2020 Sports Law Year-In-Review

By Lee Green, J.D. on December 15, 2020

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COVID-19-Related Sport Law Cases

Beginning in mid-March of 2020, example after example emerged across the country of school and athletics administrators relying on the recommendations of national, state and local public health authorities to make decisions clearly intended to be in the best interests of the health, safety and well-being of students and student-athletes regarding academic scheduling and sports seasons only to find those decisions challenged by a small-yet-vocal minority of parents or community members. In general, the objectors disagreed with alterations to class scheduling or postponement of athletics seasons with their dissenting views based not on the opinions of scientific or medical experts, but solely on the fact that other schools in neighboring communities, counties or states had adopted different strategies.

In many of those situations, in a reflection of the nature of our litigious society – even in the middle of a pandemic that has resulted in over 12 million Americans being infected with COVID-19 and more than a quarter-million losing their lives to the coronavirus – lawsuits were filed by objectors attempting to prioritize sports over the public health crisis.

One such typical case was *Mermigis v. New York Governor Andrew Cuomo, the New York Public High School Athletic Association, and Niagara Falls High Schoo*l, et al (including numerous individually-named state association, section and school athletic administrators across the state). The September filing in New York State Court by the father of a Niagara Falls High School football player was a class-action suit seeking a temporary restraining order (TRO) to overrule the decision of the NYPHSAA and its 11 geographic sections to move football season from the fall of 2020 to the spring of 2021.

On October 30, a New York Supreme Court judge ruled against granting the injunction that would have directed high school football to resume in the fall. In his ruling, the judge noted that a TRO requires that the plaintiff demonstrate that the affected persons (high school football players across New York) would 1) suffer irreparable harm and 2) have a substantial likelihood of success on the merits if a full trial was to be held later. The judge cited the spring football season as a viable option that nullified any claim of irreparable harm, along with the fact that participation in high school sports is a privilege, not a constitutionally-protected right. He also relied upon affidavits from the New York State Department of Health regarding the high-risk status of football with relation to the coronavirus, stating that the delay of the season to the spring "[is] a wise policy … the court owes a great deference to the protective measures ordered by [the state association, its sections, and the member schools] in response to the COVID-19 crisis."

Another category of COVID-19-related lawsuits are those in which parents or other constituents have challenged limits on crowd sizes at sports events. On October 1, 2020, in *County of Butler v. Wolf*, the U.S. Third Circuit Court of Appeals upheld as constitutional crowd size restrictions imposed by Pennsylvania Governor Tom Wolf that were based on recommendations by public health authorities and that limited indoor gatherings to 25 and outdoor to 250, restrictions

that were vehemently objected to by parents of high school student-athlete whose dissents were based on comparisons to crowd limits in neighboring states.

An ongoing concern for school districts nationwide is the liability question as to whether insurance coverage for high school sports would cover claims that a student-athlete contracted COVID-19 because of an athletic program's negligence in following communicable disease protocols related to the coronavirus. The key to this issue is whether the policy in question, as many now do, includes specific language excluding coverage for COVID-19. For instance, one major insurance pool, the All Lines Interlocal Cooperative Aggregate Pool (ALICAP), backed by Lloyd's of London, provides coverage for a majority of school districts in many Midwestern states (e.g. more than 170 Nebraska districts subscribe to ALICAP-Lloyd's) and the carriers have added a written exclusion to all policies expressly stating that COVID-19 claims are not covered and districts would be on their own in paying a huge court award if a student-athlete became seriously ill or died because of the coronavirus. Most insurance pools across the country have added language clarifying that COVID-19 is not covered and it is incumbent on district personnel to carefully evaluate their policies' exclusions regarding the issue.

A COVID-19 issue that may be encountered by many districts and schools in 2021 is the question regarding whether an athletic program would have the right to mandate that student-athletes, as a condition of participation, receive a vaccination against the coronavirus. Given the concerns that have already arisen that the anti-vaxxer movement may have a significant impact on the effectiveness of a COVID-19 vaccine in halting community spread of the disease, legal challenges are likely to occur if school sports programs were to insist that players must be inoculated in order to protect not just themselves, but their teammates, coaches and school communities. Judicial precedents regarding the issue are rare, but the following recent case provides a glimpse into how courts might rule in such a case.

In July 2019, in *Kunkel v. Northern Kentucky Health Department (NKHD)*, the Kentucky Court of Appeals upheld the decision in April by a Boone County trial court that refused to grant a temporary restraining order to restore the eligibility of a basketball player who was held out of school and sports events beginning in mid-March of 2019 for refusing to submit to a chickenpox vaccination in the midst of an outbreak of 32 cases at his school, Our Lady of the Sacred Heart and Assumption Academy. The trial court concluded that the control measures taken by the NKHD banning all unvaccinated students from attending school and participating in extracurricular activities were "reasonable, appropriate, and necessary to control the spread of a highly infectious disease."

In refusing to be vaccinated, Jerome Kunkel invoked the religious exemption available to him under Kentucky state law, an exemption that according to the Centers for Disease Control (CDC) is available in 45 states and D.C. Five states – New York, California, Maine, West Virginia and Mississippi – allow citizens to opt-out of school-mandated vaccinations only if the individual has a health condition that makes it unsafe to be vaccinated.

In ruling for the NKHD, the Court of Appeals rejected Kunkel's argument that the religious exemption should not only have protected him against having to take the vaccination shot (which it did), but also should have barred the NKHD from holding unvaccinated students out of school, sports and extracurriculars, and that because of the dispute, he didn't get to play in a basketball allstar game and benefit from exposure to college scouts. In rejecting Kunkel's

arguments, the Court of Appeals stated that "[O]f paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members."

The trial court also cited legal precedent from a 2015 decision by the U.S. Second Circuit Court of Appeals in *Phillips v. City of New York* allowing attendance restrictions for unvaccinated, non-immune students during an outbreak of Varicella in a school, a case that itself relied on a 1905 U.S. Supreme Court decision, *Jacobsen v. Massachusetts*, involving a person who refused to get vaccinated against smallpox.

Constitutional Law: Freedom of Speech & Social Media

In July 2020, the U.S. Court of Appeals for the Third Circuit upheld a U.S. District Court decision from March 2019, in *Levy (B.L.) v. Mahanoy Area School District*, granting summary judgment to a cheerleader (B.L.) dismissed from the squad for inappropriate postings on social media allegedly in violation of the student-athlete code of conduct at Mahanoy Area High School (PA), concluding that her communications were constitutionally protected by the Free Speech Clause of the First Amendment, and making permanent the temporary injunction restoring her to the cheer team that had been issued in October 2017 by the same lower federal court.

In May 2017, off-campus and using her privately-owned phone, B.L. took a photo of herself and a friend holding up their middle fingers and posted it on the social media platform Snapchat with the caption "f*** school, f*** softball, f*** cheer, f*** everything." A few days thereafter, the cheer sponsor informed B.L. that she was being dismissed from the squad because the profane posting violated the student-athlete code of conduct because it was "disrespectful to the coaches, the school, and the other cheerleaders." The U.S. District Court's 2019 decision that the cheerleader's free speech rights had been violated was based on the precedents established in the U.S. Supreme Court's rulings in Tinker v. Des Moines ISD – a substantial disruption had not occurred as a result of the Snapchat posting – and *Bethel School District v. Frasier*, through which the high court limited the authority of schools over students for the use of profane language to that which occurs on campus.

In November 2019, in *Longoria (M.L.) v. San Benito Independent Consolidated School District*, the U.S. Court of Appeals for the Fifth Circuit affirmed a July 2018 ruling by a U.S. District Court in favor of the district in a case involving a San Benito High School (TX) cheerleader who was removed from the squad after the discovery on her Twitter account of 10 posts containing profanity and sexual innuendo that she had either "liked" or "retweeted," actions that allegedly violated the team's social media policy in its Cheerleading Constitution. Both the appellate court and the lower court concluded that the defendants were entitled to qualified immunity and dismissed the suit for failure to state a claim, thereby sidestepping the issue whether per *Tinker and Bethel*, the cheerleader's First Amendment rights had been violated by her removal from the squad.

The decision was a marked deviation from the analytical approach used in all of the previous federal appellate decisions regarding the free speech rights of students related to postings on social media and as such, increases the likelihood – albeit still very small – that the U.S. Supreme Court might grant certiorari and agreed to hear the appeal of either the *Levy (B.L.) v. Mahanoy Area School District* case or the *Longoria (M.L.) v. San Benito Independent*

Consolidated School District case in order to clarify the controlling legal standards and create nationwide uniformity of law on the authority of schools to discipline students and athletes for inappropriate postings on social media.

Constitutional Law: Freedom of Religion & Prayer At Sports Events

In November 2019, the U.S. 11th Circuit Court of Appeals, in *Cambridge Christian School v. Florida High School Athletic Association*, overturned a November 2017 dismissal of a lawsuit involving pre-game prayer over a sports venue's public address system. In December of 2015, before the Class 2A state football championship game at Camping World Stadium (formerly the Citrus Bowl) in Orlando, CCS was denied the use of the loudspeaker system to conduct a pre-game prayer because, according to the FHSAA, the facility is a public-owned, public-operated, funded-by-public-tax-dollars entity and the association itself is a public, quasi-governmental entity, therefore the First Amendment's Establishment Clause – which prohibits government sponsorship of religious activity – barred the use of the public address system. "The lower court was too quick to pull the trigger insofar as it dismissed [CCS's] free speech and free exercise of religion claims," stated the appellate court in its written opinion. "We cannot say whether these claims will ultimately succeed, but [CCS] has plausibly alleged enough to enter the courtroom and be heard." A full trial on the merits will likely be held sometime in 2021.

The FHSAA decision was based on the U.S. Supreme Court's ruling in *Santa Fe ISD v. Doe* (2000), a case in which the Court held that prayer at sports events sponsored by "state actors" violates the Establishment Clause. However, the facts underlying the CCS dispute are slightly different from the Santa Fe ISD case, which involved athletic contests between public high schools – private schools are not restricted by the Establishment Clause – and the CCS dispute involves a private school playing in a public facility, albeit in a contest sponsored by a state actor (the FHSAA). It is relevant to note that in the Santa Fe ISD case, in addition to its primary ruling, the Supreme Court made it clear that the Establishment Clause does not limit the ability of students, fans or student- athletes to pray anytime they choose before, during or after a sports event and that the First Amendment bars only government sponsorship of that prayer by state actors such as public schools or public school employees. Therefore, spontaneous prayers initiated by players-only in a locker room or on a field are permissible and group prayers organized by private school officials for the private school community are also permissible.

Such was the result at the 2015 Florida 2A state championship game – before CCS played University Christian, another private school, the teams gathered a midfield for a prayer, and after the game, players, coaches and fans from both schools congregated on the field for a community prayer. The FHSAA's denial of the use of the public address system did not ultimately inhibit the ability those individuals to pray. University Christian won the game 61-16.

Constitutional Law: Equal Protection & Race-Ethnicity-Religion Discrimination

In August 2020, in *Arnold v. Barbers Hill Independent School District*, a U.S. District Court ruled the grooming code at Barbers Hill High School (TX), which resulted in the suspension of and additional sanctions against two black students because of their dreadlocks, constituted discrimination based on race and ethnicity, thus violating the students' Equal Protection rights. The young men argued that the school's hair restrictions primarily impacted persons of color and that in addition, their hairstyles were related to their Trinidadian ancestry and culture. The district stated in a press

release “[w]e do have a community supported hair length policy … Barbers Hill is a state leader with high expectations in all areas!”, although it failed to explain either in the statement or during the evidentiary hearing held before the court why dreadlocks were inconsistent with its academic mission as an educational institution.

In September 2019, in another legal pronouncement illustrating the standard of practice that should be applied by sports officials, state associations, schools and coaches, with regard to dress codes, grooming requirements, hairstyle rules and similar policies affecting student-athletes, the New Jersey Division on Civil Rights and the New Jersey Attorney General’s Office issued a new Equal Protection guidance related to hairstyle discrimination following the December 2018 incident when a wrestler for Buena High School was ordered by a match referee to either cut off his dreadlocks or forfeit his match. Video of the official supervising the visibly-distressed wrestler as his hair was cut by an athletic trainer on the mat in front of a gymnasium full of spectators was shown on news and sports programs nationwide and went viral on the internet.

The referee claimed that he believed the wrestler’s locks to be in violation of an NFHS rule governing the length of an athlete’s hair and the circumstances in which a student-athlete must wear a hair covering. In the DCR guidance, the agency stated that discrimination includes requirements based on traits that are intertwined or closely associated with race, ethnicity, religion or other protected class status. Furthermore, the DCR and the New Jersey State Interscholastic Athletic Association announced an agreement that included a review of all rules having a potentially discriminatory impact, implicit bias training for school athletics personnel, and a two-year suspension of the referee, who despite being acknowledged in the media by colleagues as an excellent wrestling official, had allegedly been involved in previous race-related disputes away from the mat.

The lesson to be learned from the Barbers Hill and Buena Vistas incidents is that any grooming requirement for student-athletes that might disproportionately impact individuals of a particular race, ethnicity, religion, gender or other protected class – unless justified by significant safety implications – should be eliminated.

Constitutional Law: Equal Protection & Transgender Students

On August 26, 2020, in *G.G. v. Gloucester County School Board* the U.S. Fourth Circuit Court of Appeals ruled in favor of Gavin Grimm, who as a sophomore at Gloucester County High School (VA) in 2014 was barred from using boys’ restrooms and filed a lawsuit resulting in a June 2016 Fourth Circuit decision that the term “sex” in the Title IX statute refers to gender identity, not biological gender at birth, and that to restrict a student’s use of school facilities because he is transgender constitutes illegal discrimination in violation of Equal Protection principles and Title IX law.

The 2020 Fourth Circuit decision in the G.G. case upheld a 2019 ruling that gender identity is the controlling factor governing the rights of transgender students in education and activities such as sports. “At the heart of this appeal is whether equal protection and Title IX can protect students from school bathroom policies that prohibit them from affirming their gender,” stated the written opinion in the case. “We join a growing consensus of courts in holding that the answer is resoundingly yes.”

On August 7, 2020, in *Adams v. St. Johns County School Board*, the U.S. Eleventh Circuit Court of Appeals upheld a District Court ruling that a Nease High School (FL) policy preventing Drew Adams, a transgender boy, from using school

facilities such as restrooms, locker rooms, and shower rooms corresponding to his gender identity (male), not to his biological gender at birth (female), violated both his Equal Protection rights under the U.S. Constitution and his educational rights as set forth in the Title IX statute. The counterargument, asserted by school administrators, was that the policy was designed to protect the privacy of cisgender students when they used such facilities.

The written opinion in the case noted that "Adams, for his part, does not question the ubiquitous societal practice of separate bathrooms for men and women. Instead he argues the School Board's bathroom policy singles him out for differential treatment on the basis of his gender nonconformity and without furthering student privacy whatsoever. The record before us has persuaded us to his view. The School Board has demonstrated no substantial relationship between excluding [Adams] from the communal [facilities] and protecting student privacy."

"After extensive evidence was presented at trial, the District Court found that [Adams] presence in the boys' [facilities] does not jeopardize the privacy of his peers in any concrete sense. When [he] uses the restroom, he enters a stall, closes the door, relieves himself, comes out of the stall, washes his hands, and leaves. The School Board received no reports of privacy breaches [during Adams' use of boys' facilities]. Indeed, the School Board could not produce any complaints of untoward behavior involving a transgender student. Nor could the School Board point to any incidents across the country in which allowing transgender students to use [school facilities] according their gender identity compromised other students' privacy."

On August 17, 2020, in *Hecox et al v. Little*, a U.S. District Court in Idaho issued an injunction blocking the implementation of a state statute, Idaho HB500, limiting participation by transgender women and girls on university and high school athletics teams, concluding that the law violates the Equal Protection guarantees set forth in the Fourteenth Amendment to the U.S. Constitution. A lawsuit was filed by transgender Idaho college and school athletes in March 2020 after HB500 was enacted and the TRO issued by the federal court will bar its implementation pending a full trial in the case.

In issuing the injunction, the District Court concluded "In making this determination, it is not just the constitutional rights of transgender girls and women athletes at issue, but the constitutional rights of every girl and woman in Idaho. Because the Court finds Plaintiffs are likely to succeed in establishing the Act is unconstitutional … it must issue a preliminary injunction at this time pending trial on the merits."

Although Idaho's law was the first of its type to be enacted, similar legislation has been introduced in more than a dozen states to ban transgender females from college and high school sports teams, despite actual evidence that trans athletes do not win every competition. In fact, in February 2020, just a few days after serving as one of the complainants in the OCR filing against the CIAC and one of the plaintiffs in the accompanying Soule federal lawsuit filed in Connecticut (see above), Chelsea Mitchell of Canton High School – a cisgender sprinter who claimed in the filings that she should not have to run against trans competitors because she had absolutely no chance of ever prevailing against them athletically – won the Connecticut Class S 55-meter dash state championship with a time of 7.18 seconds, edging Terry Miller of Bloomfield High School, one of the transgender girls specifically mentioned in the filings, who finished the race at 7.20 seconds.

Liability for Sports Injuries: Supervision & Technique Instruction

In November 2019, in *Mesar v. Bound Brook High School and John Suk*, a jury rejected the negligence claim of a former Bound Brook (NJ) high school baseball player who had sued his school and coach for more than $1 million alleging that improper supervision and improper technique instruction had resulted in him breaking his ankle and having to endure three surgeries. In the spring of 2012, during Mesar's first game, while trying to stretch a double into a triple, the coach – also serving as the third-base coach during the contest – signaled for the player to slide during which he sustained the injury. The jury agreed with the arguments set forth by the school and coach that sliding into base during a game is a routine and highly foreseeable play during which players assume the risk of injury and that the signal by the coach to slide demonstrated reasonable care with regard to both supervision and technique instruction because it was intended to allow the player to minimize contact and minimize the risk of injury for the player approaching the third-base bag. After the verdict was delivered, one of the jurors commented "I don't think the coach had any intention of hurting the kid when he told him to slide. It just happened. How was the coach reckless? That's how you play the game."

Liability for Sports Injuries: Safe Playing Environment

In February 2020, a Pennsylvania Court of Appeals refused to grant a new trial in *Hoffman v. Borough of Sewickley*, a case originally decided in January 2018, when a jury awarded $1.7 million to a former Little League baseball player who in April 2015, suffered a fractured skull and permanent brain damage when a batted ball passed through an opening in the protective first-base dugout fencing and struck him in the head. His family eventually filed suit against the town and recreation associations that owned and operated the baseball facility at which he was injured, asserting that the defendants had "a duty to maintain Chadwick Field, provide a safe environment for baseball teams playing on Chadwick Field, and prevent baseball teams from playing on Chadwick Field if the environment would not be safe." Despite previous incidents with players in the dugout being hit by batted balls, the court ruled that safe fencing was an "essential safety element" and that the defendants had not taken steps to repair what would have been a simple fix to protect players.

Liability for Sports Injuries: Heat Stroke

In early August 2020, a settlement with undisclosed financial terms was reached in *Estate of Bradforth v. Garden City Community College*, a lawsuit seeking a total of $50 million for the August 1, 2018, heat stroke death of Braeden Bradforth, a 5' 11", 315-pound defensive lineman who collapsed on the first day of football practice after a conditioning test requiring, among multiple other activities designed to evaluate the cardiovascular and strength capacity of players, one drill involving each athlete running 36 timed 50- yard dashes. The case is highly relevant for high schools seeking to implement best practices to safeguard student-athletes, because it involves the failure to exercise reasonable care with regard to many of the duties owed to athletic program participants at all levels of sports, including supervision, proper technique instruction, safe playing environment, evaluation of players for incapacities affecting initial preparedness to participate, immediate medical response, activation of a carefully planned emergency medical response plan, and having in place a broad plan designed to protect the health and well-being of all student-athletes.

An independent investigation conducted by noted sports medicine consultant Rod Walters, who conducted a similar review of the heatstroke death of Maryland football player Jordan McNair, revealed that after collapsing during the conditioning test, Bradforth was allowed to leave practice alone and was then found unconscious on campus near his dorm. An assistant coach was summoned, but delayed calling 911 in order to contact the head football coach, leading to a near-half-hour delay before EMTs arrived and a 75-minute gap from when Bradforth first exhibited symptoms of heat exhaustion at practice to his arrival by ambulance at the emergency room. Walters' report also noted that coaches and trainers failed to assess whether the players, on that very first day of practice, were physically prepared for an outdoor fitness exam in summer temperatures at Garden City's altitude of approximately 3,000 feet.

Ultimately, the report concluded that the athletic program and its staff had violated all of the specific duties of care owed to student-athletes, including most significantly the over-arching, threshold duty of planning – the obligation to develop and implement a broad strategy for protecting the health, safety and well-being of the young people participating in the institution's sports programs.

Liability for Sports Injuries: Rhabdomyolysis & Sickle Cell Trait

In March 2020, a federal court in Pennsylvania refused to grant a rehearing of its February 2019 decision in *M.T. v. Penn Hills School District, UPMC Sports Medicine, & Peterman et al*, a case in which M.T., a freshman football player, on the first day of practice in August 2015, sustained a serious heat stroke injury later determined by doctors to have been caused by a combination of inadequate hydration, a Sickle Cell crisis (the victim's pre-participation physical exam and medical history questionnaire disclosed that he had Sickle Cell trait) and Rhabdomyolysis (a potentially fatal breakdown of muscle tissue and kidney failure resulting from excessively strenuous exercise). Although M.T. survived, he suffered permanent brain damage which will require lifelong medical care and extensive affiliated medical expenses. Based on technicalities involving the state's qualified immunity statute and professional licensure requirements for athletic trainers, M.T. lost the suit, but numerous standards of practice emerged from the case, including the paramount importance of gradual heat acclimatization for student- athletes, the absolute necessity for proper hydration strategies, the need for special supervision of athletes who are carriers of Sickle Cell Trait, and the value of having coaches and trainers with an understanding of Rhabdomyolysis prevention measures. One tool discussed in the court's written opinion is the position statement issued by the National Athletic Trainers Association (NATA) in 2013 and continuously revised since its release titled **Prevention of Sudden Death in Secondary School Athletics: Best Practices Recommendations**.

Liability for Sports Injuries: AEDs

In December 2019, in *Diniro v. Aspen Athletic Club LLC*, a case with implications for high school sports programs seeking to fulfill their duties to provide protective athletic equipment, a safe playing environment, and a legally sufficient immediate medical response to incapacitated student-athletes, the New York Court of Appeals upheld a lower-court ruling denying a summary judgment to a fitness center. In May 2013, a health club member working out at the Aspen Athletic Club in DeWitt, New York, suffered a heart attack and later died, with his death eventually attributed to two non-functioning automated external defibrillators (AEDs) at the facility. Two AEDs were available on site, but one was an older model that had not been inspected in more than a year and whose batteries had decayed to a low-

charge, non-working state, while the second was a newer model that had been purchased only months before the incident but was still sealed in its original shipping container without its batteries installed.

The ruling by the Court of Appeals illustrates that the duty to provide protective equipment and a safe environment for athletic participants – including in high school sports settings – involves ensuring that venues have properly functioning AEDs on hand, that regular inspections are conducted of those AEDs (including their batteries), and that all athletic personnel are informed of the closest locations of AEDs in proximity to various gyms, stadiums, weight rooms, locker rooms and practice facilities.

Liability for Sports Injuries: Concussions

In May 2020, on grounds that they were protected from personal liability by the state's qualified immunity law for public employees, two coaches were dropped from a lawsuit filed in October 2019 in Utah state court, *Finn v. Cache County School District*, alleging that during a practice in October 2017, a former Ridgeline High School football player, Konnor Finn, sustained a concussion from a helmet-to-helmet hit, but after complaining of multiple symptoms of the traumatic brain injury to his position coach, was allegedly told to "man up … quit being a pu**y … and get back out there." According to the lawsuit, feeling belittled by the coach and believing he was obligated to follow the coach's instructions to continue practicing and playing in games, Finn suffered multiple additional blows to his head in practice and games over the next two weeks until another coach and an athletic trainer noticed an increasing display of concussion symptoms and referred Finn for evaluation, resulting in a diagnosis that he was by then suffering from second impact syndrome. Three years later, Finn still suffers from blackouts, seizures, extreme pain, memory loss, and other indicia of post-concussive syndrome.

The suit sets forth all of the requirements under Utah state law and Utah High School Activities Association policies governing concussions and asserts negligence by the district in failing to fulfill the duties of selecting and training coaches, providing proper technique instruction to student-athletes, and evaluating players for injuries and incapacities such as concussions. The situation also illustrates the standard of practice for education-based sports programs that athletics personnel should avoid coercing student-athletes to play through injuries and should be cautious regarding the "motivational" language directed at players. The case is still in the early stages of the discovery process and no rulings beyond the dismissal of the two coaches from the suit have yet been issued by the Cache County Court in which it was filed.

Hazing

In November 2019, in *Doe v. Milton School District*, a case representative of an issue that has been afflicting high school athletic programs for many years and related to which several dozen civil lawsuits and criminal prosecutions are litigated every year, a jury awarded a former Milton High School (VT) football player $280,000 for a 2012 hazing incident in which the victim, a freshman at the time, was at an unsupervised team dinner at a private residence, was sexually assaulted by upperclassmen in an initiation ritual by physically holding him down and penetrating his rectum with a pool cue. The perpetrators pleaded guilty in their criminal prosecutions and the standard of practice that emerges from the jury's verdict in the civil suit is that school districts and athletic personnel will be held responsible for failing to act

with reasonable care with regard to developing and implementing a substantive anti- hazing policy, educating coaches and student-athletes about the policy, and supervising student-athletes in those situations and environments where hazing was most likely to occur. Another legacy of the case and the many similar incidents that occur every year across the country is that, because the victims of hazing in school sports programs are almost always minors, district administrators and athletics personnel must be sure to fulfill their mandatory notification duties under state child abuse reporting laws. The case was noteworthy because another Milton student, Jordan Preavy, committed suicide one year after a similar attack.

Sexual Harassment & Assault

In March 2020, two $2 million payments were made to settle *Roe #1 v. Harrisonville School District* and *Roe #2 v. Harrisonville School District*, two separate civil suits related to sexual relationships perpetrated against a 14-year-old girl and a 17-year-old girl by a teacher's aide at Harrisonville High School (MO) who coached football and wrestling at the school. The lawsuits alleged that the district was negligent in its failure to exercise reasonable care to develop and implement an anti-sexual-harassment policy, to educate all staff and students regarding the policy, and to ensure substantive enforcement of the policy to protect potential victims against sexual harassment, assault and abuse. In June 2020, the former coach was charged with multiple felony counts of sexual contact with a student, but those criminal prosecutions have yet to be resolved.

Title IX & Sports Inequities

In June 2020, announced to coincide with the 48th anniversary of the enactment of Title IX, a resolution agreement finalized in March 2020 between the OCR and the Oakland Unified School District will restore girls lacrosse, girls tennis, and girls golf, all of which were eliminated by the district in 2018 as part of a budget- cutting strategy. Application of Title IX's "three-prong test" revealed that although the district's high school enrollment was 49% female, only 39% of sports participation opportunities were available to girls. And analysis across the district of Title IX's "other athletics benefits and opportunities" offered to boys teams as compared to girls teams indicated significant disparities for female student-athletes with regard to uniforms, equipment, supplies, facilities, locker rooms, access to quality coaching, practice times and scheduling methods, game times and scheduling methods, and modes of transportation. The settlement sets up a monitoring scheme through June 2023 to ensure that the OUSD closes the gap in participation percentages and "other benefit" inequities.

Title IX & New OCR Sexual Assault/Harassment Regulations

On May 6, 2020, the United States Department of Education released new Title IX regulations that establish how education programs which receive federal funding must respond to allegations of sex discrimination, including sexual harassment and sexual assault. The new regulations detail specific mandatory requirements applicable to K-12 schools and athletics programs. The date of implementation for the new regulations was August 14, 2020. A feature article in the September 2020 issue of High School Today, written by Peg Pennepacker, a member of the NIAAA legal issues teaching faculty, a nationally-known expert on Title IX who serves as a consultant on gender equity issues for universities and school districts across the country, a member of the High School Today Publications Committee and an

active member of ATIXA (the Association of Title IX Administrators), summarizes into 1,500 words the 2,000 pages of the new regulations and provides recommendations for implementation by schools and athletic administrators.