

High School Activity Issues for the 2015-2016 School Year and Beyond



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Or . . . The Times They Are a Changing



- We will address the legal issues and challenges presented thereby by new initiatives and circumstances presented in high school activities in the second decade of the 21st century, including:
 - Unified sports (pairing of intellectually disable students in specially designed activities),
 - Concussion prevention and education, and
 - Student participation issues.



Safe School Environment



- 79-2,139. Legislative findings and intent.
- “The Legislature finds and declares that all students have a right to work and study in a safe, supportive environment that is free from harassment, intimidation, and violence.”



Rule 10 - School Environment



- **Safe School Environment:**
 - **011.01 Quality Indicator: The school facilities and the general environment are safe, orderly, and **supportive of quality learning for all students**. A positive atmosphere for learning supports and reflects the work of students.**



Rule 10 - School Environment



- 79-2,137. School district; development and adoption of bullying prevention and education policy; review.
 - (2) For purposes of this section, **bullying means any ongoing pattern of physical, verbal, or electronic abuse** on school grounds, in a vehicle owned, leased, or contracted by a school being used for a school purpose by a school employee or his or her designee, or at school-sponsored activities **or school-sponsored athletic events**.



Rule 10 - School Environment



- **Anti-Bullying Response (2012):**
 - 011.01F Each school system shall develop and adopt a policy concerning bullying prevention and education for all students. The school system shall review the policy annually.



Unified Sports



- **Unified Sports combines approximately equal numbers of athletes with and without disabilities, on sports teams for training and competition. All Unified Sports players, both athletes and special partners, are of similar age and sport skill ability.**



Unified Sports



- The goal of Unified Sports is to offer a positive, inclusive foundation for athletic and social interaction between special education and general education students in the school and community.
- Sports offered in some states include – bowling, soccer, basketball, cross-country and track and field.
- In some states, the activities associations sponsors a state tournament.
- Part of the U.S. Department of Education’s effort to provide students with disabilities opportunities for participation in activities.



OCR Dear Colleague Letter



- **OCR dear colleague letter dated January 15, 2013 (full link:
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.html>):**
- **School districts**
 - **Should offer students with disabilities opportunities for athletic activities that are separate or different from those offered to students without disabilities.**
 - **Should be supported equally, as with a school district's other athletic activities.**



OCR Dear Colleague Letter



- In providing . . . For the provision of extracurricular athletics, a school district must ensure that a student with a disability participates with student without disabilities to the maximum extent appropriate to the needs of that student with a disability.
- The provision of unnecessarily separate or different services is discriminatory.



OCR Dear Colleague Letter



- **Students with disabilities who cannot participate in the school district's existing extracurricular athletics program – even with reasonable modification or aids and services – should still have an equal opportunity to receive the benefits of extracurricular athletics.**



OCR Dear Colleague Letter



- School districts
 - Must be flexible as they develop programs that consider the unmet interests of students with disabilities. . . .
 - **Recommended – but not required** - disability-specific teams for sports such as wheelchair tennis or wheelchair basketball.



OCR Dear Colleague Letter



- **School districts**
 - **When the number of students with disabilities at an individual school is insufficient to field a team, school districts can also:**
 - **(1) develop district-wide or regional teams for students with disabilities as opposed to a school-based team in order to provide competitive experiences;**
 - **(2) mix male and female students with disabilities on teams together; or**
 - **(3) offer “allied” or “unified” sports teams on which students with disabilities participate with students without disabilities.**



OCR Dear Colleague Letter



- The OCR urges school districts, in coordination with students, families, community and advocacy organizations, athletic associations, and other interested parties, to support these and other creative ways to expand such opportunities for students with disabilities.



NSAA - Unified Sports



- The NSAA has included events in the State Track meet for special education students.
- The NSAA is beginning the process of developing a unified sports program, with an initial focus on bowling.



NSAA - Unified Sports



- **Issues to be resolved:**
 - **FERPA? Parental consent for disabled child to be identified as such – consent form.**
 - **Eligibility of disabled student - Degree of disability?**
 - **Special Olympic standard appears to be an “honors” system – just need to meet the age requirements (5 years old) and register.**
 - **NSAA considering – Eligibility determined by member school decision based upon IEP and school SPED staff.**



NSAA - Unified Sports



- **Issues to be resolved:**

- **Approaches school SPED staff could use to identify students with Intellectual Disabilities:**

- **The student has been identified by an agency or professional as having intellectual disabilities as determined by their localities;**
 - **The student has a cognitive delay, as determined by standardized measures such as intelligent quotient or “IQ” testing or other measure which are generally accepted within the professional community as being a reliable measurement of existence of cognitive delay; or**



NSAA - Unified Sports



– **Approaches school SPED staff could use to identify students with Intellectual Disabilities:**

- **The student has a closely related developmental disability. A “Closely related developmental disability” mean having functional limitations in both general learning (such as IQ) and in adaptive skills (such as in recreation, work, independent living self-direction, or self-care).**
- **However, persons whose functional limitations are based solely on a physical, behavioral, or emotional disability, or a specific learning or sensory disability, are not eligible to participate as Special Olympic Athletes, but may be eligible to volunteer for Unified Sports.**



Concussion Awareness



A concussion is a traumatic brain injury that alters the way your brain functions. Effects are usually temporary, but can include problems with headache, concentration, memory, judgment, balance and coordination.” – Mayo Clinic



Concussion Awareness



⊙ Serious side effects:

- › Brain degeneration
- › Memory loss
- › Confusion
- › Impaired judgment
- › Impulse-control problems
- › Aggression
- › Depression
- › Progressive dementia



Concussion Awareness



- **Not just football!**
- **Reported concussions cases involve:**
 - Soccer
 - Hockey
 - Basketball
 - Cheerleading
 - Baseball
 - Swimming



Concussion Awareness



- **In the news!!!!**
- **Targeted hit – Disqualification from game and ensuing game – referee decision.**
 - **Omaha Central/Creighton Prep**
 - **TRO Hearing – Judge Smith-Camp’s Ruling**
 - **Huskers/ Miami – Two (2) Miami players disqualified from game and first-half of ensuing game.**



LB 923

School Safety Christmas Tree Bill



- **Concussion Awareness Act of 2011 - Sections 71-9101 to 71-9106.**
- **Section 71-9104 of the Act requires all schools to:**
 - **Have a program to make students aware of symptoms of concussions;**
 - **Remove students from a contest or activity if a concussion is suspected;**
 - **“Such student shall not be permitted to participate in any school supervised team athletic activities involving physical exertion, including, but not limited to, practices or games, until the student**
 - **(i) has been evaluated by a licensed health care professional,**
 - **(ii) has received written and signed clearance to resume participation in athletic activities from the licensed health care professional, and**
 - **(iii) has submitted the written and signed clearance to resume participation in athletic activities to the school accompanied by written permission to resume participation from the student's parent or guardian.”**



LB 923

School Safety Christmas Tree Bill



- **Concussion Awareness Act of 2011 - Sections 71-9101 to 71-9106.**
- **Section 9104 of the Act requires all schools to:**
 - **Notification of parents or guardian of possible injury;**
 - **Requires a doctor's release before a student can return to the contest or activity.**



LB 923

School Safety Christmas Tree Bill



- **Concussion Awareness Act of 2011 - Sections 71-9101 to 71-9106.**
- **71-9104. Schools; duties; participant on athletic team; actions required; notice to parent or guardian; effect of signature of licensed health care professional.**
 - **(1) Each approved or accredited public, private, denominational, or parochial school shall:**
 - **(a) Make available training approved by the chief medical officer on how to recognize the symptoms of a concussion or brain injury and how to seek proper medical treatment for a concussion or brain injury to all coaches of school athletic teams;**



LB 923

School Safety Christmas Tree Bill



- **71-9104. Schools; duties; participant on athletic team; actions required; notice to parent or guardian; effect of signature of licensed health care professional.**
 - **(1) Each approved or accredited public, private, denominational, or parochial school shall:**
 - **(b) Require that concussion and brain injury information be provided on an annual basis to students and the students' parents or guardians prior to such students initiating practice or competition. The information provided to students and the students' parents or guardians shall include, but need not be limited to:**
 - **(i) The signs and symptoms of a concussion;**
 - **(ii) The risks posed by sustaining a concussion; and**
 - **(iii) The actions a student should take in response to sustaining a concussion, including the notification of his or her coaches; and**



LB 923

School Safety Christmas Tree Bill



- LB 923 - Amends Concussion Awareness Act of 2011 at Section 71-9104 (1)(c).
- Establishes a return to learn protocol for students that have sustained a concussion.
- Protocol shall recognize that students who have sustained a concussion may need informal or formal accommodations, modifications of curriculum, and monitoring by medical or academic staff until student is fully recovered. 71-9104 (1)(c).



Activity Participation – Student Health & Safety



- **Court cases:**
 - **NFL**
 - **NCAA**
 - **Illinois High School Activities Association – Class Action**



The Standard of Care and Assumption of the Risk



- An overwhelming majority of concussion related claims are grounded in some theory of negligence.
- Many claims are brought when a coach or other supervisory authority unreasonably increases the risks related to the sport or fails to respond prudently after an injury has occurred, thereby aggravating its effect.
- Often the injury itself (caused by heading a soccer ball or colliding with another player) is a risk inherent to contact sports and is assumed by the player when he or she chooses to participate.



The Standard of Care and Assumption of the Risk



- As a general rule, parties do not have the responsibility to take affirmative action to protect others unless a special relationship exists.
- Some courts have recognized that a special relationship exists between schools and their students based on the principle that the K-12 school functions in place of the parent during the school day and therefore has a responsibility to exercise reasonable care toward students.



The Standard of Care and Assumption of the Risk



- This special relationship confers upon the school a duty to act with reasonable care and provide sufficient supervision for students in need of protection or aid. This duty of supervision encompasses the duty to adequately instruct athletes, provide proper equipment, and take measures to prevent aggravation of injuries once they occur.



The Standard of Care and Assumption of the Risk



- A fair statement of the generalized duty a school owes its student-athletes is that “a board of education, its employees, agents and organized athletic councils must exercise ordinary reasonable care to protect student athletes voluntarily involved in extracurricular sports from unassumed, concealed or unreasonably increased risks.”
- Or phrased slightly differently, “players who voluntarily join in extracurricular interscholastic sports assume the risks to which their roles expose them but not risks which are unreasonably increased or concealed.”



Suggestions for High School Concussion Response Protocols



- While there are no bright line rules as to the required standards of care when handling concussions, there are certainly emerging issues worth noting. High schools should consider each of the following:
 - All appropriate staff should be present. Physical trainers, team physicians and school nurses should be available when practicable, to evaluate potential injury and immediately respond.



Suggestions for High School Concussion Response Protocols



- Schools should implement a specific policy for emergency injury response, and all staff should be informed of the procedure.
- Schools should provide all necessary equipment to prevent student-athlete injuries.
- Both students and their parents or guardians should be informed yearly about concussion symptoms, warning signs and the latest updates in treatment, as well as what to do if they suspect a concussion.



Suggestions for High School Concussion Response Protocols



- Students should be encouraged to act as their own advocates in clearly communicating injuries and symptoms to coaches and other staff.
- Schools should implement a base line testing program, with both the computerized assessments and an in-person physician evaluation and should consistently require baseline and post concussive examinations. **(Recommended).**
- Coaches should be familiar with current developments in concussion recognition, and trained to recognize specific symptoms as well as reminded to act immediately after they suspect injury has occurred. **(See, NSAA website for NFHS “free” course on concussion awareness, treatment, etc.).**



Suggestions for High School Concussion Response Protocols



- The athletes should be taught techniques to minimize their risk of concussion by playing their sport in a way that avoids unnecessary head hits.
- The athletes should be taught techniques to minimize their risk of concussion by playing their sport in a way that avoids unnecessary head hits.
- Practice drills and plays should be altered to decrease the frequency of head hits outside of games.
- Schools should implement adequate return-to-play progressions that comply with or exceed the requirements of individual state law.



Activity Participation – Student Health & Safety



- Participation in school activities is a privilege subject to reasonable rule and regulations.
- However, school may not discriminate with regard to such participation.
 - The United States Department of Education, Office of Civil Rights (OCR) and the United States Department of Justice, Civil Rights Division (DOJ) recognized the right of students with a “gender identity” different from the student’s assigned sex to participate in interscholastic activities free from unlawful discrimination based on sexual orientation.
 - “Resolution Agreement” between the Arcadia Unified School District, the U.S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice, Civil Rights Division, OCR Case Number 09-12-1020, DOJ Case Number 169-12C-70, July 24, 2013.



Activity Participation – Student Health & Safety



- To date as many as 12 school districts in Nebraska have students that have presented a gender identity different than the student's assigned sex – transgender students.
- Some transgender students have sought to participate in activities:
 - Music, theatre, etc.
 - For 2015-2016 we anticipate that a transgender student will requested participation in an NSAA sponsored varsity athletic activity.



Activity Participation – Student Health & Safety



- Schools (secondary and post-secondary) and national and international athletics associations have adopted several different approaches to establishing standards for:
 - gender determination and identity of an individual, and
 - participation of such individuals in competition with others of the gender to which they identify.



Activity Participation – Student Health & Safety



- **The approaches to establishing a standard to be met to allow participation by an individual asserting a gender identity other than that assigned at birth have varied but include student safety considerations, including:**
 - **difference in size and strength of the individual;**
 - **medical treatment received by the individual available and engaged in by the individual.**



Activity Participation – Student Health & Safety



- **Maintaining a safe and “level playing field”:**
 - Participation standards for transgender students may be based upon the same rationale as standards for regarding the age of students and the number of semesters of participation, e.g.:
 - Promoting and caring for the safety and best interests of students, and
 - Assuring that students participating in school activities are provided a fair chance to participate in a manner that enhances their education and does not exploit them.
 - The principle of competitive equity or a level playing field is
 - All basic values of schools, and clearly a "substantial interest" of schools.



Activity Participation – Student Health & Safety



- Courts have uniformly upheld school and activity association age rules on the basis that older students (above the age of 19 years) possess physical size and strength noting that, “An age limit helps reduce the competitive advantage flowing to teams using older athletes; protects younger athletes from harm . . .”



Activity Participation – Student Health & Safety



- **Policy could address;**
 - **Competitive Equity (Title IX), Student Safety, and Level Playing Field issues.**
 - **Definition of “transgender” student.**
 - **Procedures for determining transgender student’s eligibility to participate in activity.**
 - **Written statement from student and parent of identification with sex other than gender assigned at birth.**
 - **Documentation of consistent gender identification and expression over a period of time.**
 - **Physician verification of consistent gender identification and expression over a period of time.**



Activity Participation – Student Health & Safety



- **Policy could address;**
 - **Procedures for determining transgender student's eligibility to participate in activity.**
 - **Use NCAA requirement of medical treatment though hormone therapy for one year (12 months), sexual reassignment surgery, counseling. etc.**
 - Female-to-Male – Testosterone treatment.
 - Male-to-female – Testosterone suppression treatment.



Activity Participation – Student Health & Safety



Eric Vilain, M.D. Professor, Director of the Center for Gender-Based Biology and Chief Medical Genetics Department of Pediatrics, UCLA:

“Research suggests that androgen deprivation and cross sex hormone treatment in male-to-female transsexuals reduces muscle mass; accordingly, one year of hormone therapy is an appropriate transitional time before a male-to-female student-athlete competes on a women’s team.”

2011 NCAA Transgender Handbook.



Activity Participation – Student Health & Safety



- **Policy could address;**
 - **Initial determination of eligibility by the member school?**
 - **Application to NSAA by member school?**
 - **Review panel made up of common members – school administrative, medical, psychological, physical therapist, coach, etc.?**
 - **Hearing process.**
 - **Maintenance of confidentiality.**



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