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KEY LEGAL ISSUES IMPACTING SCHOOL SPORTS

TOP 10 ISSUES

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LEGAL ISSUES IN ATHLETICS ARE PREVALENT

- Each year, lawsuits are filed, court cases decided, legislation enacted, administrative agency rulings released, state athletic association decisions issued and other legal pronouncements are handed down impacting school sports programs.
- It is important for school administrators and athletic personnel to understand contemporary issues in sports law in order to develop and manage a school district's athletic programs.
- Risk management in the context of minimizing legal exposure has become an inescapable part of the job description for school and athletics personnel.

TOP TEN SPORTS LAW ISSUES IMPACTING SCHOOL ATHLETICS PROGRAMS



CONCUSSION MANAGEMENT & RETURN-TO-PLAY PROTOCOLS

#1



CONCUSSION LAWSUITS

- **McNamee v. Hillsborough County School Board**
 - 16-year old football player sustained head injury during practice while not wearing a helmet.
 - Allegations involved receiving only a cursory evaluation by a coach and athletic trainer and leaving him alone in a training room for a half-hour before allowing him to drive himself home.
 - Student was later diagnosed with a fractured skull and a severe concussion.
 - Lawsuit ensued alleging negligent supervision, lack of an emergency medical response plan, inadequate immediate medical response etc...

CONCUSSION LAWSUITS (CONT...)

- **Texas, Ripple v. Marble Falls ISD**
 - School district allegedly ignored indicia of multiple concussions and purportedly pressured the player to continue practicing and competing.
- **Montana, Black v. Belt Valley School District**
 - School district allegedly prematurely returned a concussed player to action who then suffered a second head injury.
- **Florida, Holley v. Florida High School Athletic Assn.**
 - Lacrosse player sustained a concussion in a violent collision with an opponent and allegedly was not removed from the contest or evaluated for a head injury despite exhibiting multiple indicia of head injury.

CONCUSSION MANAGEMENT AND RETURN TO PLAY PROTOCOLS

All 50 states now have a sports concussion law in place that contains 3 common elements:

- 1) An athlete suspected of a concussion must be immediately removed from play;
- 2) An athlete may not be returned to action the same day;
- 3) An athlete may be returned to play only after written clearance is provided by a licensed health-care professional.

Other protocols include:

- Annual concussion training course
- Baseline testing
- Providing students and parents with educational materials

CONCUSSION CASES PRESENT CHALLENGING OBSTACLES

- Courts have generally been unwilling to impose liability on schools or coaches for students suffering concussions.
- Causation: did concussion happen on school team
- Proximate cause: difficult to prove coaches actions or inactions were the “proximate cause” of the concussion
- Gross Negligence: standard is difficult to overcome
- Risk acceptance: athletes are well aware of the dangers of playing sports
- Immunity: public schools generally enjoy school district immunity for injuries suffered during athletics

#2

LIABILITY FOR SPORTS INJURIES



LIABILITY CLAIMS FOR SPORTS INJURIES

- *Dixon v. Pop Warner Football*
- Settlement in excess of \$1million for injuries suffered by 13-year old when he sustained neck and spinal cord injuries resulting in permanent quadriplegia when attempting to make a tackle by leading with his head, a practice the lawsuit alleged had been taught and encouraged by his coaches.
- Judge ruled that the pre-participation waiver of liability did not bar a lawsuit for gross negligence
- In response to lawsuit Pop Warner changed its rules regarding head-on tackling, kickoffs, practice drills, contact safety protocols and mandatory football-specific training for coaches.

SCHOOL FOUND LIABLE FOR FAILING TO EXERCISE REASONABLE CARE

- *Carter v. Kern High School*
 - School mascot wearing a chicken costume at a football pep rally was dogpiled by approximately 30 football players in a mock attack on the upcoming opponent's mascot.
 - After being kicked, punched and having his head repeatedly pounded against the floor, the student suffered numerous injuries, broken bones, a damaged pituitary gland and a Grade 3 concussion.
 - Jury found the school district 100% responsible for failing to exercise reasonable care to fulfill its duties to provide a safe environment and adequate supervision.
 - Parties eventually agreed to a \$10.5 million settlement.

FAILURE TO TAKE REASONABLE PRECAUTIONS CAN RESULT IN LIABILITY

- A high-school softball player who was struck in the head during practice was awarded \$1.1 million after a lawsuit in Upstate New York.
 - The student's attorneys successfully argued to the jury that the school district did not provide adequate training for coaches and didn't have policies for when practices moved in doors, like a reasonable coach-to-student ratio.

LIABILITY FOR SPORTS INJURIES AND THE DUTIES OF ATHLETICS PERSONNEL

- Most cases surrounding suits filed by injured student athletes allege a negligent failure to exercise reasonable care to safeguard the health and well-being of the athlete.
- Athletic personnel must be well versed on the legal responsibilities imposed on them in many areas including:
 - Technique instruction
 - Safe playing environments
 - Safe equipment
 - Evaluation of injuries
 - Emergency medical response planning
 - Safe transportation

ASSESSING A COACH'S LIABILITY FOR STUDENT INJURY

- Coaches are generally not held to be personally responsible for ensuring the health and safety of student athletes.
- Coaches are generally not liable for their players' injuries.
- High school athletes assume the inherent risk involved with a sport.
- The voluntary nature of the athlete's participation in the activity usually allows schools and coaches to escape liability for injuries that are considered part of the game.
- Coaches have a duty to take "reasonable" precautions.
- A coach will breach his duty of reasonable care if the coach intentionally injures the student or engages in conduct that is reckless.

#3

SOCIAL MEDIA ISSUES: SANCTIONING OF STUDENT ATHLETES



CAN SCHOOLS SANCTION STUDENT ATHLETES FOR OFF-CAMPUS POSTINGS ON SOCIAL MEDIA?

- Courts continue to grapple with the issue of whether schools have the authority to sanction students.
- Since 2011, six cases have been decided on the issue by U.S. Courts of Appeal and a dozen other rulings have been issued by U.S. District Courts.
- In precisely one-half of these cases, courts have upheld punishments violate student-free-speech rights, while others have upheld the school's action because the speech in question **created a substantial disruption at school, constituted bullying or harassment or manifested a true threat of violence against students.**

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#4

CONSTITUTIONAL RIGHTS OF STUDENT ATHLETES

FREEDOM OF SPEECH
FREEDOM OF RELIGION
INVASION OF PRIVACY
DUE PROCESS



Constitutional Rights

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STUDENT ATHLETE CONSTITUTIONAL CLAIMS COME IN MANY DIFFERENT FLAVORS

- Student suspension for criticism of coach = First Amendment (Free Speech violation).
- Student suspension for attendance at party where alcohol is served = First Amendment (Freedom of Assembly violation).
- Suspension for failing a drug test = Fourth Amendment (Search and Seizure violation).
- Suspension for misbehavior = Fifth/Fourteenth Amendment (Due Process).
- Suspension more severe than given to other students – Fourteenth Amendment (Equal Protection Clause violation).

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FREEDOM OF SPEECH

- ***Bell v. Itawamba County School Board***
 - Student alleged free speech rights were violated when he was expelled from extracurricular activities and suspended from school after posting online a video he created featuring a rap song that accused two coaches of inappropriate conduct with female students.
 - U.S. Fifth Circuit Court of Appeals upheld the district's actions and ruled that they did not violate the student's free speech rights as the intimidating and harassing language directed at school officials could reasonably be forecast to cause a substantial disruption on school property.
 - In February 2016, the United States Supreme Court refused to hear an appeal leaving the Court of Appeals ruling in tact.

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FREEDOM OF SPEECH AND NATIONAL ANTHEM PROTESTS

- Following San Francisco 49ers quarterback Colin Kaepernick's National Anthem protests, the issue facing schools and athletic coaches is whether they can sanction players conducting such protests and whether punishments would be constitutionally permissible or would violate the student-athletes' First Amendment rights to freedom of speech, expression and protest.
- Schools can limit on-campus student speech that is lewd or profane, speech that is part of the school curriculum (school newspaper), speech that advocates drug use by students and speech that constitutes a true threat against the school community.
- By this standard, it is doubtful that punishment would withstand judicial scrutiny.

SOME RECENT HEADLINES

- 'School officials: Students must stand for anthem or face loss of playing time, participation' (Parkway High School, Bossier City, LA 9/28/17)
- 'High school on students kneeling during national anthem' (Centerville Schools, OH 9/29/17)
- 'High school football takes field amid national anthem protests' (Shreveport, LA 9/29/17)
- 'Several LHS marching band members take the knee during national anthem at football game' (Lawrence, KS 10/6/17)
- 'Two high school football players kicked off team for kneeling during anthem' (Crosby, TX 10/1/17)
- '8-and-under youth football team takes knee during the national anthem' (St. Louis 9/20/17)

WHAT'S THE AUTHORITIES SAYING

- Ohio High School Athletic Association Won't Punish Athletes Taking A Knee
- National Coalition Against Censorship: "The national anthem is no different from the Pledge of Allegiance ... Public schools cannot force students to stand for the national anthem, nor can they punish them for kneeling," the group said in its resource guide for students and schools.

FREEDOM OF RELIGION

- **Matthews v. Kountze Independent School District**
- Texas Supreme Court determined that it would review the constitutional claims of a high school cheer squad in a case dealing with their rights to display religious messages on banners at their public school athletic events.
- The ultimate issue to be determined by the Court is whether the banners are school-sponsored speech (in which case the banners are impermissible under the Establishment Clause) or, whether they are private speech by the cheerleaders (in which case they are permissible based on the Free Speech Clause and the Free Exercise of Religion Clause).

COACH LED PRAYER

- The U.S. Supreme Court rejected the appeal of a New Jersey high school football coach who has been fighting for the right to bow and kneel in prayer with his football team.
- The high court's decision leaves intact a federal appeals court's decision that the coach's desire to bow his head and take a knee during team prayer is an endorsement of religious activity at a public school.

INVASION OF PRIVACY

- **State v. Mathers**
- Non-school case - criminal charges focusing on invasion of privacy, were filed against Dani Mathers, a former Playboy Playmate of the Year, when she took a picture of a 70-year old woman in a locker room shower at an LA Fitness Center and posted the image on her Snapchat social media account along with a mocking caption fat-shaming the woman.
- LESSON LEARNED – Student athlete conduct codes should include strict prohibitions on the use of cameras in any form in locker rooms, shower rooms and restrooms.

DUE PROCESS

- *DeLaTorre v. Minnesota State High School League*
 - A federal judge dismissed a lawsuit filed by a former high school soccer player who claimed that his constitutional right to due process was violated when the athletic association refused to grant to him an exception to the transfer and residency requirements for athletic eligibility.
 - The student was required to sit out a year and would not be eligible to play until his senior year after returning from Mexico during his sophomore year.
 - Participation in interscholastic athletics is a privilege and not a right. The student's legal interests were fulfilled when given notice of the eligibility rules and an opportunity for a hearing.

HAZING THE MOST HIGHLY LITIGATED CLAIM AGAINST DISTRICTS

#5



SOME UGLY STATISTICS

- Much hazing is actually sexual assault and is often mislabeled.
- Teammate-on-teammate sexual assaults occur in all types of sports in public schools
- Boys made up the majority of aggressors and victims in teammate attacks – some suffering serious injury and/or trauma.
- Since the beginning of 2014, more than 150 incidents of alleged hazing in school athletics programs have been reported by national media, many including physical abuse or sexual assaults.
- Courts tend to find school and athletics personnel vicariously liable where the official had knowledge that hazing was occurring and exhibited deliberate indifference to correcting the situation.

HAZING CASES

- *Doe v. Hamilton County Department of Education*
- Freshman on high school basketball team sued an East Tennessee school district, a high school principal, an athletic director and a basketball coach after being part of a hazing ritual that included being sodomized with a pool cue which resulted in severe injuries and emergency surgery.
- Lawsuit alleged that school district had a long history of hazing incidents that were known to the athletic personnel who did little to develop and implement an effective anti-hazing policy.
- The lawsuit led to the cancellation of the remainder of the basketball season and the athletic director and the head coach pleading guilty to failure to report child abuse.

HAZING CONT...

- *Doe v. Maine Township High School District 207*
- Hazing suit brought by 5 soccer players at Maine West High School in Des Plaines, Illinois after being initiated by older players on their team enduring physical beatings, and sodomizing them with fingers and sticks.
- Perpetrators were charged in juvenile court with assault and two soccer coaches were charged with failure to report child abuse.
- Lawsuit resulted in \$1 million settlement and anti-hazing policy, trainings and education programs.
- Failure to report hazing is now a crime in Illinois.

FORMER ST. MARY'S PLAYERS FILE FEDERAL LAWSUIT AGAINST COACHES & OTHER DISTRICT OFFICIALS

- Lawsuit alleges players subject to regular, repeated and pervasive harassment, intimidation, bullying and humiliation under father and son coaching team. Claims include the use of derogatory and demeaning terms, players being pressured to play with injuries, players being instructed that "what happens in football stays in football," and players being encouraged to disassociate themselves from those who outwardly resisted the negative treatment by the coaches.
- Plaintiffs seek compensatory and punitive damages, a requirement that the school board adopt harassment policies, procedures and practices commensurate with guidance issued by the U.S. Dpt. of Ed., Office of Civil Rights, an award for reimbursement of court costs and attorney fees and an order for any other relief that the court deems appropriate.

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**SEXUAL HARASSMENT
IN ATHLETICS
PROGRAMS**

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SEXUAL HARASSMENT AND VIOLENCE

- *Doe, et al. v. Torrance Unified School District*
- 18 wrestlers at Torrance High School in California, filed a civil lawsuit alleging that they were sexually molested by their wrestling coach and that the school had been previously warned about the coach's behavior but had repeatedly ignored the situation.
- The coach was convicted of a range of sexual offenses involving the molestation of 25 boys and was sentenced to prison for 69 years.
- The standard for the civil suit against the district will be whether someone in a position to take remedial action had knowledge of the abuse and exhibited deliberate indifference to correcting the situation.

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**SEXUAL HARASSMENT TAKES ON VARIOUS
FORMS**

- Hostile environment sexual harassment claims involve allegations of inappropriate relationships between athletics personnel and student athletes.
- A closely related issue is the failure by school officials to follow requirements of child abuse reporting laws regarding mandatory reports to law enforcement or child protective services agencies.
- In sexual harassment civil suits, courts have tended to find school and athletic personnel vicariously liable in those instances where the official had knowledge that the harassment was occurring and exhibited deliberate indifference to correcting the situation.

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**TRANSGENDER
POLICIES FOR
ATHLETIC PROGRAMS**

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MAY 13, 2016 DEAR COLLEAGUE LETTER

- Joint issuance by U.S. Dept. of Education's Office for Civil Rights and the U.S. Dept. of Justice's Civil Rights Division summarizing Title IX's obligations of schools regarding transgender students.
- Schools may not treat a transgender student differently than they would treat other students of the same biological gender, including with regard to sports participation opportunities and access to facilities such as restrooms, locker rooms and shower rooms.
- In April 2016, in *G.G. Gloucester County School Board*, U.S. Court of Appeals for Fourth Circuit ruled that school's refusal to allow the use by transgender students of school facilities consistent with their gender identify is unlawful.

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**U.S. SUPREME COURT TO HEAR THE
APPEAL**

In August 2016, a federal judge in Texas blocked implementation of the Title IX Dear Colleague Letter.

In February 2017, President Trump rescinded protections for transgender students that allowed them to use bathrooms corresponding with their gender identify.

- U.S. Supreme Court will resolve two issues:
 - 1) Whether courts should defer to the May 2016 "Dear Colleague Letter"
 - 2) Whether educational institutions covered by Title IX must treat transgender students consistent with their gender identify.

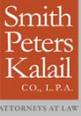
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TWO PARENTS FROM AN OPPOSING TEAM SUED TO HAVE TRANSGENDER STUDENT SUSPENDED FROM THE GIRLS' WRESTLING TEAM

- In the lawsuit filed by the parent of a female high school wrestler in Texas (who is in a different weight class and would not have faced the transgender student in any event), concern was raised over student's use of testosterone.
- That's a widely accepted medical necessity in gender-reassignment cases, not a subterfuge to gain a competitive edge.
- The lawsuit says the changes caused by testosterone might pose a safety problem for his female opponents.
- The suit calls for him to be banned for steroid use.

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#8

DISABILITY LAWS CLARIFYING A DISTRICT'S OBLIGATIONS TO PROVIDE FOR DISABLED STUDENTS

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DISABILITY LAWS

- *Kempf v. Michigan High School Athletic Association*
- A deaf high school wrestler sued the Athletic Association after his Sign Language interpreter was limited to the coach's box at the corner of the mat which made it difficult for the interpreter to maintain a line-of-sight for hand signal communication with the student.
- The lawsuit settled 8 days after it was filed.
- Federal disability laws require rule waivers be granted as long as the requested accommodations are reasonable and would not result in a fundamental alteration of the nature of the activity in question.

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ISSUES CONTINUE TO ARISE

- January 2013 OCR “Dear Colleague Letter” clarified a district’s obligations with regard to providing sports participation opportunities for students with disabilities.
- Core message: Students with disabilities should be granted equal opportunity to participate alongside their peers in school athletics programs, club sports, intramural sports and physical education classes.
- Schools have a further obligation to provide sports participation opportunities through adapted athletics programs.

TITLE IX & GENDER EQUITY

#9



TITLE IX AND GENDER EQUITY IN ATHLETIC PROGRAMS

- Since the mid-1990’s, between 125 and 150 Title IX complaints against school districts have been typically filed each year with the Office of Civil Rights.
- Of these complaints, approximately half result in a resolution agreement while the other half result in a federal lawsuit.
- The number of complaints have soared within the last 5 years.

TITLE IX

- *Carpio v. Federal Way Public Schools*
 - Father of two female wrestlers filed a Title IX suit alleging inequities between boys and girls wrestling teams including the claim that the boys practiced in wrestling rooms designed for their sport while girls were limited to using the cafeterias; boys received access to more time with coaches, transportation and lodging for road trips, superior quality coaching, more uniforms etc...
 - Settlement included a timeline for implementation of a series of specific remedies including an athletic director hired to ensure equitable and consistent practices across all of the sports programs.

DENIAL OF "LEVEL PLAYING FIELD" ALLEGATIONS

- California High School Hit with Title IX Suit for allegedly failing to provide equal access to sports programs and facilities.
- Specific allegations include that the school's male athletes get access to better practice and competitive facilities, the girls' facilities are smaller, fewer in number and lack equal access to storage and bathroom facilities and inferior access to equipment and coaching resources.

OCR'S TITLE IX "LAUNDRY LIST" OF AREAS OF INVESTIGATION

- Facilities
- Locker rooms
- Equipment
- Uniforms
- Travel
- Transportation
- Access to quality coaching
- Publicity
- Game and practice schedules
- Program and resources

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RETALIATION
AGAINST
COMPLAINANTS



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TYPICAL RETALIATION CLAIM

- The U.S. Supreme Court in *Jackson v. Birmingham Board of Education* held that retaliation against an individual who complains about violations of Title IX in a school setting is itself a separate violation of Title IX.
- Typically, this type of suit involves a coach, a student athlete or a parent who either voices concerns to school officials regarding an alleged Title IX issue or files a formal complaint to OCR and then suffers some form of disadvantageous treatment or negative consequences from school personnel as “blowback” for having expressed his or her point of view.

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OTHER SPORTS LAW
ISSUES AFFECTING
SCHOOL ATHLETIC
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OTHER SPORTS LAW ISSUES

- Employment Law & Coaches Contracts
- Trademark law & School Mascots/Logos
- Pregnancy Discrimination in Sports
- Labor Law & FLSA Issues
- Facilities Management
- Drone Use
- Sports Drug Testing
- Native American Mascot Legal Concerns
- Broadcast Rights
- Participation Rights of Charter & Homeschooled Students

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