



# 2015 NIAAA CONFERENCE



## *WORKSHOP*

# *2015 SPORTS LAW YEAR-IN-REVIEW*

***PRESENTER: LEE E. GREEN, J.D.  
PROFESSOR – BAKER U. [KANSAS]***

**National Interscholastic  
Athletic Administrators Association**



2015 NIAAA



## LIABILITY FOR SPORTS INJURIES

*Palestri v. Wagner High School*  
*June 2015 – Settlement – New York*

### *Terms Of Settlement:*

\$50,000 settlement in broken jaw injury suffered by football player attacked in unsupervised locker room after practice.

### *Standard Of Practice:*

Duty of “general supervision” over school environs where attacks, injuries, hazing, etc. might occur (locker rooms seem to be ground zero for litigation over incidents).



2015 NIAAAA



## LIABILITY FOR SPORTS INJURIES

*Pierre v. Ramapo Central School Dt.  
Jan 2015 – Decision – NY App Division*

### *Decision Of The Court:*

Upheld trial court ruling denying summary judgment to the district in a girl's claim for injury suffered during athletic dept. sponsored self-defense training class taught by coach who claimed he was a mixed martial arts expert, but had no training.

### *Standard Of Practice:*

Duty of selection-training-technique instruction and no assumption of risk of latent dangers and hidden risks.



2015 NIAAA



## LIABILITY FOR SPORTS INJURIES

*Lucia et al v. Rocky Point Union  
Free School District  
Filed August 2015 – New York*

### *Allegations In Pleadings:*

Seeking \$12 million for MRSA infections contracted by 5 wrestlers from a sodden mat not cleaned or flipped over for 7 years.

### *Standard Of Practice:*

Duty to provide a safe playing environment, monitor athletes for injuries, and to develop an emergency medical response plan.



2015 NIAAA



# LIABILITY FOR SPORTS INJURIES

*McWilliams v. Newport Central  
Catholic High School  
Summary Judgment – Oct 2015 - KY*

## *Allegations In Pleadings:*

Decision for school where football player sought \$1+M after contracting MRSA on field that had been flooded with raw sewage but had then been professionally cleaned.

## *Standard Of Practice:*

Duty to provide a safe playing environment satisfied by professional cleaning of field.



2015 NIAAA



## LIABILITY FOR SPORTS INJURIES

*Woods v. Auburn School District*  
*Filed August 2015 – Washington State*

### *Allegations In Pleadings:*

Seeking \$2 million for life-threatening injuries to a basketball player who crashed through a wired glass door located eight feet from the baseline of the court.

### *Standard Of Practice:*

Duty to provide a safe playing environment, including compliance with safe building codes related to gymnasium features.



2015 NIAAA



## LIABILITY FOR SPORTS INJURIES

*Cullum v. Riverside Brookfield H.S.  
Filed May 2015 – Illinois*

### *Allegations In Pleadings:*

Seeking \$5 million for death of 16-yr-old hoopster who collapsed on court, was attended to by an ER physician and a nurse who were in the crowd who requested an AED but none were available on-site.

### *Standard Of Practice:*

Duty to provide immediate medical assistance, including proper equipment.



2015 NIAAAA



## LIABILITY FOR CONCUSSIONS

*Pierscionek v. Illinois High School Association – Cook County Court  
Motion to Dismiss Granted - Oct 2015*

### *Decision Of The Court:*

The IHSA's has acted with reasonable care with regard to developing and implementing concussion protocols.

### *Standard Of Practice:*

Duty of schools and governing bodies to establish concussion policies/procedures consistent with state concussion laws and prevailing medical standards.



2015 NIAAA



## LIABILITY FOR CONCUSSIONS

*McNamee v. Hillsborough Cty S Bd  
Settlement – Oct 2015 – Florida*

### *Terms Of The Settlement:*

\$2 million settlement plus concussion protocol changes for football player who suffered severe TBI resulting in permanent brain damage and other physical injuries..

### *Standard Of Practice:*

Duty of school districts to establish and athletics personnel to follow concussion protocols consistent with state concussion laws and prevailing medical standards.



2015 NIAAA



## LIABILITY FOR CONCUSSIONS

*Strough v. Bedford School Dt  
Settlement – May 2015 – Iowa*

### *Terms Of The Settlement:*

\$990,000 settlement plus protocol changes for football player who sustained a concussion but was allowed to continue playing and then suffered permanent brain damage from “Second Impact Syndrome.”

### *Standard Of Practice:*

Duty of school districts and athletics personnel to follow state concussion laws and prevailing medical practices for TBIs.



**2015 NIAAAA**



# **LIABILITY FOR CONCUSSIONS**



**State Legislation:  
All 50 States & DC Now Have  
Concussion Protocol Laws**



2015 NIAAA



# LIABILITY FOR CONCUSSIONS

## *3 Common Tenets Of State Statutes:*

- ① Immediate removal from play.
- ② Same-day return to action prohibited.
- ③ Return to action only after clearance by licensed medical professional.

## *Other Common Features Of State Laws Or School Concussion Protocols:*

- Mandatory concussion education programs for all coaches.
- Mandatory concussion information provided to student-athletes/parents.
- Baseline testing for student-athletes.



2015 NIAAA



## TITLE IX COMPLIANCE

*Ollier v. Sweetwater Union H.S. Dt.*  
*Sept 2014 – U.S. Ninth Cir. Ct. Appeals*  
*Feb 2012 (& May 2009) – U.S. Dt. Ct. CA*

### *Ruling By The Appellate Court:*

U.S. Supreme Court refused to hear appeal of 9th Circuit's ruling upholding two lower court decisions finding extensive Title IX violations in the athletics program at San Diego's Castle Park high school.

### *Standard Of Practice:*

Blueprint for Title IX compliance by high schools. Full-text: [www.las-elc.org](http://www.las-elc.org).



2015 NIAAA



## TITLE IX COMPLIANCE

*In Re New York City Public Schools  
Feb 2015 – OCR Resolution Agreement*

### *Terms Of The Settlement:*

Sets forth timetable to remedy Title IX three-prong test participation opportunity inequities and violations in seven of Title IX's categories of "other athletics benefits and opportunities."

### *Standard Of Practice:*

OCR blueprint for Title IX compliance by high schools. Full-text: [www2.ed.gov](http://www2.ed.gov).



2015 NIAAA



## CONSTITUTIONAL LAW: FREEDOM OF SPEECH & SOCIAL MEDIA

*Bell v. Itawamba County School Bd*  
*U.S. Fifth Circuit – February 19, 2015*

*Ruling By The Appellate Court:*

Sanctions against a student for a rap song written and posted online from an off-campus location accusing coaches of inappropriate conduct with female students did not violate the student's free speech rights based on the *Tinker* substantial disruption standard.



2015 NIAAA



# CONSTITUTIONAL LAW: FREEDOM OF SPEECH & SOCIAL MEDIA

## *School Authority To Limit Student Speech On Social Media*

*Since 2011: 7 U.S. Court of Appeals Cases  
& 15+ U.S. District Court Decisions*

### *Prevailing Legal Standards:*

Schools may sanction students only when:

- on-campus substantial disruption or reas. foreseeable disruption (& bullying/threats)
- on-campus lewd/obscene postings

Social media policies must be precise  
and narrowly-tailored to be enforceable.



2015 NIAAA



## CONSTITUTIONAL LAW: FREEDOM OF EXPRESSION

*Hayden v. Greensburg (IN) CSD*  
*U.S. 7th Cir. Rehearing Denied – Jan 2015*  
*U.S. 7th Circuit Ruling – Feb 2014*  
*U.S. District Ct Ruling – March 2013*

### *Ruling By The Appellate Court:*

Struck down boys' basketball team's grooming policy (hair length) as a violation of Equal Protection & Title IX.

### *Standard Of Practice:*

Dress codes/grooming policies should set forth comparable (not identical) standards for boys and girls; equally burdensome.



2015 NIAAA



## CONSTITUTIONAL LAW: FREEDOM OF RELIGION

*Matthews v. Kountze ISD*

*Appeal To Texas State Supreme Ct. - Oct 2015*

*Request By The Texas Supreme Court:*

Asked for additional briefs from the parties related to potential appeal of lower court decisions upholding on free speech and free exercise grounds the rights of cheerleaders to display run-through banners bearing Bible verses at Kountze HS. Football games.

*Standard Of Practice:*

Prevailing legal standard: school-sponsored religious messages violate Establishm. Cl.



2015 NIAAA



## CONSTITUTIONAL LAW: FREEDOM OF RELIGION

*Sedlock v. Encinitas Union School Dt.  
California Court Of Appeals - April 2015*

*Decision By The Court Of Appeals:*

Upheld lower court ruling that yoga activities incorporated into the district's P.E. curriculum were secular health initiatives, not religious instruction in violation of Establishment Clause.

*Standard Of Practice:*

School-sponsored religious messages violate 1st Amendment (yoga ≠ religion).



2015 NIAAA



# CONSTITUTIONAL LAW: INVASION OF PRIVACY

*Long v. State of Texas*  
*Texas Court Of Appeals - June 2015*

## *Decision Of The Court:*

Overtaken wiretapping conviction of board member who sent daughter into girls' hoops team locker room to record coach's halftime speech to try to get coach fired.

## *Standard Of Practice:*

Court held that, consistent with rulings on teachers, coaches do not have a reasonable expectation of privacy in speeches to players regardless of where speeches occur.



2015 NIAAA



# CONSTITUTIONAL LAW: EQUAL PROTECTION & TRANSGENDERS

## *Inclusion Of Transgender Student-Athletes In School Sports Programs*

### *State Association Policies:*

30+ state associations have policies in place with criteria for determining the eligibility of MTF and FTM transgender student-athletes and addressing issues of locker room-shower-bathroom access.

### *On The Team: Equal Opportunity For Transgender Student-Athletes*

57-page position paper with policy ideas; endorsed by NFHS ([www.nclrights.org](http://www.nclrights.org)).



2015 NIAAA



# HAZING ISSUES IN ATHLETICS

*Sayreville Public Schools (NJ)  
& War Memorial H.S. Football Hazing  
Criminal Prosecutions & Potential Civil Suits*

## *The Incident:*

October 2014 cancellation of football season following allegations of hazing involving sexual assault and sexual battery. 7 players charged with felonies; during 2015 case shifted to Family Court and 6 pleaded guilty to reduced charges. First intent-to-sue notice filed against district (\$1.5M).

## *Std Of Practice For Potential Civil Suits:*

Sexual H: "knowledge + delib indifference."

Negligence: locker room supervision.



2015 NIAAA



## HAZING ISSUES IN ATHLETICS

*Issues Courts Address In The Many Hazing Criminal & Civil Suits Every Year*

- Strong and effective written policy?
- Reporting and investigation protocols?
- Athletics personnel in-service re policy?
- In-service re child abuse reporting reqs?
- Student-athletes and parents informed?
- Educational efforts focused on athletes?
- Alternative team-building activities?
- Substantive efforts to enforce policy?
- Supervision over all environments and situations where hazing might occur?



2015 NIAAA



## SEXUAL HARASSMENT

*Kaddatz v. Manatee County S. Dt.  
Florida Trial Court - Settlement - Aug 2015*

### *Terms Of The Settlement:*

\$210,000 to the family of the victim for sexual harassment of a female student-athlete by an assistant football coach, plus an agreement to institute procedures to protect students in the future. Followed a Feb 2015 settlement of a \$75,000 retaliation claim by school staffer who reported case.

### *Standard Of Practice:*

Civil liability for schools? Knowledge + deliberate indifference standard.



2015 NIAAA



## SEXUAL HARASSMENT

*U.S. v. Timothy C. Going*  
*U.S. District Court - Feb 2015 - Illinois*

*Sentencing Phase Of Criminal Trial:*

Former Fairfield H.S. X-C coach pleaded guilty to multiple charges of sexual exploitation of minors for hiding video camera in girls' locker room; 20-year prison sentence.

*Standard Of Practice:*

Civil liability for school? Knowledge + deliberate indifference standard. Fairfield H.S. officials took immediate investigatory action upon discovery of the camera.



2015 NIAAA



## SEXUAL HARASSMENT

*Sexual Harassment Policy Guidance  
Issued By Dept. Of Education's Office  
For Civil Rights – April 24, 2015*

### *Contents Of The Policy Guidance:*

Directed towards K-12 school districts and reinforcing that, as do universities, they must have certain systems and procedures in place to protect students against sexual harassment. Focuses on the obligation to have a well-trained Title IX Coordinator who instructs staff and students about their rights and duties regarding sexual h.



2015 NIAAA



## SEXUAL HARASSMENT

*Issues Courts Address In The Many Sexual Harassment Suits Filed Every Year*

- Strong and effective written policy?
- Reporting and investigation protocols?
- Promptness of response to reports?
- Athletics personnel in-serviced re policy?
- In-service re child abuse reporting reqs?
- Student-athletes and parents informed?
- Substantive efforts to enforce policy?



2015 NIAAA



## DISABILITIES LAW & ATHLETICS

*Kempf v. Michigan High School AA  
Filed Dec 3, 2015 In U.S. District Court*

### *Allegations In The Pleadings:*

Deaf high school wrestler requesting an exception to MHSAA rules that limit his sign-language interpreter to the coach's box at corner of the mat, asking that the interpreter be allowed to move around the edge of the mat in his line of sight.

### *Standard Of Practice*

**Reasonable accommodation?**

**Fundamental alteration of activity?**



**2015 NIAAA**



# ***Thanks For Attending The Presentation!!***

**Lee E. Green, J.D. - Baker University  
618 Eighth Street P.O. Box 65  
Baldwin City, Kansas 66006  
Office: 785.594.8336  
Email: *Lee.Green@BakerU.Edu***

**National Interscholastic  
Athletic Administrators Association**