



National Federation of State
High School Associations



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Indianapolis, Indiana
April 14-15, 2016

Network: HYATT-MEETING
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Tom Welter, President
NFHS Board of Directors

WELCOME



ROWE VS. WADE

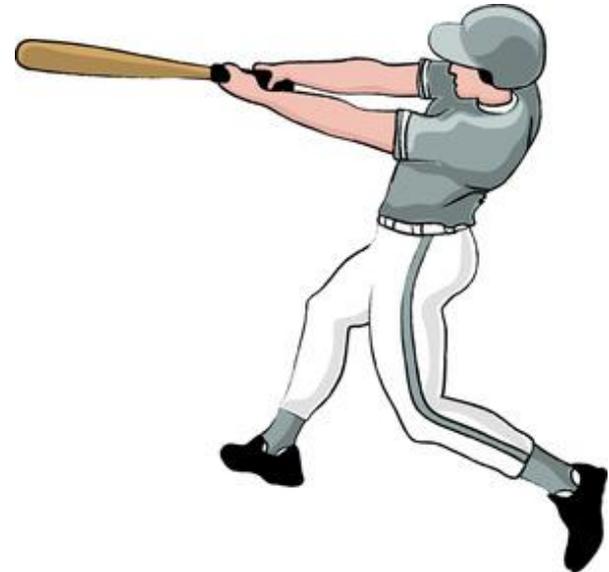


DETECTIVE STORY

- Three elderly ladies are excited about their first Major League baseball game.
- They smuggled a bottle of Jack Daniels in to the game. The game is real exciting and they are enjoying themselves, and the Jack and Cokes, immensely.
- Soon they realize that the bottle of Jack Daniels is nearly gone and there are still a lot of innings to go.
- One of them has even fallen asleep.
- Based on the given information, what is the present status of the game?

ANSWER

It's the bottom of the fifth, there's one out, and the bags are loaded!!!





Bob Gardner, Executive Director
NFHS

ANNOUNCEMENTS





Mal Mayse, Legal Counsel
Missouri State High School Activities Association

LEGAL COMPENDIUM UPDATE



MAL MAYSE, LEGAL COUNSEL

MISSOURI STATE HIGH SCHOOL ACTIVITIES ASSOCIATION

Juris Doctorate, University of Missouri 1973. Assistant MSHSAA Legal Counsel (1974-1991) and General Legal Counsel (1992 to Date). Have been involved in numerous litigations for the MSHSAA at the State and Federal trial and appellate court levels.

Annual attendance at National Meeting of State High School Association Executive Directors and Legal Counsel including program presenter and speaker participation on numerous occasions (1978 to Date).





Charles Breithaupt, Executive Director
Texas University Interscholastic League



Leo Barnes, Legal Counsel
Texas University Interscholastic League

MISCONDUCT DURING A GAME: PROTECTING SPORTS OFFICIALS AND STUDENT ATHLETES





CHARLES BREITHAUPT, EXECUTIVE DIRECTOR TEXAS UNIVERSITY INTERSCHOLASTIC LEAGUE

Charles Breithaupt was named executive director of the Texas University Interscholastic League in 2009 after 17 years on the UIL administrative staff. He became the seventh executive director in UIL history, following the retirement of Bill Farney.

Prior to becoming the executive director, Breithaupt was responsible for the administration of the entire athletic program in Texas. With more than 1,300 member schools in the state, Breithaupt was in charge of the reclassification and realignment process.

After graduating from Lamar University in Beaumont, Texas, Breithaupt spent many years in athletic and administration positions in Texas schools. Before joining the UIL in 1992, Breithaupt worked as an athletic director, principal and school board member in Texas. In addition, he dedicated 17 years to coaching five sports and earned numerous coach of the year awards in the process. His dedication to athletics has earned him places in the Texas High School Basketball Hall of Fame, the Southeast Texas Coaches Hall of Fame and the Texas High School Coaches Hall of Honor.

During his career, Breithaupt has served on the NFHS Sportsmanship, Ethics and Integrity Committee, as well as the NFHS Basketball Rules Committee. Additionally, he served a three-year term on the NFHS Board of Directors.





LEO BARNES, LEGAL COUNSEL

TEXAS UNIVERSITY INTERSCHOLASTIC LEAGUE

Formerly an Associate Vice President for Legal Affairs at the University of Texas at Austin, Leo L. Barnes began working at the UIL as the Director of Policy and Compliance in June 2013. Mr. Barnes received his undergraduate degree from the University of Texas at Austin and graduated cum laude from the St. Mary's School of Law in San Antonio.

While with the Texas Attorney General's office and in private practice, Mr. Barnes had an active trial and appellate practice in both Texas and federal courts representing state agencies, universities, school districts and government officials on a range of legal topics, including constitutional law, employment, and torts. Mr. Barnes worked for many years in the University of Texas System's Office of General Counsel and the Office for Legal Affairs at UT-Austin, where he would often work on legal matters for UIL, along with a wide range of other issues.

Mr. Barnes is native Texan who grew up in Houston and attended Spring Branch High School.



Misconduct During the Game: Protecting Sports Officials and Students

Leo L. Barnes, JD

Director, Policy and Compliance





Chance Haley

abc NEWS EXCLUSIVE

HIGH SCHOOL FOOTBALL PLAYERS SPEAK OUT
BREAK SILENCE ABOUT HITTING REF

abc NEWS
.com



Chance Haley

abc NEWS **EXCLUSIVE**

PLAYERS WHO HIT REF BLAME COACH abc NEWS .com

#WorldNewsTonight



abc NEWS EXCLUSIVE

**HIGH SCHOOL FOOTBALL PLAYERS SPEAK OUT
BREAK SILENCE ABOUT HITTING REF**

abc NEWS
.com



**SPEAKING
Out**

TONIGHT WORLD



“District officials have said that they plan to file a formal complaint against the official.”

FOOTBALL

Former John Jay coach pleads guilty in assault on blindsided official; charges against players to come

By **USA TODAY High School Sports** December 14, 2015

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Former John Jay High School assistant football coach Mack Breed appears at a University Athletic League hearing in October (Photo: Ricardo B. Braziell/Austin American-Statesman via AP)

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April 2, 2016

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Roger Blake, Executive Director
California Interscholastic Federation



Diane Marshall-Freeman,
Legal Counsel
California Interscholastic Federation

RESIDENTIAL ELIGIBILITY INVESTIGATIONS AND PRIVACY





ROGER BLAKE, EXECUTIVE DIRECTOR CALIFORNIA INTERSCHOLASTIC FEDERATION

Roger Blake has been executive director of the California Interscholastic Federation (CIF) since August 1, 2012, after serving 15 years on the CIF administrative staff. Blake, who has served in the high school education field for 36 years, is the CIF's eighth executive director.

Blake graduated from Cal State Fullerton in 1976 with a bachelor of science degree and held coaching and teaching posts at Cajon and Sonora high schools. From there, he served several positions during 24 years in the Lake Elsinore Unified School District, including coaching, teaching and administrative jobs. Blake went on to earn his master's degree from Azusa Pacific (California) University.

Blake was named CIF director of education and training in 1998 and, in 2001, was named assistant executive director.





DIANE MARSHALL-FREEMAN, LEGAL COUNSEL CALIFORNIA INTERSCHOLASTIC FEDERATION

Diane Marshall-Freeman is a partner at Fagen Freidman and Fulfrost, LLP. With over 25 years of legal experience, Ms. Marshall-Freeman is a highly skilled practitioner with an extensive background in all areas of general and special education law. She also serves as general counsel to the California Interscholastic Federation (CIF). An experienced litigator, Ms. Marshall-Freeman has successfully argued cases at the federal and state levels. As general counsel to the CIF, she has appeared at state and federal court on matters involving student athletic eligibility, qualifications for section and state championships and CIF jurisdiction.



No Pictures...Please!: Residency, Enrollment, and Privacy

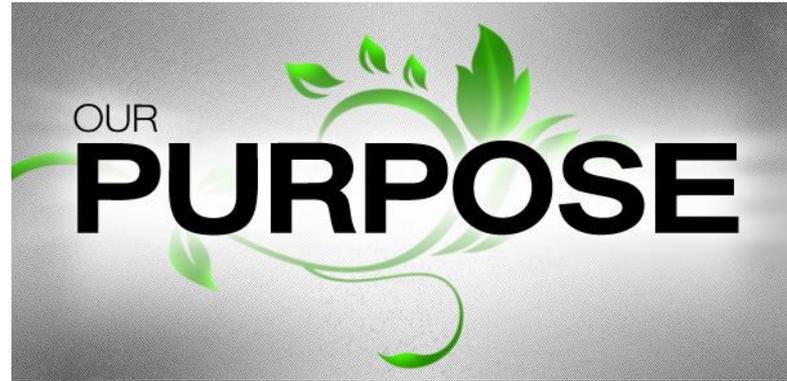


Roger Blake, CIF Executive Director
Diane Marshall-Freeman, CIF General Counsel



Fagen Friedman & Fulfroft LLP

Purpose of Today's Presentation



- > To discuss new CA legislation and various state statutes pertaining to pupil residency
- > To review criteria for the use of a private investigator
- > To evaluate possible student privacy issues
- > To consider any attorney client/work product issues



California - Examples

1. Move from a multi-million dollar suburban home to an inner city apartment
2. Multiple student transfers into a basketball powerhouse program
3. High profile student-athlete's family remained at prior residence
4. Failure to make a full-family move based on claim of home renovation
5. Student was found to be residing at the previous address



CA – Considerations

1. The enrolling school provides a written statement stating that the information provided by the student/family is false.
2. The former school has provided a written statement stating that information provided by the student/family is false.
3. The documentation provided by the student, indicates that the address provided by the family, does not match the enrolling and/or former school records.
4. Property records of the family indicate that the family owns the former address and does not own the current address.



CA - Considerations

5. The address of residence submitted by the student, does not show up on property records or cannot be found on Google Maps.
6. Students at either the former or enrolling school have provided information that indicates that documentation submitted in support of the requesting student may be false.
7. The student's siblings do not attend the new school of residence and continue to attend a school in the area of the previous address.
8. Property records show the family own a home in both the prior and new areas of residence, which are either owned by both parents or owned separately by an individual parent.



CA - Considerations

9. After additional documentation is submitted by the family to the Section, the initial belief of false or fraudulent information still exist.
10. The school SRO provides evidence that fraudulent information may have been provided by the student and family.
11. Former school district personnel provided written information that documentation submitted in support of student may be false.



CA - Considerations

12. Home visit(s) show that the family is not living at the provided address.
13. Home visit shows that the address does not exist.
14. After review of the documentation submitted to the Section, it becomes apparent that some or all of the documents were altered or fraudulent such as, verification of information by the former landlord, property owner, etc.
15. Information derived from social media indicates possibility of false and fraudulent information.



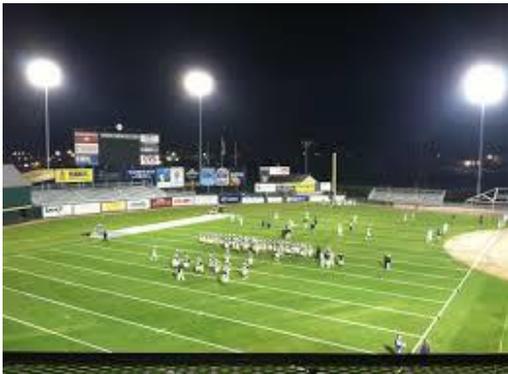
Remember the Old Days?



Residency In The News

Washington, D.C. -

“In District high schools, athletic-based transfers are becoming an alarming trend”



The Washington Post, 2013



Fagen Friedman & Fulfroft LLP

Residency In The News

New Jersey -

“Stealing education: families fake residency for school”



app.com, Sept. 15, 2015



Fagen Friedman & Fulfroft LLP

Residency In The News

Missouri -

“School districts' residency checks commingle with debate over transfer rights”

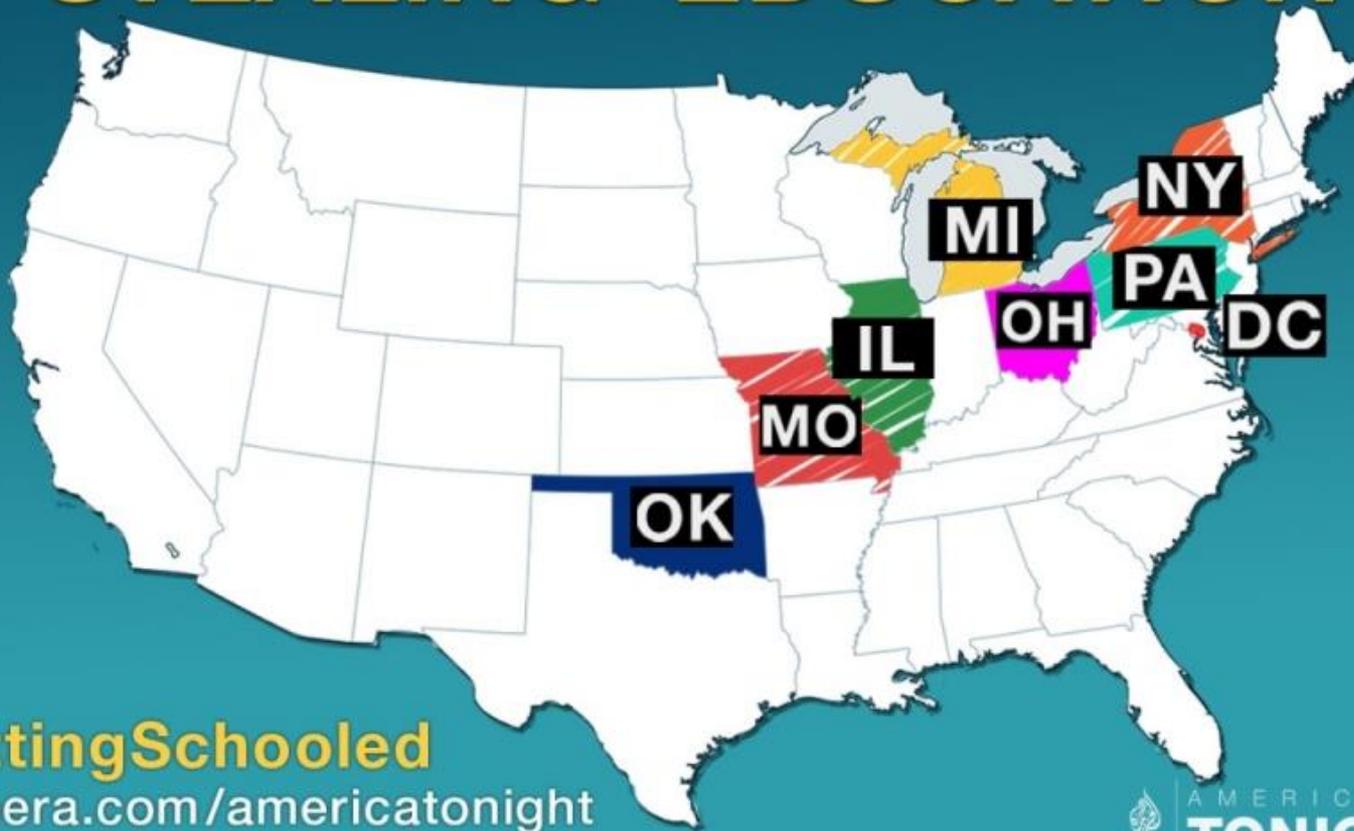


St. Louis-Post Dispatch, Sept. 2011



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8 PLACES THAT CAN JAIL YOU FOR ‘STEALING’ EDUCATION



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Residency In The News

California -

“Orinda School District Hired Private Investigator for Seven Residency Probes”

Orinda News, January 9, 2015



Assembly Bill 1101 - Adds Education Code section 48204.2

- ◆ On August 11, 2015 – Governor Brown signed Assembly Bill 1101
- ◆ Becomes effective January 1, 2016
- ◆ Before a school district can undertake an investigation to determine if a student meets residency requirement
- ◆ Governing board must first adopt a policy regarding the conducting of an investigation



Investigation Policy

Education Code section 48204.2

1. Identify the circumstances
2. Describe the investigatory method
3. Prohibit the surreptitious photographing or video-recording
4. Investigators must identify themselves truthfully



Investigation Policy

5. Provide an appeal process and specify the basis for the determination
6. The policy must be adopted at a public meeting of the board



What Kind of Student Information Do You Possess?

1. Names
2. Addresses
3. Medical information
4. Financial information
5. Transcripts
6. Discipline records
7. Photographs



FERPA

- 34 C.F.R. section 99.3
 - Defines “Educational Records” as records that are:
 - Directly related to a student; and
 - Maintained by an educational agency or institution or by a party acting for the agency or institution.



What Does This Mean For Your State Association?

1. Does your state association have established criteria for the use of an investigator?
2. Is your investigative report discloseable under your Public Records Act?
3. Does your report contain confidential student information provided by the school? The parent?

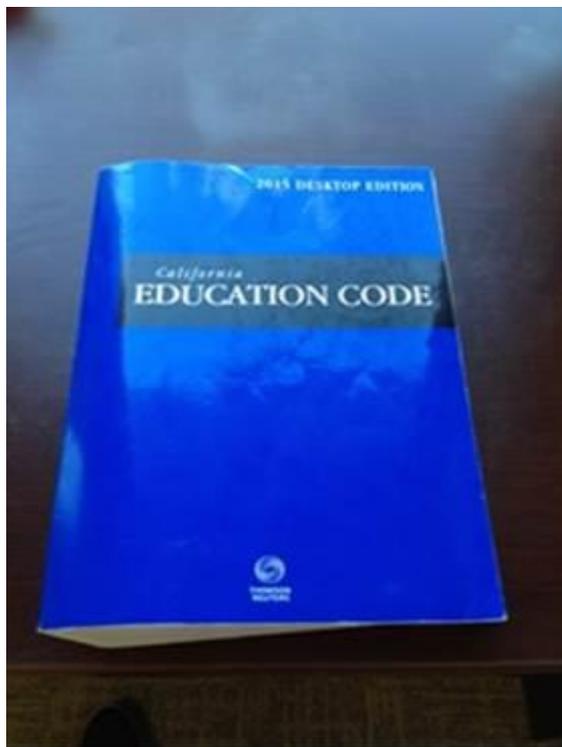


What Does This Mean For Your State Association?

4. What do you do with your reports when they are no longer needed?
5. What steps do you take to ensure the security of confidential student information?



NEW LAWS!!!



Digital Storage Services and Digital Storage Software

- Education Code section 49073.1
 - Requires the contract to include specified provisions, including a statement that the pupil records continue to be the property of and under the control of the local educational agency, **a description of the actions the 3rd party will take to ensure the security and confidentiality of pupil records**, and a description of how the local educational agency and the 3rd party will jointly ensure compliance with FERPA.



Thank You



Fagen Friedman & Fulfrost LLP



Sally Marquez,
Executive Director
New Mexico Activities
Association



Mark Geiger,
Legal Counsel
New Mexico Activities
Association



Andy Warner,
Executive Director
Maryland Public Secondary
Schools Athletic Association



Elliot Schoen,
Legal Counsel
Maryland Public Secondary
Schools Athletic Association

JUDICIAL INVOLVEMENT IN RETURN-TO-PLAY DECISIONS





SALLY MARQUEZ, EXECUTIVE DIRECTOR NEW MEXICO ACTIVITIES ASSOCIATION

Sally Marquez, has served as executive director of the New Mexico Activities Association (NMAA) since September 2012. She began her career at the NMAA in 2008 as associate director and was promoted to assistant executive director in July 2011.

Prior to joining the NMAA, Marquez held a variety of positions in the Rio Rancho Public District in New Mexico, including teacher, dean of students, assistant principal and director of personnel. Marquez held a number of teaching and coaching positions in New Mexico, Texas and Virginia for 14 years before joining the Rio Rancho district.

A graduate of Albuquerque (New Mexico) Manzano High School, Marquez earned her bachelor's degree from the University of New Mexico and her master's degree from Virginia Tech University.





MARK GEIGER, LEGAL COUNSEL NEW MEXICO ACTIVITIES ASSOCIATION

Mark has been practicing law in the areas of civil litigation and appeals involving sports law, business law, medical malpractice, and personal injury law for over twenty-five years. He has been a member of the bar of the U.S. Supreme Court since 1995, and he is licensed to practice in the Ninth and Tenth Circuits of the U.S. Court of Appeals, and the state and federal courts of New Mexico. He is a member of the New Mexico Trial Lawyers Association and the New Mexico Medical Review Commission.

Mark has represented the New Mexico Activities Association in state and federal courts, to include the U.S. Supreme Court, the Tenth Circuit Court of Appeals, and the New Mexico Supreme Court, since 1995, on matters ranging from student-athlete eligibility and school classification, ADA and Title IX, to concussion litigation and issues related to transgender athletic participation.

Mark obtained his undergraduate degree (B.S. Accounting 1985), and law degree (J.D. 1990), from Arizona State University.



ANDY WARNER, EXECUTIVE DIRECTOR

MARYLAND PUBLIC SECONDARY SCHOOLS ATHLETIC ASSOCIATION

Andy Warner is the Executive Director of the Maryland Public Secondary School's Athletic Association (MPSSAA). He currently oversees the operations of the MPSSAA while jointly fulfilling duties as the Director of Athletics for the Maryland State Department of Education. Prior to taking over as executive director, Andy served as assistant executive director of the MPSSAA for the previous nine years. He earned his undergraduate degree from the University of Maryland and a Master's in Education Administration from McDaniel College.



ELLIOT SCHOEN, LEGAL COUNSEL

MARYLAND PUBLIC SECONDARY SCHOOLS ATHLETIC ASSOCIATION

Elliott Schoen is a Maryland Assistant Attorney General and Deputy Counsel for the Maryland State Department of Education. He currently advises the Division of Rehabilitation Services, the Maryland Business Enterprise Program for the Blind, the Office of Blindness and Vision Services, the Maryland Public Secondary Schools Athletic Association, the Public Schools Construction Program and the Juvenile Services Education Schools. For the past four years, he has served on the Character and Fitness Committee for the Maryland Bar. Elliott earned his law degree from the University of Denver College of Law (1992); his undergraduate (1986) and Master's degree (1987) are from the University of Florida. Elliott began his legal career as a judicial law clerk on the Colorado Court of Appeals and then was an associate lawyer in private law practice representing parents in special education disputes. Elliott was a Peace Corps volunteer in Ecuador (1992-1994) and a special education teacher in Boulder, Colorado (1987-1989). He trains for and runs several marathons a year and has completed more than 55 marathons in 28 states, the District of Columbia, France, and Australia.



New Mexico Senate Bill 1



By

Sally Marquez, Executive Director

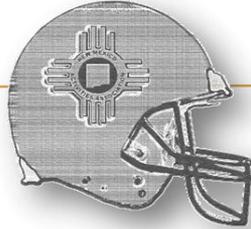
Mark Geiger, Legal Counsel



Concussion Law of 2010

A coach shall not allow a student athlete to participate in a school athletic activity on the same day that the student athlete exhibits **signs, symptoms** or behaviors consistent with a brain injury or has been diagnosed with a brain injury. The student athlete may not return to athletic participation for a minimum of **7 days** after he/she received a brain injury. Only when the student athlete no longer exhibits any sign, symptom or behavior consistent with a brain injury and has received medical clearance from a licensed health care professional may he/she return to athletic participation.

Concussion Law of 2010



- ❧ Football player knocked unconscious in a semifinal football game on Saturday.
- ❧ Athletic Trainer deems a concussion per state statute.
- ❧ Student is out of athletics for **7 days**, which includes State Championship game.
- ❧ Parents challenge when "7 days" begin, trying to count Saturday as part of "7 days."
- ❧ Parents claiming that he never lost consciousness; he "lost his breath."

NM Concussion Law 2010



- ⌘ Parents told their doctor that their son “lost his breath,” thus the doctor stated that he did not have a concussion.
- ⌘ Parents file a TRO.



NM Concussion Law 2010



 Mark Geiger, Legal Counsel

Senate Bill 137

☞ New Law

☞ 10 days, 240 hours from the time of injury

☞ State Law now includes all youth activities that use school facilities



Maryland Public Secondary Schools Athletic Association



Pathway to Play Athletic Policy for Students with Disabilities

Background Story

- Junior high school student wants to play football.
- Student has been diagnosed with Tourette's syndrome, ADHD, Obsessive-Compulsive Disorder, and he receives special education services.
- Condition causes intense physical and verbal tics. The physical tics include squatting, spitting, turning abruptly, and facial grimacing. The verbal tics include yelling, screaming, racial slurs, and sexually orientated words and phrases.

Individual Analysis

- Regardless of the decision, the key to success is an individual analysis.
- In *Martin v. PGA, (Martin II)*, 532 U.S. 661, (199), the Supreme Court emphasized that an evaluation of what constitutes a reasonable modification of rules for a disabled participant must focus on the individual and may not generally evaluate whether a blanket waiver of a requirement would constitute a fundamental alteration.
- The NFHS rules for competition allow for, “reasonable accommodations to individual participants with disabilities and/or special needs, as well as those individuals with unique and extenuating circumstances.”

Model Athletic Policy for Students with Disabilities

Maximizing Individual Opportunities

Upon the request of a student, teacher, parent, or coach any student with an IEP or 504 Plan who wishes to participate in the mainstream athletic program is referred to the Committee who will consider the eligibility of each student on a case by case basis. The Committee will conduct a review of the student and the sport, consult with the Maryland Public Secondary Schools Athletic Association (MPSSAA), and determine the accommodations and or modifications necessary to enable the individual student's participation.

Model Athletic Policy for Students with Disabilities

Pathway to Play Committee

This Committee may include:

- Special Education Teacher
- Physical Education Teacher
- Athletic Director
- Athletics Supervisor
- Coach(es) of relevant sports
- School Principal or Assistant Principal
- Student Advocate, someone who knows the student or sport may also be a part of this committee.
- Inclusion Specialist

Model Athletic Policy for Students with Disabilities

Four Part Criteria

- a. Fundamentally alter the sport?
- b. Provide a competitive advantage to the student?
- c. Competitively disadvantage other participants?
- d. Significantly increase the risk of injury for the student and other athletes?

Pathway to Play Process

Step 1: The student self-refers or is referred to the Pathway to Play Committee by a coach, teacher, or parent.



Step 2: Pathway to Play Committee conducts a review of the student and sport, consults with MPSSAA and applies 4 Point Criteria.



Step 3: Pathway to Play Committee recommends a maximum participation opportunities available to the student.

A: Determination	B: Determination	C: Determination
<p>The student is able to participate in mainstream athletics with accommodations*. The accommodations <u>do not</u>:</p> <ul style="list-style-type: none"> • Fundamentally alter the sport • Provide the student an advantage • Disadvantage other athletes • Significantly increase the safety risk to the student or other athletes. 	<p>The student is able to participate against or alongside other athletes in mainstream individual events with allowable accommodations or modifications** where the accommodations and/or modifications <u>do not</u>:</p> <ul style="list-style-type: none"> • Fundamentally alter the sport • Provide the student an advantage • Disadvantage other athletes • Significantly increase the safety risk to the student or other athletes. 	<p>The student is unable to participate in mainstream individual or team sports because the necessary accommodations or modifications:</p> <ul style="list-style-type: none"> • Fundamentally alter the sport • Provide the student an advantage • Disadvantage other athletes • Significantly increase the safety risk to the student or other athletes • The school system shall provide an alternate athletic program.***

Application of Pathway to Play

- Does the student's special accommodations needed:
 - Fundamentally alter the sport
 - Provide a competitive advantage to the student
 - Competitively disadvantage other participants
 - Significantly increase the risk of injury for the student and other athletes.

Application of Pathway to Play

- Committee addresses the issue.
- A special accommodation request is made to the MPSSAA office. The request details the final outcome of the pathway to play committee and addresses how the accommodation is applied regarding the four part criteria.
- The MPSSAA provides a letter to the school to use at all contests and provide to officials.

Keys to Success

- Everyone collectively working together for the best interest of the student while being mindful of the fundamental values of the sport.
- Holding true to educational values. Accommodations during the school day should extend to the afterschool programs.
- Parents/Guardians willing to work with the schools and process.
- Conducting an individual analysis that focuses the particular individual.

Outcomes

The Student's first game

“The student was on the sidelines last week for a JV game. During practice two weeks earlier we counted nearly 75 outburst. When his mom walked into the game they caught each other's eyes and he yelled "Hi Mommy". The grandmother was there as well. He had three outbursts the whole time and yelled "hi Mommy" five times.”

--- Joe Harbert,
CCPS Supervisor of Athletics

NOTICE

There is a player for NEHS who suffers from Tourette Syndrome. As a result of his disability, he often uses inappropriate language, profanity, including racial slurs. It is not his intention to offend or insult anyone. His disability does not allow him to control his volume or the content of his speech. We appreciate your understanding and acceptance of all of players.

Thank you and have a great game!

Outcomes

- “Since deciding to participate in Interscholastic Athletics this year his grades have improved, his behavior during the season was better, and it finally gave him something to look forward to in regards to school. He has battled depression as side effect of Tourette Syndrome, as he has never been able to fit in and make friends naturally. Since participating his mood has improved at school and at home being engaged in after school activities with his peers. Prior to sports, he would go home to be by himself until his mom could get off of work. He could not go out in public without an adult in fear that the public just would not understand. His mom said the way she knew he was having fun and enjoying himself is that he is begging to play football, wrestling, and track and field during his senior year!” (From a special education teacher at the school)

BRIAN E. FROSH
Attorney General



ELIZABETH F. HARRIS
Chief Deputy Attorney General

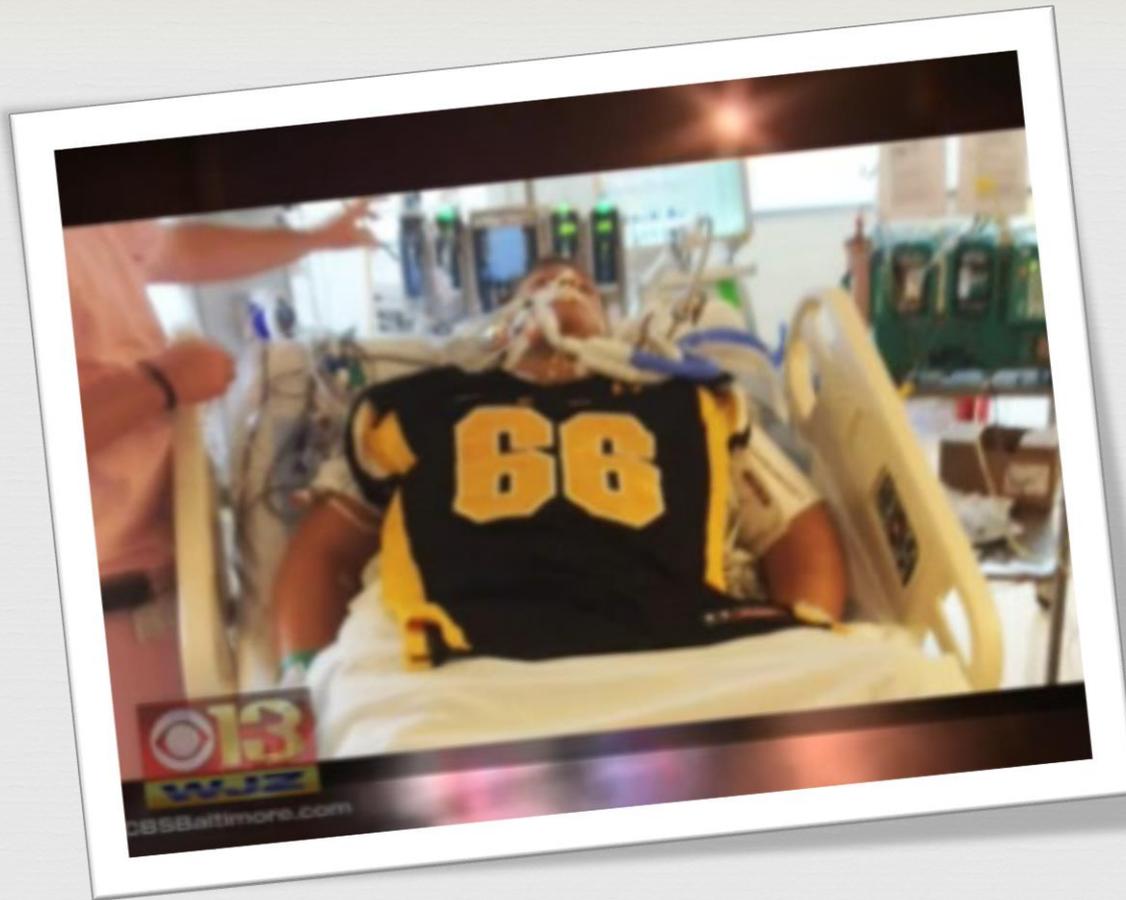
THIRUVENDRAN VIGNARAJAH
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL



Class v. Towson U.

Elliott L. Schoen
Assistant Attorney General



<http://baltimore.cbslocal.com/2015/07/21/towson-player-wants-to-return-to-football-after-suffering-heatstroke/>

Gavin Class



- ❧ After surviving a near-fatal heatstroke and undergoing a liver transplant, offensive lineman Gavin Class wants to play football again for Towson University. But the school says it doesn't have the ability to adequately protect him from potentially serious health issues during practices or games.
- ❧ ESPN Enterprise Journalism - September 24, 2015 - ESPN MediaZone.mht



Post recover testing

<http://espnmediazone.com/us/press-releases/2015/09/espn-enterprise-journalism-september-24-2015/>

Reasonableness



- ❧ Whether the Team Physician's and Towson University's decision was:
- ❧ Good-faith application of its policy to protect the health and safety of student-athletes,
- ❧ In compliance with the University's statutory obligations to provide reasonable accommodations, and
- ❧ Not a disguise for discrimination under the ADA or the Rehabilitation Act.

Deference



∞ And in resolving this question, we give the Team Physician's decision – and derivatively, Towson University's decision – a measure of deference.

806 F.3d 236
United States Court of Appeals,
Fourth Circuit.

Gavin CLASS, Plaintiff–Appellee,

v.

TOWSON UNIVERSITY, Defendant–Appellant.
[American Medical Society for Sports Medicine](#);
Maryland Athletic Trainers Association; National
Athletic Trainers’ Association, Inc.; National
Collegiate Athletic Association, Amici Supporting
Appellant.

No. 15–1811.

Argued: Sept. 16, 2015.

Decided: Nov. 13, 2015.



***238 ARGUED:** [Julia Doyle Bernhardt](#), Office of the Attorney General of Maryland, Baltimore, MD, for Appellant. [Steven M. Klepper](#), Kramon & Graham, P.A., Baltimore, MD, for Appellee. **ON BRIEF:** [Brian E. Frosh](#), Attorney General of Maryland, [Kathleen E. Wherthey](#), Assistant Attorney General, Office of the Attorney General of Maryland, Baltimore, MD, for Appellant. [Andrew M. Dansicker](#), Law Office of Andrew M. Dansicker, LLC, Hunt Valley, MD, for Appellee. [Mitchell Y. Mirviss](#), Venable LLP, Baltimore, MD, for Amici American Medical Society for Sports Medicine, Maryland Athletic Trainers Association, and National Athletic Trainers’ Association, Inc. Philip S. Goldberg, [William C. Martucci](#), Washington, D.C., [William C. Odle](#), [Corby W. Jones](#), Shook, Hardy & Bacon, L.L.P., Kansas City, MO, for Amicus National Collegiate Athletic Association.

Before [NIEMEYER](#), [KEENAN](#), and [WYNN](#), Circuit Judges.

Opinion



Craig Anderson, Executive Director
Illinois High School Association



Michael Nelson
Lathan and Watkins

ILLINOIS CONCUSSION LAWSUIT UPDATE





CRAIG ANDERSON, EXECUTIVE DIRECTOR ILLINOIS HIGH SCHOOL ASSOCIATION

Craig Anderson joined the Illinois High School Association (IHSA) staff as an Assistant Executive Director in July, 2010 and was named the Executive Director-Elect in June, 2015. Anderson assumed the duties of Executive Director, becoming the seventh individual in the 114-year existence of the Association to serve in that role, in January, 2016.

Since joining the IHSA staff, Anderson has been the IHSA administrator for the sports of baseball, football and wrestling. Additionally, he oversaw the IHSA Officials Department, where he was charged with the licensing and education programs for the 15,000-plus officials who annually regulate IHSA sports competition.

Anderson oversaw and instituted significant changes to the programs he administered during his tenure as an Assistant Executive Director, most notably in football, where concussion safety standards were expanded, summer contact eliminated, in-season contact reduced and a comprehensive preseason acclimatization policy enacted. In addition, under his leadership the IHSA Individual Wrestling State Tournament was expanded to a three-day tournament that allowed for additional wrestlers to advance to the state final, and the baseball state finals transitioned to new a state final host site in Peoria.





MICHAEL NELSON LATHAN AND WATKINS

Michael J. Nelson is an attorney with Latham & Watkins LLP. His practice focuses on class action defense and other high-stakes litigation, particularly in the sports, oil and gas, and manufacturing industries. Trial-experienced, Mr. Nelson has successfully litigated complex cases across the US, including mass tort, contract, antitrust, licensing, environmental, indemnity, insurance, and business tort disputes. Sports examples include: (1) Represented the Illinois High School Association (IHSA) in defeating the first putative concussion class action in the nation against a statewide high school athletic association. *Pierscionek v. IHSA*, 2015 WL 6550826 (Ill. Cir. Ct. (Cook Cty.) 2015). (2) Represented the NFL Players Association (NFLPA) in winning a high-profile trial regarding more than \$4 billion in TV rights fees from DIRECTV, CBS, FOX, NBC and ESPN. *White v. NFL (TV Revenues)*, 766 F. Supp. 2d 941 (D. Minn. 2011). (3) Represented Reebok in antitrust litigation concerning NFL trademark licensing arrangements for NFL jerseys and other apparel brought by a former licensee, *American Needle v. New Orleans La. Saints (N.D. Ill.)*, and a putative class of consumers, *Dang v. S.F. 49ers (N.D. Cal.)*. (4) Represented the NFLPA and NFL Players Inc. in defeating class certification in a name-image-likeness licensing dispute brought by former professional football players claiming breaches of alleged fiduciary duties, *Brown v. NFLPA*, 281 F.R.D. 437 (C.D. Cal. 2012), and also winning an appeal that affirmed the grant of summary judgment in a similar licensing dispute, *Grant v. NFLPA*, 566 F. App'x 569 (9th Cir. 2014). (5) Represented the NCAA in concussion litigation, *Sheely v. NCAA (Md. Cir. Ct (Montgomery Cty.))*, and in concussion insurance matters.

Prior to joining Latham & Watkins, Mr. Nelson served as a law clerk to the Hon. Daniel Manion of the US Court of Appeals for the Seventh Circuit and the Hon. Paul Gadola of the US District Court for the Eastern District of Michigan. Mr. Nelson serves on the board of a nonprofit arts organization in the Chicago suburbs and is active in the Chicago Sports Commission.



IHSA Response

1. Class Action Football Concussion Case
2. Timing
3. Response – Media and our Schools
4. Our Message
5. Communication with member schools
6. Success with a great legal team

Keys to Early Dismissal

1. Public policy dispute for legislature, not courts
2. “Negligent rulemaking” is not a cause of action
3. Contact sports exception bars negligence claim
4. Failure to state a claim for injunctive relief
5. Medical-monitoring-only is not a cause of action
6. Express assumption of risk bars claim



Scott Eldridge, Legal Counsel
Michigan High School Athletic Association



Courtney Wilbert, Legal Counsel
Tennessee Secondary School Athletic
Association

DISABILITY ACCOMMODATIONS FOR DEAF ATHLETES





SCOTT ELDRIDGE, LEGAL COUNSEL MICHIGAN HIGH SCHOOL ATHLETIC ASSOCIATION

Scott is a Senior Principal in Miller Canfield's Lansing, Michigan office. He specializes in management-side labor and employment law, governmental litigation, sports law, higher education law, commercial litigation, and appellate law. Scott represents colleges and universities, associations, municipalities, commercial enterprises, and government contractors in state court, federal court, and administrative tribunals. He earned his J.D. from Wake Forest University School of Law (2003) and his B.A. from Alma College (2000), where he played on the men's basketball team.





COURTNEY WILBERT, LEGAL COUNSEL

TENNESSEE SECONDARY SCHOOL ATHLETIC ASSOCIATION

Courtney Wilbert practices law with the firm Kay, Griffin, Enkema, and Colbert in Franklin, TN. She graduated magna cum laude in 2000 from the University of Tennessee in Knoxville with a Bachelor of Arts degree in psychology and a minor in business. She received her law degree from the University of Tennessee in 2003, graduating cum laude. While at UT, she was a member of the Law Review and the Speaker's Series. The main emphasis of Courtney's trial practice has been in the areas of labor and employment law, education law, and the litigation of constitutional and civil rights issues. Courtney has appellate experience in the Tennessee Court of Appeals, the Tennessee Supreme Court, and the Sixth Circuit. Additionally, Courtney has served as co-counsel on a matter before the United States Supreme Court and has been granted permission to file amici curiae brief in the United States Supreme Court. Courtney is a member of the Nashville, Williamson County, Tennessee, and American Bar Associations. Courtney is legal counsel for the TSSAA.





Rob Cuff, Executive Director
Utah High School Activities Association



Mark Van Wagoner, Legal Counsel
Utah High School Activities Association

MODERN CHALLENGES TO TRADITIONAL EDUCATION-BASED SPORTS





ROB CUFF, EXECUTIVE DIRECTOR

UTAH HIGH SCHOOL ACTIVITIES ASSOCIATION

Rob Cuff has been executive director of the Utah High School Activities Association (UHSAA) since August 2009 after serving as assistant director of the association for eight years.

During his time as assistant director, Cuff was director of baseball, basketball, drill team, football, music, soccer, softball and volleyball. He also directed the USHAA's coaches education program.

Before joining the UHSAA, Cuff coached basketball at Orem (Utah) Mountain View High School for 12 years – seven as head coach – earning the title as winningest coach in Mountain View boys' basketball history and leading the teams to two state championships and a 23-5 record in state tournament games. He is a former president of the Utah High School Basketball Coaches Association. He also was an English teacher and athletic administrator at Mountain View.

Cuff currently serves on the NFHS Appeal Board and is a former member of the NFHS Football Rules Committee, NFHS Baseball Rules Committee, NFHS Strategic Planning Committee and NFHS National Records Committee.

Cuff, who earned his bachelor's degree from Brigham Young University and his master's from the University of Phoenix, was a high school football official for 12 years and officiated three state championship games.





MARK VAN WAGONER, LEGAL COUNSEL

UTAH HIGH SCHOOL ACTIVITIES ASSOCIATION

Mark O. Van Wagoner serves as the legal counsel for the Utah High School Activities Association. Van Wagoner is engaged in specialized practice involving multi-national small cap corporations. Practice included litigation in state, Federal and Bankruptcy Courts in California, Florida, Oregon, Arizona, Texas, Massachusetts, India and Israel; representation before regulatory agencies, negotiation of acquisitions, mergers and take-overs, as well as compliance and corporate governance.

Prior to representing the UHSAA, Van Wagoner was the founding partner of the litigation firm, Van Wagoner & Stevens, for 11 years in Salt Lake City. He also was part of the litigation department at O'Melveny & Myers in Los Angeles for three years, where he was heavily involved in the jury trials of two antitrust cases involving IBM.

Van Wagoner received his B.A. in history from Brigham Young University. He completed his J.D. at the Duke University School of Law, where he was the winner of the Hardt Cup Moot Court competition and Chairman of Moot Court Board.





Brian Humke, Legal Counsel
Iowa High School Athletic Association

SOCIAL MEDIA POLICIES VS. “PROTECTED CONCERTED ACTIVITIES”





BRIAN HUMKE, LEGAL COUNSEL

IOWA HIGH SCHOOL ATHLETIC ASSOCIATION

Brian is a shareholder in the litigation department of Nyemaster Goode, P.C. He is the chairperson of Nyemaster Goode's technology committee. Brian is rated AV Preeminent by Martindale Hubbell.

Brian is a Fellow of the Iowa Academy of Trial Lawyers. Membership is by invitation only, upon sponsorship and recommendation from peers and judges and unanimous approval by the Board of Governors. Membership is limited to 250 attorneys who have displayed exceptional skills and the highest integrity, and who have dedicated their professional lives primarily to trial practice.



The New Water Cooler: Employee Use of Social Media and the NLRA



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BRIAN J. HUMKE

NYEMASTER GOODE, P.C.

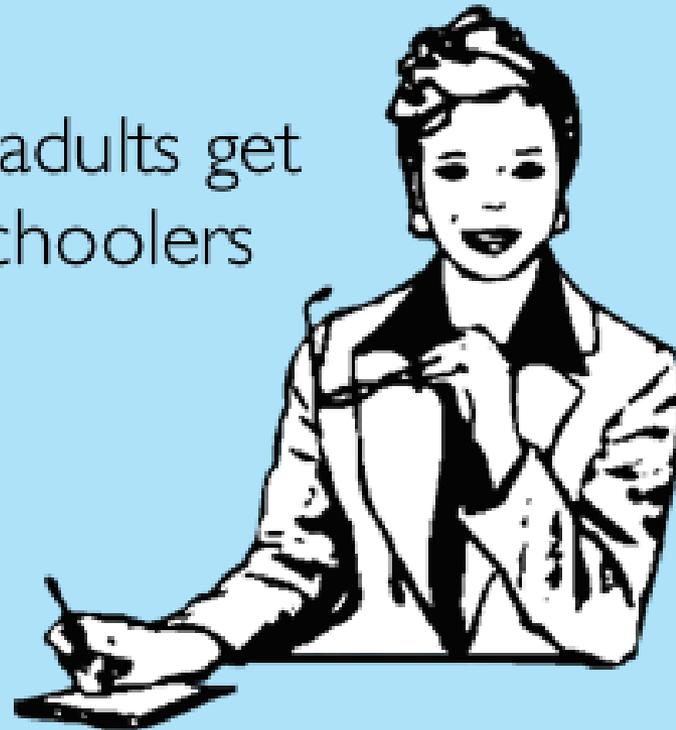
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The Office Water Cooler:

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NLRA - Section 7

“Employees shall have the right... to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection....”

NLRA - Section 8

Provides that it is an unfair labor practice for an employer to "interfere with, restrain or coerce employees in the exercise of rights guaranteed in Section 7 of this Act."

What does “concerted” mean?

- Group activity by two or more employees
- Activity by one person but done on behalf of a group
- Activity by one person intending to initiate group action
- Activity by one person to enforce an existing collective bargaining agreement

Examples of protected concerted activities:

- Two or more employees addressing their employer about improving their pay
- Two or more employees discussing work-related issues beyond pay, such as safety concerns, with each other
- An employee speaking to an employer on behalf of one or more co-workers about improving workplace conditions
- Union activities

NLRA applies to:

- Most private sector employers

NLRA does not apply to:

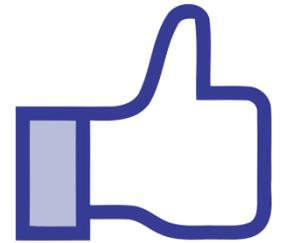
- Federal, state or local governments
- Employers who employ only agricultural workers
- Employers subject to the Railway Labor Act

How does the NLRA apply to employee use of social media?

The same rules of the NLRA apply whether the protected concerted activities are conducted face-to-face or on social media.



Ex-employee posted comments on Facebook critical of employers tax withholding calculations. Current employee used the “like” button in regard to post. Another employee replied and referred to supervisor as an “a__h___e.



Both were terminated.

VIOLATION

Why? Employer cannot prohibit “inappropriate discussions”

Three D LLC d/b/a/ Triple Play Sports Bar and Grille, 361 NLRB No. 31 (2014)

Employees of after school program were upset about the way they were treated. The next school year they reapplied for jobs. They posted plans on Facebook to not follow rules and to engage in activities that were not approved by the employer.

Employer withdrew rehire offers

NO VIOLATION

Why? Advocated insubordination, neglect of duties to jeopardize Center's after school program

Richmond District Neighborhood Center, Case No. 20-CA-091749 (October 28, 2014)

Company had policy prohibiting discussion of salaries among employees.

Employee who violated policy was terminated.

VIOLATION

Why? Rules inhibiting discussion of salaries unlawfully violates section 7 activities, regardless of the mode of communication.

Jones & Carter, Inc. and Lynda A. Teare Case 16–CA– 27969 (November 26, 2012)



Walmart Greeter via Facebook:

“The government needs to step in and set a limit on how many kids people are allowed to have based on their income. If you can’t afford to feed them you shouldn’t be allowed to have them....Our population needs to be controlled! In my neck of the woods when the whitetail deer get to be too numerous we thin them out!...Just go to your nearest big box store and start picking them off....We cater too much to the handicapped nowadays! Hell, if you can’t walk, why don’t you stay the f___ home!!!!”

Greeter was fired.

NO VIOLATION

Why? The Facebook comments did not involve protected concerted activity since the communications did not “address working conditions, nor did they arise out of any concern or complaint about his working conditions.

Walmart, No. 11-CA-067171 N.L.R.B. (May 30, 2012)

Dish Network employee handbook included a rule prohibiting employees from making “disparaging or defamatory comments about DISH Network” and prohibited posting negative commentary electronically during “Company time.”

In addition, prohibited employees from speaking about Dish without prior authorization from management.

VIOLATION

Why? Construed as overbroad because it chilled some speech protected by section 7. The rule did not clarify that solicitation could occur during breaks and other nonworking hours while at work.

Dish Network Corporation and Communications Workers of America, Local 6171 and Eric Sutton.
Cases 16-CA-062433, 16-CA-066142 and 16-CA-068261 (April 30, 2013)

Bartender complained that he had been working for five years without a raise, wasn't getting any tips despite serving food, referred to the restaurant's customers as "rednecks," and said he hoped they choked on glass as they drove home drunk.

Bartender was fired for his posts after owner saw them on his page.



NO VIOLATION

Why? No evidence of concerted activity.

JT's Porch Saloon & Eatery, Ltd NLRB 13-CA46689 (2011)

While in the middle of a catered function, an employee went to the bathroom during a break and posted this state about his supervisor to his personal Facebook page:



“Bob is such a NASTY M_____R F_____R don’t know how to talk to people!!!!!! F__k his mother and his entire f_____g family!!!! What a LOSER!!!! Vote YES for the UNION!!!!!!!”

Employee was fired.

VIOLATION

Why? Ambiguous employer rules – rules that reasonably could be read to have a coercive meaning – are construed against the employer. This principle follows from the Act’s goal of preventing employees from being chilled in the exercise of their Section 7 rights, whether or not that is the intent of the employer.

Policies: Lawful vs. Unlawful

Lawful

- Prohibit posting of secret, confidential or attorney-client privileged information
- Prohibition on harassment, bullying, retaliation, discrimination after work, from home on home computers

Unlawful

- Require self-identification when posting online about the Company or policy
- Prohibit use of Company logo
- Prohibit release of confidential information of guest, team member or company
- Prohibition of offensive, demeaning or inappropriate comments online

Policies: Lawful vs. Unlawful

Lawful

- Respect and follow copyright and IP laws, fair use, trademarks and brands
- Do not defame or discredit the company's products or services
- Prohibit rudeness to customers
- Solicitation during non-work time only

Unlawful

- Avoid harming Company's image or integrity
- Do not pick fights with co-workers
- Requiring use of chain of command to make complaint
- Require all media inquiry referrals to the company
- Prohibit engaging in action that is not in best interests of employer

NLRB Issues Reports

General Counsel of the NLRB has issued 3 reports dealing with its decisions relating to social media:

- August 18, 2011 - discusses 14 cases
- January 24, 2012 - discusses 14 cases
- May 30, 2012 - discusses 7 employer policies.
- Approves of Walmart's policy and provides Word version with report.

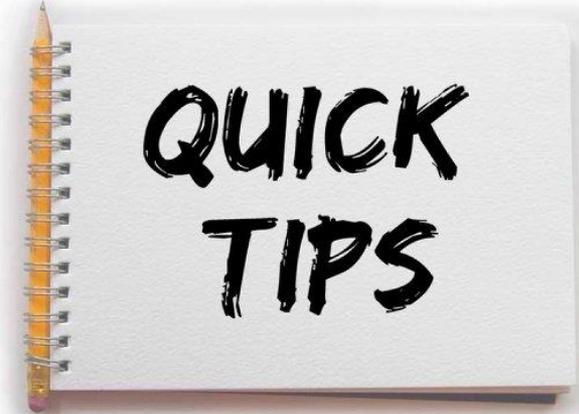




QUICK TIPS

When developing your policy...

- Accept social media – not a novelty
- Focus on outcomes
- Look at what others are doing – Walmart
- Understand that policy will be a work in progress
- Keep language positive
- **BE SPECIFIC:** Avoid subjective terms and standards that put employees to the task of discerning permissible vs. impermissible social media conduct



QUICK TIPS

When developing your policy...

- When dealing with conduct, use examples and limiting language to narrow the scope
- When a social media policy addresses in abbreviated form matters, such as non-disclosure of confidential information, that are addressed in more detail elsewhere in the employee handbook, employers should consider inserting a specific reference to the more detailed policy.
- Submit social media policy for review by counsel on a frequent basis

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Thank you for your time.

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Davis Whitfield, Chief Operating Officer
NFHS

CLOSING REMARKS





Gabe Feldman

Associate Professor of Law and Director, Sports Law
Tulane University Law School

SPORTS LAW YEAR IN REVIEW



GABE FELDMAN

ASSOCIATE PROFESSOR OF LAW AND DIRECTOR, SPORTS LAW

TULANE UNIVERSITY LAW SCHOOL

Gabe Feldman is the Paul and Abram B. Barron Associate Professor of Law at Tulane Law School, the Director of the Tulane Sports Law Program, the Associate Provost for NCAA Compliance at Tulane University, and the co-Founder and co-Director of the Tulane Center for Sport. Professor Feldman has emerged as one of the leading voices in the country in the growing field of sports law. His extensive experience in sports law includes representing a variety of sports entities while he was in private practice, and he continues to act as a consultant for a number of clients in the sports industry.

Professor Feldman joined the Tulane Law School faculty in 2005 after nearly five years as an associate with Williams & Connolly in Washington, D.C. Before that, he served as judicial clerk to Judge Susan H. Black of the U.S. Court of Appeals for the 11th Circuit in Jacksonville, Fla. He is regularly quoted in the New York Times, Wall Street Journal, USA Today and other newspapers throughout the country, and he has made numerous appearances on national television and radio. He also currently serves as the on-air legal analyst for the NFL Network.

Professor Feldman is editor of The Sports Lawyers Journal, a law journal devoted to the study of sports law, and The Sports Lawyer, a monthly online newsletter, and was a sports law contributor to the now-defunct Grantland.com and the Sports Law Blog. He is director of publications for the Sports Lawyers Association; co-authored of one of the leading sports law casebooks in the country, Sports Law: Cases and Materials; is one the Articles Review Board for the Journal of Legal Aspects of Sport; and has been published in a variety of journals and periodicals. Much of his writing focuses on the intersection of antitrust, labor, intellectual property law and the sports industry. Professor Feldman also serves as a mediator and arbitrator.

Professor Feldman serves on the board of directors of the Sports Lawyers Association, Walk Again Athletic Warriors and Athletes for Hope, a nonprofit organization created to harness the power of sports to impact social change. He is also the Director of Special Olympics in New Orleans. He is also a member of the NCAA Committee on Competitive Safeguards and Medical Aspects of Sports.

Professor Feldman teaches Antitrust, Sports Law, Negotiation and Mediation and Contracts. In 2013, he received a President's Award for Graduate and Professional Teaching, a Tulane University recognition of excellence in teaching, learning and research.





Steve Timko, Executive Director
New Jersey State Interscholastic Athletic
Association



Steve Goodell, Legal Counsel
New Jersey State Interscholastic Athletic
Association

SCHEDULING AND SAFETY





STEVE TIMKO, EXECUTIVE DIRECTOR

NEW JERSEY STATE INTERSCHOLASTIC ATHLETIC ASSOCIATION

Steven J. Timko, B.S., Western Kentucky University, M.A., Rider College is the Executive Director of the NJSIAA since January, 2006. Prior to his position as Executive Director, Mr. Timko served as Assistant Director of the NJSIAA for five years. He also served on the NJSIAA Executive Committee for seven years and on the Directors of Athletics Association of New Jersey (DAANJ) Executive Committee for twelve years. Mr. Timko was President of the Directors and Supervisors Association of Health and Physical Education and Treasurer of New Jersey Association of Health, Physical Education, Recreation and Dance (NJAHPERD). He also served as Director of Health, Physical Education and Athletics for the Hopewell Valley Regional School District for twenty five years. Mr. Timko was a former President of the Directors and Supervisors Association of Health and Physical Education and Treasurer of New Jersey Association of Health Physical Education, Recreation and Dance (NJAHPERD).

During his 34 years in education, he coached baseball, basketball and cross-country and served as a basketball assignor for five years in Mercer County.

Mr. Timko earned his BS in Health and Physical Education from Western Kentucky University and his MA in Administration and Supervision from Rider College.

Steve Goodell, Legal Counsel, NJ

Steven Goodell is a partner with Herbert, Van Ness, Cayci & Goodell in Lawrenceville, NJ. He graduated from Bucknell University (1980) and earned his J.D. from The University of Texas at Austin (1984). He served as an assistant county prosecutor in Trenton, NJ, and now serves as counsel to the New Jersey State Interscholastic Athletic Association (NJSIAA), the Diocese of Trenton, and the NJ Municipal Clerks' Association. He also represents municipal entities throughout central New Jersey, is a trustee of the New Jersey Institute of Local Government Attorneys and serves as associate counsel for the New Jersey State League of Municipalities.





STEVE GOODELL, LEGAL COUNSEL

NEW JERSEY STATE INTERSCHOLASTIC ATHLETIC ASSOCIATION

Steven Goodell is a partner with Herbert, Van Ness, Cayci & Goodell in Lawrenceville, NJ. He graduated from Bucknell University (1980) and earned his J.D. from The University of Texas at Austin (1984). He served as an assistant county prosecutor in Trenton, NJ, and now serves as counsel to the New Jersey State Interscholastic Athletic Association (NJSIAA), the Diocese of Trenton, and the NJ Municipal Clerks' Association. He also represents municipal entities throughout central New Jersey, is a trustee of the New Jersey Institute of Local Government Attorneys and serves as associate counsel for the New Jersey State League of Municipalities.



New Jersey State Interscholastic Athletic Association

N  **SIAA**

PROTECTING, PROMOTING AND PROVIDING FOR OUR HIGH SCHOOL STUDENT ATHLETES

Scheduling & Safety



**HOW DO WE SCHEDULE FOOTBALL GAMES
WHEN THE CENTRAL CONCERN IS SAFETY?**

OR

**WHAT HAPPENS WHEN SOME TEAMS
ARE JUST TOO GOOD?**

Scheduling & Safety



Over the past 5 years, schools in Northern New Jersey have been having difficulty scheduling football games.

“Big 5” non-publics plus one:

- Bergen Catholic
- Don Bosco Prep
- St. Joseph Regional
- Paramus Catholic
- DePaul Catholic
- St. Peter’s Prep



Scheduling & Safety



As a result of this difficulty, we received correspondence from superintendents saying they would refuse to play the Big 5 and would instead forfeit games.

Scheduling & Safety



In regards to the Administration and Don Bosco Preparatory's Coaching Staff, I am formally requesting that they find a replacement game in their schedule, as I refuse to take the liability for this egregious safety situation ever occurring again on my watch.

Sincerely,

Zatiti Moody

Principal of Operations, Eastside High School

Scheduling & Safety



I feel that either solution works. The first levels the playing field and the second separates the field into even parts. I urge Athletic Directors and Superintendents who are frustrated by the disparity and inherent dangers by this uneven playing field to weigh in now and remedy the current situation.

Sincerely,

Nicholas J. Sacco
Senator, 32nd District

Scheduling & Safety



Organized statewide committee of public and non-public schools to discuss issue.

- Appointed representatives from all interest groups, including public, non-public and choice schools.

Scheduling & Safety



NJSIAA: Bergen principals getting a seat at table

BY DARREN COOPER
STAFF WRITER | THE RECORD

ROBBINSVILLE — Bergen County officials have complained the loudest over the years while trying to get the state to level high school football playing fields by not forcing public schools to play against the area's powerhouse non-publics.

Those officials now have a seat at the table in the ongoing conversation about the No. 1 issue in North Jersey scholastic athletics.

Reacting to The Record's stories on alleged recruitment of high school athletes, the Bergen County Association for School Administrators, the Bergen County Principals and Supervisors Association and Pascack Valley superintendent P. Erik Gunderson each sent a letter to NJSIAA executive director Steve Timko.

Timko said he responded to the principals association by inviting the group to have a member on the public/non-public committee that is handling issues between the two factions.

"Hopefully we get some positive feedback and recommendations that come out of it," said Timko, adding that everything is on the table — including a separate football conference for large non-public schools.



Scheduling & Safety



- Out of this committee, legislation was proposed to separate public and non-public schools for sport of football.
- The vote passed the membership by a 2-1 margin but was vetoed by the Commissioner of Education.

Commissioner of Education Decision



“Even assuming that the NJSIAA has demonstrated that elite non-public schools must be separated due to competitiveness and fairness concerns, this proposal does not ensure that all other non-public schools will be able to continue to compete with appropriately matched public schools in their region. **Completely excluding these non-public schools without a compelling rationale deprives them and the State of the benefits of diverse interscholastic athletic competition and equal athletic opportunity, and subjects those non-public schools to increased burdens in their attempt to provide for full schedules... .”**

Commissioner of Education Decision



“Therefore, [separating publics and non-publics for football] **clearly violates the State’s well-established policy of equal athletic opportunity.**”

Scheduling & Safety



This is where we are today from a scheduling perspective:

- In Central and South Jersey, publics and non-publics peacefully schedule and co-exist with each other.
- In North Jersey, there is a new football conference of 115 schools where no public school plays a non-public school.
- All superpower non-publics play each other.

Scheduling & Safety



Problems we still face:

- There are two non-public schools who still refuse to play their non-public schedules.
- We have public schools who are now refusing to play non-publics even if they are in their conference.
- In each of all of these situations, schools are using safety as their basis for not competing.

Scheduling & Safety: Legal Concerns



Quandary:

- Public schools refuse to play against non-publics
- “B+” non-publics refuse to play against “A+” non-publics
- Commissioner of Education mandates integrated competition.

Scheduling & Safety: Legal Concerns



- Can we require schools to play certain opponents against their will?
- What are the liability implications?

Scheduling & Safety: Conference Alignment



Primary tool is conference alignment:

By mandate of the Commissioner of Education, leagues and conferences are integrated,

- public/non-public
- urban/suburban/rural

All schools are integrated into appropriate conferences.

Scheduling & Safety: Conference Alignment



“A league and conference structure that provides opportunity for healthy athletic competition among urban, suburban, rural and parochial schools adds substantially to the benefits derived from such interaction and serves the interest of preparing our young people for future involvement with persons of diverse socioeconomic, regional, and religious backgrounds.”

In re New Jersey Interscholastic Athletic Association’s Proposed Realignment of Athletic Leagues and Conferences; OAL Docket No. EDU 2561-82.

Scheduling & Safety: Conference Alignment



- Conference constitutions & bylaws create “contractual” relationships among member schools.
- NJSIAA has overseen 5 statewide realignments over past 35 years.
- Appeals from conference decisions heard by NJSIAA.

Scheduling & Safety: Forfeiture



A second tool is forfeiture

- School decides whether it will play the game
- Some conferences apply enhanced penalties, to discourage forfeitures

Scheduling & Safety: Forfeiture



D'Alessandro: Kearny football's forfeit against St. Peter's illustrates continued talent gap between publics, non-publics

By [Dave D'Alessandro | Star-Ledger Editorial Board](#)

“Actually, we don’t know when the safety issue isn’t valid. Not even a coach of Hansen’s presence can control what goes on in a 77-7 game, which was the score against Memorial High two weeks back. The coach used 60 players (including four quarterbacks) and asked for a running clock before halftime.

What either team gained from this experience is unclear.”

Scheduling & Safety: Superconferences



A third tool is creation of “superconference” confederations:

- North Jersey 115
- West Jersey 101
- Shore Conference 43
- Mid-State 38
- NJIC 28
- Greater Middlesex 24

Scheduling & Safety: Superconferences



Superconferences provide a greater number of scheduling options than were previously available.

Schedules can be more finely tuned for:

- geography
- school size
- strength of program

Scheduling & Safety: Superconferences



- Two non-public schools are resisting their “superconference” designations
 - One case has been decided, but the school is not satisfied
 - One case will be heard April 19.

- Two public schools continue to refuse to play non-public schools.

Duty to “match & equate”



The tort duty to “to properly match and equate competitors for competition” requires “placing athletes in direct competition, in contact and non-contact sports, with other athletes of similar age, size, mental and physical maturity, experience, and skill level in training sessions and competitions.”

Figone, A.J. (1989). Seven major legal duties of a coach. Journal of Physical Education, Recreation and Dance, 60(7), 71-75

Schwarz, T.C. (1996). Coaches and liability: preventing litigation through the legal duties of coaches. Doctoral dissertation, Washington State University, USA.

Scheduling & Safety: remaining questions



This predicament of the level playing field will always be with us.

The change now is the heightened concern for safety, and use of “safety” as an excuse for refusing to play.

Scheduling & Safety: remaining questions



Is there a way to develop a formula for determining when an elite team has become too good?

Is there a way to determine when a football game is unsafe?

Questions?



STEVEN J. TIMKO

EXECUTIVE DIRECTOR

NEW JERSEY STATE INTERSCHOLASTIC
ATHLETIC ASSOCIATION

STEVEN P. GOODELL

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Michael Solomon
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Alan Boynton
Legal Counsel
Pennsylvania Interscholastic
Athletic Association

BUSY DAYS IN PENNSYLVANIA: NLRB ELECTION DISPUTE AND CONCUSSION LITIGATION





DR. BOB LOMBARDI, EXECUTIVE DIRECTOR

PENNSYLVANIA INTERSCHOLASTIC ATHLETIC ASSOCIATION

Dr. Lombardi has served PIAA since May 16, 1988 to the present. He has recently been appointed by the PIAA Board of Directors to be PIAA's 7th Executive Director effective, July 16th. He has been the staff member in charge of the day-to-day duties of the PIAA officials' program and its' continuing education component which has over 14,000 registered sports' officials. Bob's supervisory duties include registration, recruitment, evaluation and assignment of registered sports' officials for all championship events. The development of continuing education materials via meeting guides, rules bulletins, evaluation instruments and educational seminars. He also serves as the director of the annual officials' convention (18th year) and years of service recognition awards banquet. Additionally, during his tenure, Bob has served the membership of PIAA, as tournament director of most of their championship events and presently administrates the championships of Wrestling, Football, Basketball, Golf, Cross Country and Track and Field.

Prior to his hiring at PIAA, Bob was a teacher/coach in the Wayne Highlands School District and his educational accomplishments are as follows:

University of New Mexico (1994) Doctor of Philosophy- Sports Administration.

East Stroudsburg University (1982) Master of Education- Health and Physical Education.

East Stroudsburg University (1977) Bachelor of Science - Health and Physical Education and teacher/athletic coach certification.





MICHAEL SOLOMON, LEGAL COUNSEL

PENNSYLVANIA INTERSCHOLASTIC ATHLETIC ASSOCIATION

Michael L. Solomon, counsel in the Harrisburg, PA office of Cohen Seglias Pallas Greenhall & Furman, has over 25 years of transactional, corporate and estates experience. His principal areas of practice include real estate with emphasis in real estate financing and commercial landlord/tenant law, administrative law with emphasis on liquor licensing and enforcement matters, corporate finance and formation, and estates planning and administration.

Mr. Solomon has served as Director of Legal Affairs for the Pennsylvania Interscholastic Athletic Association since 2002, and has served as Solicitor to the Susquehanna Township Planning Commission and as Assistant City Solicitor of the City of Harrisburg.

Active in the community, Mr. Solomon is a former President of The Big 33 Scholarship Foundation, and has served on boards of various religious and community organizations.

He is a graduate of Vanderbilt University and the University of Toledo College of Law.





ALAN BOYNTON, LEGAL COUNSEL

PENNSYLVANIA INTERSCHOLASTIC ATHLETIC ASSOCIATION

Alan is a member of McNees Wallace & Nurick in Harrisburg, Pennsylvania, where he is chair of the firm's Injunction Group and primarily handles business litigation matters. He joined the firm in 1985 after serving a clerkship with a federal district court judge. He has represented the Pennsylvania Interscholastic Athletic Association in litigation matters since 1996 and has been general counsel since 2001..





COHEN SEGLIAS

PALLAS GREENHALL & FURMAN PC

PIAA OFFICIALS' UNIONIZATION EFFORT

2016 Update

Presented By:

Michael L. Solomon, Esquire
for

NFHS Legal Meeting

April 15, 2016



**Pennsylvania Sports
Officials' Organizing
Committee**

www.PASPORTSOFFICIALS.org

*Office and Professional
Employees International
Union, AFL-CIO, CLC*

**Mission Statement:
To create a Voice
through the OPEIU
to represent PIAA
Officials throughout
Pennsylvania, in
order to gain
Fairness, Dignity,
and Respect.**

Dear DAVID,

Many Officials have told us that they see the great advantages we will gain from creating a sports officials' union, but they aren't sure how we can do that, given that the PIAA views us independent contractors. Today, we write to explain why the PIAA's argument on this legal issue is flawed.

We are Employees



Pennsylvania Sports Officials' Organizing Committee

www.PASPORTSOFFICIALS.org

Office and Professional Employees International Union, AFL-CIO, CLC

Mission Statement:

To create a Voice through the OPEIU to represent PIAA Officials throughout Pennsylvania, in order to gain Fairness, Dignity, and Respect.

Welcome to PASOOC and OPEIU

Dear WILLIAM,

We are the Pennsylvania Sports Officials' Organizing Committee (PASOOC), the group of your Sister and Brother Officials to whom PIAA Executive Director Bob Lombardi was referring in his District-wide email of last week.

Today, we are writing you to explain who we are and what our movement is all about.

Like you, we are all PIAA Officials, **from all sports**, who have joined together to form a Union for our mutual aid and protection. Over the last several weeks this effort has grown tremendously fast, and we have an active organizing committee of over 50 officials, from all sports, of female and male officials from across Districts 7 & 8.

We believe that all PIAA Officials deserve a **voice** and a **vote** in our working conditions, training, evaluation procedures, uniform requirements, post-season assignments, the PIAA's Convention attendance requirement, and our game fees. We want to have a voice in our travel to and from games; a say in Officials' safety on and off the field/court; and we want our Union to be our true advocate for the things that matter to us.

Our inadequate and unequal game fees are certainly an issue, but they are not our only concern - and they aren't even our top concern.

We put our hearts and souls into the games we love; we sacrifice time away from our families to travel to and from games and meetings; we endure the scrutiny of invasive background checks and the increasingly critical eyes of parents, coaches, and school administrators. Why do we do this? To endure a fair and safe game for the student-athletes. **Having a voice in our work conditions, PIAA policies, and compensation is not only fair, it is long overdue.**



Office and Professional Employees International Union, AFL-CIO, CLC

PASOOC has asked Office and Professional Employees International Union to join us in our effort to form a union for PIAA Sports Officials. OPEIU is the perfect Union for us. [VISIT OPEIU!](#)

OPEIU is a member of the AFL-CIO and has over 110,000 members across the United States, Puerto Rico, and Canada. They are large enough to have the tools and strength to protect and support us, but OPEIU is not so large that we would become just a blip on the radar.

OPEIU represents the Association of Minor League Umpires, the Union of the Minor League Baseball Umpires. The leadership and staff of OPEIU know what it is like to be a sports official, and they understand and respect our profession. They know how to get a Contract that works for us and aren't looking for a "traditional Union Contract" that might radically alters high school sports.

OPEIU represents a diverse cross section of professions, including helicopter mechanics and pilots, office and clerical employees, medical doctors, nurses, and others. The diversity of OPEIU makes them a strong Union. Just like diversity in a investment portfolio, when a turn in the economy impacts a particular industry, that can put major pressure on one-industry unions. Not so for OPEIU. It continues to grow, because it has members in a wide range of professions.

OPEIU is a democratic organization. All of their Local Unions are allowed to operate and function autonomously, and local leaders and members are in control of the direction of their unions. The International Union is there to lend support, research, staff, and assistance upon request from a Local. JOIN PASOOC and OPEIU, and let's make progress together!

Join Now

Election Requirements & Union Strategy

- Limited to Employees (not independent contractors)
- Union petition must be accompanied by signed authorization cards from at least 30% of the "employees" in the "voting unit"
- Union's strategy was to establish a beach head with a readily attainable bargaining unit (appx. 115 W. PA tax officials) and, once entrenched, expand their reach across state (and nation??)

HEARING – ELECTION - APPEAL

- 6/15 Hearing on election – 2 days in early June 2015 before NLRB Hearing officer, both sides file briefs
- 7/30/15 Regional Director issues Decision and Direction of Election – exhaustive 74 page opinion – emphasis on level of control exercised by PIAA; determines that sports officials are employees
- 8/13/15 PIAA requests review of Regional Director's decision

August 2015 – Pre-election campaigning

- Issue a series of letters
- Meetings with officials

August 24, 2015 – Election begins by NLRB issuing ballots

- Issued to all LAX officials in Pgh area – 116 eligible

- September 14, 2015 – Ballots return date
 - Union wins election 53-31
- November 2015 – Union sends letter requesting to begin bargaining – PIAA rejects idea on grounds that we are appealing Director’s Decision
- March 2016 – NLRB grants PIAA’s Request for Review (denial rate is generally 95+%) – merely gives a right to be heard further; briefs due in April

PIAA'S LEGAL STANCE

1. PIAA is not an “employer” under the NLRA
 - PIAA falls within the political subdivision exemption
2. The Lacrosse officials are not “Employees” of PIAA
 - Independent contractor test; reliance of Big East decision – The Big East Conference, 282 NLRB 35 (1986), affd., 836 F.ed 143, 127 LRRM 2279 (3rd Cir. 1987)
3. In any event, an election should be delayed until the next season

Determining Whether Officials Are Employees Or Independent Contractors Under the NLRB

- Issue has come up frequently in recent years in relation to drivers, such as Fed Ex drivers, cab drivers, Lyft drivers, truck drivers, limo drivers
- Burden of establishing that an individual is an independent contractor is on the employer
- "the common law of agency is the standard to measure employee status"

Determining Whether Officials Are Employees Or Independent Contractors Under the NLRB

- Restatement (Second) of Agency § 220(2) identifies ten (non-exhaustive) factors:
 - Extent of control which the master may exercise over the details of the work
 - Whether the work involves a distinct occupation or business

- Whether the worker is supervised by the employer
- Who supplies the tools and place of work
- The level of skill required
- The method of payment (by time or by the job)
- The length of time for which the work is to occur
- Whether the work is part of the regular business of the employer
- The parties' belief as to whether it is an employment relationship
- Whether the principal is or is not in the business

- Generally, the focus is on "independence" and "control"
- No one factor is decisive; balancing of factors
- DC Circuit Court of Appeals recently changed direction: emphasis is now on whether the individuals have "significant opportunity for gain or loss."
- Other courts have mentioned looking at the "economic realities" of the relationship
- Ultimately, a very flexible standard exists

PIAA and Registered Sport Officials

- PIAA has no control over regular season assignments
- PIAA has no control over regular season fees paid to officials
- PIAA does not evaluate officials during the regular season
- PIAA does control post-season assignments, fees and evaluations (higher degree of control there)

THE APPEAL

- Case submitted to NLRB on briefs
- Decision anticipated this summer
- Outcome likely to be appealed to either Circuit Ct. for DC or 3rd Cir., but only after administrative ruling of ULP (if PIAA loses), or directly by Union

TAKE - AWAYS

- Keep an ear on the tracks
- Engage the troops
- Strive for equality
- Keep the tent flap open



shutterstock · 210720415

Thank you for attending

For more information, contact:

Michael L. Solomon, Esquire
Cohen Seglias Pallas Greenhall & Furman PC

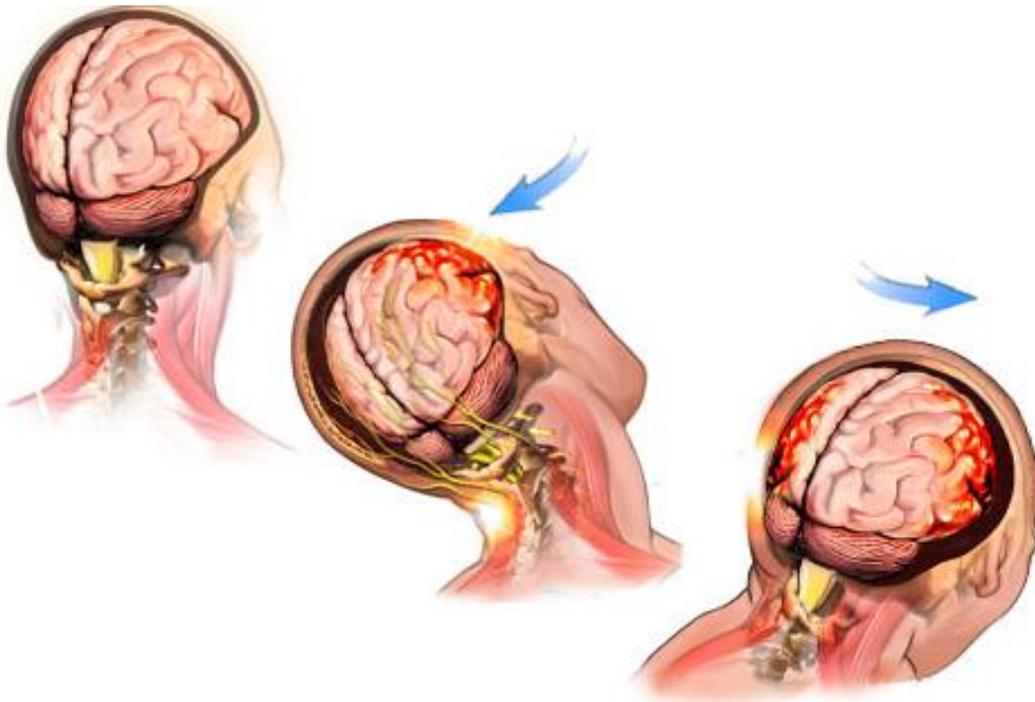
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Hites v. PIAA

Concussion Lawsuit in Pennsylvania



Alan R. Boynton, Jr.
aboynnton@mwn.com



Complaint

- Filed Dec. 10, 2015
- Court of Common Pleas of Lawrence County



Plaintiffs' Counsel

- **Robert N. Pierce, III & Joseph Bellisimo**
 - Bellisimo & Peirce, New Castle, PA
- **Scott Carpenter & Rebecca Bell-Stanton**
 - Carpenter & Schumacher, Plano, Texas
- **Jason Medure & Michael Bonner**
 - Medure, Bonner Bellissimo Peirce & Daley, New Castle, PA (Neshannock school district solicitors)
 - Son played football at Neshannock w/two plaintiffs



The Plaintiffs

- **Jonathan Hites: Neshannock High School**
 - Football injury as a freshman while attending a pre-season camp during the summer (2011)
 - Injury may have occurred while horsing around in the locker room
 - Was removed from play after exhibiting symptoms
 - Father took him to hospital that evening
 - Received medical clearance in July 2012
 - graduated 2015



The Plaintiffs

- **Kaela Zingaro: Neshannock High School**
 - Softball injury while diving for a catch (June 2014)
 - Removed from game
 - Trainer was on site
 - Taken to the hospital that evening
 - Cleared to return to play 2 months later
 - graduated 2015
 - Father is an assistant football coach at Neshannock
 - Received concussion training



The Plaintiffs

■ Domenic Teolis: Lincoln High School

- Football injury in practice as a freshman (Oct. 2012)
- Played in a game the following day
- Taken to the hospital that evening
- Absent from school for 9 weeks
- Released from treatment in April 2015
- senior in 2016



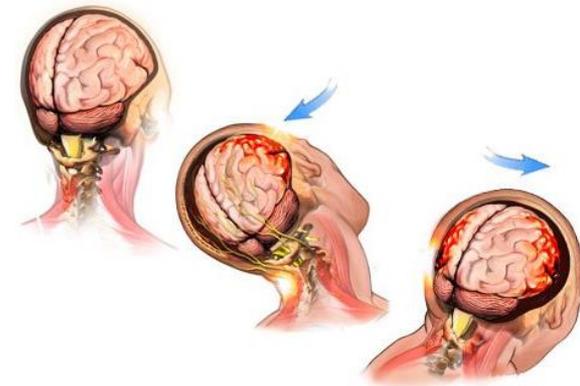
Consistent Facts

- All 3 Plaintiffs were removed from play once symptoms were identified
- All 3 Plaintiffs were treated at a hospital within a day of injury
- All 3 Plaintiffs remained disqualified from play until cleared by a physician to return
- **The reality is that the claim is for the concussion which was suffered through their participation in the sport, not the handling of the concussion**



Timeline

- **July 2010: PIAA extensively revises concussion removal and return to play protocols**
- **July 2010: PIAA amends CIPPE to add concussion information**
- **Aug. 2011: Hites injured**
- **Nov. 2011: SIYSA adopted**



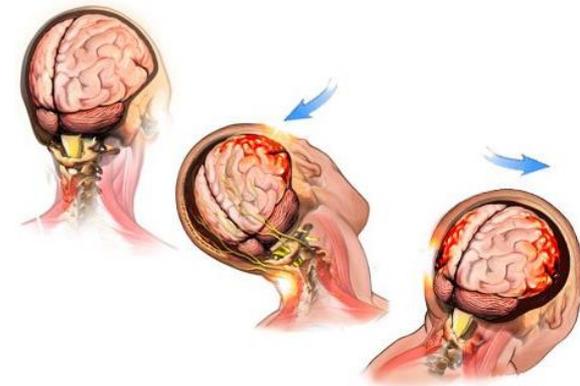
Timeline

- **Mar. 2012: PIAA amends CIPPE to require parental signatures re concussion protocols**
- **July 2012: SIYSA effective date**
- **Oct. 2012: Teolis injured**
- **June 2014: Zingaro injured**
- **Dec. 2015: lawsuit filed**



Relief Requested

- **Class certification: "Any and all participants in sports activities for a member school of PIAA"**
- **Class certification: "Any and all participants in sports activities for a member school of PIAA that sustained a head injury from 2007 to the present."**



Claims

- **Count I: Negligence**
- **Count II: Medical Monitoring Trust**
 - If for the entire class: up to 3.15 million people
- **Count III: Equitable Claims**
 - No substantive claim; only sets forth equitable relief sought



Relief Requested

- **Monetary damages**
- **Equitable relief, including "creation of a Medical Monitoring Fund and penalty-based enforcement of concussion policies for participants in Pennsylvania PIAA-sponsored youth sports."**
- **Attorneys' fees**



Defending The Case

- **Andrew Kimball, Gordon & Rees, Pittsburgh**
 - Retained by insurer
- **Michael Nelson, Latham & Watkins, Chicago**
 - Consultant: handled Illinois concussion case
- **Alan Boynton, McNeas Wallace & Nurick, Harrisburg**
 - Consultant: PIAA general counsel



Preliminary Objections

- **No duty owed by PIAA**
- **Lack of proximate cause**
- **Non-Justiciable Issue**
- **Public policy of non-interference with PIAA**
- **Assumption of risk**



Safety In Youth Sports Act 24 P.S. § 5321, et seq.

- **Adopted November 9, 2011**
- **Becomes effective July 1, 2012**
- **Requires annual training for coaches**
- **Mandatory removal from participation upon exhibiting concussion symptoms**
- **Return to play must be approved by a medical professional**
- **Establishes penalties on coaches for violations**







Questions?

Alan R. Boynton, Jr.

McNees Wallace & Nurick LLC

100 Pine Street, P. O. Box 1166

Harrisburg, PA 17108-1166

Direct Telephone: 717-237-5352

Direct FAX: 717-260-1665

aboynon@mwn.com





Dr. Bill Heinz
NFHS SMAC



Kevin Charles, Executive Director
Delaware Interscholastic Athletic
Association

ACCIDENTS ARE KILLING HIGH SCHOOL STUDENTS





DR. BILL HEINZ

NFHS SMAC

Dr. Heinz is a medical orthopedist who specializes in the diagnosis and treatment of sports related concussions and musculoskeletal injuries. He received his undergraduate degree from Purdue University and then his medical degree from Indiana University School of Medicine. He completed a residency in Internal Medicine, and a fellowship in Primary Care Sports Medicine, where he sub-specialized in shoulder injuries. He is board certified by the American Board of Internal Medicine and holds a Certificate of Added Qualification in Sports Medicine. He is an adjunct professor at the University of New England in the Department of Physical Therapy, and is a co-founder of the Maine Concussion Management Initiative. He is the current Chair of the Sports Medicine Advisory Committee for the National Federation of State High School Associations, and also serves on the Maine Principals' Association Sports Medicine Committee. He is the team physician for the Portland Sea Dogs, the sports medicine consultant for Portland High School and Gould Academy, and the company physician for the Portland Ballet.





KEVIN CHARLES, EXECUTIVE DIRECTOR

DELAWARE INTERSCHOLASTIC ATHLETIC ASSOCIATION

Kevin Charles joined the Delaware Interscholastic Athletic Association in 2004 as coordinator of officials and was named executive director in 2005. He previously was employed by the Delaware Division of Public Health for 25 years before his retirement in 2004.

Charles was a longtime member of the Delaware Wrestling Officials Association and was a wrestling official for 31 years. He was an officials assignor for 17 years and worked seven years as the state wrestling rules interpreter for the Delaware association. He chaired the DIAA State Wrestling Committee for five years and was the DIAA State Wrestling Tournament Director for five years for both dual and individual tournaments. Charles is in his third year on the NFHS Board of Directors.

He is a graduate of Dover High School, and has a bachelor of science degree in biology from the University of Delaware and a master of science degree in athletic administration from Delaware State University.





WHAT'S KILLING YOUR HIGH SCHOOL STUDENTS

National Federation of State
High School Associations



Take Part. Get Set For Life.™

William M. Heinz, MD – Chair of NFHS SMAC
2016 NFHS Legal Meeting
Hyatt Regency Hotel – Indianapolis, IN
April 15, 2016





MOST COMMON CAUSES OF DEATH IN ORGANIZED SPORT

- Cardiac
- Head injuries
- Neck injuries
- Heat stroke
- Asthma
- Exertional sickling
- Trauma (not to head/neck)
- Other – lightning, diabetes





SCA/SCD

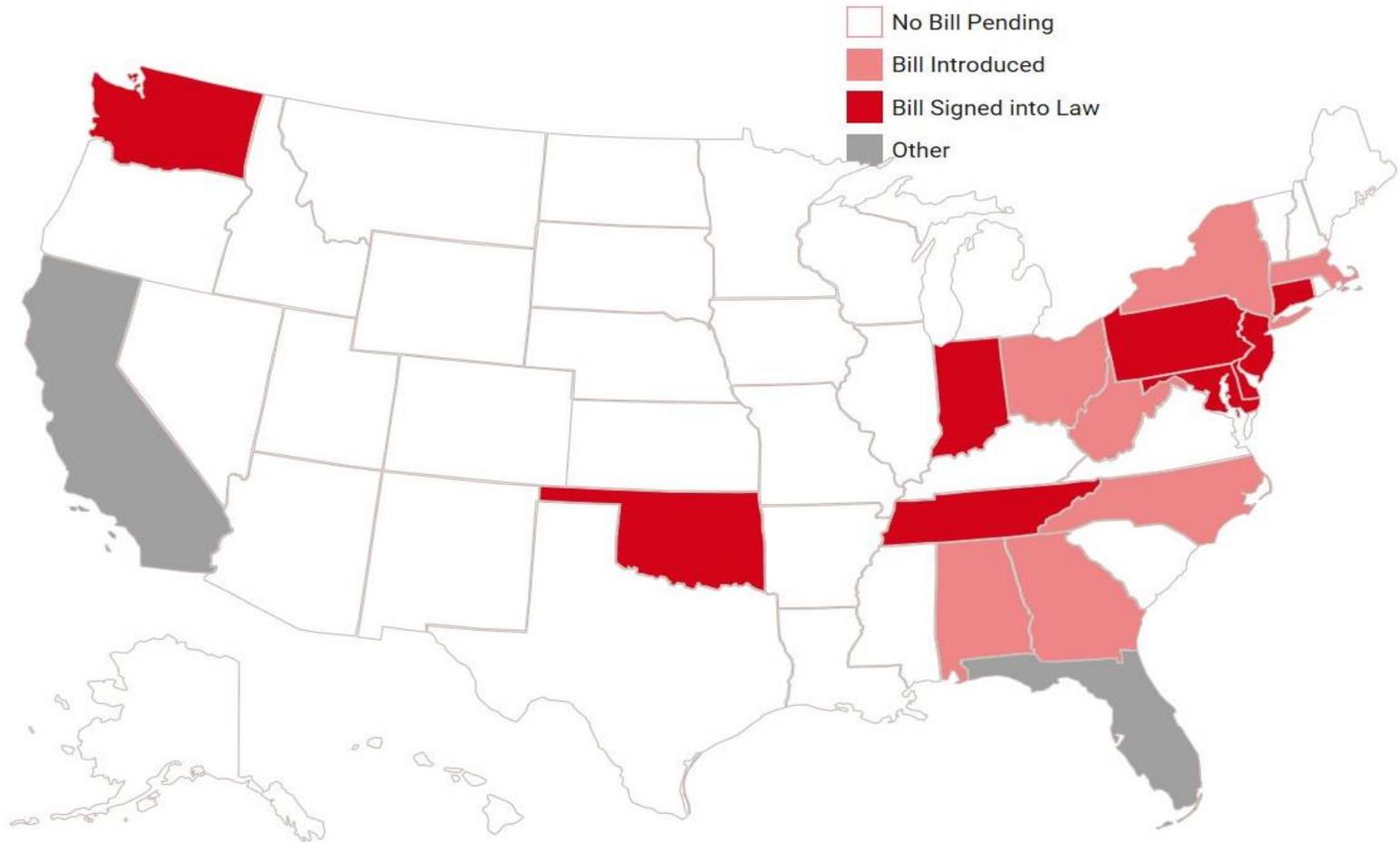
- Sudden cardiac death (SCD) is the sudden death of an individual during or within 1 hour after exercise due to a cardiovascular disorder.
- Sudden death from intrinsic cardiac conditions remains the leading cause of mortality in athletes during sport.

Harmon KG, Asif IM, Klossner D, et al. Incidence of sudden cardiac death in national collegiate athletic association athletes. *Circulation* 2011;123:1594–1600.

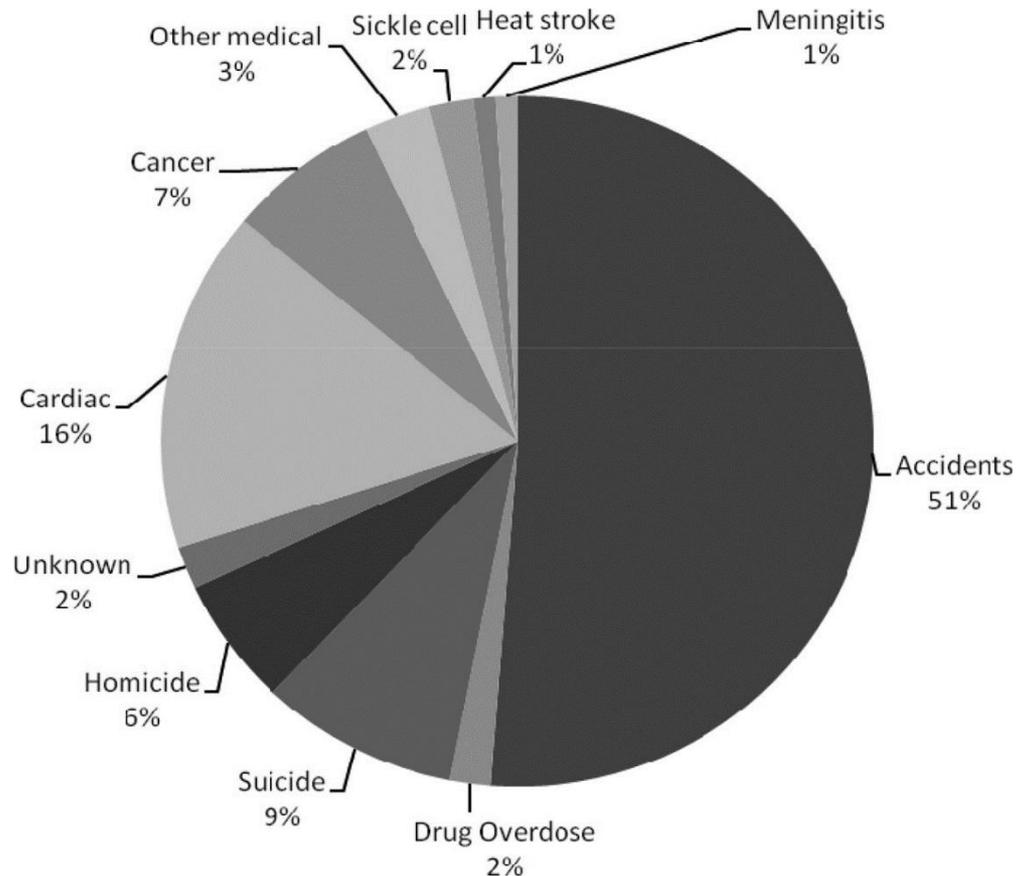
Maron BJ, Doerer JJ, Haas TS, et al. Sudden deaths in young competitive athletes: analysis of 1866 deaths in the United States, 1980–2006. *Circulation* 2009;119:1085–92



SUDDEN CARDIAC ARREST LEGISLATION BY STATE



CAUSES OF SUDDEN DEATH IN NATIONAL COLLEGIATE ATHLETIC ASSOCIATION ATHLETES, 2004 TO 2008.



Kimberly G. Harmon, Irfan M. Asif, David Klossner and Jonathan A. Drezner

Incidence of Sudden Cardiac Death in National Collegiate Athletic Association Athletes

Circulation. 2011;123:1594-1600;



INCIDENCE OF SUDDEN CARDIAC DEATH IN NATIONAL COLLEGIATE ATHLETIC ASSOCIATION ATHLETES

KIMBERLY G. HARMON, IRFAN M. ASIF, DAVID KLOSSNER AND JONATHAN A. DREZNER

CIRCULATION. 2011;123:1594-1600

- During 5-year period, 273 deaths in 1,969,663 athlete participant-years.
- 187 (68%) due to nonmedical or traumatic causes
- 80 (29%) due to medical causes, 6 (2%) to unknown causes.
- Of the medical causes, 45 (56%) were cardiovascular-related sudden death, representing 75% of sudden deaths during exercise, **but only 16% of total deaths.**



NATIONAL CENTER FOR CATASTROPHIC SPORT INJURY RESEARCH

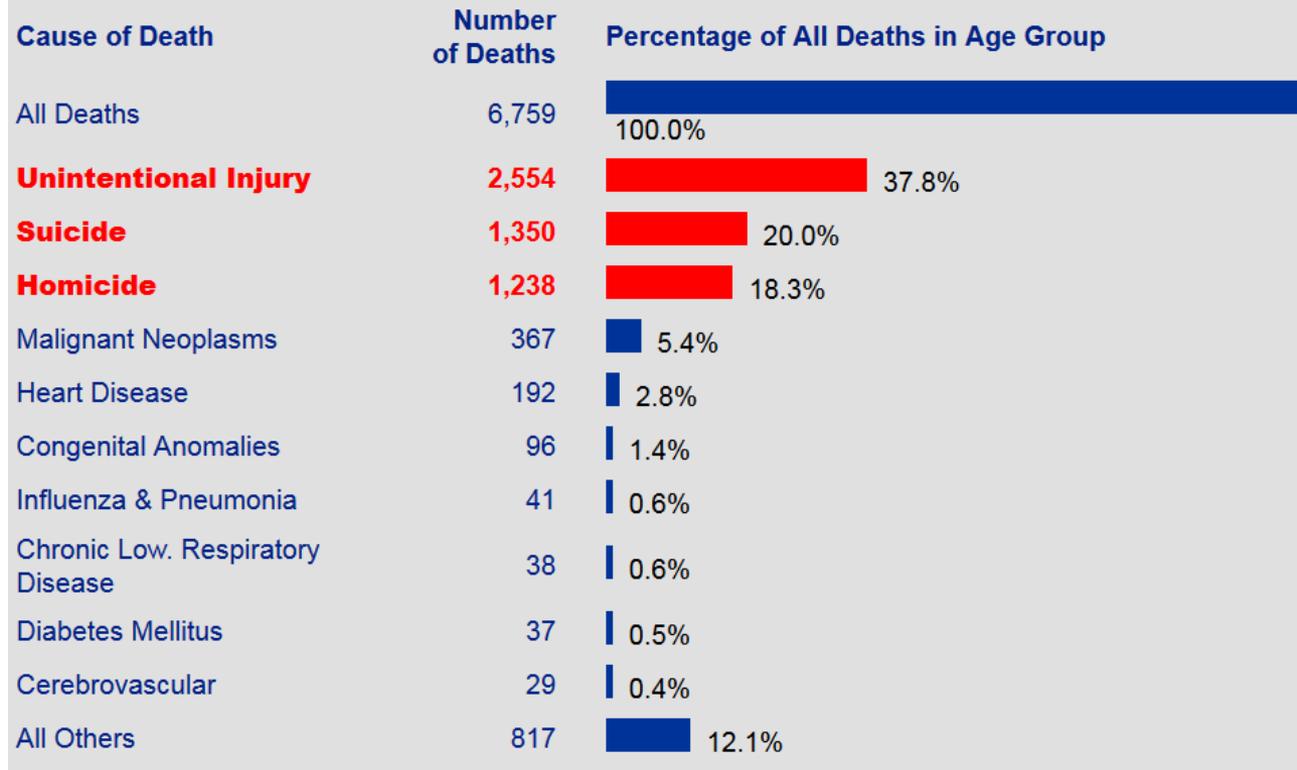
- Director: Kristen Kucera, Ph.D., ATC, LAT
Medical Director: Robert Cantu, MD
- The University of North Carolina at Chapel Hill
- The *mission* of the **National Center for Catastrophic Sport Injury Research (NCCSIR)** is to conduct surveillance of catastrophic injuries and illnesses related to participation in organized sports in the United States at the collegiate, high school, and youth levels of play. In working through a Consortium for Catastrophic Injury Monitoring, the NCCSIR aims to track cases through a systematic data reporting system that allows for longitudinal investigation of athletes suffering from catastrophic injuries and illnesses. The goal of the Center is to improve the prevention, evaluation, management, and rehabilitation of catastrophic sports-related injuries



SUMMARY: IN 2013, THE TOP 2 LEADING CAUSES OF DEATH FOR BOTH MALES AND FEMALES AGED 15-19 WERE UNINTENTIONAL INJURY AND SUICIDE. HOMICIDE RANKED 3RD FOR MALES AND 4TH FOR FEMALES. RESTRICTING TO UNINTENTIONAL INJURIES ONLY, MV TRAFFIC, POISONING AND DROWNING ARE RANKED HIGHEST FOR BOTH GENDERS. DATA ARE COMPILED FROM DEATH CERTIFICATES AND PROCESSED BY THE NATIONAL CENTER FOR VITAL STATISTICS. CAUSES COME FROM ICD-10 CODES.

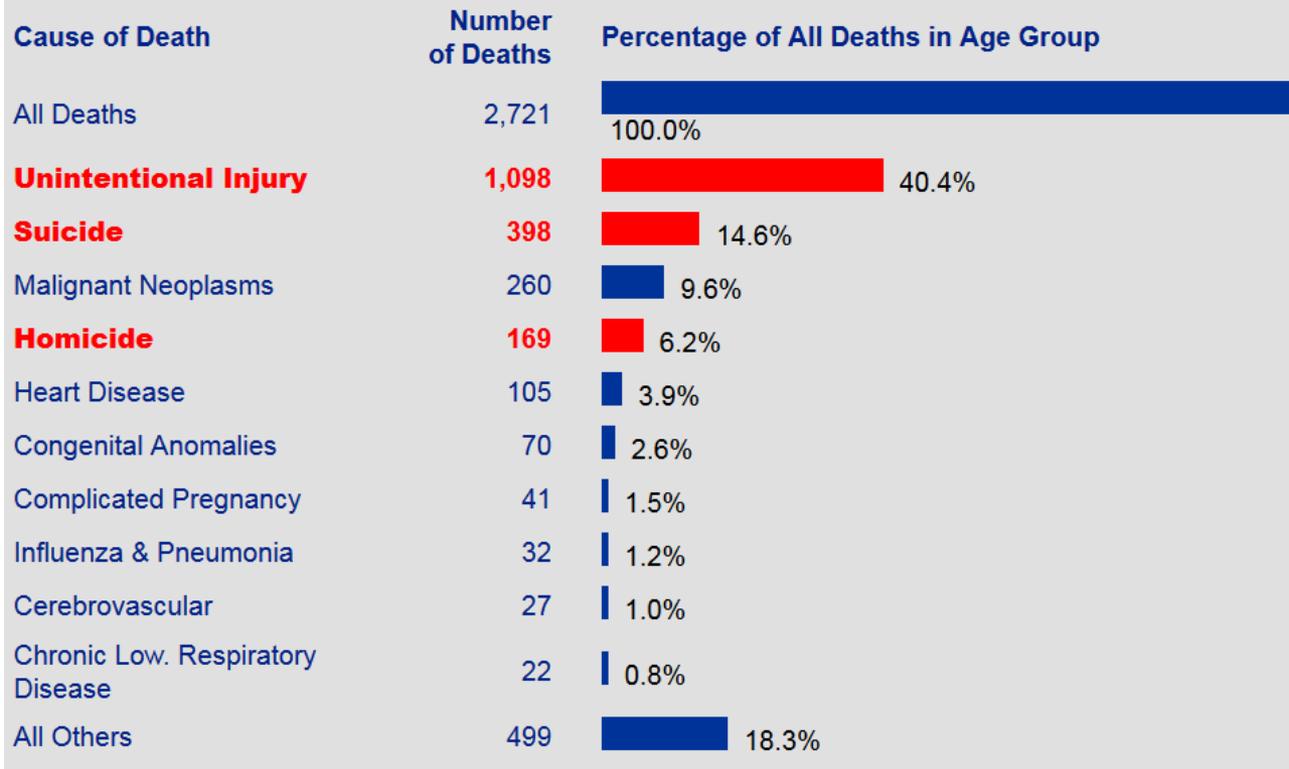
10 Leading Causes of Deaths, United States

2013, All Races, Males
Ages: 15-19



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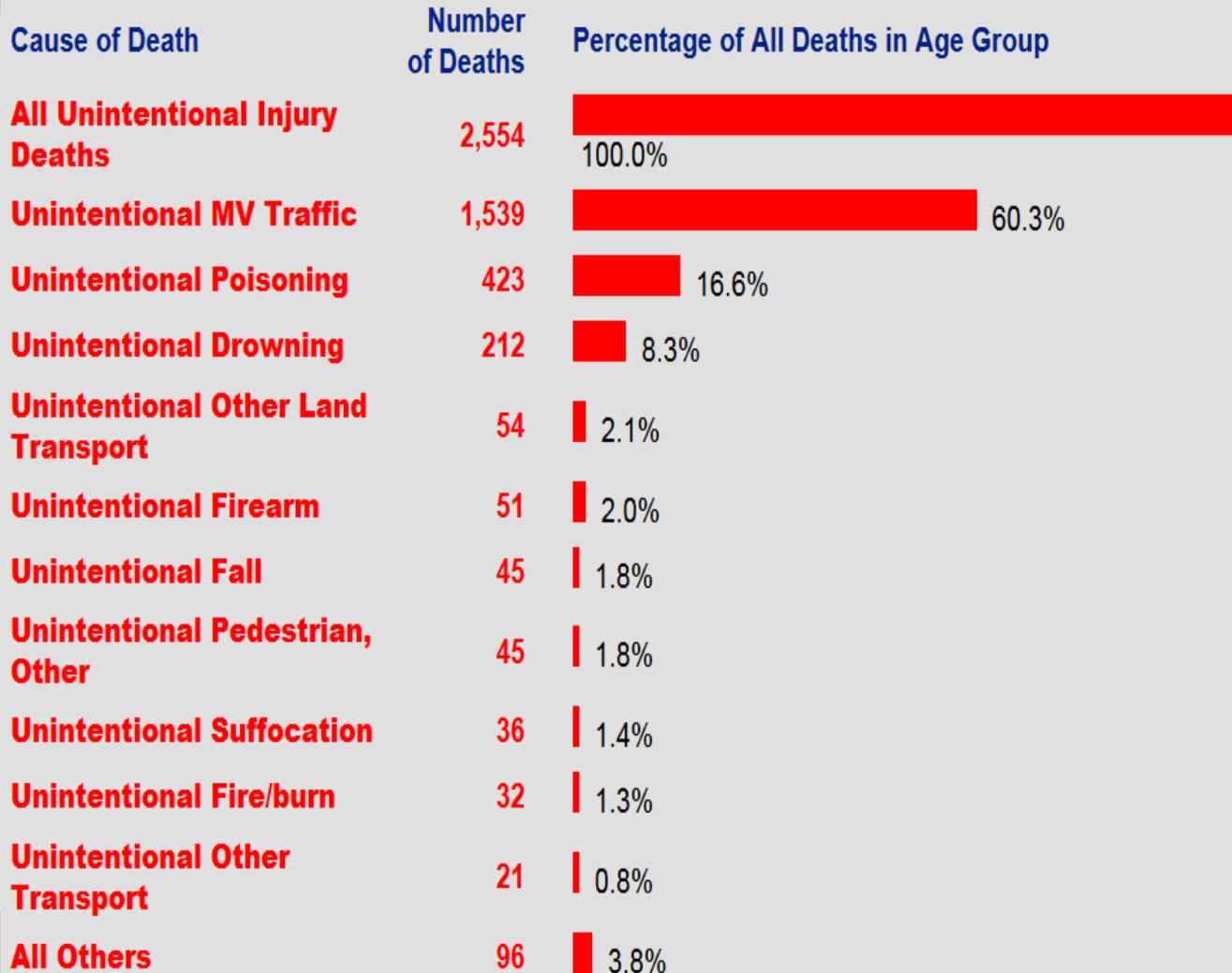
10 Leading Causes of Deaths, United States
 2013, All Races, Females
 Ages: 15-19



10 Leading Causes of Unintentional Injury Deaths, United States

2013, All Races, Males

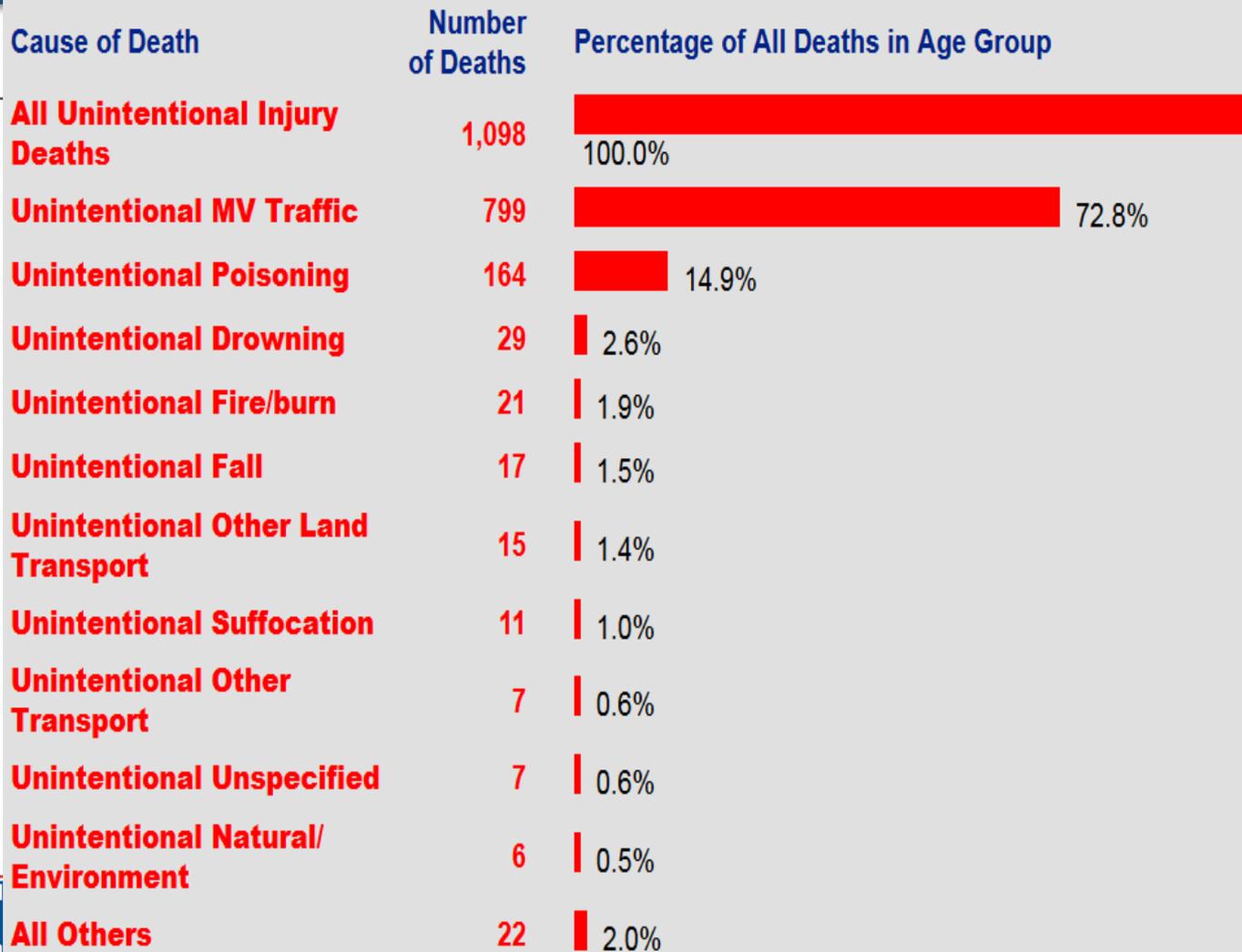
Ages: 15-19



10 Leading Causes of Unintentional Injury Deaths, United States

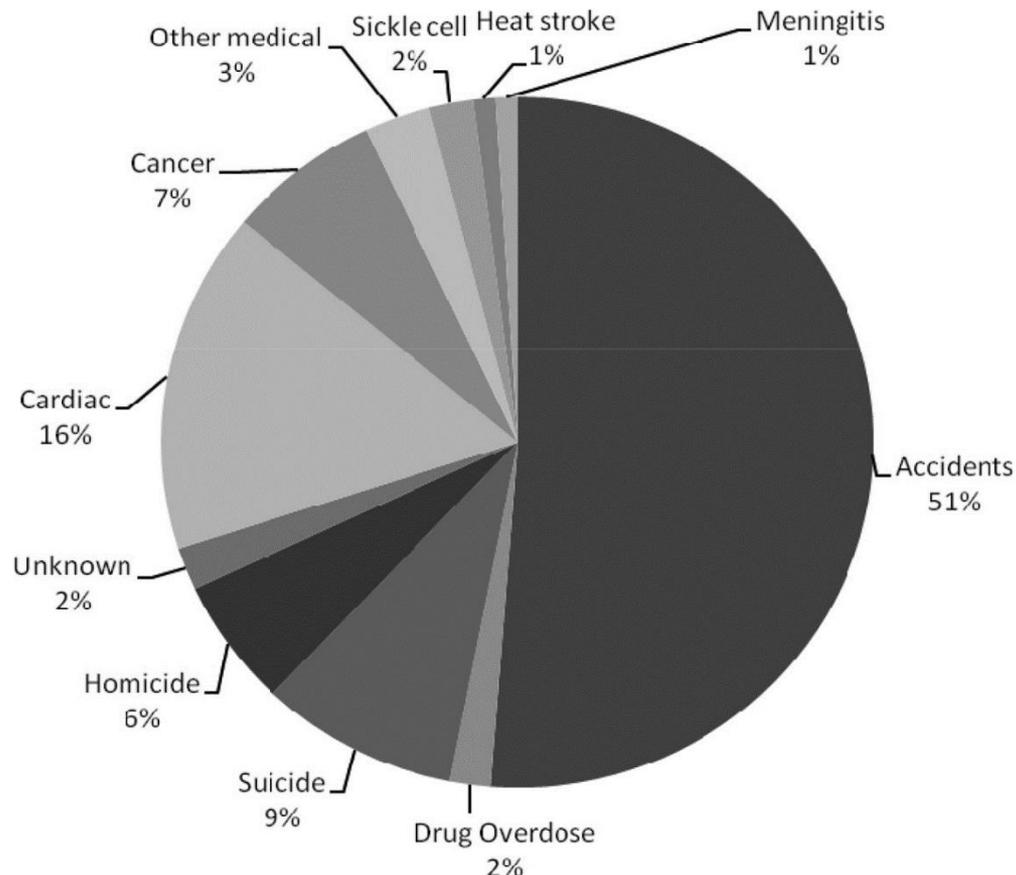
2013, All Races, Females

Ages: 15-19





CAUSES OF SUDDEN DEATH IN NATIONAL COLLEGIATE ATHLETIC ASSOCIATION ATHLETES, 2004 TO 2008.



Kimberly G. Harmon, Irfan M. Asif, David Klossner and Jonathan A. Drezner

Incidence of Sudden Cardiac Death in National Collegiate Athletic Association Athletes

Circulation. 2011;123:1594-1600;





Robert D. Foss, PhD
Senior Research Scientist & Director
Center for the Study of Young Drivers
730 Martin Luther King Jr Blvd. Highway Safety Research
Center, University of North Carolina
Chapel Hill, NC 27599-3430





- Crash risk is higher for young teens, but it's largely because their inexperience rather than foolish, risk-takers.
- Many common beliefs about teens (esp. as drivers) and why they crash a lot are wrong.
- Doing anything while driving that takes the driver's eyes off the road for very long is extremely risky.
- Passing laws against it is also ineffective.
- There appears to be substantial potential for improving the extent to which parents and teens take advantage of the benefits of a GDL system and coaches seem to be in an ideal position to help with the latter.



HOMEMADE SKATEBOARD ROCKET EXPLODES, KILLS STUDENT

THE ASSOCIATED PRESS APRIL 5, 2016, 9:54 P.M. E.D.T

- THOUSAND OAKS, Calif. - Investigators on Tuesday were trying to figure out what caused a homemade rocket attached to a skateboard to explode, killing a Southern California high school student and injuring his friend.
- Bernard Moon, 18, of Thousand Oaks died after the blast Monday night. A 17-year-old had minor injuries and was released from the hospital Tuesday.



HOMEMADE SKATEBOARD ROCKET EXPLODES, KILLS STUDENT

THE ASSOCIATED PRESS APRIL 5, 2016, 9:54 P.M. E.D.T

- The two senior honor students were from Thousand Oaks High School. The blast took place in a courtyard at Madrona Elementary School in Thousand Oaks.
- Moon was a varsity tennis player at the school, an honors student and had been accepted to both the University of California, Berkeley and Brown University, friends said.





WHAT'S OUR ROLE IN OFF-FIELD STUDENT-ATHLETE SAFETY

National Federation of State
High School Associations



Take Part. Get Set For Life.™

Kevin Charles— DIAA Executive Director
2016 NFHS Legal Meeting
Indianapolis, IN
April 15, 2016

Salesianum School senior killed in crash; four others injured

Story Highlights

- Five people were involved in a crash late Friday, March 11, 2016 near U.S. 301 in southern New Castle County, Delaware.
- Authorities have identified one killed as Tyler Brown, 17, a student at Salesianum School.
- The incident involved a pickup and a tractor-trailer and is under investigation.



Classmates, teachers and friends are remembering Tyler Brown, a senior at the Salesianum School in Wilmington, as an outstanding student, athlete, artist and dedicated friend.





WHAT'S OUR ROLE IN OFF-FIELD STUDENT-ATHLETE SAFETY

- The NFHS and member states have made tremendous strides on on-field player-safety.
- Still, the greatest threat to student athletes is the car ride to and from practice and contests.
- What's our role in off-field player safety?
 - ❖ No Answers Here. Just Raising the question.





WHAT'S OUR ROLE IN OFF-FIELD STUDENT-ATHLETE SAFETY

- The Sport in America survey found that coaches are a leading positive influence on today's youth.
- Respondents were asked to rate the overall influence of a variety of groups on young people.
- Across all major demographic groups, coaches rank as the number one positive influence on youth today.





WHAT'S OUR ROLE IN OFF-FIELD STUDENT-ATHLETE SAFETY

- **Engaging State or Sport Specific Coaches Associations**
 - ❖ Conversation with DIFCA Officer- Mike Ryan, Head Football Coach, Athletic Director and School Counselor
 - ✓ “Finding a way to reach kids is important.”
 - ✓ “Too much pressure on coaches to do parental things.”
 - ✓ “If you bombard the kids with too much info they will filter.”
 - ✓ However, a “Toolbox for Coaches” with impactful, interactive activities “Would be awesome!”
 - ✓ But not a mandatory program for coaches.
 - ✓ “You won’t save ‘em all but you might reach one kid and that would make it worthwhile.”





WHAT'S OUR ROLE IN OFF-FIELD STUDENT-ATHLETE SAFETY

➤ Engaging State or Local Police

- ❖ Conversation with Tom MacLeish, Supt. DSP (Retired) and a current football official & member of DIAA FB committee
 - ✓ The risk to student athletes while driving is “way beyond anything that happens on the field.”
 - ✓ Regarding involving coaches, “I think it’s a great idea.”
 - ✓ “One small act by a coach might reach the student and save a life.”
 - ✓ Suggested discussing with DSP Traffic Section to find a way to involve DSP Troopers working in conjunction with coaches.
 - ✓ Suggested working with Office of Highway Safety.





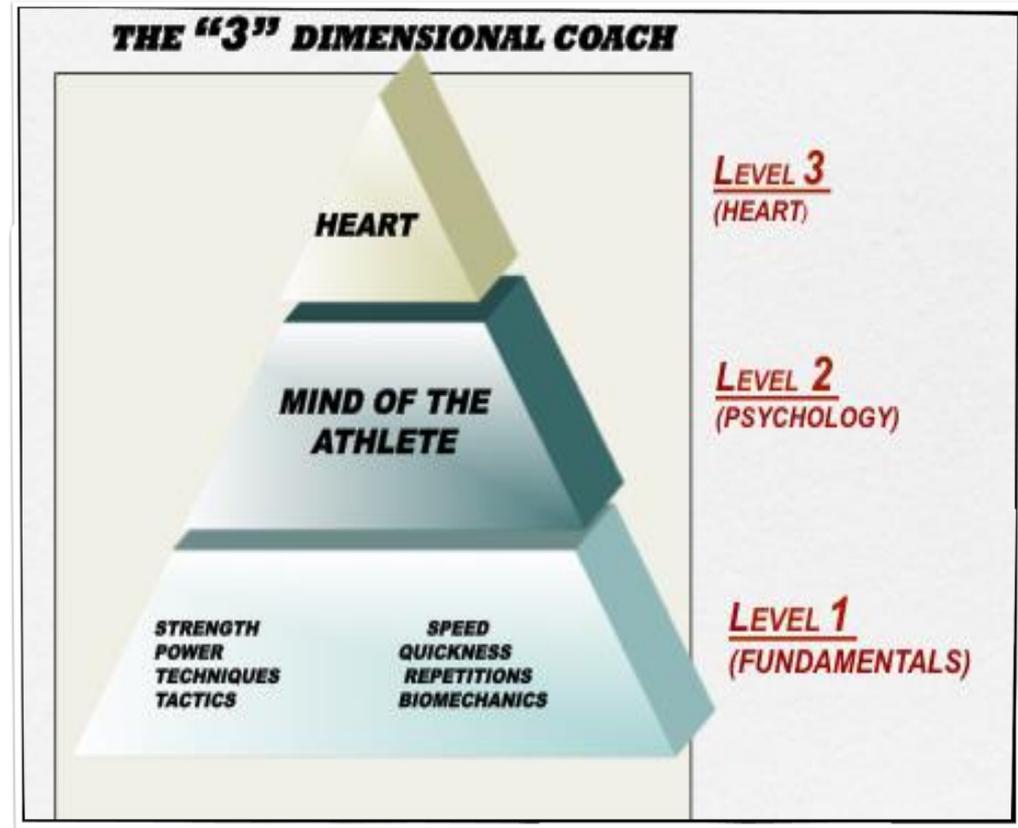
WHAT'S OUR ROLE IN OFF-FIELD STUDENT-ATHLETE SAFETY

- **Engaging Coaches Training Programs & Trainers**
 - ❖ **NFHSLearn.com** – currently don't have a product that addresses this specific topic.
 - ❖ **Delaware Coaches Ed Company- ETA356 Joe Thomson**
 - ✓ 3 Dimensional Institute – coaching the body, mind & heart
 - ✓ “Studies show that coaches always come out on top as influencing of high school aged children.” Greater than parents, siblings, pastor.
 - ✓ Intends to add a unit to ETA356 lesson plan for coaches on subject.



WHAT'S OUR ROLE IN OFF-FIELD STUDENT-ATHLETE SAFETY

- 75% of coaches in America only coach in the 1st---Dimension.
- 15 – 20% of coaches Have a strategy for Coaching in the 2nd Dimension.
- 5 – 10% of coaches have a strategy for the 3rd Dimension.





WHAT'S OUR ROLE IN OFF-FIELD STUDENT-ATHLETE SAFETY

➤ Engaging Highway Safety Campaigns

- ❖ Delaware Campaign – “Run Fast, Drive Slow”

- ❖ Targeted Boys State Tournament Events

- ✓ Attempting to reach 15 to 18 year old males
- ✓ Displays and demonstrations at entrance of venues, PSA's , etc.
- ✓ Not sure of the effectiveness of this approach. Spectators filter too.
- ✓ Partnering Highway Safety with DSP and coaches would seem to be more likely to directly reach the student athlete.





WHAT'S OUR ROLE IN OFF-FIELD STUDENT-ATHLETE SAFETY

Discussion

What's happening in your state
regarding off-field player-safety?

Thank You!





David Stead, Executive Director
Minnesota State High School League



Patrick Kelly, Legal Counsel
Minnesota State High School League

EVOLVING DUTY OF CARE





DAVID STEAD, EXECUTIVE DIRECTOR MINNESOTA STATE HIGH SCHOOL LEAGUE

David Stead's 48-year career has taken him from English teacher and coach in Iowa to principal at a Minnesota high school to executive director of the Minnesota State High School League. Following college, Stead began teaching and coaching at Rockwell City (Iowa) High School, where he remained before taking on English teacher, athletic director and assistant principal titles at Manchester (Iowa) High School.

Stead and his wife, Cathy, left Iowa in 1973, and Dave took over the position of assistant principal at New Ulm (Minnesota) High School. He was later named principal in 1979, and remained at New Ulm until joining the staff of the MSHSL as associate director in 1986. In 1988, Stead became the sixth executive director of the MSHSL, a position he still holds.

Since the beginning of Stead's relationship with the NFHS, he has played an active role in its operation, serving as chairman of the second NFHS Strategic Planning Committee from 1999 to 2002. He was president of the NFHS during the 2004-05 school year to conclude a four-year term on the Board of Directors.

Born and raised in Monticello, Iowa, Stead was an involved high school student. He attended the University of Northern Iowa and Morningside College on football scholarships, earning a bachelor of arts degree in 1965. He later returned to college, earning a master of arts degree in educational administration at the University of Wyoming in 1972 and a specialist degree in educational administration at Mankato (Minnesota) State University in 1978.





PATRICK KELLY, LEGAL COUNSEL

MINNESOTA STATE HIGH SCHOOL LEAGUE

Patrick J. Kelly is President at Kelly & Lemmons. He has practiced law for over 40 years. Mr. Kelly obtained his juris doctor degree from Creighton University School of Law in 1975. Mr. Kelly attended National University of Ireland, with honors, and graduated from Marquette University with a Bachelor of Arts degree in 1971. Mr. Kelly is licensed to practice before all Minnesota and Wisconsin courts, Federal District Courts in both states, the 8th Circuit Court of Appeals, and the Supreme Court of the United States. From 1986 through present, Mr. Kelly has devoted approximately 60% of his work to municipal law. Mr. Kelly has extensive experience in land use planning, property development, eminent domain issues, condemnation issues and acquiring properties for community projects such as parks, community centers, and public improvements.

Mr. Kelly has established relationships with many Members of Congress and Senate, as well as local lawmakers, He also has a strong relationship with financial institutions and recognizes the importance of economic vitality in the community. Mr. Kelly assisted bond counsel for the issuance of debt-related instruments and has provided opinions to clients as requested. He has also provided opinions to various cities regarding procedures and compliance with bonds. In addition, Mr. Kelly is a recognized and sought-after mediator of labor contract and employment disputes, as well as being a frequent speaker at local and state bar functions.

Mr. Kelly's current representation includes the Minnesota State High School League and the Teamsters Public and Law Enforcement Employees' Union, Local 320. Mr. Kelly's general counsel practice has included development of employment policies, employee seminars, labor negotiations, general advisory assistance, civil service commissions, and frequent lectures on ethics, sexual harassment and discrimination.



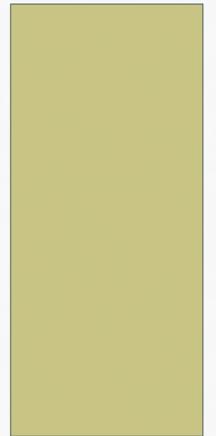


- https://www.youtube.com/watch?v=Cj_loW2Wk2c



EVOLVING DUTY OF CARE

PRESENTATION BY PATRICK J. KELLY, ESQ.
AND DAVID STEAD, EXECUTIVE DIRECTOR OF MSHSL



Brief Overview of Sudden Cardiac Arrest

Implementing an AED Program American Heart Association (2013)

- Cardiac arrest is a leading cause of death in the United States. Each year, emergency medical services (EMS) treats about 360,000 victims of cardiac arrest before they can reach the hospital. Less than 10% of those victims survive. Cardiac arrest can happen to anyone at any time
- What is cardiac arrest?
 - “cardiac arrest is the abrupt loss of heart function in a person who may or may not have heart disease. The time and mode of death are unexpected. Cardiac arrest occurs instantly or shortly after symptoms appear. Most cardiac arrests are due to abnormal heart rhythms called **arrhythmias**.
 - A common arrhythmia is **ventricular fibrillation**, in which the heart's electrical impulses suddenly become chaotic and ineffective. Blood flow to the brain stops abruptly; the victim then collapses and quickly loses consciousness. Death usually follows **unless** a normal heart rhythm is restored within minutes.”

- What is defibrillation?
 - Defibrillation is a process in which an electronic device gives an electrical shock to the heart. Defibrillation stops ventricular fibrillation by using an electrical shock and allows the return of a normal heart rhythm. **A victims chance of survival decreases by 7 to 10 percent for every minute that passes without defibrillation.**
- What is the difference between sudden cardiac arrest (SCA) and a heart attack?
 - SCA is *not* the same thing as a heart attack, although a person suffering a heart attack is more likely to develop abnormal heart rhythms and SCA.
 - A heart attack is caused by blocked blood flow to the heart muscle so the muscle begins to die. SCA is caused by an abnormal heart rhythm. A heart attack is often preceded by chest, arm, upper abdomen or jaw pain, nausea and sweating. There is rarely a warning before SCA. Heart attack patients usually remain conscious, but SCA victims always lose consciousness.
 - Taken from *The IHRSA – Defibrillators (AEDs) in Health Clubs*

High Expectations and high emotions lead to high damages

“As can be expected, litigation involving allegations of negligence stemming from inadequate response to a medical emergency can prove very costly and long-lasting.”

Defending claims of negligent response to medical emergency, 2015 CLM Annual Conference

Duty of Care Defined

The duty of care is the reasonable care necessary while performing any acts that could foreseeably cause harm to others; this duty of care presents a legal obligation on individuals and entities. This is developed through common law jurisprudence.

In order to establish a claim of negligence, a claimant must prove that this bedrock principle of the duty of care was breached. That breach may subject an individual or entity to liability for any foreseeable harm.

The courts have considered a duty of care as a formalization of a social contract. Which means that there are implicit responsibilities held by individuals towards other in the society.

We know the idea of a general duty of care is accepted, but the problem is that there are significant differences among the common law jurisdictions concerning the specific circumstances under which the duty of care exists.

As we know, the states as a separate sovereign are free to develop their own tort law under the Tenth Amendment. The result is there are several tests for finding a duty of care in the United States tort law. Some states state that the only test is whether the harm to the plaintiff from the defendant's actions was foreseeable.

Multi-Factor Test

California Civil Code section 1714 imposes a general duty of ordinary care, which by default requires all persons to take reasonable measure to prevent harm to others.

- ***Rowland v. Christian, 69 Cal.2d 108 (1968)* factors:**
 - The foreseeability of harm to the injured party;
 - The degree of certainty he or she suffered injury;
 - The closeness of the connection between the defendant's conduct and the injury suffered;
 - The moral blame attached to the defendant's conduct;
 - The policy of preventing future harm;
 - The extent of the burden to the defendant and the consequences to the community of imposing a duty of care with resulting liability for breach; and
 - The availability, cost and prevalence of insurance for the risk involved.

Other states have developed different lists of factors such as this one from Tennessee:

- The foreseeability of the harm or injury;
- The possible magnitude of the potential harm or injury;
- The importance or social value of the activity engaged in by the defendant;
- The usefulness of the conduct to the defendant;
- The feasibility of alternative conduct;
- The costs and burdens associated with the alternative conduct;
- The relative usefulness of the alternative conduct; and
- The relative safety of the alternative conduct.

3rd Restatement of Torts

3rd Restatement of Torts, § 40 (May 16, 2012)

Section 40 finds its counterpart in § 314A of the Second Restatement and includes the same special relationships that § 314A recognized (*supra*) and identifies three others (i.e. employer-employee, schools and their students, and landlords and their tenants).

Perhaps the most significant difference between the two Restatements concerns the scope of the duties they articulate. Comment d in § 40 of the Third Restatement points out that the affirmative duty recognized in Section 314A of the Second Restatement was limited to providing first aid and temporary care until appropriate medical care could be obtained. Section 40, on the other hand, adopts a more general duty of reasonable care that “recognizes both the variety of situations in which the duty may arise and advancements in medical technology that may enable an actor to provide more than mere first aid.” Section 40 further notes that “[a] duty of reasonable care is flexible enough to account for a wide variety of situations.” - Taken from *Defending claims of negligent response to medical emergency*, 2015 CLM Annual Conference

Fowler v. Bally Total Fitness Corp., No. 07 L 12258 (Ill.Cir.Ct. Oct. 27, 2007)

- **Illinois Circuit Court's opinion on a duty of care**

- “..no reason why the standard of care, even for emergency services, should not be regarded as an **ever-evolving** concept, measured in some way by the acceptance of the need for and efficacy of new emergency treatment procedures and equipment”
- “Common sense dictates that heart attacks are a **reasonably foreseeable** type of injury likely to occur in instances where strenuous physical activity and exercise is encouraged... And **societal standards**... Were trending towards mandatory AED requirements at the time of decedent's death...”
- “This Court cannot discern any logical reason why Bally would not employ AEDs at its Gaithersburg facilities considering it was already obligated to employ AEDs throughout the rest of Montgomery County. Such action on the part of Bally smacks of indifference to the welfare of its patrons... There is no denying the fact that Bally knew with 100% certainty that dozens of its members would suffer attacks and die each year. Instead of pursuing a relatively cheap and easy solution to the problem through the deployment of AEDs at its health facilities, Bally chose to consciously disregard this known risk.”

Verdugo v. Target Corp., 59 Cal. 4th 312, 327 P. 3d 744 (2014)

- **Summary of Facts:**

- Maryann Verdugo, a 49 year old developmentally disabled shopper, suffered sudden cardiac arrest and collapsed at the target store in Pico Rivera, CA.
- In response to a 911 call, paramedics were dispatched from a nearby fire station. It took the paramedics 10 minutes to reach the store and an additional 10 minutes to navigate the Target store in order to find Ms. Verdugo.
- The paramedics attempted to revive Ms. Verdugo, but were unable to do so. Target did not have an AED.
- The Verdugo family argued that “because of the important potentially life-saving role that an AED may play in the event of sudden cardiac arrest, the size of the Target store in question, the number of customers who patronize the store, and the relatively low cost of an AED device, Target’s common law duty ... Included an obligation to obtain an AED.
- The average size of a Target store is 135,000 sq. feet
- Target used to sell “Phillips HeartStart AEDs” on its website for approximately \$1,200.

Verdugo v. Target Corp.,
59 Cal. 4th 312, 327 P. 3d 744 (2014)

- **Holding: No common law duty requires commercial property owners, such as Target, to provide AEDs to its customers**
 - The acquisition and development of AEDs is a costly and burdensome undertaking (in support of its conclusion, the court points to “the magnitude of the burden[s] imposed by California’s AED laws)
 - The risk of sudden cardiac arrest is no greater at Target than at any other location open to the public
 - No aspect of target’s business activities increases the risk that a person will suffer sudden cardiac arrest.
 - “Stores like Target have a moral obligation to provide AEDs for use in a medical emergency” – Justice Harry Pregerson

Limones v. Sch. Dist. of Lee Cty., 161 So. 3d 384, 387 (Fla. 2015)

- **Summary of Facts**

- At approximately 7:40 p.m. on November 13, 2008, 15 year-old Abel Limones, Jr., suddenly collapsed during a high school soccer game.
- No evidence to suggest that Abel collapsed due to a collision with another player. The event involved a soccer game between East Lee County High School, Abel's school, and Riverdale High School, the host school. Both schools belong to the School District of Lee County.
- When Abel was unable to rise, Thomas Busatta, the coach for East Lee County High School, immediately ran onto the field to check his player. Abel tried to speak to Busatta, but within three minutes of the collapse, he appeared to stop breathing and lost consciousness.
- Busatta was unable to detect a pulse. An administrator from Riverdale High School who called 911, and two parents in the stands who were nurses, joined Busatta on the field. Busatta and one nurse began to perform cardiopulmonary resuscitation (CPR) on Abel. Busatta, who was certified in the use of an automated external defibrillator (AED), testified that he yelled for an AED.
- The AED in the possession of Riverdale High School was actually at the game facility located at the end of the soccer field, but it was never brought on the field to Busatta to assist in reviving Abel.

Limones v. Sch. Dist. of Lee Cty., 161 So. 3d 384, 387 (Fla. 2015)

- **Facts Continued**

- Emergency responders from the fire department arrived at approximately 7:50 p.m. and applied their semi-automatic AED to revive Abel, but that was unsuccessful. Next, responders from the Emergency Medical Service (EMS) arrived and utilized a fully automatic AED on Abel and also administered several drugs in an attempt to restore his heartbeat.
- After application of shocks and drugs, emergency responders revived Abel, but not until approximately 8:06 p.m., which was twenty-six minutes after his initial collapse.
- Although Abel survived, he suffered a severe brain injury due to a lack of oxygen over the time delay involved. As a result, he now remains in a nearly persistent vegetative state that will require full-time care for the remainder of his life.

Limones v. Sch. Dist. of Lee Cty., 161 So. 3d 384, 387 (Fla. 2015)

- **Duty to Use an AED**

- The Supreme Court of Florida stated as a general principle, a party does not have an duty to take affirmative action to protect or provide aid to another unless a **special relationship** exists.
- If the special relationship exists, according to the Court, the law requires a party to act with reasonable care towards the person in need of protection or aid.
- The Florida courts had already established a special relationship between schools and their students. The Supreme Court of Florida, based on that relationship, ruled that the school is required to reasonably supervise its students during all activities and that the activities are subject to the control of the school even if the activities occur beyond the boundaries of the school.

– Taken from *Florida High School's Duty of Care Transcends AED Ownership* by John Wolohan and Delana R. Williams

Limones v. Sch. Dist. of Lee Cty., 161 So. 3d 384, 387 (Fla. 2015)

- **Holding**

- The Supreme Court of Florida found that the school owed Limones a duty and to act with reasonable care **under the circumstances:**
 - A duty to take appropriate post-injury efforts to avoid or mitigate further aggravation of his injury.
 - The post-injury efforts, according to the court, depends on the circumstances and fluctuate with time, the students age and activity, and the extent of the injury
 - The facts indicated that the school had an AED and that the use could have prevented further aggravation of his injury. As a result, the court found that the use of the AED equipment was within the school's duty of care.

Limones v. Sch. Dist. of Lee Cty.,
161 So. 3d 384, 387 (Fla. 2015)

- **Immunity Doctrine for School Employees - DENIED**
 - The Supreme Court of Florida stated that the employees were only entitled to immunity when the AED is actually used or attempted to be used.
 - The Supreme Court of Florida held that since it was undisputed that no actual attempt of the use of the AED occurred until after first responders arrived, the school and its employees were not entitled to immunity.
 - **NOTE:** Florida has established a common law duty to students and if there is a student injury they must take reasonable measures to prevent aggravation of the injury. This is coupled with the advances in medical technology and as a result the duty can change and what is acceptable presently may be a breach of duty in the future.

Federal Laws Acknowledging the need for AEDs

The Cardiac Arrest Survival Act (CASA) requires the U.S. Secretary of Health and Human Services to establish guidelines for placing AEDs in federal buildings. These guidelines are to include recommendations on the appropriate placement of AEDs including procedures for the following:

- Implementing appropriate training courses in the use of such devices, including the role of cardiopulmonary resuscitation;
- Proper maintenance and testing of the devices;
- Ensuring coordination with appropriate licensed professionals in the oversight of training of the devices;
- Ensuring coordination with local emergency medical systems regarding the placement and incidents of use of the devices.

The Rural Access to Emergency Devices Act (also called the Rural AED Act) was passed by Congress along with the CASA. This law authorizes the appropriation of \$25 million in grants to certain “community partnerships” for the purchase of AEDs and for AED training.

The Airline Passenger Safety Act, enacted in April 1998, requires the Federal Aviation Administration (FAA) to review the contents of medical kits carried on commercial airplanes. It is estimated that 1,000 persons die each year due to cardiac arrest suffered on international commercial airline carriers. More and more guidelines are equipping their fleets with AEDs.

Practical Considerations

- Design a careful program
- Device selection and maintenance of AEDs
- User identification and training
- Detailed response and action plans



Jack Roberts, Executive Director
Michigan High School Athletic Association



Don Hinton, Executive Director
Mississippi High School Activities
Association

CREATIVE MEASURES TO MINIMIZE HEAD INJURIES





JACK ROBERTS, EXECUTIVE DIRECTOR MICHIGAN HIGH SCHOOL ATHLETIC ASSOCIATION

Jack Roberts is in his 28th year as executive director of the Michigan High School Athletic Association. The Dartmouth College graduate is a reader, traveler, public speaker and tries to be a writer (there's an absolutely terrible novel in the works). With the rest of his time, he serves as President of the Refugee Development Center in Lansing, Michigan; as chairman of the board of the Michigan Society of Association Executives; on the board of directors for the East Lansing Art Festival; and on the steering committee of Officials for Kids – a fund-raising and support system for the four Children's Miracle Network hospitals of Michigan. He married well: his wife Peggy was the coordinator of the Power of We Consortium of Ingham County, Michigan before her retirement last summer. They have two sons: John who co-manages a principal preparation program for the Washington, DC Public Schools; and Luke who, with his wife Alison, teaches in China.





DON HINTON, EXECUTIVE DIRECTOR

MISSISSIPPI HIGH SCHOOL ACTIVITIES ASSOCIATION

Don Hinton became the sixth executive director of the Mississippi High School Activities Association on July 1, 2011, after serving 12 months as executive director-elect. Prior to joining the MHSAA staff in July 2010, Hinton served a seven-year stint on the executive board, during which time he helped implement and coordinate the Star Sportsmanship program for two years.

Hinton has a lengthy background in Mississippi education and activities, working 30 years in education that included time at Callaway, Jim Hill, Murrah, Northwest Rankin, Ocean Springs and Vancleave high schools. He served in a variety of roles during his career in secondary education, including teacher, principal, assistant principal, athletic director, head football coach, assistant football coach, girls basketball coach, and track and field coach.

Hinton graduated in 1973 from Bay Springs High School, where he competed in football, basketball, baseball and track and field. He went on to play football for Jones Junior College and Millsaps College and received his bachelor's and master's degrees from the University of Southern Mississippi.

Nationally, Hinton serves on the NFHS Appeal Board and the NFHS Coaches Publications Committee.



The background of the slide is a close-up, shallow depth-of-field photograph of a stack of books. The pages are slightly blurred, showing some text and page numbers. The lighting is warm and soft, creating a professional and academic atmosphere. Three text boxes are overlaid on the left side of the image, and one is on the bottom right.

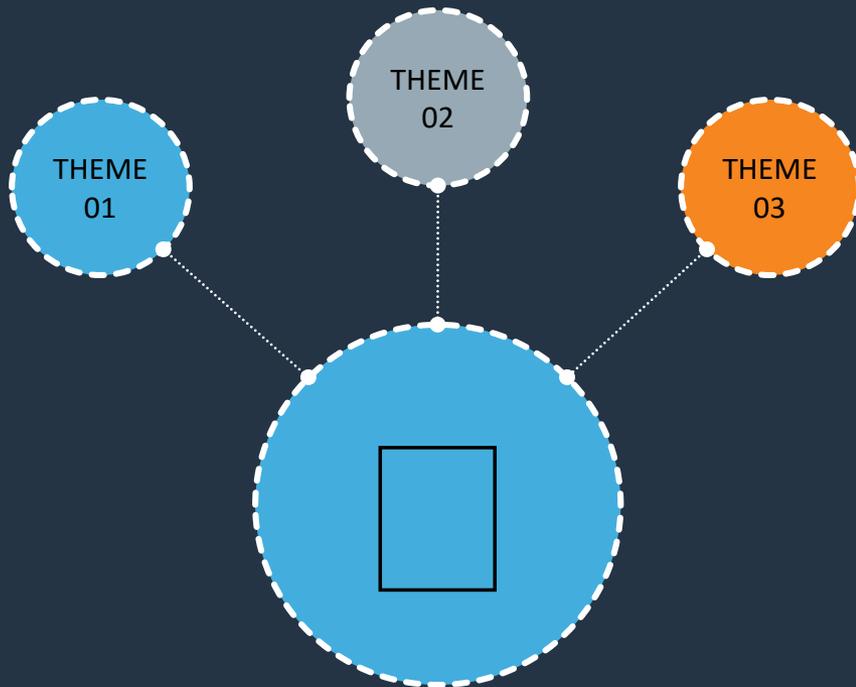
THE

CONCUSSION CARE

NARRATIVE

**John E. “Jack” Roberts
Executive Director
Michigan High School Athletic Association**

Three Themes

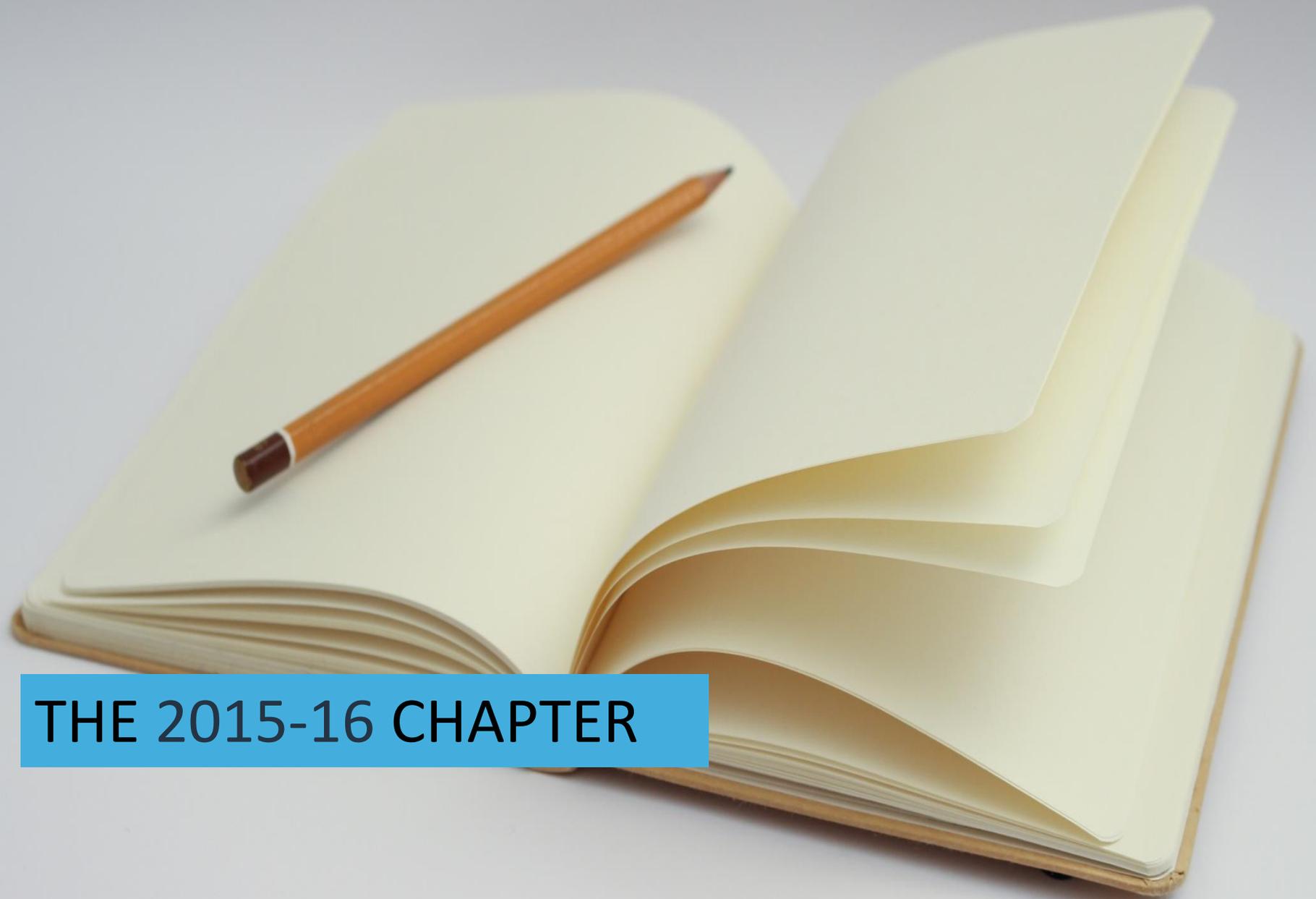


Concussion is only **one of many** health issues schools must take seriously.

Concussion is a concern of **all sports, both genders.**

Football has never been safer than it is today.





THE 2015-16 CHAPTER

A photograph of a high school baseball field. In the foreground, a player in a blue and white uniform with the number 18 on his back is standing on the grass. In the background, other players are on the field, and spectators are sitting on bleachers. A large metal structure, possibly a scoreboard or camera tower, is visible behind the field. The scene is set outdoors with trees in the background.

CPR REQUIREMENT

FOR ALL

HIGH SCHOOL

HEAD COACHES

THREE

INITIATIVES

for

ALL SPORTS

- ✓ Mandated concussion reports
- ✓ Two sideline detection pilot programs
- ✓ Concussion care “gap” insurance



SAFER THAN EVER.org



Youth Team Coaches!

Some of these materials and messages can be used to help promote participation in junior high/middle school and non-school youth football programs. We invite you to take advantage of these resources.

Safer Than Ever Meeting Message



Downloadable Video Files

[STE Meeting Message \(1:39\)](#)

[Broadcast Quality \(1920x1080\)](#)

[Web Quality \(640x360\)](#)

[STE 30-Second TV Promo](#)

[Broadcast Quality \(1920x1080\)](#)

[Web Quality \(640x360\)](#)

Right click to download



DOWNLOAD THIS MESSAGE TO SHOW AT YOUR TEAM MEETING!

SAFERTHANEVER.org

Stand up for the Game!

- [NFHS Concussion Statement \(12/11/15\)](#)
- [Minneapolis Star Tribune Article \(12/3/15\)](#)
- [NFHS Viewpoint \(10/28/15\)](#)
- [Iowa HS Athletic Association Statement \(12/16/15\)](#)
- [BLOG - Making The Game Safer \(10/6/15\)](#)

Featured Article

WHY FOOTBALL MATTERS - By John Harbaugh

The game of football is under attack.

We see it every day in the headlines and on the news.

The medical concerns are pressing. The game has taken its share of criticism. President Barack Obama said that if he had boys he wouldn't let them play football. Even LeBron James has publicly said no football in his house.

The question is asked over and over: Why would anyone want to play football? And why would anyone let their kids play?

Here's my answer: I believe there's practically no other place where a young man is held to a higher standard.

[READ MORE OF THIS ARTICLE](#)

More Articles

- [Alaspa shares the benefits of athletics while participating in MHSAA video](#)
- [Eastern Michigan Football Coach Pens Powerful Letter To Moms](#)
- [High School Football's Benefits Outweigh The Risks](#)
- [Bubble Wrap](#)

Audio Resources

[30-Second Radio Promo](#)

MP3 File - [Right Click To Save](#)

[60-Second Coaches Radio](#)

[Script](#)

PDF File

[PA Script - H.S. Games](#)

PDF File

[PA Script - Youth Games](#)

PDF File

Print Resources

[Safer Than Ever Poster](#)

PDF File

[Safer Than Ever brochure](#)

PDF File

[Right click to download](#)

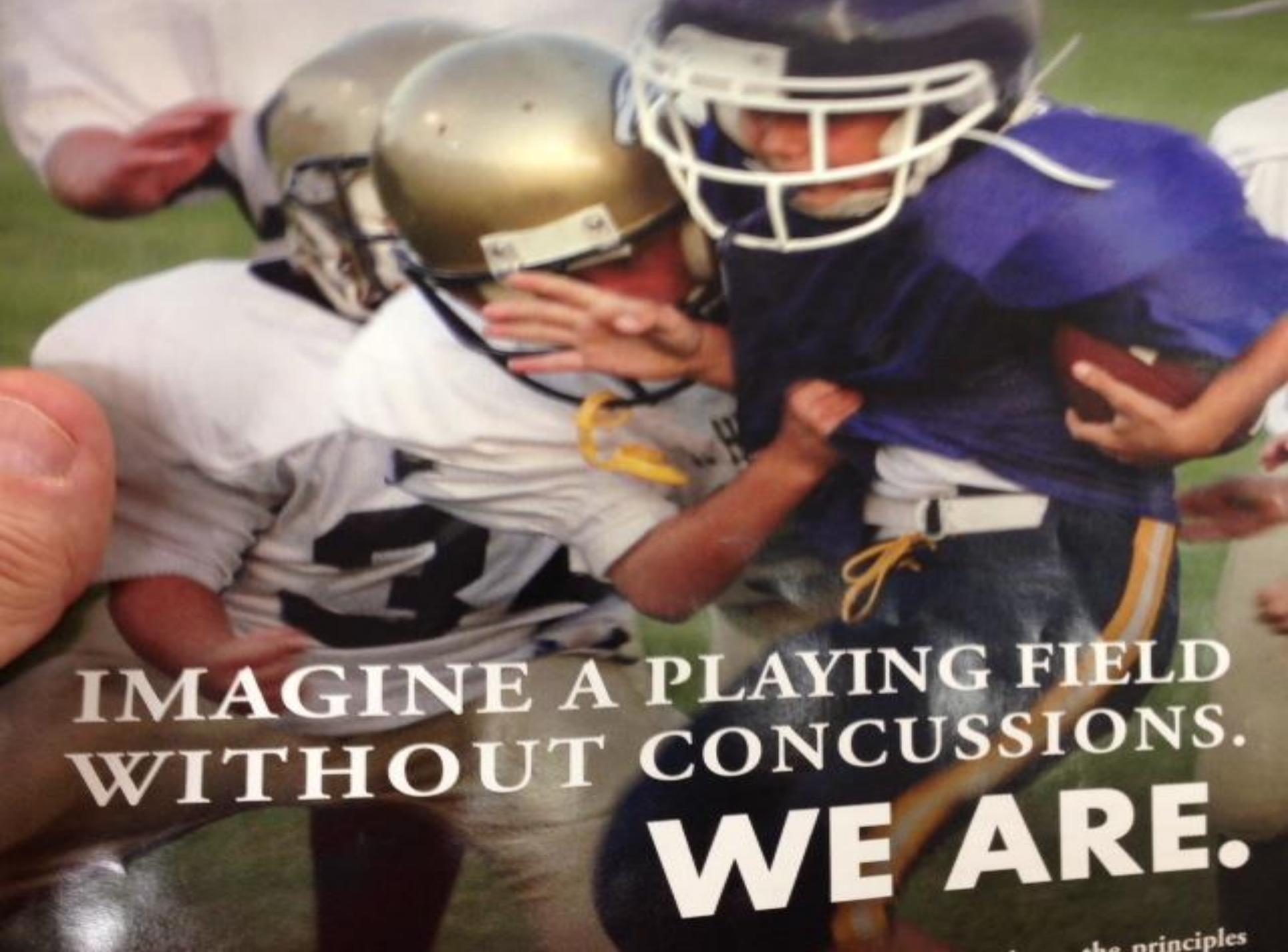
The background of the slide is a stack of books, with the pages of the top book slightly fanned out. The text is overlaid on this image. The word 'THE' is in a blue box, 'CONCUSSION CARE' is in a larger blue box, and 'NARRATIVE' is in a grey box.

THE

CONCUSSION CARE

NARRATIVE

**John E. “Jack” Roberts
Executive Director
Michigan High School Athletic Association**



IMAGINE A PLAYING FIELD
WITHOUT CONCUSSIONS.
WE ARE.

the principles

“MODEL”.....

small replica of the real
thing.





The Zero1 from Vicis.

Safer Equipment

Strength Training

Technology

Sports Rule Changes / Limited Contact

Increased Knowledge & Awareness

PRE-PARTICIPATION REQUIREMENTS

BEFORE PARTICIPATION BEGINS ...

- ◆ **PHYSICAL EXAMS**
- ◆ **PARENT CONSENT FORMS**
- ◆ **CONCUSSION FORM (ALL SPORTS)**
- ◆ **PRE-SEASON STUDENT-PARENT-COACH MEETING**
- ◆ **WRITTEN DOCUMENTATION**



Mississippi Telehealth Concussion Project



UMMC

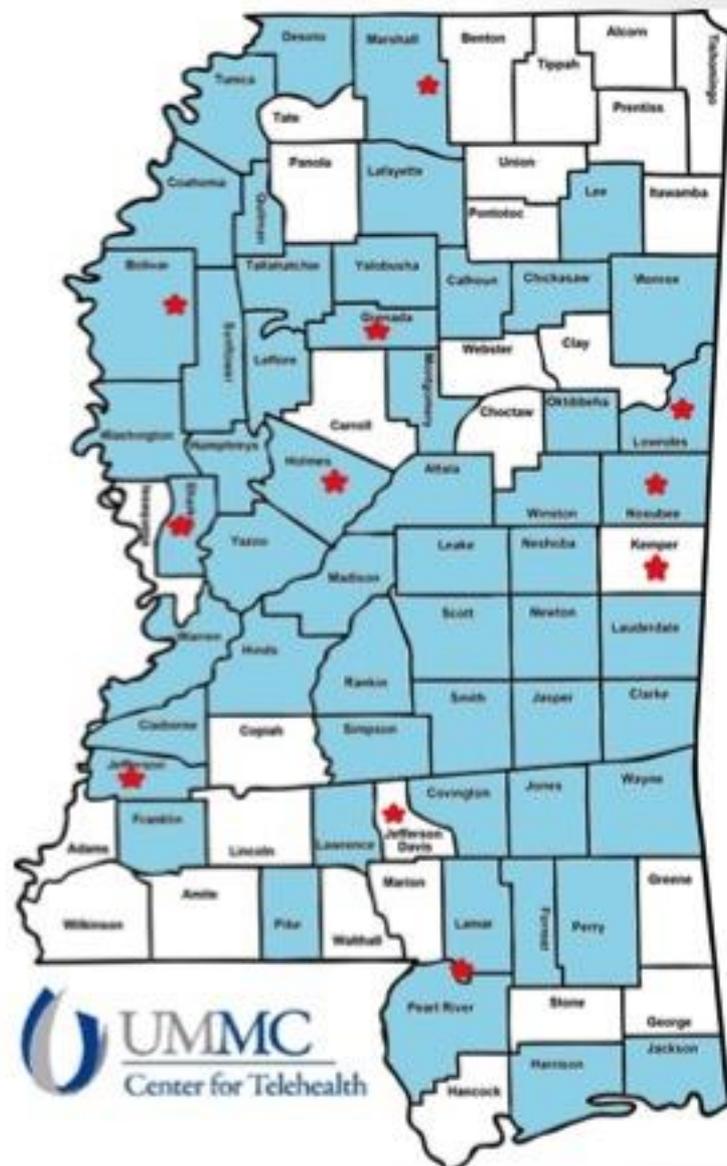
Center for Telehealth



UMMC Center for Telehealth
Mississippi Telehealth Concussion Project
Mississippi High School Activities Association (MHSAA)

Pilot Project Locations

- **John F. Kennedy High School (Mound Bayou)**
- **South Delta High School (Rolling Fork)**
- **Holmes County Central High School (Lexington)**
- **Noxubee County High School (Macon)**
- **West Lowndes High School (Columbus)**
- **Kemper County High School (DeKalb)**
- **Prentiss High School (Prentiss)**
- **Holly Springs High School (Holly Springs)**
- **Lumberton High School (Lumberton)**
- **Jefferson County High School (Fayette)**
- **Grenada High School (Grenada)**



Mississippi Telehealth Concussion Project

11 rural high schools in Mississippi

During the 2015 high school football season

For concussion injuries only

Available from 7:00 to 11:00 PM on Fridays

Benefits

Provides access to an emergency physician at the football game

Reduces wait times for evaluation of the concussion injury

Enables the treatment or recommendation for further care to be provided directly after the injury occurs at the game

Goals

Collecting data on the program

Could be a model to be scaled and replicated nationally





X2
BIOSYSTEMS



Mississippi Concussion Safety Pilot Program 2015/2016



Concussion Safety Pilot Program

- 1) Use of app to implement SCAT3 test for concussion evaluations, including:
 - Baseline testing (FB, Bask., Soc., BB/SB)
 - Post-impact sideline assessments
 - Return to play monitoring
- 2) Use of X-Patch, head impact monitoring device to measure the incidence of head impacts.



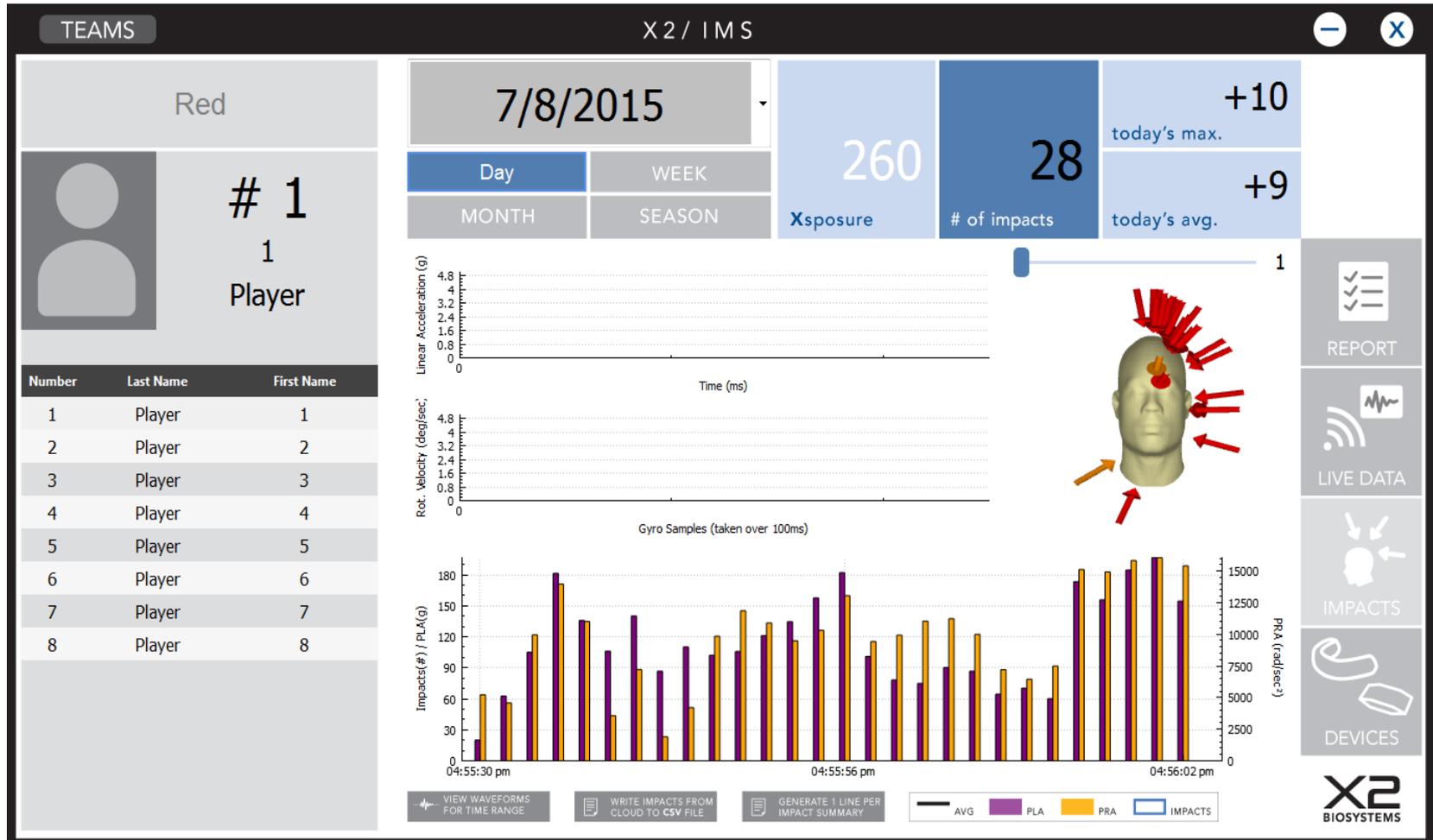
*(Parental Consent Form)

MHSAA / X2 BIOSYSTEMS

CONCUSSION PILOT

Head Impact Monitoring Device

X-Patch / “~~IS~~” Impact Monitoring System app for Laptop



PLAYERS WHO WERE CHIPPED

- **Booneville High School**
 - OLB, LB/RB, LB, QB, WR/QB, WR/DB, FB/DE, OL/LB, NG, RB
- **Clinton High School**
 - RB, DE (2), Safety, QB, WR, LB(2), G/NT, CTR,
- **Gulfport High School**
 - QB, OL (2), RB, DB/WR, LB, DL (2), DB, TE
- **Hattiesburg High School**
 - FS(2) , WR(5), CB, 1 No Position Given
- **Lewisburg High School**
 - OL/DL (2), Corner, RB/LB (3), WR (3), Rover

TEAM	ROSTER MEMBERS	BASELINE EXAMS	BASELINE %	POST INJURY EXAM	MEDICAL HISTORY
Booneville Boys	35	35	100.0%	-	35
Booneville Girls	-	-	0.0%	-	-
Clinton Boys	127	127	100.0%	-	127
Clinton Girls	20	20	100.0%	-	20
Gulfport Boys	84	75	89.3%	6	1
Gulfport Girls	24	23	95.8%	1	-
Hattiesburg Boys	87	85	97.7%	-	85
Hattiesburg Girls	13	12	92.3%	-	12
Lewisburg Boys	62	62	100.0%	1	1
Lewisburg Girls	10	10	100.0%	-	-



MIND MATTERS
FOUNDATION
PLAY SMARTER | PLAY SAFER | PLAY LONGER



1. **Proactive step** to move forward with a state-wide high school concussion program
2. Athletes received free **baseline examinations**
3. **Continuing education** for our athletic trainers
4. Continued awareness of **promoting safety** for student-athletes participating in the sport of football

***#1 REASON STUDENTS
PARTICIPATE IN
ACTIVITIES & ATHLETICS***

“WE ARE HIGH SCHOOL”

“TO HAVE FUN”



Roger Dearing, Executive Director
Florida High School Athletic Association



Leonard Ireland, Legal Counsel
Florida High School Athletic Association

WORKING WITH THE LEGISLATURE





Florida High School Athletic Association

Working with your Legislature -
Challenges and Strategies
NFHS Legal Seminar 2016

Indianapolis



Make Sure You Understand how a Bill becomes a Law in your State



**Make Sure You Keep Close
Communication with your Legal
Advisor(s)**



You must get to know which legislators are leading the charge – AND WHY!

There are a myriad of issues that occur during the year

Many unhappy parents and community leaders reach
out to the legislators in their areas

It is important that both sides of any issue are made
available



You must get to know which legislators can provide assistance – and How

There are key legislators who are staunch supporters of
your association and the rules of fair play

Understand each of their roles in the legislative process

Find his/her committees assignments



Make Sure You Understand each step of the process and which committees must convene in order to adopt the bill



Companion Bills Must Exist in Both Houses of the Legislature

Bills must be sponsored in both the House and the Senate in order to become law

Wording does not have to be the same in both Houses, but rather language can be compromised during conference week

There are ALWAYS amendments, and you must track them



**Spend the Money and Hire
Lobbyist with strong ties to the
legislature and a proven record
of success**



You Can't Do It Alone

The more people that contact their legislators the better

Develop a team that has constant contact with the leaders in your member schools

Keep everyone informed of the dangers which might exist in the language

There are people who have influence on a number of legislators, don't be reticent to contact them for assistance



Develop A Legislative Committee Task Force

Bill language has to be analyzed and evaluated

The impact of proposed legislation must be understood

All members must be made aware of how the proposed language will impact them

Get the general public aroused



Hiring a Public Relations Firm, strictly for Legislative Defense may be a necessity

Public Relations Firms have the best access to the general public and news media

IRS allows 501 (c)(3) organizations to spend a portion of their assets to protect itself from legislative attacks* (IRS Form 5768 must be filed in order to expend funds to influence the Legislature)

Radio and television interviews are a great way to get the information to the public

Having celebrities get involved is helpful

(* IRS Range is \$225,000 to \$1,000,000 depending on the total assets of the organization)



**You must be ready to be
available and testify at any and
all committee hearings**

**Asking Others to Testify is
helpful**



Keep your Legal Advisor, Lobbyist
and Public Relations Firm Fully
Informed



Comprehensive Coordination is vital

- Weekly meetings with staff to evaluate and update amended language
- Weekly conference calls with lobbyist and PR personnel are necessary
- Group texting and emails with lobbyist and staff ,so all get the information simultaneously, is vital
- Coordinate all of the efforts of member schools, community leaders, parents and student-athletes
- Make sure the general public understands all of the ramifications of the proposed legislation
- Radio and television news interviews are important – stick to the issues not the individuals



Legislative Mandates Can Be Dangerous – Be Prepared





ROGER DEARING, EXECUTIVE DIRECTOR FLORIDA HIGH SCHOOL ATHLETIC ASSOCIATION

Roger Dearing has been executive director of the Florida High School Athletic Association since 2009 after more than 35 years in Florida's public school system. Prior to taking the FHSAA position three years ago, Dearing had served as superintendent of schools in Manatee County for six years.

As a classroom teacher, Dearing was twice named "Teacher of the Year." As an administrator, he received the "Outstanding Young Educator Award," the Orlando Business Journal's "Up and Comers Award" and three times was named Osceola County's "Administrator of the Year." He also was honored as "Outstanding Alumnus" from the University of Central Florida's College of Education for the First Quarter of a Century.

Dearing earned a bachelor's degree in Math from the University of Central Florida in 1971, a master's in math from UCF in 1972 and a doctorate from UCF in 1987. Dearing was President Elect of the Florida Association of District School Superintendents for the state of Florida, and served on several FHSAA committees.





LEONARD IRELAND, LEGAL COUNSEL

FLORIDA HIGH SCHOOL ATHLETIC ASSOCIATION

Leonard E. Ireland, Jr. was born in Tifton, Georgia. He graduated from North Georgia College in Dahlonega, Georgia, in 1961 with a Bachelor's Degree in Business Administration. Leonard then entered the United States Army as a Second Lieutenant, serving as an Infantry Platoon Leader at Fort Benning, Georgia. He completed the United States Army Rotary Wing Aviation (Helicopter) Schools at Camp Walters, Texas, and Fort Rucker, Alabama, earning his wings as an Army Rotary Wing Aviator. He served as a helicopter pilot with the First Armored Division in Fort Hood, Texas, until his discharge from the Army in 1965. After leaving the Army, Leonard entered the University of Florida, Levin College of Law receiving a Juris Doctor, with honors, in 1967. While at the University of Florida, he was a member of The Law Review, Phi Kappa Phi and Order of the Coif. He was admitted to the Florida Bar in 1967.

Leonard has practiced with the firm now known as Clayton-Johnston, P.A. since graduation from law school. Since admission to the Bar, his practice has concentrated primarily in civil trial practice, although for a brief period he served as a part time Assistant State Attorney in Gilchrist County, Florida. Leonard has handled many complex cases such as prosecuting and defending class action suits involving insurance companies, commercial disputes, land use disputes, construction litigation, and family law matters. In addition, Leonard has represented many injured parties in personal injury cases.

In 1982, the Florida Bar's Board of Certification, Designation and Advertising, on which Leonard served in 1985, permitted Florida lawyers who demonstrated substantial trial experience and met certain continuing legal education requirements, to apply to become Board Certified as a civil trial lawyer. Leonard was among the first Florida lawyers to be certified as a civil trial lawyer. Leonard also maintains the highest possible peer rating for legal ability and integrity, as established by the Martindale-Hubbell Law Directory.

In addition to his law practice, Leonard has been actively involved in professional activities, especially the Florida Bar and the Eighth Judicial Circuit Bar Association. He served on the Board of Directors of the Eighth Judicial Circuit Bar Association including a term as President, as Chairman of the Florida Bar's Continuing Legal Education Committee, and as a member of the Florida Bar's Board of Certification, Designating and Advertising.

He has also been active in Gainesville area community activities. He served as President of the Gainesville Jaycees in 1971, and received the Gainesville Jaycees Distinguished Service Award. He has served as legal counsel to the Florida Jaycees, on the Board of Directors of the Kiwanis Club and the Rotary Club, and served as President/Chairman of the Gainesville Area Chamber of Commerce in 1992.





Davis Whitfield, Chief Operating Officer
NFHS

ANNOUNCEMENTS





Gary Musselman, Executive Director
Kansas State High School Activities
Association



Randall Forbes, Legal Counsel
Kansas State High School Activities
Association

RECLASSIFICATION PROCEDURES





GARY MUSSELMAN, EXECUTIVE DIRECTOR

KANSAS STATE HIGH SCHOOL ACTIVITIES ASSOCIATION

Entering his 20th year as Executive Director and 28th year of service to the Kansas State High School Activities Association, Mr. Musselman leads a committed staff of 20, who serve more than 750 member schools, grades 7 through 12. He is responsible for all eligibility rulings for students seeking to participate in athletics and activities under the Association's jurisdiction. During the 2005-06 school year, he was instrumental in working with the Kansas Association's Executive Board and the Kansas State Department of Education in developing the nation's first eligibility policy for virtual students and reports annually to the Kansas State Board of Education on the business conducted by the KSHSAA.

Mr. Musselman has served on three NFHS Strategic Planning Committees, Chaired the original NFHS Target Wellness/Sportsmanship/Citizenship Committee, and was a member of the NFHS Marketing Committee and Football Rules Committee. He has served on the NFHS Appeals Board and presently serves as the Section 5 representative on the NFHS Board of Directors. The NFHS Board elected Mr. Musselman to the office of President-Elect for 2015-16. Mr. Musselman served three terms on the NFHS Foundation Board of Directors and completed a term as Chairman of that Board in 2014-15. Mr. Musselman has presented on numerous occasions at NFHS summer meetings, legal meetings and winter meetings on a wide variety of topics.





RANDALL FORBES, LEGAL COUNSEL

KANSAS STATE HIGH SCHOOL ACTIVITIES ASSOCIATION

Mr. Forbes has been in the private practice of law in Topeka, Kansas since graduating from Washburn University School of Law in 1976. Mr. Forbes has represented the Kansas State High School Activities Association for over 35 years.

Mr. Forbes is licensed to practice in the states of Kansas and Missouri. He is a partner in the law firm of Frieden, Unrein & Forbes, LLP. Mr. Forbes' law practice is focused in the areas of commercial litigation, employment litigation and administrative law. He is a past Chairman of the Litigation Section of the Kansas Bar Association. Mr. Forbes has served as an Adjunct Professor of Law at Washburn University School of Law teaching classes in Pretrial Advocacy and Trial Advocacy. Mr. Forbes has been a guest lecturer at Kansas State University in the area of Construction Law. Mr. Forbes has also lectured on various legal topics in the areas of litigation, construction, employment and administrative law.





Jim Tenopir, Executive Director
Nebraska School Activities Association



Rex Schultze, Legal Counsel
Nebraska School Activities Association

IMPLEMENTING TRANSGENDER POLICIES





JIM TENOPIR, EXECUTIVE DIRECTOR NEBRASKA SCHOOL ACTIVITIES ASSOCIATION

Jim Tenopir, who retired in 2015 after five years as chief operating officer of the National Federation of State High School Associations (NFHS), has returned to the Nebraska School Activities Association (NSAA) as executive director.

Prior to joining the NFHS in 2010, Tenopir was executive director of the NSAA for nine years after one year on staff as executive director-elect. He was a teacher, coach, athletic director and superintendent for 30 years before joining the NSAA staff, including the final 18 years as superintendent of the Cambridge (Nebraska) Public Schools.

During his years as NSAA executive director, Tenopir was highly involved with the NFHS. He was a member of the 2008-2011 NFHS Strategic Planning Committee and served a four-year term on the NFHS Board of Directors, which was culminated by serving as president during the 2008-09 school year.

During his five years as NFHS COO, Tenopir managed the day-to-day operations of the NFHS national office staff, chaired the Rules Review Committee, directed the NFHS committee process, supervised fulfillment of NFHS publications and products, and guided the staff in providing service to the 51 NFHS-member associations.





REX SCHULTZE, LEGAL COUNSEL

NEBRASKA SCHOOL ACTIVITIES ASSOCIATION

- Shareholder in the law firm of Perry, Guthery, Haase & Gessford, P.C., L.L.O., 1984.
- Bachelor of Arts, Kearney State College (University of Nebraska at Kearney), 1974.
- Juris Doctorate, University of Nebraska-Lincoln, 1981.
- Teacher, Omaha Bryan Senior High School, 1974-1978.
- Past President, Nebraska School Board Council of School Attorneys.
- Past President, Lincoln Bar Association.
- General Counsel for the Nebraska School Activities Association.



NSAA – GENDER PARTICIPATION POLICY



NFHS Legal Meeting & Conference
April 15, 2016

Prepared and Presented by:

James A. Tenopir, Executive Director

Rex R. Schultze, General Counsel

Nebraska School Activities Association

What Was The Process?



- Under the NSAA Constitution the Board has the authority to establish policy in the form of an Approved Ruling.
- August 2015 - Board authorized consideration of a policy addressing “gender participation” which included participation by a transgender student.
- November 2015 - Parochial schools using the NSAA legislative process introduced a “certificate at birth” by-law identical to Georgia by-law 1.47 (amended to “certificate” only in August 2015).
- December 9, 2015 - Presentation of a Gender Participation policy to Board, with final reading set for January, 2016.

What Was The Process?



- January 6-13, 2016 – NSAA District meetings, “certificate at birth” receives a majority of votes in 4 of 6 districts.
- January 14, 2016 - Final reading and action by the Board on Policy - adopted by the Board on a 6-2 vote.
- “Certificate at birth” would “trump” the Board policy if approved by a 60% vote of Rep. Assembly in April.
- January to April – Intense lobbying of Rep. Assembly members by the parochial schools and some public school administrators in favor of the “certificate at birth” by-law.

What Was The Process?



- April 8, 2016 – Representative Assembly met.
 - 51 Representatives;
 - 60% affirmative vote needed to adopt the by-law.
 - Vote:
 - 23 For;
 - 27 against
 - 1 Abstention.
- **NSAA Board policy on Gender Participation remains in effect.**

Effort to buttress gender rule fails

Parochial schools unable to override NSAA policy.

By **MARGARET REIST**
Lincoln Journal Star

A new Nebraska School Activities Association policy on transgender students who want to participate in high school sports has survived an attempt by parochial schools to override it.

The NSAA's representative

assembly — a group of 51 delegates from the six governing districts — failed on Friday to get the super-majority vote needed to require participation be determined by the sex on a student's birth certificate.

A separate proposal passed in January by the NSAA board creates a policy transgender students must follow to participate in sports as a gender other than that with which they were born.

Had the birth-certificate proposal succeeded, it would have

effectively eliminated the ability of transgender students to participate according to their expressed gender and created one of the most restrictive policies in the country.

To pass, it needed 31 votes. It got 23. Twenty-seven voted against the proposal, and one abstained.

The vote means the policy passed by the board of directors in January will remain in effect, and it represents the end of a protracted debate on the issue that began in September when the NSAA

began researching the issue.

There was no discussion by members of the representative assembly before Friday's vote, although Executive Director Jim Tenopir acknowledged intense lobbying of NSAA members and how challenging the process had been.

"I would encourage you to vote your conscience, vote in a manner that you believe is in the best interest of all students," he said. "Our kids, all of our kids, are dependent on this body's leadership."

The policy approved by the board leaves the initial decision about whether to allow a transgender student to participate according to his or her expressed gender up to the high school. Then the matter goes to an NSAA committee that will weigh documentation from friends, family, teachers and doctors.

Male-to-female transgender students must provide documentation of at least a year of

See NSAA, Page A2

HIGH SCHOOL ATHLETICS

**NSAA chief:
Transgender
policy is fair
to kids, legal**

Critics favoring a 'gender-at-birth' alternative fall short of winning a change

Purpose of Policy



- **Every student, every day!**
- Minimize discrimination (Title IX).
 - See *Clark v. Arizona Interscholastic Asso.*, 695 F.2d 1126, 1131 (9th Cir. Ariz. 1982).
- Student Safety.
 - See *Clark v. Arizona Interscholastic Asso.*, Supra at 1131; *Kahn v. Shevin*, 416 U.S. at 355, 94 S. Ct. at 1737, 40 L. Ed. 2d at 193; *Michael M. v. Sonoma County Superior Court*, 450 U.S. at 469, 101 S. Ct. at 1204, 67 L. Ed. 2d at 442; *Orr v. Orr*, 440 U.S. 268, 280-82, 99 S. Ct. 1102, 1112-13, 59 L. Ed. 2d 306, 319-21 (1979) (The court has recognized average real differences between the sexes).

Purpose of Policy



- **Every student, every day!**
- Competitive Equity.
 - Maintaining a “level playing field” is an inherent expectation at all levels of sport competition and a key value of the schools that are members of the NSAA. Maintaining such competitive equity in NSAA-sponsored activities is indispensable in:
 - Preserving Title IX protections for female activities.
 - See, ARTICLE: The Title IX Athletic Regulations and the Ideal of a Gender-free Society, 11 U. Denv. Sports & Ent. Law J. 3, 36. citing O'Connor v. Board of Education, 645 F.2d 578 (7th Cir. Ill. 1981).
 - Preserving protections of female athletic activities through the contact sport exclusion to Title IX.
 - Springs Exempted Village School Dist. Bd. of Education v. Ohio High School Athletic Asso., 647 F.2d 651 (6th Cir. Ohio 1981).

Purpose of Policy



- **Every student, every day!**
- Personal Privacy.
 - Protecting the personal privacy of all student athletes participating in NSAA activities.
 - See, *Johnston v. University of Pittsburgh*, 2015 U.S. Dist. LEXIS 41823, (U.S. Dist. Court, Western District of Penn.), March 31, 2015; and, *Grimm v. Gloucester County School Board*, 2015 U.S. Dist. LEXIS 124905 U.S. Dist. Court, Eastern District of Virginia), September 17, 2015 (on appeal).

Purpose of Policy



- Anecdotal evidence of transgender students in schools
- Lack of NSAA rules to address participation by transgender students
- Preferable for NSAA to have protocol, rather than have the courts make every participation decision
- Assist schools who are dealing with transgender issues

Input From Many...



- Purposely taken time to interact with many groups and individuals: administrators, school board members, NDE, state senators, church groups, ACLU & physicians
- Many closely held beliefs on all sides of the issue
- Unless NSAA adopts one of the policies suggested by one of these groups, likely many in disagreement
- General observations: schools dealing with issue and seeking leadership; issue will not go away; competitive equity and fairness are concerns; facilities are hot button

What Should Policy Be?

Alternative approaches



Type of Policy	States	Comment
No policy	AL, AK, AZ, DE, HA, MD, MISS, ND, SC, TEN, TX, IND, MT	
School decides	CONN, KS, MASS, NM, NJ, NY, OK, SD, UT, WY, IA	No NSA control, other schools disadvantaged.
Birth certificate	ARK, GA, KT, LA, NC**, TX	All recognize amendment of birth certificate.
Medical review panel	CA, DC, FL, IL, MA, MINN, NV, NH, OH, WASH, WS, VT, VIRG	Provides best option
Evaluation	CO, IS, MO	

What Should Policy Be?



- Two policy considerations in District legislative process
 - Sex stated on certificate “at birth”
 - Sex stated on birth certificate subject to Application for Participation by member school on behalf of transgender student
- To our knowledge, no state has strict “birth certificate” policy without options for modifications.
 - **See, Georgia, North Carolina, Texas, and Kentucky.**
 - Much thanks to counsel for Georgia and Kentucky for assistance in understanding the application of the policies of their states.

What Nebraska Law or Regulation May Apply To An NSAA Policy?



- Neb. Rev. Stat. § 71-604.01 (2005). “Upon receipt of a notarized affidavit from the physician that performed sex reassignment surgery on an individual born in this state and a certified copy of an order of a court of competent jurisdiction changing the name of such person, the Department of Health and Human Services Finance and Support shall prepare a new certificate of birth in the new name and sex of such person in substantially the same form as that used for other live births. The evidence from which the new certificate is prepared and the original certificate of birth shall be available for inspection only upon the order of a court of competent jurisdiction.”

Contents of Gender Participation Policy



- In drafting policy – tried to provide legal authority for every provision – to particularly be in a position to respond to a OCR/DOJ challenge (and ACLU – that was actively monitoring our effort).
- As you can see, the policy itself is footnoted with legal citations that were incorporated into the policy for all to see.

Contents of Gender Participation Policy



- Initial determination: sex on birth certificate
- Girls may participate on boys teams when there is no girls' sport or comparable sport
- Boys are not allowed to play girls sports or on girls teams even when there is no corresponding boys sport
- Procedures for participation begin with student/parent requesting in writing ability for student to participate as transgender athlete

Sequence of Policy Steps



- School then makes NSAA eligibility determination
- School petitions NSAA for participation considerations if school deems they are OK with student participating
- NSAA “Gender Identity Eligibility Committee” would be convened; costs borne locally, not by NSAA
- Gender Identity Eligibility Committee comprised of physician, psychologist, NSAA staff, school administrator from non-appealing school

Info Provided To Committee



- Current school registration information
- Written statement from student/parents affirming consistent gender identity/expression
- Documentation from others to affirm actions, attitudes, dress demonstrating consistent gender identity
- Written verification from appropriate healthcare professional of the student's consistent gender identity

Info Provided To Committee



- Medical documentation of hormonal therapy, sex reassignment surgery, counseling, and other medical or psychological interventions
- Other relevant information or documentation from member school, student or parents

Committee - Approval/Disapproval



- For the Committee to approve the Transgender Student Application the information presented must establish to the members of the Committee that the transgender student has met each of the following criteria:
 - (a) That the transgender student affirms and exhibits the consistent gender identity and expression to which the student self-relates;

Committee - Approval/Disapproval

- (b) That there has been submitted creditable documentation from individuals such as, but not limited to, parents, friends and/or teachers, affirming the actions, attitudes, dress and manner and demonstrate the student's consistent gender identification and expression;



Committee - Approval/Disapproval

- (c) That there has been submitted creditable written verification from an appropriate health-care professional (physician, psychologist) of the student's consistent gender identification and expression; and,



Committee - Approval/Disapproval

- (d) For a transgender female (or Male-to-Female) (MTF) student only, that there has been submitted creditable medical documentation of hormonal therapy, sexual re-assignment surgery and physiological testing; . . .



Committee - Approval/Disapproval

- (d) such documentation must establish that:
 - the transgender female has either completed a minimum of one year of hormone treatment related to gender transition or undergone medically confirmed gender reassignment procedure, and,
 - demonstrated to the Committee through a medical examination and testing and physiological testing that **the transgender female student athlete does not possess physical (bone structure, muscle mass, and/or testosterone hormonal levels, etc.) or physiological advantages over genetic females of the same age group.**



Further Policies



- Hormone therapy under supervision of licensed physician doesn't violate Performance Enhancing Supplement policy
- Hormone treatment **MUST** be under supervision of physician
- Nothing in policy to be construed as encouragement to undergo any gender modification procedures—obvious physical, psychological and social implications

Further Policies



- Once approved as transgender athlete, student may not revert to original gender without another evaluation.
 - A MTF student may participate on a boys' team pursuant to paragraph C.2. of the Policy [e.g. when there is no girls sport or comparable sport (e.g., softball and baseball) or team offered in that sport by the member school].
 - A FTM student who has been approved for participation on male teams under this policy shall not be eligible for participation on female teams pursuant to paragraph C.2. of the Policy.

Further Policies



- Student denied participation as transgender athlete has eligibility as determined by birth certificate
- Schools may access appeal process for denied transgender student, with costs being borne locally
- Appeal Committee same make-up as original committee with at least two of the committee members being new

Further Policies



- That process exhausts NSAA administrative remedies

Restroom/Locker Rooms



- Policy to allow fair and equal participation, still maintaining privacy—for athlete and others
- Students have general expectation of privacy in restrooms and locker rooms
- A transgender student granted permission to participate and not had sex reassignment surgery shall at NSAA-sponsored events be permitted birth-sex restrooms and locker rooms, or assigned private facilities

Restroom/Locker Rooms



- Case law support:
 - *Johnston v. University of Pittsburgh*, 2015 U.S. Dist. LEXIS 41823, (U.S. Dist. Court, Western District of Penn.), March 31, 2015.
 - *Grimm v. Gloucester County School Board*, 2015 U.S. Dist. LEXIS 124905 U.S. Dist. Court, Eastern District of Virginia), September 17, 2015.
 - *Iowa Civil Rights Commission v. Burlington Area Community YMCA*, (Administrative Decision) Iowa Department of Inspections and Appeals; *Goins v. West Group*, 635 N.W. 2d 717 (Minn. 2001).

Restroom/Locker Rooms



- Case law support:
 - *Circuit Court of Cook County Illinois*, No. 15, CH 12497, August 15, 2015, Circuit Court – 1879, Judge David B. Atkins:
 - TRO to order transgender student to use the restroom facilities of gender with which the student identified:
 - **“The District’s decision making in this instance is arguably not based on [Student]’s sexual orientation, but instead on his anatomical sex.”**

“No good deed goes unpunished!”



- Church and faith based organizations unhappy.
 - Promise a challenge of some kind . . .
- ACLU unhappy, but in a January 11, 2016 letter:
 - **“Maintaining the Gender Identity Committee structure for a individualized assessment without the birth certificate requirement probably meets the bare minimum legal standards.”**

Application Form



- **Part I – Application and NSAA Member School and Student Information:** General information about the school, student and parents/guardians. [Key parts]
 - **Member school approval:** Member school approval of the participation of the Student in extra-curricular activities of the gender with which the Student identifies if found eligible by the NSAA.
 - **NOTE: Important component – Member school choice.**

Application Form



- **Part I – Application and NSAA Member School and Student Information:** General information about the school, student and parents/guardians. [Key parts]
 - **Medical Treatment/Therapy:**
 - **Hormone Treatment**
 - *Date Treatment Initiated:* _____, 20__.
 - **Testosterone Suppressant**
 - *Date Treatment Initiated:* _____, 20__.
 - **Puberty Suppressant**
 - *Date Treatment Initiated:* _____, 20__.
 - **Reassignment Surgery**
 - *Date of Surgery:* _____, 20__.
 - **None**

Application Form:



- **Part II - Documentary Information:** Required documentary information set forth in the policy.
- **Part III – Education, Personal and Medical Information Release to Gender Identity Eligibility Committee:**
 - Authorization for Disclosure and Release of Educational, Personal and Health Information - HIPAA and FERPA Release.
 - Authorization.
 - HIPAA and FERPA Release.
 - Non-Disclosure and Confidentiality.
 - Binding Affect

Application Form



- **Part IV - Acceptance of Terms and Conditions of AUTHORIZATION FOR DISCLOSURE AND RELEASE OF HEALTH INFORMATION - HIPAA and FERPA.**
 - “Release: The undersigned **NSAA Member School** and the **NSAA** hereby accepts the terms of the above stated AUTHORIZATION FOR DISCLOSURE AND RELEASE OF HEALTH INFORMATION - HIPAA and FERPA Release.”

NSAA – GENDER PARTICIPATION POLICY



NFHS Legal Meeting & Conference
April 15, 2016

Prepared and Presented by:
James Tenopir, Executive Director
Rex R. Schultze, General Counsel
Nebraska School Activities Association



Que Tucker, Executive Director
North Carolina High School Athletic
Association



Whitney Frye, Legal Counsel
North Carolina High School Athletic
Association

ANTICIPATION LITIGATION – BRINGING ALL PARTIES UP TO SPEED





QUE TUCKER, EXECUTIVE DIRECTOR NORTH CAROLINA HIGH SCHOOL ATHLETIC ASSOCIATION

Que Tucker has been with the NCHSAA for 25 years having served as Director of Student Services and then Deputy Commissioner prior to becoming commissioner in December, 2015. NC native. Received undergraduate degree from Mars Hill College and Master's Degree from UNC Greensboro, both in physical education. Was a high school coach for 12 years and coached at NC State University for 2 years with the late Coach Kay Yow, prior to joining the NCHSAA.





WHITNEY FRYE, LEGAL COUNSEL

NORTH CAROLINA HIGH SCHOOL ATHLETIC ASSOCIATION

Native of Greensboro, NC; 2007 graduate of UNC Chapel Hill with a degree in Communication Studies; 2011 graduate of the School of Law at NC Central University with high honors. Was advisor at the U.S. Social Security Administration before joining the NCHSAA in 2014. Comes from legal family—father is a lawyer and judge, while grandfather was an attorney who went on to serve as the first African American Chief Justice of the NC Supreme Court.





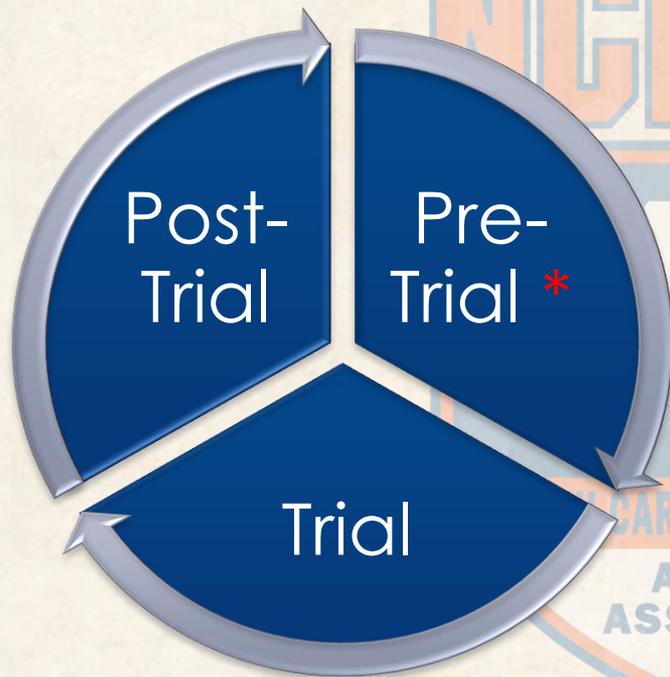
Anticipating Litigation: Bringing All Parties Up to Speed

Que Tucker, Commissioner
Whitney Frye, General
Counsel and Associate
Commissioner

Introduction

- ❖ Sports Law continues to have a pervasive impact on everyone involved, from ticket managers to public directors, to team doctors, to the athletes themselves.
 - Glenn M. Wong, *Essentials of Sports Law 2* (3rd ed. 2002)
- ❖ For many non-lawyers, a group that includes most athletic administrators, the threat of litigation is a very upsetting proposition with the potential of great expense.

Civil Legal Process



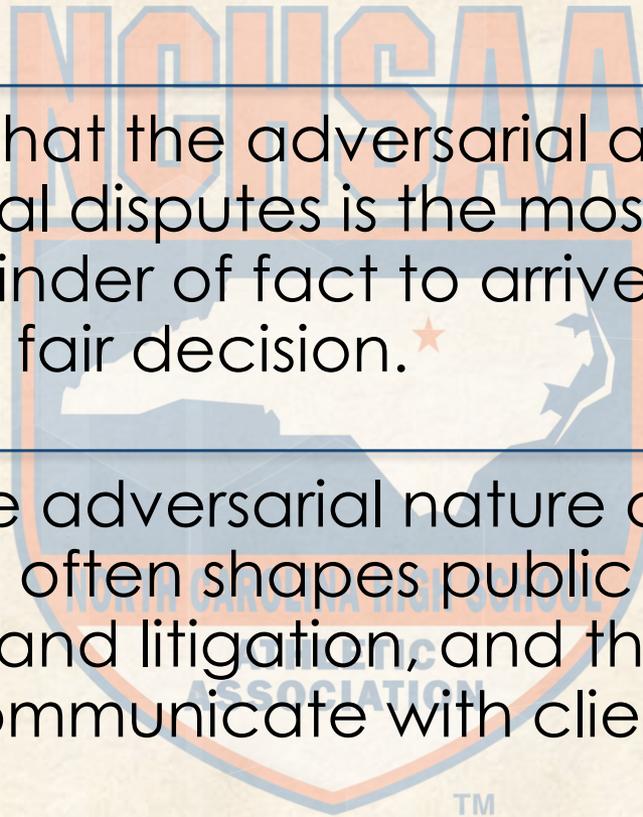
* We will focus our discussion on the implications pre-trial but will note that each component is interconnected and it will be necessary to explain to the Association you represent how each component can affect the desired outcome.

TM

Adversarial Nature of Proceedings

It is thought that the adversarial approach to resolving legal disputes is the most effective way for the finder of fact to arrive at the truth and reach a fair decision.★

However, the adversarial nature of legal proceedings often shapes public perception of attorneys and litigation, and the manner in which we communicate with clients.

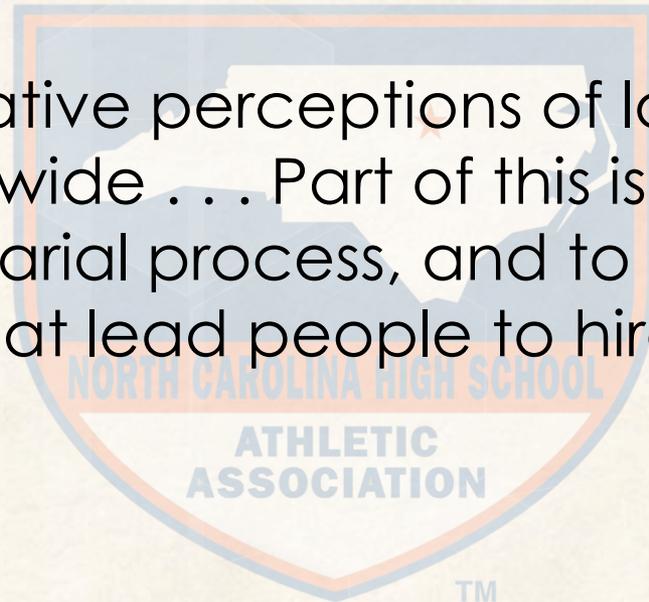


TM

ABA Section of Litigation-Public Perceptions of Lawyers Consumer Research (2002)

“The negative perceptions of lawyers run deep and wide . . . Part of this is inherent to the adversarial process, and to the difficult situations that lead people to hire a lawyer.”

NCHSAA



ABA Section of Litigation-Public Perceptions of Lawyers Consumer Research (2002)

NCHSAA



On the Positive Side

- Americans say that lawyers are knowledgeable about the law, and can help clients navigate through difficult situations

On the Negative Side

- Americans say that lawyers are greedy, manipulative and corrupt

Litigation Perception



What the non-lawyer
thinks when they hear
lawsuit, trial or court . .

TM

Attorney's Role: Communicate and Represent

How?

Embrace the Rookie Mentality

Approach the organization as a rookie

Most attorneys tend to be problem solvers, attempting to remedy current and potential sources of litigation

Understand the Association's Structure

The Association is your client, however the entity is more than its flow chart . . . it's more like a labyrinth

Do your research!

Examine
the Website

Handbook

Relevant
Statutes
and Case
Law

Attend an
Athletic
Contest

Identify
Association
Experts

Building Rapport and Trust is Key

Rapport

Associations are founded upon communication and consistency

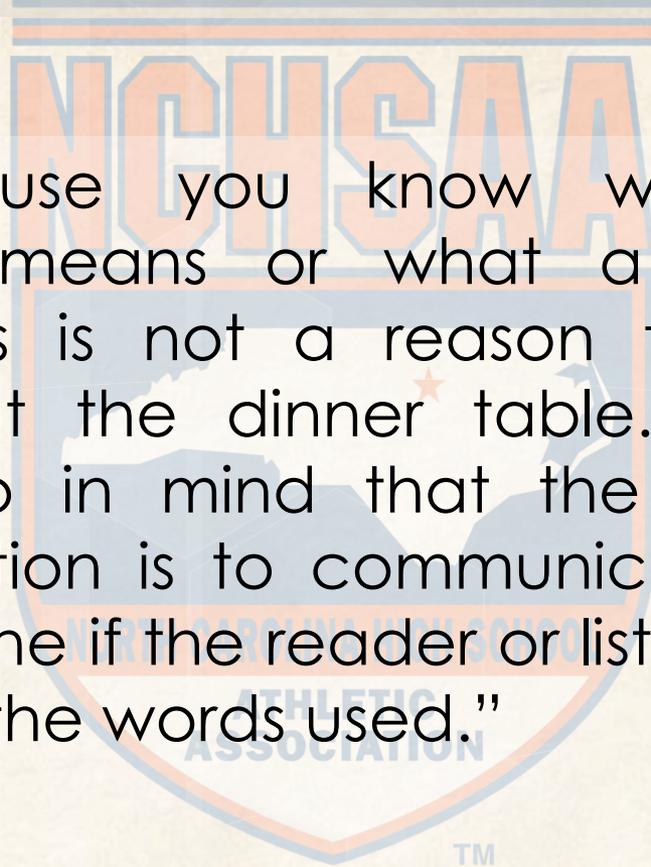
The biggest mistakes come from perception without information

Remember, all work cannot be done behind a desk

TM

Effective Communication- Remember Your Audience

“Just because you know what *malum prohibitum* means or what a habendum clause does is not a reason to use such language at the dinner table. A lawyer should keep in mind that the purpose of communication is to communicate and this can't be done if the reader or listener doesn't understand the words used.”



Effective Communication- Avoid Legalese

Try This

This; that; named earlier
Although; though
Here
Up to now; until now
Despite; in spite of; even though
Must
The; this; that
Afterwards; from then on
There; in it
Of it
From where

Aforementioned
Albeit
Herein
Heretofore
Notwithstanding
Shall
Such [adj.]
Thereafter
Therein
Thereof
Whence

Instead of This

Effective Communication- Eliminate Useless Verbiage

Many terms and phrases are unique to legal writing, and can be eliminated when corresponding with Associations

"Hereinafter referred to as"

"It goes without saying that"

"Know all men by these presents"

"On the matters set forth herein"

"Veritable"

"Whereas"

"Witneseth"

Effective Communication

Avoiding legalese, useless, verbiage and common legal phrases also includes omitting the inclusion of words that display an attorney's expansive vocabulary.

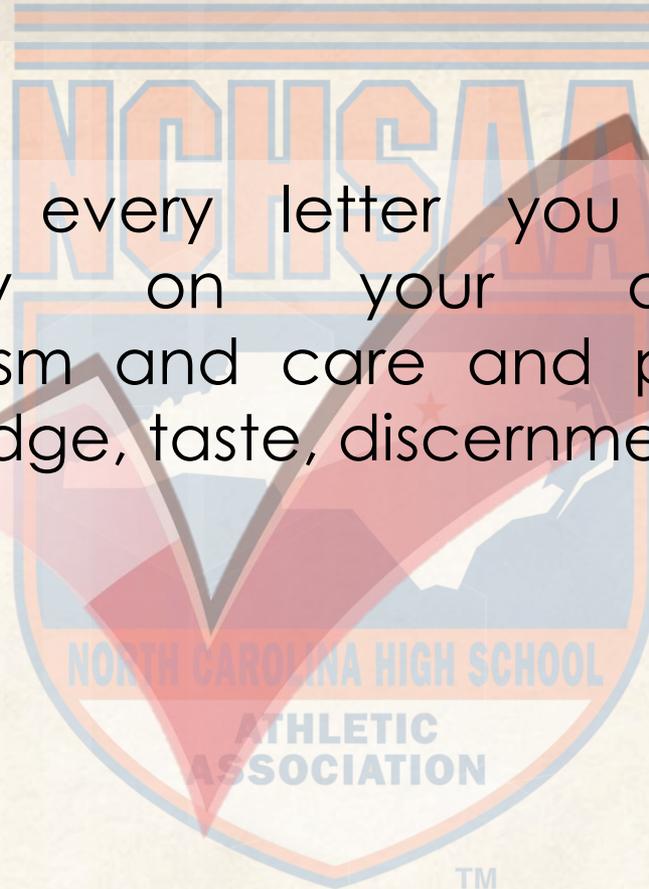


Don't be afraid of
a little red pen!



Effective Communication

Remember, every letter you send is a commentary on your degree of professionalism and care and perhaps also your knowledge, taste, discernment and tact.



Effective Communication- Pare Down Phrases

NGHSAA

Try This

Have
Because of
In fact
Again
While
Because; since
About; regarding
Refer to
Consider

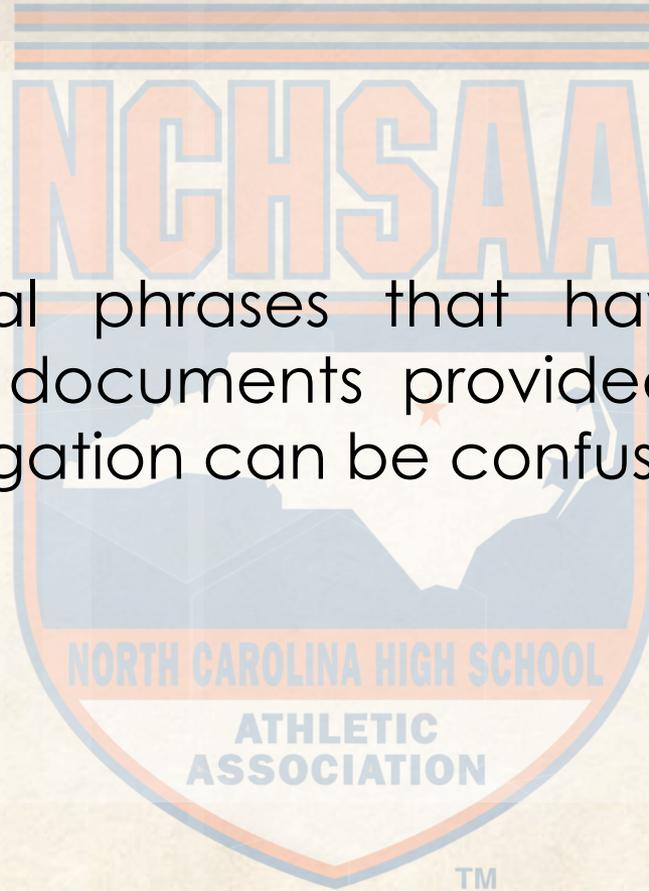
Am in receipt of
As a consequence of
As a matter of fact
As previously stated
During the course of
Inasmuch as
In/with regard to
Make reference to
Take into Consideration

Instead of This

TM

Effective Communication

Explain legal phrases that have common usage. The documents provided during the course of litigation can be confusing.



Effective Communication: Example

❖ INJURY

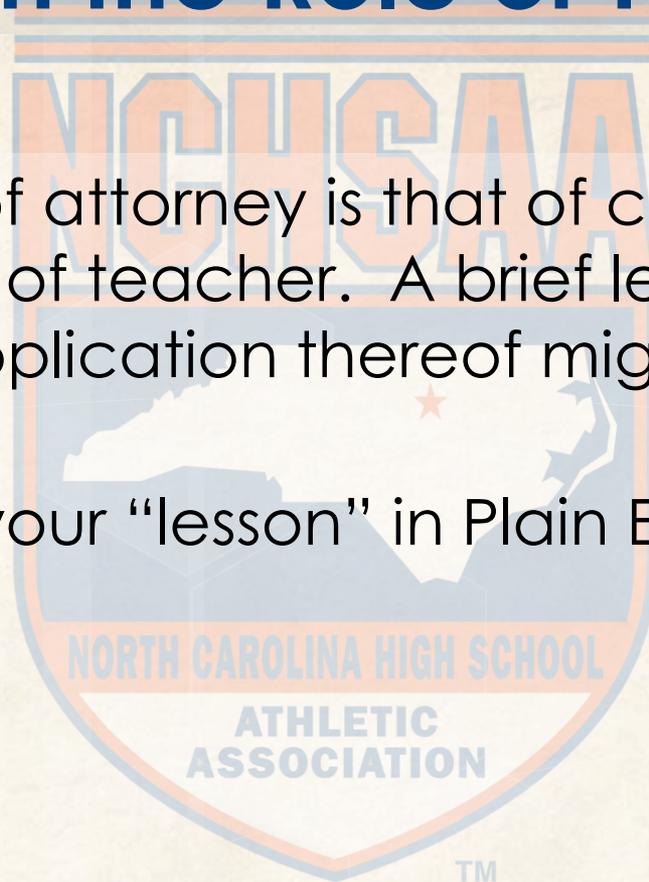
- **Common meaning:** A physical bodily trauma.
- **In law:** Any violation of a legal right, including one that results in property damage or economic loss.

❖ CONSIDERATION

- **Common meaning:** Respect, kindness, or thought.
- **In law:** Something of value or a legal detriment promised in exchange for another person's contractual promise or performance.

Effective Communication- Take on the Role of Teacher

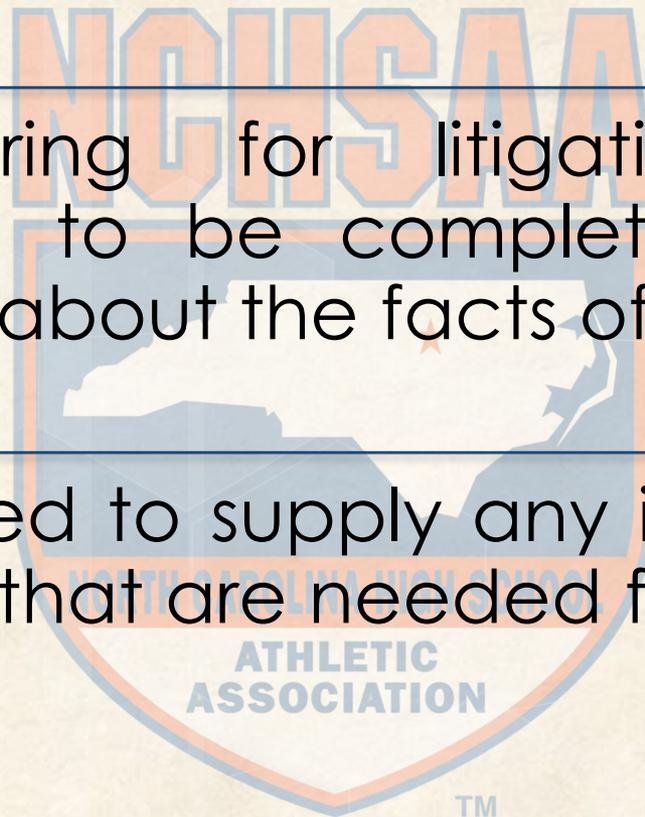
- ❖ The job of attorney is that of counselor but also that of teacher. A brief lesson in Tort or the application thereof might be in order.
- ❖ Provide your “lesson” in Plain English.



Associations Should Understand

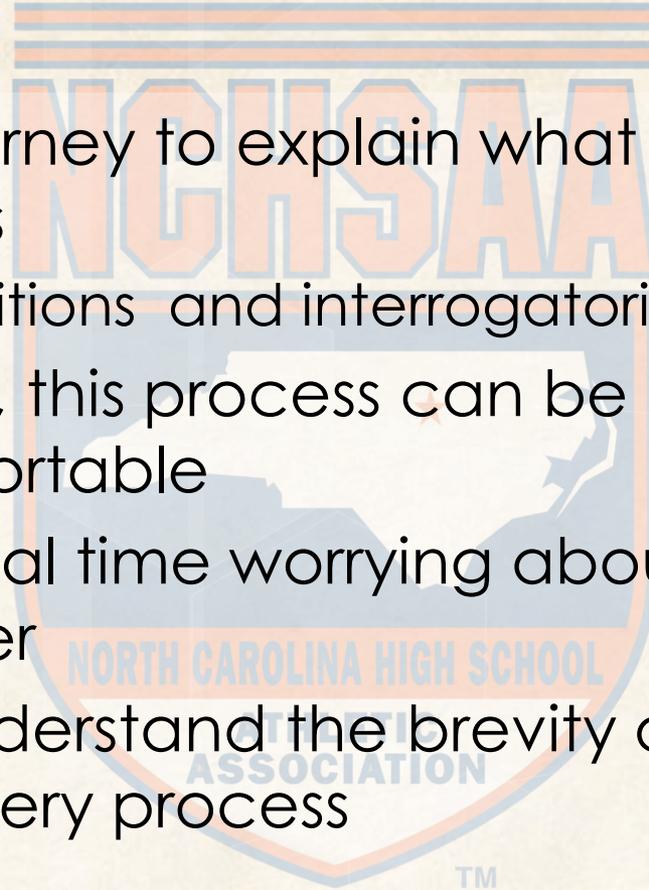
In preparing for litigation, it is imperative to be completely honest and open about the facts of the case.

Be prepared to supply any information or records that are needed for trial.



Associations Should Understand: Discovery

- ❖ Ask your attorney to explain what the discovery phase entails
 - i.e. depositions and interrogatories
- ❖ Be prepared, this process can be a bit intrusive and uncomfortable
- ❖ Spend minimal time worrying about providing the “right” answer
- ❖ However, understand the brevity and importance of the discovery process



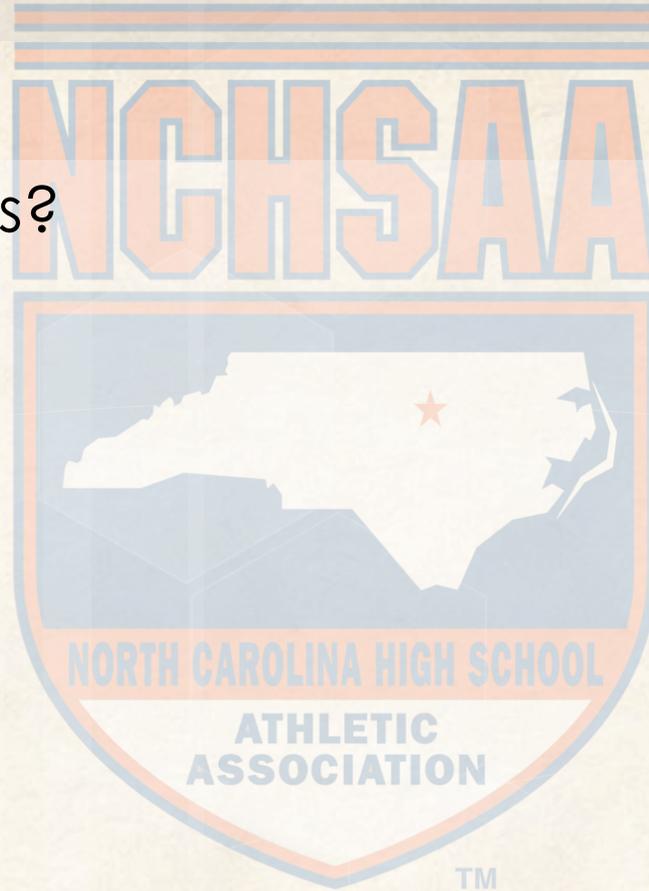
“Que Tips”

- ❖ Communicate, communicate!
- ❖ Fill in the gaps for attorneys
 - Do not assume
 - Be specific
- ❖ Run to catch-up
- ❖ Do some research on your own
- ❖ Trust your attorney



Lessons Learned

❖ Questions?





Tom Welter, Executive Director
Oregon School Activities Association



Don Carter, Legal Counsel
Oregon School Activities Association

**FROM RELIGION-TO-NUTS:
MAKING ACCOMMODATIONS IN SCHEDULING AND
MANAGEMENT OF CHAMPIONSHIP EVENTS**





TOM WELTER, EXECUTIVE DIRECTOR

OREGON SCHOOL ACTIVITIES ASSOCIATION

Tom Welter joined the Oregon School Activities Association (OSAA) in 1995 as assistant executive director and became executive director in 2001. He is retiring this year after 21 years with the OSAA.

Welter is currently serving as president of the NFHS Board of Directors to conclude his four-year term. Welter has served on numerous NFHS committees including the Sanctioning Committee (1995-98), the Football Rules Committee (1995-2004) and the Strategic Planning Committee (2008). He has made presentations at the National Athletic Directors Conference, the NFHS Summer Meeting and the NFHS Legal Meeting.

Prior to joining the OSAA in 1995, Welter was on the staff at Central Catholic High School in Portland for 20 years, including 18 years as athletic director and 15 years as vice principal/dean of students.

Welter was president of the Oregon Athletic Directors Association (OADA) in 1990-91, and was selected as Oregon's Athletic Director of the Year in 1993. He also received the NIAAA State Award of Merit in 1993 and the NIAAA Distinguished Service Award in 1996.

Welter was inducted into the Central Catholic High School Hall of Fame in 2005, received the OADA Lifetime Achievement Award in 2010, and the Oregon Athletic Coaches Association Distinguished Service Award in 2010.

A native of Stayton, Oregon, Welter graduated from Oregon State University in 1971. His first teaching job was in Whyalla, South Australia, where he taught math and science.





DON CARTER, LEGAL COUNSEL

OREGON SCHOOL ACTIVITIES ASSOCIATION

After starting his legal career as Law Clerk to Justice Edwin J. Peterson of the Oregon Supreme Court, Don was hired as an associate with the firm in 1980, and has been a partner at McEwen Gisvold LLP since 1985. He served as McEwen Gisvold's managing partner from 2000 to 2004. He represents clients in the areas of real estate, real estate finance, business law and estate planning. Don has been included as one of The Best Lawyers in America since 2003, and named an Oregon Super Lawyer since 2007. He was selected to be a Fellow in the American College of Real Estate Lawyers in 2011.





OREGON DISCRIMINATION ACCOMMODATIONS

TOM WELTER – OSAA EXECUTIVE DIRECTOR

APRIL 15, 2016



OSAA

- 290 Member Schools
- 116 State Championships in 19 different athletic and non-athletic activities

BASIC TENET OF ADVENTIST RELIGION:

“Observe the Sabbath from sundown on Friday
to sundown on Saturday”

CASE HISTORY

- 1996 – Portland Adventist Academy seeks a TRO in US Federal Court
- 1997 – Judge denies request

CASE HISTORY cont.

- 2000 – Former Adventist students, and their parents, file religious discrimination claim against the OSAA
- Executive Board denies claim

CASE HISTORY cont.

- 2002 (Feb) – Appeal to the State Superintendent of Public Instruction
 - Hearing officer hears case
 - State Superintendent denies request
- 2002 (March) – Adventist students and parents file appeal with the Oregon Court of Appeals

CASE HISTORY cont.

- 2003 (June) – Oregon Court of Appeals sends the case back to the State Superintendent of Public Instruction

CASE HISTORY cont.

- 2004 (Feb.) – State Superintendent, again, denies the claim
- Case is again appealed to the Oregon Court of Appeals

CASE HISTORY cont.

- 2006 (March) – Oregon Court of Appeals reversed their 2003 decision
- The OSAA seeks to review the Oregon Supreme Court

CASE HISTORY cont.

- 2008 (Feb.) – While case is before the Oregon Supreme Court three students seek Temporary Restraining Orders in Circuit Court
- The Judge grants the TRO

CASE HISTORY cont.

- 2008 (May) – Oregon Supreme Court affirmed and remanded case back to State Board of Education, applying new standard
- Oregon Supreme Court rules that the OSAA must review every religious accommodation request individually and determine how the proposed modification affects the “essential objectives” and the “successful operation” of that specific event

TYPES OF MODIFICATIONS MADE BY THE OSAA:

- Volleyball and basketball – changed time of semifinal games so the Adventist school' semifinal game is on Friday afternoon before sundown
 - If necessary, rent a separate facility on Saturday night, after sundown, to play a consolation game that was originally scheduled before sundown
- Cross Country – Run Adventist athletes on Friday afternoon and insert their times into the meet results on Saturday
- Band – Allow a public school band with an Adventist flute player to perform on Thursday instead of with their assigned classification on Saturday

MODIFICATIONS cont.

- Soccer – Required schools to play on Friday before sundown or Saturday after sundown
- Baseball – Had two private schools play a Saturday rain-out on Sunday
 - A public school, with two Fundamentalist Christians, was allowed to play on Monday
- Track and Field – Request from two schools for this spring



To Be Continued...



Dan Schuster, Director of Educational Services
NFHS

EDUCATIONAL SERVICES UPDATE





DAN SCHUSTER, DIRECTOR OF EDUCATIONAL SERVICES

NFHS

Dan Schuster was named NFHS Director of Coach Education in 2014. He was an education program specialist from 2008 to 2012, and served as NFHS Assistant Director of Coach Education for two years. He handled many administrative tasks of the Coach Education Program from 2012 until taking over as director in 2014.

During his four years as a coach education specialist, Schuster started and supervised the program's social media campaigns, assisted with course development, and promoted the program to NFHS member associations and other groups throughout the country. Schuster assisted with development of the program's budget and goals and managed the development of a new Learning Management System during his two years as assistant director.

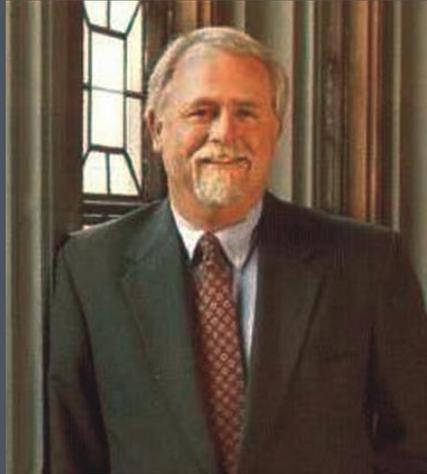
Schuster has earned his Certified Athletic Administrator (CAA) designation through the National Interscholastic Athletic Administrators Association and has completed the Accredited Interscholastic Coach (AIC) professional development coursework designed for interscholastic coaches.

In addition to his work in coach education, Schuster has served as editor of the NFHS Ice Hockey Rules Book and liaison to the NFHS Ice Hockey Rules Committee since 2010.

Schuster earned his bachelor's degree in kinesiology from Indiana University in 2007. He was a sport communication major with a double minor in sport marketing/management and telecommunications. One year later, he earned his master's in athletic administration from Indiana with a focus on budgeting, sport law and marketing.

Prior to joining the NFHS staff in 2008, Schuster worked with the NFHS Coach Education Program as an intern at Creative Street Media Group in Indianapolis. During his years at Indiana University, Schuster assisted in the athletic department at Bloomington High School North and the IU School of Health, Physical Education and Recreation.





Bob Baker, Legal Counsel
Indiana High School Athletic Association

OPEN FORUM





BOB BAKER, LEGAL COUNSEL

INDIANA HIGH SCHOOL ATHLETIC ASSOCIATION

Bob Baker, now a sole practitioner, has practiced for over 30 years with small and medium sized firms primarily in civil trial work. Bob is experienced in all aspects of tort and business litigation, and has worked extensively in sports and education suits and disputes.

Mr. Baker has represented the IHSAA in all administrative hearings and lawsuits. He has previously presented for the NFHS at the annual Legal Seminar and at the NFHS Summer Meeting.

Bob is a graduate of Miami University and the Indiana University School of Law.





NFHS LEGAL MEETING

National Federation of State
High School Associations



Take Part. Get Set For Life.™

Hyatt Regency Indianapolis
Indianapolis, Indiana
April 14-15, 2016