

Name: _____ Today's Date: ____/____/____

Class: ___Essentials of Sports Medicine ___ Applied Sports Medicine

This is a reflection of the material discussed on Legal/Ethical Considerations and Administration in Sports Medicine.

A reflection is not a summary.

What do you not want to forget about this topic:

I understand that risk management is dictated by safety groups like insurance companies. YES NO

On a scale 1 to 5 (1 not likely, 5 most likely),

... you research this topic more on your own? 1 2 3 4 5

...I know how to take detailed notes. 1 2 3 4 5

...I am ready to make decisions that affect others life. 1 2 3 4 5

...I respect that I need to keep pace, to keep good time management. 1 2 3 4 5

... will you help educate others about this topic? 1 2 3 4 5

...will you take the poster from this document and hang it somewhere for others to see? 1 2 3 4 5

***Reflection is not a summary, but is a collection of your thoughts on what you learned, what you enjoyed, what you may not have enjoyed, and what you plan to do better on the next assignment.*

Reflection on Legal/Ethical issues in Sports Medicine. State what you enjoyed doing as part of lesson.

Learning shall always continue. Be willing to read, have discussion or formulate a potential response to any issue.

Moore Sports Medicine

A leader in Allied Health Education

___ Essentials ___ Applied

Points: ___/___

Student Name: _____ Date Issued: _____ Date Due: _____

Training: Legal/Ethical Issues and Administration in Sports Medicine

Description: Introduction to Sports Medicine Legal Issues that map the direction of a fast growing career. Mapping includes specific legal case exploration, computer researching, and becoming competent in the understanding of and the execution of a preparticipation physical exam.

By the end of this class/lesson, participants will be able to:

- 1) Explain judgement that occurs in sports medicine
- 2) The purpose of oversight in sports medicine
- 3) Prepare to explain to clients the pre-participation physical
- 4) Execute a pre-participation physical with understanding of note taking for deficiencies

Materials: presentation, evidence based practice, physical form(s), article(s), organizational charts, journal entry assessment, text book, exit slip

Procedure: complete each attached assignment in order as led by instructor, submit working document upon direction of instructor, complete assessment, seek score, place in binder

Topics: 1) assumption of risk, 2) liability, 3) negligence, 4) physicals, 5) note taking

Resources: youtube (TedEd; 3 tips to boost your confidence), www.kyats.com, Essentials of Sp Med by Clover; Chapter 1, ESPN, CTE Online, HBO REAL SPORTS, KHSAA physical form, AAFPA physical form, Gym to Jury,

Strands: inquiry, Perspectives, Life Science

Core ideas: Structure and Function, Information Processing, Critical thinking, compare/contrast

Practices: obtaining, evaluating and communicating information (on demand writing)

Crosscutting concepts: cause and effect, structure and function, stability and change

Terms: pre-participation physical, confidentiality, assumption of risk, liability, hydrated, battery, ethics, HIPPA, malpractice, negligence, tort, Management of risk (?)

Student Activities: 1) EBP, 2) Physical form , 3) the additional questions in the working document, 4) Thinking It Through, 5) gym to jury presentation, 6) memo to coaching staff, 7) article, 8) assessment, 9) exit slip

NAME: _____ *Essentials of Sports Medicine*

Topic: Chapter 2: Legal/Ethical Considerations in Sports Medicine and Administration

Answers
before the
lesson:

- 1) T F Written Standards for conduct or behavior and moral philosophy are known as code of ethics.
- 2) T F Gambling on games is unsporting conduct, but legal.
- 3) T F All initiation rituals are illegal.
- 4) T F Sports medicine professionals should have malpractice insurance.
- 5) T F A patients medical record is confidential.
- 6) T F The laws of athletic training and fitness instruction vary from state to state.
- 7) If you were to set-up a safety committee for you athletic team/facility assessment; who would you include from your sports medicine team?
- 8) I know why it is important that on a physical exam, the question "Can You swim" is on there.

Answers after lesson:

- 1) Go to www.KHSAA.ORG , click general, search general forms of the physical form.
- 2) Once located read the preliminary questions (history).
- 3) Which three (3) questions, in your opinion are important to safety and health of participants?
Rewrite these questions and provide an explanation to support your opinion.

a.

b.

c.

- 4) Indicate two (2) questions that you would consider removing and state explanation for each.

a.

b.

- 5) Go to any other state high school athletic association website. Print off their physical form. What state did you use: _____

- 6) What is the website: www._____

- 7) Compare/Contrast. Indicate three (3) differences in the pre-participation physical between the two (2) states.

a.

b.

c.

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___Essentials ___Applied

Points: ____/____

- 1) Who should be the one to complete an athletic physical?
- 2) What purpose would a urinalysis serve on a physical?
- 3) About how many weeks prior to season a physical should be performed? Explain
- 4) What roles does a coach play with a physical?
- 5) Should a sports physical be used as a school physical?
- 6) List one example of the physical that will allow a coach to prepare for an athlete's conditioning. Explain.
- 7) How long a physical should be kept on file? Why?
- 8) What is the purpose of a physical?

PREPARTICIPATION PHYSICAL EVALUATION HISTORY FORM

(Note: This form is to be filled out by the patient and parent prior to seeing the physician. The physician should keep this form in the chart.)

Date of Exam _____

Name _____ Date of birth _____

Sex _____ Age _____ Grade _____ School _____ Sport(s) _____

Medicines and Allergies: Please list all of the prescription and over-the-counter medicines and supplements (herbal and nutritional) that you are currently taking

Do you have any allergies? Yes No If yes, please identify specific allergy below.

Medicines Pollens Food Stinging Insects

Explain "Yes" answers below. Circle questions you don't know the answers to.

GENERAL QUESTIONS	Yes	No	MEDICAL QUESTIONS	Yes	No
1. Has a doctor ever denied or restricted your participation in sports for any reason?			26. Do you cough, wheeze, or have difficulty breathing during or after exercise?		
2. Do you have any ongoing medical conditions? If so, please identify below: <input type="checkbox"/> Asthma <input type="checkbox"/> Anemia <input type="checkbox"/> Diabetes <input type="checkbox"/> Infections Other: _____			27. Have you ever used an inhaler or taken asthma medicine?		
3. Have you ever spent the night in the hospital?			28. Is there anyone in your family who has asthma?		
4. Have you ever had surgery?			29. Were you born without or are you missing a kidney, an eye, a testicle (males), your spleen, or any other organ?		
HEART HEALTH QUESTIONS ABOUT YOU	Yes	No	30. Do you have groin pain or a painful bulge or hernia in the groin area?		
5. Have you ever passed out or nearly passed out DURING or AFTER exercise?			31. Have you had infectious mononucleosis (mono) within the last month?		
6. Have you ever had discomfort, pain, tightness, or pressure in your chest during exercise?			32. Do you have any rashes, pressure sores, or other skin problems?		
7. Does your heart ever race or skip beats (irregular beats) during exercise?			33. Have you had a herpes or MRSA skin infection?		
8. Has a doctor ever told you that you have any heart problems? If so, check all that apply: <input type="checkbox"/> High blood pressure <input type="checkbox"/> A heart murmur <input type="checkbox"/> High cholesterol <input type="checkbox"/> A heart infection <input type="checkbox"/> Kawasaki disease Other: _____			34. Have you ever had a head injury or concussion?		
9. Has a doctor ever ordered a test for your heart? (For example, ECG/EKG, echocardiogram)			35. Have you ever had a hit or blow to the head that caused confusion, prolonged headache, or memory problems?		
10. Do you get lightheaded or feel more short of breath than expected during exercise?			36. Do you have a history of seizure disorder?		
11. Have you ever had an unexplained seizure?			37. Do you have headaches with exercise?		
12. Do you get more tired or short of breath more quickly than your friends during exercise?			38. Have you ever had numbness, tingling, or weakness in your arms or legs after being hit or falling?		
HEART HEALTH QUESTIONS ABOUT YOUR FAMILY	Yes	No	39. Have you ever been unable to move your arms or legs after being hit or falling?		
13. Has any family member or relative died of heart problems or had an unexpected or unexplained sudden death before age 50 (including drowning, unexplained car accident, or sudden infant death syndrome)?			40. Have you ever become ill while exercising in the heat?		
14. Does anyone in your family have hypertrophic cardiomyopathy, Marfan syndrome, arrhythmogenic right ventricular cardiomyopathy, long QT syndrome, short QT syndrome, Brugada syndrome, or catecholaminergic polymorphic ventricular tachycardia?			41. Do you get frequent muscle cramps when exercising?		
15. Does anyone in your family have a heart problem, pacemaker, or implanted defibrillator?			42. Do you or someone in your family have sickle cell trait or disease?		
16. Has anyone in your family had unexplained fainting, unexplained seizures, or near drowning?			43. Have you had any problems with your eyes or vision?		
BONE AND JOINT QUESTIONS	Yes	No	44. Have you had any eye injuries?		
17. Have you ever had an injury to a bone, muscle, ligament, or tendon that caused you to miss a practice or a game?			45. Do you wear glasses or contact lenses?		
18. Have you ever had any broken or fractured bones or dislocated joints?			46. Do you wear protective eyewear, such as goggles or a face shield?		
19. Have you ever had an injury that required x-rays, MRI, CT scan, injections, therapy, a brace, a cast, or crutches?			47. Do you worry about your weight?		
20. Have you ever had a stress fracture?			48. Are you trying to or has anyone recommended that you gain or lose weight?		
21. Have you ever been told that you have or have you had an x-ray for neck instability or atlantoaxial instability? (Down syndrome or dwarfism)			49. Are you on a special diet or do you avoid certain types of foods?		
22. Do you regularly use a brace, orthotics, or other assistive device?			50. Have you ever had an eating disorder?		
23. Do you have a bone, muscle, or joint injury that bothers you?			51. Do you have any concerns that you would like to discuss with a doctor?		
24. Do any of your joints become painful, swollen, feel warm, or look red?			FEMALES ONLY		
25. Do you have any history of juvenile arthritis or connective tissue disease?			52. Have you ever had a menstrual period?		
			53. How old were you when you had your first menstrual period?		
			54. How many periods have you had in the last 12 months?		

Explain "yes" answers here

I hereby state that, to the best of my knowledge, my answers to the above questions are complete and correct.

Signature of athlete _____ Signature of parent/guardian _____ Date _____

PREPARTICIPATION PHYSICAL EVALUATION THE ATHLETE WITH SPECIAL NEEDS: SUPPLEMENTAL HISTORY FORM

Date of Exam _____

Name _____ Date of birth _____

Sex _____ Age _____ Grade _____ School _____ Sport(s) _____

1. Type of disability		
2. Date of disability		
3. Classification (if available)		
4. Cause of disability (birth, disease, accident/trauma, other)		
5. List the sports you are interested in playing		
	Yes	No
6. Do you regularly use a brace, assistive device, or prosthetic?		
7. Do you use any special brace or assistive device for sports?		
8. Do you have any rashes, pressure sores, or any other skin problems?		
9. Do you have a hearing loss? Do you use a hearing aid?		
10. Do you have a visual impairment?		
11. Do you use any special devices for bowel or bladder function?		
12. Do you have burning or discomfort when urinating?		
13. Have you had autonomic dysreflexia?		
14. Have you ever been diagnosed with a heat-related (hyperthermia) or cold-related (hypothermia) illness?		
15. Do you have muscle spasticity?		
16. Do you have frequent seizures that cannot be controlled by medication?		

Explain "yes" answers here

Please indicate if you have ever had any of the following.

	Yes	No
Atlantoaxial instability		
X-ray evaluation for atlantoaxial instability		
Dislocated joints (more than one)		
Easy bleeding		
Enlarged spleen		
Hepatitis		
Osteopenia or osteoporosis		
Difficulty controlling bowel		
Difficulty controlling bladder		
Numbness or tingling in arms or hands		
Numbness or tingling in legs or feet		
Weakness in arms or hands		
Weakness in legs or feet		
Recent change in coordination		
Recent change in ability to walk		
Spina bifida		
Latex allergy		

Explain "yes" answers here

I hereby state that, to the best of my knowledge, my answers to the above questions are complete and correct.

Signature of athlete _____ Signature of parent/guardian _____ Date _____

PREPARTICIPATION PHYSICAL EVALUATION PHYSICAL EXAMINATION FORM

Name _____ Date of birth _____

PHYSICIAN REMINDERS

- Consider additional questions on more sensitive issues
 - Do you feel stressed out or under a lot of pressure?
 - Do you ever feel sad, hopeless, depressed, or anxious?
 - Do you feel safe at your home or residence?
 - Have you ever tried cigarettes, chewing tobacco, snuff, or dip?
 - During the past 30 days, did you use chewing tobacco, snuff, or dip?
 - Do you drink alcohol or use any other drugs?
 - Have you ever taken anabolic steroids or used any other performance supplement?
 - Have you ever taken any supplements to help you gain or lose weight or improve your performance?
 - Do you wear a seat belt, use a helmet, and use condoms?
- Consider reviewing questions on cardiovascular symptoms (questions 5–14).

EXAMINATION			
Height	Weight	<input type="checkbox"/> Male <input type="checkbox"/> Female	
BP	/ (/)	Pulse	Vision R 20/ L 20/ Corrected <input type="checkbox"/> Y <input type="checkbox"/> N
MEDICAL	NORMAL	ABNORMAL FINDINGS	
Appearance • Marfan stigmata (kyphoscoliosis, high-arched palate, pectus excavatum, arachnodactyly, arm span > height, hyperlaxity, myopia, MVP, aortic insufficiency)			
Eyes/ears/nose/throat • Pupils equal • Hearing			
Lymph nodes			
Heart* • Murmurs (auscultation standing, supine, +/- Valsalva) • Location of point of maximal impulse (PMI)			
Pulses • Simultaneous femoral and radial pulses			
Lungs			
Abdomen			
Genitourinary (males only) [†]			
Skin • HSV, lesions suggestive of MRSA, tinea corporis			
Neurologic [‡]			
MUSCULOSKELETAL			
Neck			
Back			
Shoulder/arm			
Elbow/forearm			
Wrist/hand/fingers			
Hip/thigh			
Knee			
Leg/ankle			
Foot/toes			
Functional • Duck-walk, single leg hop			

*Consider ECG, echocardiogram, and referral to cardiology for abnormal cardiac history or exam.
[†]Consider GU exam if in private setting. Having third party present is recommended.
[‡]Consider cognitive evaluation or baseline neuropsychiatric testing if a history of significant concussion.

- Cleared for all sports without restriction
- Cleared for all sports without restriction with recommendations for further evaluation or treatment for _____
- Not cleared
- Pending further evaluation
 - For any sports
 - For certain sports _____
- Reason _____

Recommendations _____

I have examined the above-named student and completed the preparticipation physical evaluation. The athlete does not present apparent clinical contraindications to practice and participate in the sport(s) as outlined above. A copy of the physical exam is on record in my office and can be made available to the school at the request of the parents. If conditions arise after the athlete has been cleared for participation, the physician may rescind the clearance until the problem is resolved and the potential consequences are completely explained to the athlete (and parents/guardians).

Name of physician (print/type) _____ Date _____
 Address _____ Phone _____
 Signature of physician _____, MD or DO

■ PREPARTICIPATION PHYSICAL EVALUATION CLEARANCE FORM

Name _____ Sex M F Age _____ Date of birth _____

- Cleared for all sports without restriction
 Cleared for all sports without restriction with recommendations for further evaluation or treatment for _____

- Not cleared
- Pending further evaluation
 - For any sports
 - For certain sports _____

Reason _____

Recommendations _____

I have examined the above-named student and completed the preparticipation physical evaluation. The athlete does not present apparent clinical contraindications to practice and participate in the sport(s) as outlined above. A copy of the physical exam is on record in my office and can be made available to the school at the request of the parents. If conditions arise after the athlete has been cleared for participation, the physician may rescind the clearance until the problem is resolved and the potential consequences are completely explained to the athlete (and parents/guardians).

Name of physician (print/type) _____ Date _____

Address _____ Phone _____

Signature of physician _____, MD or DO

EMERGENCY INFORMATION

Allergies _____

Other information _____

FROM THE GYM TO THE JURY

**CRUDE AND
VULGAR
COACHING**
see page 10

America's Leading Authority on Injury, Liability, and Litigation in Sports

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US COURT OF APPEALS UPHOLDS PROHIBITION ON SPORTS GAMBLING IN NEW JERSEY

The U.S. Third Circuit Court of Appeals on August 9, 2016 upheld the prohibition of sports gambling in New Jersey. The full court of 12 members heard the appeal brought by the State of New Jersey, which was asking the judges to uphold the state's 2014 Professional and Amateur Sports Protection Act (PASPA) to legalize sports gambling. The full complement of 12 judges voted 10 to two to uphold the earlier three judges finding that PASPA conflicted with a federal law that prohibits sports gambling in all the states except Nevada, Oregon, Montana and Delaware.

In PASPA, New Jersey was attempting to support the state's failing gambling industry, which has been hurt by the growth of gambling in surrounding states. The law was opposed by most organized sporting organizations including the National Collegiate Athletic Association and all of the professional sports leagues who have long argued that the expansion of sports gambling in the states violates existing federal law.

The Washington Post, Washington, DC, August 9, 2016

IN MY OPINION

The state of New Jersey now has the option to appeal the Third Circuit decision to the US Supreme Court. However, the court's vote of 10 to two against PASPA means that any further appeal would be an uphill climb at best. With the expansion of the National Hockey League to Las Vegas, proponents and opponents of legal sports gambling will have the opportunity to access its effect on the integrity of the sport. While those desiring the expansion of legalized sports gambling were hurt by the Third Circuit's decision, the issue is not going away. There are powerful interests on every side of the issue and it is likely that other states will challenge the federal law and that the ultimate decision will rest with the US Supreme Court.

FORMER FOOTBALL STAR CONVICTED IN MORTGAGE SCAM

Former collegiate and five-time Pro Bowl wide receiver Irving Fryer has been sentenced to five years in prison for his part in a mortgage scam. His mother, Allene McGhee, was convicted in the same case and was sentenced to three years probation. In addition, Fryer and his mother must pay \$615,000 in restitution to five lending institutions that they cheated.

News & Record, Greensboro, NC, December 8, 2015

University of North Carolina Challenges Academic Fraud Findings

The University of North Carolina (UNC) has disputed the National Collegiate Athletic Association's (NCAA) jurisdiction to investigate and impose penalties for violations resulting from the University's long-running academic fraud scandal. In a statement, that did not include any further self-imposed penalties, the University responded to five allegations issued by the NCAA in April, 2016. The University is challenging the NCAA's jurisdiction as to allegations of a lack of institutional control at the Chapel Hill campus. The NCAA believes that the University should have and could have investigated the courses in question. While the University acknowledged problems with the courses cited by the NCAA, it believes that they are subject to review by the Southern Association of Colleges and Schools Commission on Colleges (SACSCC) and not the NCAA. The SACSCC placed the University on a one-year probation, which expired in June, 2016.

The Washington Post, Washington, DC, August 2, 2016

FROM THE GYM TO THE JURY

From The Gym To The Jury is published five times annually. The contents of this publication are considered risk management counseling and not legal advice. Unless otherwise noted, the opinions expressed are those of *From the Gym to the Jury, Inc.* If legal advice is required, the service of a professional is recommended.

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From The Editors

A Letter to the Editor

Rather than our usual From the Editors message in this issue we are reproducing this thoughtful letter from a veteran and coach concerning our recent article about the growth in awards given to young athletes.

I'm a middle school head football coach, athletic director, and self-contained special education teacher who became a teacher after serving twelve years in the U.S. Army. I joined the Army straight out of high school and worked my way up from a recruit to a captain. My view of presenting trophies is filtered by the time I spent serving my country.

I do not believe in having awards based upon the vote of the team. Most of the team votes that I have observed seem to be nothing more than popularity contests or cliques vying for attention. Those team votes that do recognize a truly outstanding individual tend not to remember the other ten athletes that were on the field when their local all-star scored all of those touchdowns or sacked the opposing quarterback. I believe that a person should volunteer to become a team member for all of the positive and negative outcomes of that experience. If a person joins a team for the award they will be receiving at the end of the season then their sense of priorities is backward. Any recognition, as well as motivation, should be intrinsic and gained from hard work and perseverance.

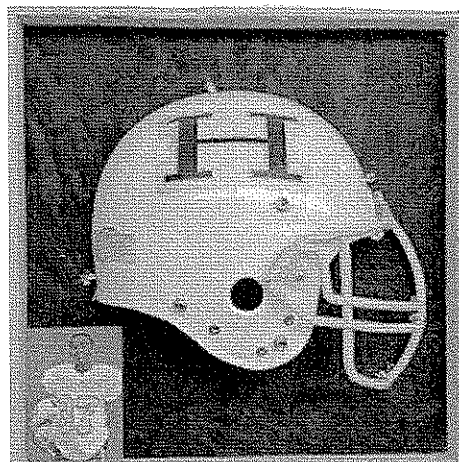
Young people should learn to become self-reliant and not judge their worth on the gossamer wings of popularity. During the Cold War there seemed to be a push made by the Department of Defense to bolster a service member's self-esteem by handing out all sorts of nonsensical awards to the point that it almost seemed that a soldier could get an award based solely on the amount of time they spent waiting in the chow line.

Here is what I do to show my gratitude to my athletes and at the same time dispose of football helmets that are no longer serviceable. I cut my unserviceable helmets in half, mount them on plywood that has been stained to the school colors and secure them to the wood with zip ties. I then hot glue a picture of the athlete to the front of the wood. On the back of the award is a certificate of appreciation on which the football schedule and the final scores of each game are posted. All of my football players and managers receive the same token of my appreciation at the end of the season so that I recognize all of the members of my team because they are all part of a team and need to be appreciated equally.

Ron Mutchko

Our thanks to longtime subscriber, Ron Mutchko, for giving us his opinion regarding the true meaning of awards, trophies and medals. He is a coach and Athletic Director at Hudtloff Middle School in Lakewood, WA.

Herb Appenzeller



A Dark Stain on History

On October 9, 1999, Kristin Samuelson, a freshman at Oregon State University (OSU), was drugged and raped at an off-campus apartment. Ms. Samuelson woke up during the assault and saw several OSU football team pictures, OSU football jerseys and the name Carlyle was on the back of one of the jerseys. A few days after the assault, Ms. Samuelson reported the rape to student health services and a sexual assault counselor. The OSU sexual assault counselor told the freshman co-ed that maybe she said yes, that the rape kit was worse than the assault and that these types of incidents are hard to prove, that she would be blamed, that she should not have been drinking and gave her a schedule for Alcoholics Anonymous meetings. After the initial meeting, the OSU counselor had no further contact with the student and took no further action. The sexual assault counselor's words, inaction and blame caused Kristin Samuelson to feel even more shame, humiliation and emotional distress. Ms. Samuelson, who had been an excellent student, felt distraught, anxious, isolated and depressed. The young student failed at her studies and left OSU after her first year.

Fast forward 15 years to November 14, 2014, when Kristin Samuelson read an article in the *Oregonian* newspaper describing a similar assault of another student that happened a year before her assault. Two Oregon State University football players and two other men had raped Brenda Tracy on June 24, 1998. Ms. Tracy was drugged and raped in the same apartment where Ms. Samuelson was raped. Calvin Carlyle, an OSU football player, was alleged to be one of Ms. Tracy's assailants while Ms. Samuelson's attacker was Carlyle's cousin. Brenda Tracy reported her rape to one of OSU's sexual assault counselors. After reading the 2014 *Oregonian* article, Kristin Samuelson realized that Oregon State University officials again ignored the brutal rape of one of its students and failed to take any corrective action. From the police report that Brenda Tracy provided, OSU officials knew that Carlyle associated with sexually violent males that had participated in her rape. OSU also knew football coaches had suppressed other reports of sexual abuse towards females by football players. After Ms. Tracy's sexual assault, Coach Riley suspended Carlyle and another football player implicated in the assault for one game. The University placed both players on probation, told the players to perform 25 hours of community service and attend an educational program. Kristin Samuelson sued Oregon State University and Head Football Coach

Mike Riley. The plaintiff brought a Title IX claim under the substantive due process and equal protection clause under Section 1983. Ms. Samuelson alleged that OSU was deliberately indifferent to reports of rape and sexual misconduct by failing to investigate reports of sexual misconduct and failing to notify law enforcement of the plaintiff's rape, discouraging the plaintiff from reporting the sexual assault to law enforcement, minimizing or covering up the discriminatory impact of Ms. Tracy's and the plaintiff's reports of sexual assault and continuing to use ineffective methods to address sexual assaults on OSU female students. The plaintiff claimed that the University's indifference was intended to protect the fundraising efforts, which were heavily dependent on the donors' positive regard for the football program and the image of a safe campus. The plaintiff was subjected to a hostile educational environment so severe, pervasive and objectively offensive that she was effectively barred access to an educational opportunity. Coach Mike Riley made no effort to reform the football team's hostile and sexually violent culture toward women. Coach Mike Riley's deliberate indifference to the known and obvious danger exposed the plaintiff to danger she would not have otherwise faced.

The United States District Court for the District of Oregon ruled that Ms. Samuelson was drugged and raped at an off-campus apartment. The attacker, not a student, was visiting from Portland. Oregon State did not have any control over activities at an off-campus apartment and did not control every adult who visits Corvallis. Since OSU had no relationship with the harasser, it cannot be held liable for harassment under Title IX. Coach Riley did not know the attacker, never knew of Ms. Samuelson's report of sexual abuse and was entitled to qualified immunity. The court found that the defendants were not liable under Title IX, equal protection and due process claims. Kristin Samuelson's claims were dismissed with prejudice. The court did state however, that the University's response to the rapes of Samuelson and Tracy was shameful, woefully inadequate and a dark stain on the history of the institution. "Justice and accountability took a back seat to the outdated notion that 'boys will be boys' and truth took a back seat to the desire to attract donors and talented athletes."

Samuelson v. Oregon State University and Mike Riley, United States District Court for the District of Oregon 2016 U.S. Dist. Lexis 20991

A Constitutional Issue

Zachary Dorley was an incoming ninth grader who was severely injured in a football drill when he was matched against Steven McElhinny, a rising senior, in a blocking drill. According to court testimony, Dorley was small in stature and was matched against a much older and larger player. The ninth grader expected the drill to be conducted at less than full speed and in a non-contact manner, as advised by the coaches. However, Dorley believes that the coaches discreetly encouraged violence and aggression by the upper classmen upon younger players. The rising ninth grader believes the coaches encouraged the veterans to turn noncontact drills into contact drills and legitimate drills into dangerous mismatches. The allegations are that these drills have been going on for a long time and that people in authority must have known about this, and allowed coaches to place younger, smaller and weaker students in danger and in harm's way.

Zachary Dorley sued the South Fayette Township School District and Joseph Rossi, James Sweeny, and William Yost. The plaintiff claimed the defendants violated his right to bodily integrity under the Fourteenth Amendment to the United States Constitution and established a state created danger under the Fourteenth Amendment. The plaintiff also filed State Law Tort claims against student Steven McElhinny. The defendants all filed new motions to dismiss. The School District raised the doctrine of qualified immunity as their defense in the motion to dismiss. Qualified immunity shields officials from civil liability as long as the conduct does not violate clearly established statutory or constitutional rights that a reasonable person would have known. A right is clearly established if it is sufficiently clear that every reasonable official would have understood that

what he is doing violates that right. The plaintiff argued that matching a 120 pound rising ninth grader against a 240 pound rising senior in a drill the ninth grader thought was non-contact, violated the Fourteenth Amendment protection against bodily integrity, and in fact was a state-created danger.

The United States District Court for the Western District of Pennsylvania found that it is possible for high school football coaches to be liable for constitutional violations under a state-created danger theory. However, football involves some size and strength mismatches and that fact alone does not create liability. A culture where bigger students are encouraged directly or indirectly to test, or toughen up, smaller students by tossing them around the field of play is outdated thinking and is reprehensible coaching in any situation. However, the court cannot say that it is unconstitutional conduct and beyond debate. The Pennsylvania Supreme Court has made it clear that the qualified immunity doctrine does provide

the defendants with legal protection. The key issue is not whether the conduct violated Dorley's rights, but at the time of the episode, did it violate the plaintiff's rights. The plaintiff's allegations that somebody in authority must have known what was going on for a long time did not provide enough factual content.

The principle of where there is smoke, there must be fire is no longer viable in court. The School District's motion to dismiss was granted and the amended complaints were dismissed with prejudice. The State Law Tort claims against Steven McElhinny were allowed to proceed. McElhinny acknowledged in court testimony that he "launched" Dorley 10 yards down field, which would be cause for a penalty during play, but is not tortious conduct. The court rejected his motion to dismiss and remanded the case to the Court of Common Pleas of Allegheny County.

Dorley v. South Fayette Township School District, United States District Court for the Western District of Pennsylvania, 2016 U.S. Dist. Lexis 71180, June 1, 2016

IN MY OPINION

We respectfully disagree with the U.S. District Court for the Western District of Pennsylvania. What the coaches did was wrong. Even in 2009, there was enough case law to know that to mismatch opponents is not prudent or safe. Whether by size or age, to intentionally match students of unequal ability is never appropriate in contact sports. Putting a junior or senior in a competitive situation against a freshman is asking for a bad result. Not only is there the risk of physical injury, but we would suggest that hazing is often a byproduct.

As a high school coach over 30 years ago, one of the best decisions I ever made was to bring in freshmen players two weeks after upper classmen reported for football practice. For two weeks the freshmen practiced by themselves without having contact with the older players. The week before our first game, sophomore players would be brought together to form the Junior Varsity team. As a result of bringing the freshmen out later, more young men came out for the program and those players identified as a class and fewer freshmen quit. There is a tremendous difference between 14 and 15 year old boys and 18 and 19 year old men. It is called Middle School for a reason. To paraphrase Title IX, those ages should be separate and equal. We see no legal justification for allowing older athletes to physically abuse younger teammates.

How Not to Breach a Contract

Cody Smargiassi signed a contract to play ice hockey for the Junior Hockey Club of the Jersey Shore Wildcats. The contract included a code of conduct that members of the club were required to follow. The contract also required nonrefundable payments made to the club to cover certain related expenses. According to the Wildcats, Smargiassi breached the contract by missing a team bus to a showcase event in Philadelphia, PA. Smargiassi and a teammate arrived on time for the bus but then left to go to a Wawa to purchase food. When the two did not make it back by the appointed time, the bus left without them. The two teammates then decided to go into the Jersey Shore Rink and go out on the ice without skates or helmets, a clear violation of rink rules. The two young men were removed from the ice and an incident report was written and filed. The hockey club also claimed that Smargiassi violated the rules of the billet house where he was residing. Based on the various incidents and alleged rules violations, Cody Smargiassi was removed from the club. Smargiassi then filed a lawsuit to get his money back as was required with the initial playing contract. The Jersey Shore Wildcats filed an answer and a counterclaim asking for the remaining money owed to the club under the terms of the contract.

A bench trial began on December 1, 2014, and the

trial judge issued an opinion that the hockey club used the incidents as an excuse to terminate the contract. The judge held that the conduct violations did not warrant dismissal. The trial judge ordered the defendant to refund the monies to the plaintiff, except for \$500 to cover the stay at the billet house. The defendant appealed. The Superior Court of New Jersey, Appellate Division, stated that the court does not weigh evidence, assess credibility of witnesses or make conclusions about evidence. The defendant argued that the trial judge erred in not making a finding as to which party was in material breach of contract. According to the Superior Court, a breach is material if it goes to the essence of the contract. The trial judge ruled that the plaintiff was not in material breach of the contract. The trial judge found that the young man's violations did not support his removal from the Hockey Club. The defendant's counterclaims were dismissed because of the failure to meet the burden of persuasion. Since the defendant breached the contract, the defendant was not entitled to damages. The Superior Court supported the trial judge's factual findings and legal conclusion. The judgment of the trial court was affirmed.

Smargiassi v. Jersey Shore Wildcats, Superior Court of New Jersey, Appellate Division. 2016 J.J. Super. Unpub. Lexis 994, May 2, 2016

Part and Parcel

It was the last two minutes of a hotly contested soccer match when twelve-year-old G.C. dribbled the ball up the field and took a shot at the goal. As G.C. attempted to strike the ball, he was kicked in the leg by T.U., a thirteen-year-old defender resulting in a knee injury to G.C. G.C.'s parents, on behalf of their son, sued numerous defendants claiming negligence and reckless and intentional conduct. After discovery, all the defendants moved for and were granted summary judgment.

The plaintiffs only appealed the order rendered to T.U. On appeal, the plaintiffs argued that T.U.'s conduct was reckless and therefore actionable. T.U. was issued a yellow card for unsportsmanlike behavior for tripping G.C. after the play. A

liability expert for the plaintiffs gave the opinion that T.U.'s conduct was intentional and or reckless in nature and constituted serious foul play. The plaintiffs claimed that there was sufficient evidence to allow a jury to determine whether the conduct was reckless. According to the motion judge, there was no evidence to indicate that when T.U. went to swipe the ball there was an excessive degree of danger in the act. There was no testimony to suggest that the defendant intended to kick or strike G.C. rather than the ball. There was no evidence suggesting that T.U. kicked or tripped G.C. after the shot had been taken. The plaintiff was unable to establish the requisite degree of recklessness to prove his case. The appellate court stated that reckless

conduct is an extreme departure from ordinary care in a situation in which a high degree of danger is apparent. In order to establish tort liability in recreational sport, a heightened standard of reckless or intentional conduct is required. G.C. was dribbling the ball toward the goal to take a shot with time running out and the game on the line. T.U. made a move for the ball, but was not under control and he made contact with G.C. The referee issued the yellow card because the contact did not conform to the normal level of play. The referee stated in testimony that T.U. was just trying to swipe the ball away. According to the motion judge, there was no evi-

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Part and Parcel ...

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dence to support the contention that T.U.'s conduct rose to the level required of recklessness. The appellate court agreed with the motion judge. Injuries are a part and parcel of children playing a physical sport. The granting of summary judgment was affirmed.

G.C. v. New Jersey Youth Soccer, Superior Court of New Jersey, Appellate Division. 2016 N.J. Super. Unpub, LEXIS 1566 July 6, 2016

IN MY OPINION

We have to agree with the court in this case. Children get hurt playing sports. That is a reality. What we find unique and concerning is the number and diversity of the defendants that were brought into the lawsuit. Here is a list of the defendants: New Jersey Youth Soccer; Morris County Youth Soccer Association; Roxbury Soccer Club; Mount Olive Soccer Club; Fred Phillips; Carl Halter; Marc Cicalese; Peter Crawford; Henry Pollison; Stuart Marcus; William Spies; T.U. by and through his guardians ad litem, K.R. and J.U.; K.R. an individual, J.U. an individual, and the Philadelphia Insurance Companies. A recreation soccer match resulted in a hurt knee and fifteen defendants. Creative lawyering aside, we would like to know the total court expense for the fifteen defendants, plus the plaintiff's lawyer fees. The value of law lies not in the happiness it creates, but rather in the misery and suffering it prevents and the equality it protects. We are not sure what this lawsuit accomplished other than generous billing for the numerous lawyers involved.

When Bats Fly

On May 31, 2011, the Honors Physical Education class at Glenbrook North High School was playing a game called Mushball. The game is like baseball except the ball gets progressively mushier and squishier and takes a greater effort to hit it further with an aluminum bat. During the game in question, Niko Kollias lost control of his aluminum bat as it slipped out of his hands and struck and injured Blair Shwachman, another player. When asked why the bat slipped, young Kollias testified that the bat was used, the grip was plastic, it was warm and hot that day and his hands were sweaty. Blair Shwachman and her father Perry Shwachman filed a complaint with the Cook County Circuit Court against the Northfield Township High School District 225 and two physical education teachers, Mark Reborra and Jillian Nowak. The circuit court granted summary judgment to the defendants and the plaintiffs appealed. Kollias and Shwachman were students in an honor gym class that required a greater degree of mandatory participation in activities and the students were graded daily on their participation. On the day of the accident, teachers Nowak and Reborra directed the class to participate in a mandatory mile run and then the teachers supervised, instructed and directed the class to play Mushball on a soccer field that did not have a backstop. The soccer field was used because the softball field was being groomed. According to the plaintiff, the students were instructed to stand in an area where bats could be thrown by batters. Shwachman was standing in the designated area when she was hit by the flying bat.

According to the complaint, the two teachers knew from their education, training and experience in the discipline of physical education that there was a high likelihood of batters throwing their bats as they strike the ball during a game of Mushball. The plaintiffs allege that

the defendants instructed the students to stand in an unsafe area, improperly supervised the activity, and failed to warn the class of the likelihood of injury while they were standing in the designated area. By placing the students in the line of fire, the defendants exposed the students to the risk of being hit by a flying bat.

The school defendants contended that there had never been a student injured by a thrown bat in at least the last 22 years. The defendants argued that nothing in the record suggests a thrown bat or any resulting injury was a specific, foreseeable and probable danger. At the time of Blair's injuries, Nowak was standing on the first base side and Reborra was on the third base side. Nowak testified that Reborra counted off approximately 45 feet from home plate, placed an equipment bag on the ground and made sure the students stood behind the bag at all times.

Even though there was no evidence of a student ever being injured by playing Mushball on a field without a backstop, because of the lawsuit, the school district implemented a policy that Mushball had to be played on a field with a backstop. According to the circuit court, the record contains no evidence that Nowak and Reborra displayed either an utter indifference to or a conscious disregard for Blair's safety. There was simply no evidence that the defendants had any reason to suspect that one of the students in the class would throw a bat some 45 to 60 feet towards a classmate. The circuit court, in granting summary judgment for the defendants, stated that the Tort Immunity Act adopted a higher standard for willful and wanton conduct. The appellate court affirmed the judgment of the Circuit Court of Cook County. *Shwachman v. Northfield Township High School District 225*, Appellate Court of Illinois First District, Fifth Division. 2016 IL App (1st) 143865-U134132

Communication Breakdown

Eric Romig was the softball coach at Pennridge High School in Perkasio, PA when he developed a sexual relationship with a student. It was through a series of text messages that the coach was able to begin the relationship with E.N. between her sophomore and junior years at Pennridge High School. Upon discovery of the relationship, Eric Romig pled guilty to six criminal charges from his inappropriate conduct with E.N. and is currently in jail.

James and April Nace acting as guardians of E.N., sued Pennridge School District, Eric Romig, Thomas Creeden, David Babb, Faith Christian Academy, Ryan Clymer and Russell Hollenbach. The Plaintiff's sued Romig for violation of E.N.'s constitutional due process rights, intentional infliction of emotional distress, and assault and battery. The claims against Pennridge School District, Principal Creeden and Athletic Director Babb were for violation of constitutional due process, Title IX sexual harassment, and a state law claim of willful misconduct. The allegations against Faith Christian Academy, and Headmaster Clymer and Athletic Director Hollenbach were for negligence under Pennsylvania State law. The Faith Christian Academy defendants and the Pennridge School District defendants filed motions for summary judgment on all claims, while the plaintiffs filed a motion for summary judgment against Eric Romig.

Eric Romig served as a part-time coach at three southeastern Pennsylvania high schools between 2003 and 2013. However, coaching was never his full time job and he served as the manager of a local automobile service station. Romig began his career at Faith Christian Academy in 2003 and was the head

girls' basketball coach from 2005 until January 5, 2010 when he resigned for health reasons. The resignation came at the request of Headmaster Ryan Clymer following a two-week investigation of the coach. Clymer investigated reports that Romig had sent thousands of personal texts to a member of the basketball team. The student provided the Headmaster with a list of topics included in the messages, some of which were sexual in nature. Two other female students were contacted, as well as an acquaintance in the local law enforcement community and Faith Christian's legal counsel. Ryan Clymer kept the results of his investigation quiet, not even telling anyone in the administration the details. Athletic Director Russell Hollenbach did not learn of the allegations until long after coach Romig had resigned. There was no report made to law enforcement or to Child Protective authorities. Eric Romig was allowed to resign because of his excessive texting to a student athlete.

In the spring of 2008 while coaching girls' basketball at Faith Christian Academy, Romig was hired by Quakertown High School Athletic Director David Babb to coach the girls' softball team. Romig resigned from both Quakertown High School and Faith Christian Academy January 5, 2010. David Babb left Quakertown High School prior to Romig's resignation to become the Athletic Director at Pennridge High School. In 2012, Babb needed an assistant softball coach at Pennridge and Eric Romig was encouraged to apply for the opening. David Babb contacted his replacement at Quakertown and was told that Romig resigned for heart related health issues. Subsequent criminal background

and sexual abuse checks revealed no history of criminal activity or child abuse. In early 2012, Eric Romig was hired as the varsity assistant softball coach at Pennridge High School, and in 2012-2013, he was promoted to head girls' basketball coach. In court proceedings, Babb stated he contacted Russell Hollenbach, the athletic director, at Faith Christian Academy and was told that Romig was an excellent basketball coach who had some texting issues and that he had resigned because of a difference of opinion. Hollenbach in court testimony did not recall that conversation. Athletic Director Babb testified that he spoke with Principal Thomas Creeden and the Principal said, "Let's keep an eye on the Coach strategy." Principal Creeden also did not recall that conversation and claimed he first learned of the texting issue only after the October 2013 arrest of coach Romig.

On October 1, 2013, Pennridge's Superintendent suspended Romig from coaching duties because of his arrest. After pleading guilty in January 2014 Eric Romig was terminated from his position with the Pennridge School District. Eric Romig coached E.N. during the 2012-2013 seasons while she was a member of the Pennridge girls' softball team. The texting began during E.N.'s sophomore season and concerned mainly non-softball related topics. By June 2013, the texts had become sexual in nature. Coach Romig told E.N. that he hoped to marry her and even though she was initially resistant to that idea, she did eventually express hope to marry her coach. In late September of 2013 E.N.'s parents discovered the text messages on their daughter's phone, confronted her and contact-

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Communication Breakdown . . .

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ed law enforcement. E.N. was first upset with her parents but now believes she was manipulated into the relationship. Eric Romig admitted that the relationship was wrong, that he knew it was wrong as it was happening, but that he did not believe it was harmful or injurious to the young woman. The former coach pled guilty to corruption of a minor; photographing, videotaping, depicting on computer or filming sexual acts with a minor; viewing or possessing child pornography; unlawful contact with a minor; unlawful intercourse/sexual contact with a student; and criminal use of a communication facility. In May 2014, coach Romig was sentenced to serve three and one-half to seven years in a Pennsylvania State Correctional Facility.

The plaintiffs allege that the verbal and physical sexual abuse and harassment by Romig violated the fourteenth amendment due process right to bodily integrity. The Pennridge School District did provide sexual harassment training and information about the district's sexual harassment policies to teachers, but non-teaching staff, including coaches, were not required to attend the meetings. Coach Romig did not attend the meetings and the School District's coach's handbook did not contain any information regarding sexual harassment or personal communication with students.

The district court found that the plaintiffs failed to show that a lack of training violated E.N.'s constitutional rights. It said, "There must be a plausible nexus or affirmative link between the municipality's custom and the specific constitutional rights in question." The plaintiffs claim that failure to train led to a state-created danger for their daughter. In

addition, the policy adopted by Creeden and Babb of "let's keep an eye on the Coach strategy" was also a "state-created danger." The plaintiffs argued that the Principal and Athletic Director were aware of the risk, but hired Romig anyway, failing to offer training or closely monitor his contact with student athletes. Creeden and Babb knew more and should have done more than they did. The district court ruled that the plaintiffs were not able to demonstrate a genuine issue of material fact and thus the state-created danger theory failed. The plaintiffs also argued that the school district's hiring and supervision of Eric Romig gave rise to liability for sexual harassment under Title IX. According to the district court, sexual harassment under Title IX requires proof that an official with authority to institute corrective measures had to have actual knowledge of discrimination and failed to respond adequately. There was no evidence according to the district court that any coach, teacher or administrator had any knowledge of the relationship between Romig and E.N. Therefore, the school district's motion for summary judgment on the plaintiff's Title IX claim must be granted. The plaintiff's also alleged that Creeden and Babb owed a "duty of care" to their students to protect E.N. from foreseeable harm and that duty was breached when steps were not taken to investigate, train, monitor or fire coach Romig after learning of his issues at Faith Christian Academy. Willful misconduct requires a finding that the actor desired to bring about the result that followed or at least was aware of the probability that the result would happen. The plaintiffs were not able to provide evidence that Creeden or Babb knew that E.N. would be harmed and the defendant's motion for summary judgment was granted on the count of willful misconduct.

Faith Christian Academy was informed that coach Romig was engaged in inappropriate sexual communication with a student and did not report these allegations to authorities. Eric Romig later abused another student that was not associated with Faith Christian Academy. According to the district court under Pennsylvania law, negligent liability does not extend to Faith Christian Academy for subsequent abuse of a minor with no connection to the Academy, therefore Faith Christian Academy defendant's motion for summary judgment was granted. James and April Nace moved for summary judgment against defendant Eric Romig. The plaintiff's three claims were for section 1983, intentional infliction of emotional distress and assault and battery. Coach Romig pled guilty to the charge of institutional sexual assault, a third degree felony. A third degree felony in this situation is when a person who is a volunteer or an employee of a school, or any other person who has direct contact with a student at a school, engages in sexual intercourse, deviant sexual intercourse, and indecent contact with a student of the school. The district court found that Romig's contact with E.N. took place outside of his coaching role and there was no evidence he used his position as a coach to compel E.N. to meet him or to have sex with him. Summary judgment under section 1983 for the plaintiff was not appropriate. As for the claim of intentional infliction of emotional distress, Romig's conduct was inappropriate and illegal, but falls short of being so outrageous in character or as extreme in degree as to go beyond all possible bounds of decency. The district court ruled that the conduct was not so atrocious or utterly intolerable and the plaintiff's motion for sum-

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Communication Breakdown . . .

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mary judgment was denied. The plaintiff's third claim for summary judgment was for assault and battery. Under Pennsylvania law, battery is defined as an intentional "harmful or offensive contact with the person of another." Assault is an act intended to place another person in reasonable apprehension of an immediate battery. Because of Romig's guilty plea and the admission of sexual contact, legal consent is impossible. The plaintiff's motion for summary judgment was granted on the claim of assault and battery. The Pennridge School District defendant's and the Faith Christian Academy defendant's motions for summary judgment were all granted. All of the plaintiff's motions for summary judgment were denied except for the claim of assault and battery.

James Nace and April Nace as Guardians of E.N., a Minor v. Pennridge School District, Eric Romig, Thomas Creeden, David Babb, Faith Christian Academy, Ryan Clymer and Russell Hollenbach, United States District Court for the Eastern District of Pennsylvania, 3016 U.S. Dist. Lexis 60244, May 6, 2016 decided

IN MY OPINION

We are confused about several issues that emerge from this case. Eric Romig was sentenced to serve three and one-half to seven years in a Pennsylvania State Correctional Facility for his crime. The crime in this case was developing an unlawful sexual relationship with a 16-year-old player on his team. Meanwhile Brock Turner, a Stanford University student-athlete, raped a young woman behind a dumpster and for his crime, he received a six-month sentence. I am not defending Mr. Romig, in fact we would like to see him locked up for a longer time. The larger questions are how does a person commit rape and get only six months and how can an underage minor be exploited by a coach employed by her school and gain no legal relief against the supervising authorities who were tasked with her welfare?

All too often, we read about college students being sexually assaulted on campus and the attacker walks away from the crime with little or no punishment. In this case, Romig's punishment seems inappropriately light.

That brings us to our second question. Why do we use the terms rape and sexual assault interchangeably? If it is rape, it is rape — whether it happens at a party, in a dorm room, or someone's house. The United States District Court for the Eastern District of Pennsylvania defined assault as putting a person in reasonable apprehension that something might happen. Using that definition, if something does happen, it is not assault it must be sexual battery or rape. We are not sure why the term sexual assault is used when we mean rape. Third, Faith Christian Academy never referred Romig's behavior to law enforcement, or child protective services or shared the information they had on Eric Romig with another school. For turning a blind eye to the activities of one of their coaches, a Pennsylvania district court awarded the school summary judgment.

In a somewhat similar situation, Pennsylvania State University was harshly criticized and sanctioned by the National Collegiate Athletic Association (NCAA) for not going to law enforcement with relevant allegations about Jerry Sandusky. We guess Faith Christian Academy should be grateful that the school is not a member of the NCAA.

NEW COACH HAPPY IN LEGENDARY PROGRAM

Justin Fuentes, Virginia Tech's new football coach, is happy with the status of the program in Blacksburg. "The first thing Coach Fuente said was that he didn't have to rebuild anything," said senior fullback Sam Rogers. Rogers continued that Fuente wanted to advance the program and not tear anything down. One major effort that Fuente made for continuity was retaining three of retiring Coach Frank Beamer's staff, most notably defensive coordinator Bud Foster. Foster is widely respected

and is considered by many to be the top defensive coach in America. *USA Today, August 4, 2016*

FARVE INDUCTED INTO PROFESSIONAL FOOTBALL HALL OF FAME

Brett Farve, Green Bay Packer great, is the latest quarterback to be inducted into the Professional Football Hall of Fame. In an emotional speech at the induction ceremony, Farve gave credit for his success in football to his father, Irv Farve, a "hard-nosed, no-nonsense high school football coach."

USA Today, August 3, 2016

UNIVERSITY OF MISSOURI ADDS TO SELF-IMPOSED PROBATION

The University of Missouri has added an additional year of probation to a self-imposed penalty for improper benefits of \$11,400 that were provided to several basketball players. The University's self-imposed sanctions on its basketball program have vacated 23 wins from the 2013-2014 seasons and postseason play and eliminated one scholarship from 2013-2014 season and one more from 2017-2018.

Greensboro News & Record, Greensboro, NC, August 3, 2016

Crude and Vulgar Coaching

C.M. and A.M. were brother and sister and both were students at Pleasant Valley High School and members of the high school wrestling team. According to the plaintiff, C.M. was involved in a verbal and physical altercation with wrestling coach Mark Getz in which Getz allegedly threw C.M. against a wall. A.M.'s claim involved allegations of sexual harassment by the coaching staff. The plaintiffs alleged that the defendants violated the Fourteenth Amendment and State Created Danger against C.M. and violated Title IX against A.M. The defendants moved for summary judgment after discovery was completed.

The Title IX claim came in two parts. There was an allegation of discrimination against A.M. because she was removed from the wrestling team because she was a female. The coaches let her back on the team, but according to allegations, A.M. was treated more harshly than the male wrestlers. A.M. considered herself constructively terminated from the wrestling team.

The second portion of the Title IX claim was for sexual harassment. Sexual harassment under Title IX is severe, pervasive and objectively offensive language that undermines and detracts from the victim's educational experience and the victims are denied equal access to the institutions resources and opportunities. According to the plaintiff, Getz called students vulgar names for female genitalia, would curse in almost every single letter of the alphabet, called some team members string bean arms and referred to some as faggots or bitches. However, evidence indicated that Getz used these vulgar words to boys and not the plaintiff. After the district court reviewed the coaches statements, it found that there were fewer than ten sexually tinged comments over the course of two or three years. The plaintiff was not sexually propo-

sitioned, physically threatened or touched in a sexual manner. The court said the statements were offensive and inappropriate but did not address the plaintiff in a sexual way. The record established that the coaching staff was not discriminatory. They harassed everyone on the team, male and female. The coaches treated A.M. like everyone else, poorly and immaturely. The coaches may have violated the school's own policies, but the plaintiff sued under Title IX, not the school policies. The comments made by the coaches did not give rise to a valid Title IX sexual harassment claim.

The district court did not condone in any way the crude and vulgar language allegedly used by the coaches, and stated that no student, male or female, should be subjected to such treatment. The court went on to say that it is the school's responsibility to uphold the dignity of those entrusted

to their care. The school district is responsible for investigating and taking remedial action. The plaintiff's claim that she was unlawfully discriminated against under Title IX was also not a valid claim. The United States District Court for the Middle District of Pennsylvania found that the code of Federal Regulations provides that where a school provides a team for one gender, members of the opposite sex must be allowed to try out for the team. A.M. was allowed to try out for the team. The district court added that Title IX provides no right for the plaintiff to be a team member. High School sports are still a privilege and not a right. Summary Judgment was granted to the defendants on the claim of Title IX discrimination and on the claim of sexual harassment under Title IX.

Moeck v. Pleasant Valley School District, United States District Court for the Middle District of Pennsylvania, 2016 U.S. Dist. Lexis 50702, April 15, 2016

IN MY OPINION

The code of Federal regulations states that where a school provides a team for one sex, members of the opposite sex must be allowed to try out for the team. The question becomes: how does this federal regulation apply to the transgender student? Does the federal code apply to biology or gender identification? Currently National Collegiate Athletic Association (NCAA) policy allows for a woman transitioning to a man be on the men's team, but a male transitioning to be a female is not allowed on the woman's team. On its face, this policy appears to be a double standard and an example of gender bias and discrimination. The question then is what would be a fair and legal policy for transgender athletes?

For years, some legal scholars have suggested that Title IX's policy of separate but equal sports participation flies in the face of the *Brown v. The Board of Education* decision against that very policy. Why, according to federal policy, do we have to open all classes to both sexes, even physical education, yet our athletic teams must be separated by gender? With the issue of transgender sports participation looming on the horizon, is it time we bring Title IX and athletic participation under the *Brown* doctrine and ban separate and equal?

There is little doubt that Coach Getz and his staff's behavior was crude in the extreme. It is of little comfort that they were equally offensive to both male and female students. Coaches like Getz have a time-honored reputation for toughness, but they are also charged with teaching the higher values and virtues of athletics. Indiscriminate vulgarity is not part of the mission of an athletic coach entrusted with the guidance of our children.

A Rush to Sweep Discrimination Claim under the Carpet

Jane Doe, who is alleging that the University discriminated against her because of her sex, is suing the University of Alabama in Huntsville (UAH). The plaintiff claims that UAH violated Title IX of the Education Amendments Act of 1972. Ms. Doe alleges that Associate Provost and National Collegiate Athletic Association (NCAA) Representative, Dr. Brent Wren, Police Sergeant John Beswick and Dean of Students Regina Young violated her right to equal protection under the Fourteenth Amendment and she is seeking relief from the individual defendants under Article 1983. The defendants filed a motion to dismiss and the case was assigned to Magistrate Judge Harwell Davis.

Judge Davis recommended that the court grant the defendant's motion and dismiss the action with prejudice. Jane Doe objected to Davis' recommendation. The plaintiff has three specific objections to Judge Davis' report. First, the report omits certain alleged facts relevant to her Title IX claim. Second, the plaintiff objected to the conclusion that she failed to show that UAH acted with deliberate indifference to known sexual harassment. Third, Ms. Doe asks the court to allow discovery before dismissing her 1983 claim with prejudice.

Ms. Doe's Title IX claims arise out of her sexual assault complaint against hockey player Lasse Uusivirta. According to the plaintiff, UAH Police Sergeant John Beswick first attempted to talk her out of doing anything about the attack. Sergeant Beswick mentioned that people hang out at the hockey dorms and share girls all the time. Even after Mr. Uusivirta confessed to the assault, Sergeant Beswick told Jane Doe that she had "no case at all", but he did recommend that she submit her case to the Student Conduct Board. The UAH investigation was then closed and no arrest or further action was taken. The Conduct Board ruled that Mr. Uusivirta be expelled immediately. However, the associate provost and National Collegiate Athletic Association (NCAA) representative reviewed the Conduct Board's decision and imposed a significantly reduced penalty. UAH did not inform Ms. Doe of the appeal and reduction of the penalty until she saw her assailant on campus. When Dr. Wren made his decision, the hockey season was over and the suspension would actually be between seasons. Dr. Brent Wren also happens to be a highly visible public supporter of UAH Hockey. The assailant's athletic scholarship was also not withdrawn as the conduct board had determined and the assailant was still in good standing with the UAH

Hockey Team. When approached by Jane Doe, Dr. Wren would not discuss his decision without another female present in the room and stated that UAH only expelled students for academic misconduct.

After Dr. Wren's decision, Ms. Doe contacted outside law enforcement officials and Uusivirta was arrested and charged with first-degree rape. A University hockey coach posted bond and a coach stated on Twitter "Things are not always as they seem. Be careful to judge". Although Lasse Uusivirta had admitted that Jane Doe was unable to consent when he had sex with her, Mr. Uusivirta fled the United States after being released on bail and his name stayed on the hockey roster until his attorney informed the court that the young man had skipped bail. The district court found that Ms. Doe had no knowledge that Mr. Uusivirta had appealed the decision of the Student Conduct Board to Dr. Wren. There was nothing in the student handbook that gave a student the right to appeal to Dr. Wren. Since Dr. Wren vacated the expulsion, the District Court for the Northern District of Alabama, Northeastern Division, concluded that UAH might not have followed its own policy. The district court held that the plaintiff's Title IX complaint against UAH should proceed.

On the 1983 claims against UAH, the Eleventh Amendment to the United States Constitution comes into play. The Eleventh Amendment does not bar suits against a state by its own citizens, but the Supreme Court has held that a nonconsenting state is immune from lawsuits brought in federal court by the state's own citizens. The court agreed with the magistrate's recommendation that the 1983 official capacity claims for damages against the three defendants be dismissed. The Eleventh Amendment immunity bars those claims. Ms. Doe's official capacity claims for injunctive relief are another matter and do not violate the Eleventh Amendment. The district court found that a suit alleging a violation of the federal constitution against a state official in his official capacity is not a suit against the state. The district court held that Ms. Doe's official capacity claim for injunctive relief would not be dismissed. The District Court for the Northern District of Alabama, Northeastern Division, ruled that Jane Doe's Title IX claim against UAH and the 1983 official capacity claim for injunctive relief were to proceed.

Jane Doe v. The University of Alabama in Huntsville, United States District Court for the Northern District of Alabama, Northeastern Division, 2016 U.S. Dist. Lexis 42991

Let the Jury Decide

David Corral was a wellness fitness specialist for the UNO Charter School Network, an Illinois nonprofit corporation that operates charter public schools in the Chicago area. Mr. Corral had been working at Garcia High School since August 2008. Beginning in October 2009 the physical education teacher and his students began using a gymnasium facility with separate locker rooms for male and female students. UNO's policy is that teachers take attendance and then upload the information onto a computer system within the first five minutes of class.

On November 24, 2009 Corral took attendance with the students sitting on the floor, he then sent them to their locker rooms to get dressed for class, while he went to his office to upload the attendance information into his computer. When he was finished uploading the information he went back to the gym and stood near the two locker rooms. After five minutes, all the students were ready to begin class, except M.L. Corral found M.L. in the locker room without a shirt with red marks on his body. Another student entered the locker room and gave M.L. a shirt to wear and the three individuals rejoined the other students. Once class began, Corral sent a text message to Andres Avila, a student counselor at UNO. The text stated, "Someone was bullying M.L. and he is not talking." He was changing in the locker room and when I walked in his back and chest were all red, like he was fighting." After class, Avila questioned M.L. and ultimately the UNO administration conducted an investigation, the Chicago police became involved and some students were arrested. Corral contends he participated in the investigation and he was questioned by UNO administration. During a meeting on December 4, 2009 with Principal Josephine Gomez and Sister McCarry, UNO's Director of Academic affairs, David Corral was fired. Corral brought a lawsuit against his former

employer alleging that he was fired for reporting an assault on a student during gym class. The plaintiff claims that UNO violated Title IX of the Educational Amendments Act of 1972, and the Illinois Common Law for retaliating discharge.

The Defendants moved for summary judgment on both claims. Several UNO and Garcia High school administrators testified in deposition about why the plaintiff was fired. Juan Rangel, UNO's Chief Executive Officer testified that Corral was fired for his inattentiveness to the students in his class when the incident occurred. Principal Gomez claimed that the teacher was fired because of his non-supervision of students during the incident. Sister McCarry testified that Corral acted negligently by not monitoring the locker room. The plaintiff claims that UNO's reasons for termination are false and retaliatory. Corral claimed that UNO deliberately and intentionally terminated his employment for reporting suspected child abuse as is required by Illinois Abused and Neglected Child Reporting Act. The plaintiff complained about the lack of supervision in the locker room before and after the November 24th incident. He questioned UNO's policy of taking class attendance the first five minutes of class when his students needed to be changing. He further questioned that the requirement that teachers upload attendance records at the start of each class meant that he could not adequately supervise his students thus making UNO negligent for events in the locker rooms. Corral also complained about the decision to allow one of the attackers to return to school given his disciplinary record and medical issues.

The district court for the Northern District of Illinois, Eastern Division found that the plaintiff presented enough evidence to create a genuine issue of fact for a jury to decide the case.

Corral v. UNO Charter School Network, Inc., United States District Court for the Northern District of Illinois, Eastern Division, 2013 U.S. Dist. Lexis 62397, May 1, 2013