



2011 AIAAA CONFERENCE PRESCOTT, ARIZONA



CURRENT LEGAL ISSUES IN SCHOLASTIC ATHLETICS

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CURRENT LEGAL ISSUES IN ATHLETICS ADMINISTRATION



SPORTS-RELATED LAWSUITS: 2010

	<i>Scholastic</i>	<i>Collegiate</i>
<input type="checkbox"/> Constitutional/Civil Rights	142	17
<input type="checkbox"/> Sports Injury Related Suits	827	96
<input type="checkbox"/> Title IX Complaints	112	24
<input type="checkbox"/> Title IX Lawsuits	38	9
<input type="checkbox"/> Sexual Harassment Complaints	348	52
<input type="checkbox"/> Sexual Harassment Lawsuits	119	23
<input type="checkbox"/> Hazing Lawsuits	277	19
<input type="checkbox"/> Disabilities Complaints + Suits	162	31
<input type="checkbox"/> Employment Law Complaints	195	49
<input type="checkbox"/> Employment Law Lawsuits	87	24



CURRENT LEGAL ISSUES IN ATHLETICS ADMINISTRATION



LIABILITY FOR SPORTS INJURIES

- ◆ ***Felix v. Barre Supervisory Union (Settled July 2010)***
 - 16-year-old football player sustains neck/spinal injury in head-down, helmet-to-helmet contact (quadriplegia).
 - Lawsuit alleged violations of duties of proper technique instruction, warnings, and supervision.
 - Pre-settlement, Vermont Supreme Court had ruled out assumption of risk and statutory immunity defenses.
 - Settlement amount not disclosed; structured payout intended to cover estimated lifetime medical care (\$9 M).
- ◆ ***Hunt v. Public School Athletic League (Settled Sept 2010)***
 - Undersized high school football player suffered a broken neck in scrimmage against bigger players (paraplegia).
 - Suit alleged violations of duties of supervision, technique instruction, warnings, medical response, evaluation of injuries (premature return to action), and matching/equating athletes for safe participation.
 - Settlement amount: \$8 M (est. lifetime medical care).



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LIABILITY FOR SPORTS INJURIES

- ◆ ***Estate of Max Gilpin v. Stinson (Settled September 2010)***
 - Wrongful death civil suit against high school football coach for heat-stroke death of player.
 - Trial was scheduled for May 2010 but was delayed so parties could engage in mediation leading to settlement.
 - \$1.75 M settlement donated to Max Gilpin Beat The Heat Foundation (education re heat-related risks).
- ◆ ***Reese v. New York City Public Schools (Settled Jan 2010)***
 - P.E. class dodgeball injury; rainy day/six classes/100 kids in small gym using soccer balls instead of dodgeballs.
 - Settlement for \$20,000 (cost of dental surgeries).
- ◆ ***Juleson v. Springfield School District (Filed July 2010)***
 - High school football referee struck from behind on the field by golf cart driven by 2-year-old boy.
 - Suit alleges failure to supervise and failure to provide a safe environment; ref seeking \$265,000 in damages.



CURRENT LEGAL ISSUES IN ATHLETICS ADMINISTRATION



LIABILITY FOR SPORTS INJURIES: CONCUSSIONS

- ◆ ***Protecting Student Athletes From Concussion Act of 2010***
 - H.R. 6172 introduced in Congress on Sept 22, 2010 and would impose uniform national concussion management standards and education reqs on schools nationwide.
 - Hearings held before House Education & Labor C. in Sept 2010; testimony by doctors/medical researchers on frequency/severity of TBIs in school and youth sports.
 - Bill is a high-school-focused follow-up to the Concussion Treatment & Care Tools Act (ConTACT) of 2009.
- ◆ ***Arizona Law Regarding Concussions: ARS 15-341 (2011)***
 - State law requiring athletes suspected of having sustained a concussion to be immediately removed from play and cleared to return only after written release by a health care provider trained in evaluation and mgmt of concussions (physician, trainer, nurse practitioner, or physician assistant). Note education signoff requirement.



CURRENT LEGAL ISSUES IN ATHLETICS ADMINISTRATION



LIABILITY FOR SPORTS INJURIES: CONCUSSIONS

- ◆ ***NFHS Revised Concussion Management Guidelines***
 - Went into effect for the 2010-11 school year.
 - Numerous state associations have adopted the new NFHS guidelines as mandatory protocols in their states (e.g. the Illinois High School Association, in August 2010, voted to make mandatory the NFHS concussion guidelines).
 - Consult your state association website and hard-copy publications to ensure compliance in your jurisdiction.
- ◆ ***NFHS Online Course: Concussion In Sports – What You Need To Know (Launched Spring of 2010)***
 - Free course; takes 20-30 minutes to complete; may be used to educate coaches, student-athletes, parents, and other sports event supervisors; includes extensive printable resources; available at www.nfhslearn.com.
- ◆ ***Center For Disease Control (CDC) Resources***
 - Extensive concussion management info: www.cdc.gov.



CURRENT LEGAL ISSUES IN ATHLETICS ADMINISTRATION



FREE SPEECH & CYBERSPACE ISSUES

- ◆ ***T.V. & M.K. v. Smith-Green Comm. Schools (August 2011)***
 - Volleyball players suspended from team for posting inappropriate pictures depicting sexually explicit activity taken at summer sleepover on their MySpace pages.
 - Court ruled school violated free speech rights of the student-athletes. School intends to appeal the ruling.
- ◆ ***L.P. & A.B. v. Northshore School Dt. (March 2010)***
 - Mediation ordered in free speech case involving two h.s. cheerleaders suspended from squad for sexting incident involving use of privately-owned cell phones.
- ◆ ***S.T. v. Pearl Public School District (Docketed for 2011)***
 - Cheerleader suspension for inappropriate postings on Facebook challenged on free speech & privacy grounds; cheer coach required team members to provide her with account passwords to monitor members postings.



CURRENT LEGAL ISSUES IN ATHLETICS ADMINISTRATION



FREEDOM OF RELIGION & ESTABLISHMENT CLAUSE ISSUES

- ◆ ***Marszalek v. Dearborn Public Schools (Settled March 2010)***
 - Wrongful termination based on religious discrimination case by wrestling coach who alleged his coaching contract was not renewed because of his Christian beliefs.
 - Majority of students at the school are Muslim; case began when Muslim wrestlers and their parents complained that coach was trying to convert them to Christianity.
 - District settled case for \$25,000 to avoid cost of a trial.
- ◆ ***Iacono v. Croom (October 2010)***
 - Temporary restraining order issued by federal court lifting suspension of female student for violating district no-piercing rules.
 - Student is member of Church of Body Modification, a non-theistic denomination that encourages piercings.
 - Courts focus only on sincerity of belief, not legitimacy.



CURRENT LEGAL ISSUES IN ATHLETICS ADMINISTRATION



DUE PROCESS ISSUES & THE “RIGHT” TO PARTICIPATE IN SPORTS

- ◆ ***Natke v. North Branch Area School Dt. (Feb 2010)***
 - 16-year-old baseball player suspended for one-third of season pursuant to Athletic Code of Conduct for stealing a case of beer from a store (charged with retail theft).
 - Lawsuit based on due process, equal protection, and breach of contract (created by Code of Conduct).
 - Federal court ruled athletic participation is a privilege not a constitutional right and that no equal protection or contract violation occurred.
- ◆ ***Doe v. Silsbee Independent School Dt. (Sept 2010)***
 - U.S. Court of Appeals ruled district did not violate a cheerleader’s due process, equal protection, or free speech rights for removing her from squad for failing to cheer for a member of boys basketball team who had allegedly sexually assaulted her (but who was not indicted).



CURRENT LEGAL ISSUES IN ATHLETICS ADMINISTRATION



DRUG TESTING PROGRAMS ADMINISTERED BY HIGH SCHOOLS

- ◆ ***Brown v. Shasta Union High School Dt. (Sept 2010)***
 - The California Court of Appeals upheld the May 2009 ruling by a trial court that the school district's random, suspicionless drug testing policy for students involved in non-sport extracurricular activities violates the search/seizure and privacy provisions of the state constitution.
 - Although testing of student-athletes was upheld by the decision, case is the most recent in a series striking down drug-testing programs by ruling that a state constitution grants even greater privacy protections than does the Bill of Rights to the U.S. Constitution.
- ◆ ***Long v. Goshen County School Dt. (Argued June 2010)***
 - Wyoming Supreme Court will soon decide appeal of 2009 trial court decision upholding drug testing of students involved in sports and extracurricular activities.



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HAZING

◆ *Elk River High School (Minnesota) – August 2010*

- Varsity football program temporarily suspended and 9 players eventually dismissed or suspended for hazing in which upperclassman struck/poked victims near their buttocks with broomsticks.
- School board has now implemented an anti-hazing educ. program for athletics personnel, athletes, and parents.

◆ *Carmel High School (Indiana) – May 2010*

- 4 basketball players charged with assault, battery, and criminal recklessness for locker room/bus hazing.
- Incident led to resignation of varsity head coach and dismissal of 3 freshmen team coaches.
- \$2.25 M tort lawsuit filed against district and coaches alleging “a lengthy history of sexual abuse and bullying by students in the athletics program.”



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HAZING

◆ Clarksville High School (Tennessee)

- Summer football camp hazing incident; cell phone video posted online of beatings inflicted on underclassmen.
- Investigation found culture of hazing permeated school's athletics program; head football coach resigned and six players were suspended from football team.

◆ Robertson High School (New Mexico)

- Final sentencing hearing in criminal cases related to Aug 2008 football camp hazing-sodomy incidents; five of six attackers already sentenced; last received one-year prison sentence for his actions at June sentencing hearing.
- Also in June, civil lawsuits filed against district and sports personnel alleging tolerance of pervasive culture of hazing.

◆ Arizona Anti-Hazing Law: ARS 15-2301 (2011)

- Copy of statute is attached to handout.



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SEXUAL HARASSMENT

◆ *USA Swimming Lawsuits*

- Five separate lawsuits involving multiple victims in swim clubs nationwide (criminal charges also filed in several of the cases against the coaches involved).
- September 2010: USA Swimming implements a new athlete protection policy (full-text at usaswimming.org).

◆ *Doe v. Flaherty (U.S. 8th Circuit - August 2010)*

Trentadue v. Redmon (U.S. 7th Circuit - October 2010)

- Doe involved a high school girls' basketball coach in a sexual relationship with a player and Trentadue involved a JROTC instructor in a sexual relationship with student.
- Rulings dealt with a variety of issues, including the standard of liability of schools and personnel for S.H.

Legal Standard: Strict liability when a school official in a position to take remedial action has knowledge that sexual harassment is occurring and exhibits deliberate indifference to remedying the situation.



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TITLE IX & GENDER EQUITY

◆ Biediger v. Quinnipiac University (July 2010)

- U.S. District Court ruling: Competitive cheer squad members cannot be counted as varsity athletes for Title IX compliance (computing substantial proportionality).
- Court relied on 2008 OCR pronouncement setting forth criteria for a sport and found deficiencies in Quinnipiac's cheer program with regard to many of those criteria.
- Judge noted likelihood in future of competitive cheer being recognized as a sport.

◆ Recission of 2005 OCR E-Survey Policy (April 2010)

- 2005 OCR policy allowed schools to comply with three-prong test by using e-surveys and counting non-responses as having no interest in participating in sports.

◆ Federal Title IX Data-Reporting Legislation

- House & Senate versions progressing through committee.

◆ NWLC OCR Complaints Against 12 Districts (Nov 2010) & Mass Filings In Oregon, Washington, & Idaho (2011)



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FAIR LABOR STANDARDS ACT

◆ Purdham v. Fairfax County Schools (March 11, 2011)

- **4th Circuit Court of Appeals:**

Volunteer coaches are exempt from overtime requirements of FLSA if:

- ① **Freely provide services &**
- ② **Job duties are dissimilar from regular job &**
- ③ **Paid only a nominal amount**

Stipends are “nominal”

Mascot Lawsuit-Of-The-Year

Sluggerrr & The Affair Of The Misfiring Hot Dog Cannon



***COOMER
V.
KANSAS CITY
BASEBALL
CLUB, INC.***





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***Thanks For Attending
The Workshop!!***

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