Spring classes. Mr. Sadler added that the pressures on the Academic Status Committee were already very severe, and that parents had complained about this problem and had submitted resolutions urging that the process be speeded up. Ms. Themo wondered whether continuance cases could be pulled and handled separately. Mr. Shaver said that another difficulty was that senior grades usually could not be arrived at until all final exams had been graded. Mr. Greenia noted that students were generally opposed to pulling the grades of those on probation. Mr. Clement reiterated the need for penalties on tardy faculty.

Mr. Rapoport suggested a compromise, that rather than January 5 each of the last four due dates be January 2. Ms. Bryant said this would be of some help. Classified staff had already been told they should report to work on January 2, and might rebel if now asked to work on Saturday and Sunday as well. Mr. Baron emphasized the time demands of grading numerous long essay exams. Mr. McGlennon observed that whatever course might be adopted, at least some groups (parents, students, classified staff, faculty) would be inconvenienced. Perhaps it was best to simply declare our intention as a faculty and allow the administration to find a way to process the grades.

No further discussion developing, the motion to adopt the resolution was put to a vote and was passed by a small margin.

Respectfully submitted,



Gary C. DeFotis
Secretary to the Faculty

Appendix I: Resolution Regarding the Schedule for Reporting Grades

GCD:gep

December 2, 1986

Resolution Regarding the Schedule for Reporting Grades

Whereas the Faculty of Arts and Sciences is adamantly opposed to the new accelerated schedule for reporting grades for the Fall Semester, 1986-87,

Be it resolved that the following substitute schedule for reporting grades will be followed:

<u>Examination</u>	<u>Grades due no later than</u>
Wednesday, December 10	Noon, Tuesday, December 16
Thursday, December 11	Noon, Wednesday, December 17
Friday, December 12	Noon, Thursday, December 18
Saturday, December 13	Noon, Friday, December 19
Monday, December 15	*Noon, Tuesday, December 23
Tuesday, December 16	*Noon, Monday, December 29
Wednesday, December 17	*Noon, Tuesday, December 30
Thursday, December 18	*Noon, Monday, January 5

*New due dates

Be it further resolved that we, the members of the Faculty of Arts and Sciences, recognize an obligation to meet these deadlines and pledge ourselves to make every effort to do so.