



A Cautionary Tale

The Legal Risks Stemming From Unruly Fan Behavior

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Information in this presentation, including but not limited to PowerPoint handouts and the presenters' comments, is summary only and not legal advice. We advise you to consult with legal counsel to determine how this information may apply to your specific facts and circumstances.



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Unsportsmanlike Conduct Manifests in Many Ways

- Physical assault
- Bullying
- Harassment
- Racial/ethnic discrimination
- Gender/gender identification discrimination



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Questions



1. Who is responsible for addressing unruly conduct of fans?
 - During league play
 - During regional play
 - During championships



Questions



2. How does your state association respond to unruly fan behavior?
3. Is your association's response enough to avoid or minimize liability?



A Cautionary Tale - CA

- February 25, 2016
- Varsity girls' Section playoff game
- Racially diverse city school v. all white affluent suburban school
- Unruly fans, racial taunts, physical contact
- Two players file complaints with CA's civil rights agency



Elkhorn HS v. Beloit Memorial HS (WI 2016)

- Elkhorn High School vs. Beloit Memorial HS
- Racial chants yelled at mostly African-American and Latina players
- Players had to come off the field due to the chants
- “One of the girls was cradled in the arms of one our assistant coaches for a good 15 to 20 minutes”
- Elkhorn HS’s student population is 85% white



Glendale Mountain Ridge HS v. Mesa Red Mountain HS (AZ 2017)

- Mesa Red HS students directed racial chats and gestures at Glendale Mountain Ridge HS's only African-American basketball player
- Whenever the player was on the floor, Mesa students mimicked monkey sounds, scratched their armpits, and pounded their fists against their chests



Jefferson HS v. Dover HS (2017 NJ)

- At an American pride theme night, students of the home team (Jefferson) shouted racial slurs and chanted “build the wall”
- Whenever an African-American player of the opposing team (Dover) shot a free throw, students of the home team chanted “ashy knees”



Jefferson HS v. Dover HS (2017 NJ)

- Dover HS's athletic director filed a formal complaint with the NJSIAA
- NJSIAA issued a statement in response requiring both schools to come up with action plans satisfying both the letter and spirit of NJSIAA's sportsmanship policy



Possible Causes of Action

1. Education Code – anti-discrimination provisions
2. Title VI of the Civil Rights Acts of 1964
3. *State Civil Rights statutes



CA: Unruh Civil Rights Act

(b) All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.



Similar State Civil Rights Statutes

- New Jersey – Title 10 section 10-1-2
- New York – N.Y. Civ. Rights Law section 40
- Kansas – Kan. Stat. sections 44-1001
- Arizona – Ariz. Rev. Stat. section 41-1442
- Washington – Wash. Rev. Code section 49.60.010
- Florida – FL. Stat. Ann section 760.08



Threshold Issues

1. Are you a state agency?
2. Does an interscholastic contest qualify as a “business establishment”?
3. Was there a denial of “full and equal accommodation . . .?”
4. Is the state association responsible for the conduct of a third-party tortfeasor?
5. Was there intentional discrimination?



Recommendations

1. Do not leave complaints of discriminatory fan conduct only in the hands of the schools
2. Ensure claims of discriminatory behavior are followed-up by the association
3. Prepare guidelines regarding fan/athlete behavior
4. Consider the adoption of sanctions/penalties for schools that fail to resolve complaints of discriminatory fan behavior



Thank You

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