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Legal Issues in Secondary School Athletics

I. INTRODUCTION

Participating in high school athletics has become a way of life for a large number of American adolescents.[1] Unfortunately, being involved in legal procedures has also become an American way of life.[2] Since both activities often intersect, high school administrators and coaches responsible for athletic programs should be aware of the legal ramifications and liabilities such programs may incur. There are two types of legal claims often made against high school athletic programs: (1) violation of rights/discrimination, and (2) injury negligence claims.

Administrators should be aware that claims of personal rights violation are common in society today. Thus, administrators need to understand how to comply with the legal requirements that will help alleviate the expense of defending these types of suits. Winning a lawsuit may save money by avoiding damage awards. However, never having a suit filed against you saves even more by also avoiding court costs and attorney's fees.

Generally, injured athletes are reluctant to sue schools and coaches for injuries. However, this reluctance decreases as the severity of the injury increases.[3] Because courts grant a substantial number of large damage awards, administrators should be aware of the standard of care to which they are legally held and take precautions to stay within that standard.

II. VIOLATION OF RIGHTS/DISCRIMINATION

Courts have not defined participation in athletics as a

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1. "Approximately seven million students are engaged in some type of interscholastic sport during the school year." Eugene C. Bjorklun, *Assumption of Risk and Its Effect on School Liability for Athletic Injuries*, 55 EDUC. L. REP. 349 (1989).

2. Two hundred thousand civil suits were filed in federal courts in 1982. Twelve million cases were filed in state courts in 1977. IRVIN A. KELLER & CHARLES D. FORSYTHE, ADMINISTRATION OF HIGH SCHOOL ATHLETICS, 362 (7th ed. 1984).

3. Bjorklun, *supra* note 1 at 349-350.

"right."[4] In *Darrin v. Gould*,[5] the Washington Supreme Court granted females a right to participate in football based on a state equal rights amendment. The court recognized that the United States Supreme Court has refused to hold "education" as a fundamental right guaranteed by the United States Constitution, let alone define participation in athletics as such.[6]

Since participation is not a right, what standard will courts use in cases involving discrimination claims? To see if participation rules are rationally related to a legitimate purpose, courts will ask whether the rules further a reasonable goal of the athletic program. When rules of participation have been established, courts will not disturb the ruling board's authority, so long as the rules are not arbitrary.[7] If the court finds that the rules are arbitrary, it will likely nullify them and require the board to establish regulations consistent with the court's opinion.[8]

Rules which the courts have found acceptable include: re-

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4. Morrison v. Roberts, 82 P.2d 1023, 1025 (Okla. 1938). *See also* Thompson v. Fayette County Pub. Sch., 786 S.W.2d 879, 881-82 (Ky. App. 1990) ("[I]nterscholastic activities are only a mere expectation and do not amount to an entitlement. . . . [A] student has neither a property interest nor any fundamental right to participate in extracurricular activities in Kentucky.").

5. 540 P.2d 882 (Wash. 1975).

6. *Id.* at 886-87. *See also* Plyler v. Doe, 457 U.S. 202 (1982); San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973).

7. *Morrison*, 82 P.2d at 1025. Furthermore, one Utah court has stated:

> It is not for the courts to be concerned with the wisdom or propriety of the resolution as to its social desirability, nor whether it best serves the objectives of education, nor with the convenience or inconvenience of its application to the plaintiff in his particular circumstances. So long as the resolution is deemed by the Board of Education to serve the purpose of best promoting the objectives of the school and the standards for eligibility are based upon [a] uniformly applied classification which bear[s] some reasonable relationship to the objectives, it cannot be said to be capricious, arbitrary or unjustly discriminatory.

Starkey v. Bd. of Educ. of Davis County Sch. Dist., 381 P.2d 718, 720 (Utah, 1963). *See also* Brown v. Wells, 181 N.W.2d 708, 711 (Minn. 1970). ("[W]e must be controlled by well-established authority which recognizes it is the duty of courts, regardless of personal views or individual philosophies, to uphold regulations adopted by administrative authorities unless those regulations are clearly arbitrary and unreasonable"); *Thompson*, 786 S.W.2d at 882 (policy requiring minimum grade point average "does not in any way exceed the reasonable and legitimate interests of the school system . . . . the policy is reasonable and without arbitrariness.").

8. Brenden v. Indep. Sch. Dist., 477 F.2d 1292 (8th Cir. 1973) (finding there was no rational basis for concluding that women are incapable of competing with men in non-contact sports and refused to determine that there was a rational basis to preclude females from participating in contact sports).

quiring a minimum grade point average for students in order to participate in interscholastic athletics;[9] rules declaring students ineligible to participate on a school team if they participate on an independent team in the same sport;[10] rules making students ineligible if they accept certain awards;[11] and rules stating that married students are ineligible to participate in extracurricular activities.[12]

In *Starkey*, decided in 1963, the rationale for not allowing married students to participate in interscholastic athletics was that "[teenage] marriages should be discouraged; and further, that when they do occur it is desirable that the parties devote more time and attention to the serious responsibilities involved rather than spend the extra time needed for extracurricular school activities."[13] With society's changing attitudes it is likely that a court today would not uphold a similar rule. One rationale that still may have influence is the idea the schools want to decrease the number of students that "drop out" before completing their high school education. Marriage is a factor that generally increases the drop out rate.[14]

The same standard is applied when handicapped students sue a school to allow them to participate in athletic programs. Whether the action is brought under § 504 of the Rehabilitation Act of 1973,[15] or under an equal protection theory, the same standard is used. The test is whether there exists a justifiable or reasonable basis for the action. Most of these cases will hinge on the medical evidence of the risk of injury and whether the student is "otherwise qualified," as required by the statute.[16]

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9. *Thompson*, 786 S.W.2d at 882.
10. *Brown*, 181 N.W.2d at 711.
11. *Morrison*, 82 P.2d at 1025.
12. *Starkey*, 381 P.2d at 720-21.
13. *Id.* at 721.
14. *Id.* at 720-21.
15. 29 U.S.C. § 794 (1988).
16. Kampmeier v. Nyquist, 553 F.2d 296, 299 (2nd Cir. 1977), states:

> [E]xclusion of handicapped children from school activity is not improper if there exists a substantial justification for the school's policy. [The statute] prohibits only the exclusion of handicapped persons who are "otherwise qualified." Here, the defendants have relied on medical opinion that children with sight in only one eye are not qualified to play in contact sports because of the high risk of eye injury.

In cases where plaintiffs have supplied appropriate medical evidence to show the risk of injury to the handicapped student is minimal, the parents and student were willing to accept the risk, and the students were "otherwise qualified," the

Can a school keep a female from participating on a male team? When no similar female sport is offered, courts often find rules prohibiting females from participating on male teams in non-contact sports to be both arbitrary and unreasonable.[17] As articulated by the U.S. Court of Appeals for the Eighth Circuit:

> The question in this case is not whether the plaintiffs have an absolute right to participate in interscholastic athletics, but whether the plaintiffs can be denied the benefits of activities provided by the state for male students.[18]

Congress passed Title IX which requires that no person be excluded or denied benefits, on the basis of sex, from an educational program or activity receiving federal funds.[19] This correlates with the fact that some states, and the National Collegiate Athletic Association (NCAA), have changed their rules to allow females to participate in male non-contact sports when no equivalent female team is offered.[20]

The question concerning contact sports has not been as frequently addressed as the non-contact sport question. The *Darrin* court did allow females to participate in football, a male contact sport.[21] *Darrin*, however, was based on a Washington State equal rights amendment which the court felt granted more protection than that which already existed under the Equal Protection Clause of the U. S. Constitution.[22]

To avoid unnecessary litigation, administrators and coaches should: (1) identify the objectives of the athletic program; (2) establish rules which are rationally related to the objectives of the program; and (3) consistently administer those rules.

III. NEGLIGENCE

When a student is injured while participating in interscholastic athletics he or she may bring a suit for negligence against coaches, trainers, athletic directors, principals, and

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courts have upheld the students' right to participate. *See* Poole v. South Plainfield Bd. of Educ., 490 F.Supp. 948 (D.N.J. 1980); Grube v. Bethlehem Area Sch. Dist., 550 F. Supp. 418 (E.D.Pa. 1982).

17. *See* Brenden v. Indep. Sch. Dist., 477 F.2d 1292 (8th Cir. 1973) (affirming trial court).

18. *Id.* at 1297.

19. 20 U.S.C. § 1681(a) (1988).

20. *Brenden*, 477 F.2d at 1301.

21. *Darrin v. Gould*, 540 P.2d 882 (Wash. 1975).

22. *Id.*

school boards. In such a suit, the issue will normally be whether the defendants have properly discharged their duty. Have they met the standard of care required by law in performing their job? Defendants may defend themselves against a negligence claim by arguing: (1) that state law prevents them from being sued, or in the alternative, that (2) the person suing was aware of the risk of participation and voluntarily accepted that risk. These approaches are referred to as *immunity* and *assumption of risk* defenses.

A. Standard of Care.

Coaches and administrators should understand the standard of care owed to an athlete. Eugene C. Bjorklun[23] summarizes this standard as:

> -Providing proper and adequate instruction and supervision;
> -Providing and maintaining safe facilities and equipment;
> -Providing proper medical attention; and
> -Reasonably selecting and matching participants.[24]

More specific duties of coaches and athletic directors are given by Keller and Forsythe:[25]

> Athletic Directors:
>
> 1. The purchase of recognized quality protective player equipment.
> 2. Making sure the athletic field or floor is kept free of any hazards.
> 3. Providing ample supervision in implementing safety measures in all phases of the athletic program, including transportation.
> 4. Sponsoring in-service programs to keep coaches and athletic trainers up to date in providing for the health and safety of athletes.
> 5. Supervising the distribution of safety guidelines and policies to athletes and their parents.
> 6. Making certain all coaches properly instruct players in the fundamental and particular playing techniques for the sports concerned and warn them of the risks involved.

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23. *See* Bjorklun, *supra* note 1.
24. *Id.* at 351.
25. KELLER & FORSYTHE, ADMINISTRATION OF HIGH SCHOOL ATHLETICS 365-66 (7th ed. 1984).

7. Keeping complete records of all athletic injuries.
8. Recommending only fully qualified coaches for employment.
9. Arranging for adequate medical supervision.
10. Contracting competent game officials.

Coaches:

1. Keeping abreast of the latest knowledge and techniques in the cause and prevention of injuries.
2. Regularly inspecting all player and game equipment to make certain they meet required safety standards.
3. Properly fitting all athletes with protective equipment for the sport involved.
4. Carefully instructing players in the use of all safety equipment.
5. Making certain all practice and playing fields and floors are free of hazards.
6. Thoroughly acquainting players with rules of safety contained in the games rules, including special points of emphasis.
7. Carefully instructing players in all safety techniques and requiring their use in practice and competition.
8. Issuing clear warnings of the risks taken in the sport and of possible injuries from failure to apply all safety measures, particularly of such acts as using the head in butt blocking, spearing, and so on.
9. Preparing a statement of safety policies and risks involved for distribution to players and parents. (It is wise to require verification that these have been read and understood and that they will be applied.)
10. Providing sufficient and appropriate drills to properly condition athletes for the sport concerned.
11. Allowing no athlete to start practice for a sport without a certificate of fitness from a physician.
12. Making certain all athletes are covered with athletic accident insurance prior to reporting to their first practice.
13. Always acclimating athletes to heat and humidity factors.
14. Making certain all vehicles transporting athletes are fully insured.
15. Requiring parental permission for out-of-town trips.
16. Providing proper supervision at all times and making sure any faculty members assisting in supervision are properly instructed.
17. Checking to see that proper medical supervision is

provided for both practices and games.

18. Being prepared to administer first aid, but careful not to practice medicine.

19. Keeping careful and complete records of all injuries, including circumstances.

20. *Exercising at all times the best judgment a reasonable person would under the circumstances.*[26]

B. The Leaky Umbrella of Immunity.

State law may grant immunity from suit to teachers and other certified educational employees. If such is the case, the plaintiff must overcome the immunity by proving wilful and wanton misconduct, which is a higher standard than mere negligence.[27]

Whether a coach or administrator is covered by this immunity umbrella is often unclear. For example, *Garrity v. Beatty*[28] involved a claim that the school district negligently permitted a student to wear an ill-fitting helmet and refused to furnish proper football equipment upon the student's request. The Illinois Supreme Court held that the school district knew, or should have known, the helmet was unlikely to prevent injury, and held for the plaintiff.[29]

In *Thomas v. Chicago Board of Education,*[30] the Illinois appellate court expounded on *Garrity* by stating that inspection and testing of equipment was not a discretionary function of school board employees and are therefore not protected by immunity.

Absent similar wilful and wanton misconduct, school boards are immune from prosecution for negligence when they hire improperly trained or educated coaches because this is a supervisory function. Coaches are covered by the same criteria in their role of supervision and training.[31]

In *Vargo v. Svitchan,*[32] a student was injured in a summer weight training program that was *contrary* to state high school athletic association rules. The Michigan Court of Ap-

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26. *Id.*
27. Kobylanski v. Chicago Bd. of Educ., 347 N.E.2d 705, 709 (Ill. 1976).
28. 373 N.E.2d 1323 (Ill. 1976).
29. *Id.*
30. 377 N.E.2d 55 (App. Ill. 1978).
31. *Id.*
32. 301 N.W.2d 1 (Mich. App. 1980).

peals held that the superintendent was covered by governmental immunity but the principal and athletic director were not. However, in *Gasper v. Friedel*,[33] the South Dakota Supreme Court determined that the superintendent, school board members and coaches were all performing discretionary functions in offering a summer weight lifting and conditioning program. Thus, they were protected by governmental immunity. *Gasper* differs from *Vargo* in that the program in *Gasper* complied with all rules of the state athletic association and the coach had given proper safety training to the students. The student was injured when he did not follow the safety instructions. The defendants in both cases were performing discretionary duties. However, in *Gasper* the training program was in accordance with association rules and the coach had given proper safety instructions, indicating no wilful or wanton negligence.

Courts have articulated the immunity issue poorly. They seem to construe the test for immunity depending on whether or not the activity is discretionary, with a notion that wilful or wanton negligence negates the immunity. Arguably, individuals who are not granted immunity are those who demonstrate wanton negligence.

Immunity is not a sure-fire defense because it is statutorily created and some states may not have immunity statutes. Immunity also depends on whether the coaches and administrators' activities are discretionary. Unfortunately, courts determine what is a discretionary activity. Therefore, a wise administrator will not depend on immunity as a defense.

C. *The Dubious Defense of Assumption of Risk.*

Claiming a plaintiff was aware of the risk and voluntarily accepted that risk is another possible defense. Bjorklun points out several problems school administrators face when relying on this "assumption of risk" defense to a negligence claim. First, assumption of risk is not available in some states.[34] Second, depending on the student's age, that student may be held to a lower standard of care than an adult.[35]

Some school districts thought that by having participants and parents sign waivers, courts would find that the student

33. 450 N.W.2d 226 (S.D. 1990).
34. Bjorklun, *supra* note 1 at 355.
35. *Id.*

and parents expressly assumed the risk. Bjorklun points out the problem with this approach. Because all high school athletes are minors, they can disavow contracts and invalidate waivers at any time. Parents can contractually waive their own rights but they can not waive their children's rights.[36]

The Washington Supreme Court, in *Wagenblast v. Odessa School District*,[37] disallowed waiver forms as a participation requirement. The court held the waivers invalid as a violation of public policy.[38] Bjorklun concludes that signing a waiver can show a jury that the participant assumed the risk of participation. However, this conclusion assumes there was no negligence adding to the risk. If such assumption is true, the injury was never actionable.[39] Therefore, administrators should not depend upon waivers to save them from negligence claims.

IV. CONCLUSION

As the number of students participating in interscholastic athletics increases, so too does the likelihood of injuries. Because society has become more litigious, athletic administrators and coaches must be aware of the legal issues involved in operating athletic programs.

Knowledge is the key. Administrators and coaches should be aware of current litigation in this area.[40] Responsible administrators and coaches will implement rules of participation which are related to reasonable objectives of the athletic program. They will also know and meet the standard of care to avoid—or when unavoidable, to win—lawsuits. Funding for education is a precious resource that should not be wasted in needless litigation.

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36. *Id.* at 357.
37. 758 P.2d 968 (1988).
38. *Id.*
39. Bjorklun, *supra* note 1 at 358.
40. The *LegaLetter*, published by Wheatland Group Holdings, Inc. is an excellent resource to aid the administrator in keeping abreast of current litigation on issues involving athletics. It is published and distributed to members of the Fund Administrators Association and subscribers to the Mutual Legal Aid Pact. The address for Wheatland Group Holdings, Inc. is: P.O. Box 2159, Topeka, KS 66601-2159.