Legal Issues In
High School Athletics
Hackney Publications

In This Issue

Legal Issues in High School Athletics *is a publication of Hackney Publications.*

The Split Between a Coach and a Team's Boosters Can Be a Messy Divorce

By Gary Chester, Senior Writer

Takeaways

- Upon accepting the position as the manger of Wayne Hills High School (WHHS) baseball team, Scott Illiano was given permission by the school's athletic director and superintendent to fundraise, which he attempted to coordinate with the booster club.
- However, the booster club failed to follow its own by-laws and violating state law by serving alcohol at a team banquet, delaying the purchase of equipment, rigging booster club elections, giving $100 gift cards to WHHS players, ignoring requests to pay assistant coaches, and holding mass gatherings during the COVID-19 pandemic.
- Illanio reported the booster club members, who were subject to limited suspensions and then, in turn, retaliated against Illanio, resulting in WHHS terminating his employment.
- Thereafter, Illanio filed a civil complaint against Wayne Hills Board of Education, wherein all but one of his eight claims sur-

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Football Player's Weight Room Injury Case Crippled by Motion to Dismiss

By Jeff Birren, Senior Writer

Takeaways

- When a plaintiff brings a "State Created Danger" claim against a school district, the plaintiff must show that the school district acted with a degree of culpability that shocks the conscience.
- The Court did not apply the "drastic change" to the status quo standard in this case, but the standard for a "State Created Danger" is still high and a difficult standard to meet for a plaintiff.
- The Court refused to find that the either the school district or the coach were deliberately indifferent to the plaintiff's disability and bureaucratic inaction is not enough to prove they had actual knowledge that the discriminatory conduct was taking place.

Shyler Drumm was severely injured by a classmate. His parents had previously complained to the football coach about the harassment Drumm was receiving from teammates. The coach told the players to stop bullying Drumm because his mother had called to complain. Afterwards, the harass-

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High School Coach Suspended Without Pay After Social Media Post about Inferior Lighting

By Matt Schuckman

Quincy (Ill.) High School softball coach Darrell Henze was suspended over the winter without pay pending a termination to be decided by the Quincy School Board at its February meeting for violating the school's code of conduct for coaches.

Henze said he was informed of the decision by Lisa Otten, the director of personnel for the Quincy Public Schools, and was given a letter spelling out the reasons for the suspension.

The move came one day after Henze posted on the social media site X, formerly known as Twitter, a reaction to learning the lights on both the QHS baseball and softball fields were being taken down immediately and would be replaced in the coming months.

According to Henze, a plan was made last September to replace the lights if they were deemed unsafe by playing standards and health life safety bonds were being used to purchase and install new lights. Neither the baseball field nor the softball field is expected to have lights for the spring season.

QHS athletic director Kristina Klingele said the athletic department is working on a solution so all baseball and softball varsity and junior varsity teams will not have any games impacted by the lighting situation.

Henze wrote on X: "Due to lack of foresight, deception, and improper planning, QHS Softball and Baseball will be without lights this season with no real plan as to when lights will be reinstalled."

Henze was asked by school administrators to delete the post and he did not.

Reached by phone Thursday afternoon after his social media post went public, Henze said the lack of lights severely curtails moving the softball program forward. Last year, the Blue Devils finished 18-16 and won their first regional game since 2012.

"We have to be able to play JV innings," Henze said. "It's going to be tough enough for us to get a varsity game in without lights."

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Legal Issues in HIGH SCHOOL ATHLETICS

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Hackney Publications *Legal Issues in High School* is published every other month by Hackney Publications, P.O. Box 684611, Austin, TX 78768.

Postmaster send changes to Legal Issues in High School Athletics. Hackney Publications, P.O. Box 684611, Austin, TX 78768.

ISSN: 1527-4551

Hackney Publications

Two New Hampshire HS Girls Challenge the Constitutionality of Trump's "Keeping Men Out of Women's Sports" Executive Order

By Ellen J. Staurowsky, Ed.D., Senior Writer & Professor of Sports Media, Ithaca College, staurows@ithaca.edu

Takeaways

- Prior to the passage of HB 1204, which prohibited transgender girls from participating on girls' athletic teams in the state, issues associated with athletic eligibility were left up to the New Hampshire Interscholastic Athletic Association (NHIAA) to regulate.
- The NHIAA left it up to school districts to determine a student's eligibility to play based on "the gender identification of that student in current school records and daily life activities in the school and community."
- Since Tirrell and Turmell, two transgender high school girls who attend public schools in New Hampshire, challenged an executive order issued by President Trump that prevents transgender girls and women from participating on teams that match their gender identity, the NHIAA Council, under pressure due to the threatened withholding of federal funding from New Hampshire schools, suspended its Policy Statement and School Recommendation Regarding Transgender Participation as of February 14, 2025 pending

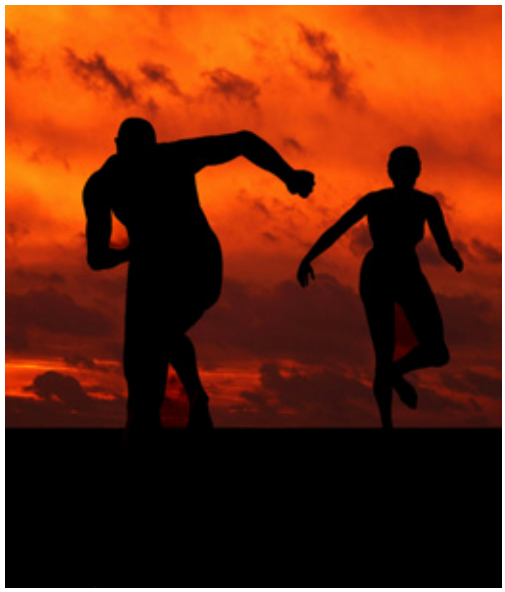
On February 12, 2025, two transgender high school girls who attend public schools in New Hampshire challenged an executive order entitled "Keeping Men Out of Women's Sports" (National Sports Ban) issued by President Trump that prevents transgender girls and women from participating on teams that match their gender identity (*Tirrell & Turmelle v. Engleblut et al*., 2025). This represents an expansion of a lawsuit brought by the Plaintiffs in August of 2024 following the enactment by the NH legislature of HB 1204 which prohibited transgender girls from participating on girls' athletic teams in the state.

Prior to the passage of HB 1204, issues associated with athletic eligibility were left up to the New Hampshire Interscholastic Athletic Association (NHIAA) to regulate. In their oversight capacity, the NHIAA had developed and adopted a "Policy Statement and School Recommendation Regarding Transgender Participation" in 2015 through its Eligibility Committee. In keeping with NHIAA's educational mission, the Policy had provided for transgender athletes to participate on teams sponsored by NHIAA athletic programs. As per the Policy as it was presented in September of 2024, "It would be fundamentally unjust and contrary to applicable State and Federal law to preclude a student from participation on a gender specific sports team that is consistent with the public gender identity of that student for all other purposes" (*Tirrell & Turmelle v. Engleblut et al.,* 2024, Appendix A - NHIAA Bylaws Article II, p. 54). The NHIAA left it up to school districts to determine a student's eligibility to play based on "the gender identification of that student in current school records and daily life activities in the school and community…" (*Tirrell & Turmelle v. Englebut et al.,* 2024, Appendix A - NHIAA Bylaws Article II, p. 54).

Initially, the Plaintiffs sought and obtained a temporary restraining order that allowed them to remain eligible while the case proceeded. The Plaintiffs also sought relief under the Equal Protection Clause of the 14th Amendment, arguing that HB 1204 singled them out and categorically barred them from participating on girls' teams because they were transgender. They further argue that HB 1204 does not meet the heightened scrutiny requirement for classifications based on sex and transgender status because their exclusion cannot be justified as being substantially related to any important state interest. Described as being similarly situated to other girls, both girls had lived their lives and pursued activities as girls throughout their schooling. Neither had undergone male puberty and the basis on which they were being excluded from participation was founded on sex stereotypes and misconceptions. Citing the language from Title IX of the Education Amendments Act of 1972, they further argue that prohibitions against the girls having an opportunity to try out for a team and/or participate on

a team consistent with their gender identity subjects the girls to sex discrimination and denies them the benefits to be realized from participation (*Tirrell & Turmell v. Edelblut et al., 2025*, Counts 1-IV).

The definitions relied upon in the National Sport Ban are embedded in another executive order issued by President Trump, that being the "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government" (the Gender Ideology Order). As a consequence, both of these orders are challenged. This case explores the limits of executive authority of the Federal Defendants (President Donald Trump, U.S. Attorney General Pamela Bondi, and U.S. Acting Secretary of Education Denise Carter).



- In Count V, the plaintiffs allege that the orders effectively compel two of the added defendants, U.S. Attorney General Pam Bondi and U.S. Acting Secretary of Education Denise Carter to discriminate on the basis of sex and to direct the federal agencies they oversee to investigate schools who allow transgender girls to participate on girls' athletic teams and to withdraw federal funding. As noted in the lawsuit, "The National Sports Ban and the Gender Ideology Order violate the equal protection rights of Plaintiffs and other transgender girls and women under the Fifth Amendment" (*Tirrelle & Turmell v. Edelblut et al.,* 2024, p. 29).
- In Count VI, the Plaintiffs seek an injunction to prevent the Federal Defendants from enforcing or implementing both the National Sport Ban and the Gender Ideology Order, which they argue violate Title IX and require recipients of federal funding to engage in sex discrimination prohibited by Title IX. Plaintiffs further seek a declaration that both orders are *ultra vires* "as they impermissibly direct agencies to take actions in violation of statutory laws that prohibit discrimination on the basis of sex" (*Tirrell & Turmell v. Edelblut et al.,* 2024, p. 30).
- In Count VII, the Plaintiffs argue that the provisions in the executive orders calling for the withholding or termination of federal funding appropriated by Congress constitute "actions that exceed the President's Article II powers, unconstitutionally infringe upon Congress's powers, and attempt to amend federal legislation while bypassing Article I's Bicameralism and Presentment Clauses" (*Tirrell & Turmell v. Edelblut et al.,* 2024, p. 32).

Since Tirrell and Turmell filed their amended complaint, two further developments have happened. First, the NHIAA Council, under pressure due to the threatened withholding of federal funding from New Hampshire schools, suspended its Policy Statement and School Recommendation Regarding Transgender Participation as of February 14, 2025 pending further review. Second, an organization known as Female Athletes Unlimited has moved to be recognized as an intervenor in this case.

References

Tirrell and Turmell v. Frank Edelblut et al. (2025). United States District Court for the District of New Hampshire. Civil Action No. 1:24-cv-00251.

New Hampshire Interscholastic Athletic Association. (2025). Bylaw Article II-Eligibility. https://www.nhiaa.org/ckfinder/userfiles/files/4HB%2024-25%20%20II%20Eligibility%20-%20Updated%202_14_25(1).pdf

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Motion to Dismiss Denied in High School Basketball First Amendment and Retaliation Case

By Dr. Rachel S. Silverman

Takeaways

- The Whalens, Mark and his son, Jake, filed three retaliation claims under the First Amendment against the former head basketball coach, Dana Mackenzie and the new head coach, Tyler Selk, for the adverse actions the defendants took after reporting concerns of financial misconduct.
- The alleged adverse actions including Mackenzie reducing Jake's playing time to almost nonexistent, and Selk cutting Jake from the team in 2023-24, even though Jake performed well during the tryouts and met every requirement.
- The defendants claimed they were entitled to qualified immunity and that it is not established that a coach can be held liable under the First Amendment for discretionary decisions about the team's roster; however, the court stated this is incorrect to assert that discretional decisions may not be subject to the First Amendment, so they were not entitled to qualified immunity and their motion to dismiss was denied.

Jake Whalen attended Waunakee High School and graduated in 2024. During his 2021-22 basketball season he was the junior varsity team's captain and starter. A group of parents, including the Whalens, attempted to remove Dana Mackenzie, the head coach, partly due to concerns of financial misconduct related to the "Waunakee Hoops" youth basketball camp. The parents believed Mackenzie was keeping money that should have gone to the school district or been spent directly on the camp. Jake's father, Mark Whalen, raised his concerns at a school board meeting in October 2022. Thereafter, Whalen noticed his son's playing time significantly reduced through the next season until it was almost nonexistent by the end of the season. Jake Whalen was considered a better player than those in the rotation playing on the court. After the 2022-23 season, Mackenzie's contract was not renewed, and the assistant coach, Tyler Selk, became the new head coach. Selk did not allow Jake Whalen to play in many summer games. Selk commented to Mark Whalen, alluding to this being a consequence or punishment for Whalen's remarks about the previous coach.

Mark Whalen contacted the Waunakee Police Department in August 2023 and alleged Mackenzie and Selk had been siphoning funds from the booster club back to themselves. This instigated a four-month-long criminal investigation. During the police interviews the coaches asked if Mark Whalen was the one who made the complaint. In October 2023, Jake Whalen met with the school principal and Selk to discuss his place on the basketball team. Jake stated in the meeting he believed he was being retaliated against for comments his father had made. During a preseason meeting for potential team members and parents in November 2023, Selk said he was weeding out the toxic parents. During the next tryouts, Selk had Jake practice with the freshmen players, and the Whalens believed this decision was made to humiliate Jake. Although Jake performed well during the tryouts and met every requirement, Selk cut him from the team.

The Whalens asserted three retaliation claims under the First Amendment. A First Amendment retaliation claim needs three elements: 1. Plaintiff engaged in protected speech. 2. Defendant took action that would dissuade the average person from speaking out. 3. Defendant took adverse action because of the protected speech (*Harnishfeger v. United States*, 2019; *Bridges v. Gilbert*, 2009). Defendants, Mackenzie and Selk, assert the complaint does not satisfy any of those elements and that they should be entitled to qualified immunity.

There are many standards for determining protected speech, and the court determined that even with the narrowest protection, the Whalens adequately alleged they engaged in protected speech. Mark and Jake's comments were not indecent, threatening, or promoting illegal conduct. The comments did not disrupt the basketball team's operations, and the Whalens' statements were about alleged misconduct, not bad coaching decisions.

The Whalens allege two adverse actions were taken: 1. Mackenzie reducing Jake's playing time to almost nonexistent, and 2. Selk cutting Jake from the team in 2023-24. Many courts have confirmed that being cut or suspended from a school sports team could qualify as retaliation under the First Amendment. In *B.L. v. Mahoney Area School District* (2020) the Supreme Court declared the school district violated the First Amendment by suspending a student from the cheerleading squad for her posts on social media. The courts reason that losing the ability to play a sport would deter the average student or parents from speaking out against a coach, and the Whalens adequately demonstrated this in their case.

Mark Whalen contacted the Waunakee Police Department in August 2023 and alleged Mackenzie and Selk had been siphoning funds from the booster club back to themselves. This instigated a four-month-long criminal investigation.

The plaintiff must demonstrate that the adverse action resulted directly from the protected speech or was at least a motivating factor for the adverse action. The court agreed the Whalens had enough to state a plausible claim. The Whalens met all three elements needed for a retaliation claim under the First Amendment.

The defendants believed they were entitled to qualified immunity because it is not established that a minor may bring a First Amendment retaliation claim based on a parent's protected speech. However, Jake's claim is based on his speech, not his father's. The other reason defendants stated they were entitled to qualified immunity is that it is not established that a coach can be held liable under the First Amendment for discretionary decisions about the team's roster. The court stated it is incorrect to assert that discretional decisions may not be subject to the First Amendment. Also, the court disagrees, stating it is clearly established that being benched or removed from a school team can serve as the basis of a retaliation claim. Both reasons the defendants provided for qualified immunity were not adequate. Therefore, the court denied the defendants' motion to dismiss due to a sufficient case for a retaliation claim under the First Amendment, and defendants are not entitled to qualified immunity.

References

Bridges v. Gilbert, 557 F.3d 541, 546 (7th Cir. 2009)

Harnishfeger v. United States, 943 F. 3d 1105, 1112-13 (7th Cir. 2019)

Whalen v. Mackenzie, 2024 U.S. Dist. LEXIS 230098

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Bill Would Allow Texas High Schoolers to No Penalty Transfer

By Austin Spears

A major change could soon be coming to Texas High School sports with the proposal of **House Bill 619**. This bill, proposed by Texas House State Representative Barbara Gervin-Hawkins from District 120 in San Antonio, would allow high schoolers to transfer for the purpose of athletics without penalty. The law stipulates that each athlete would only be able to do this once, and it would have to be to a different school district from their current high school. As long as the student's guardians sign off on the transfer, neither the previous nor future school district can block the transfer, giving the student autonomy. This law would be a monumental change in the scope of

high school athletics in Texas. Historically, students have been eligible to transfer for academic reasons but never for athletics. This bill protects athletes from the usual penalties they would receive from the University Scholastic League (USI) if they were to transfer.

Gervin-Hawkins hopes the bill will allow students more opportunities to receive collegiate scholarships and be successful in their future athletic careers. In an interview, Gervin-Hawkins said, "For me, sports are important for our youngsters. It really truly can be a vehicle out of poverty... I'm concerned that we are holding kids back that could move forward." She intends for the bill to give athletes of all skills who may not be in the best position for their athletic growth an avenue to find a situation that suits them best.

The idea behind the bill is it can help a multitude of students in various positions. A student who is a very capable athlete but maybe not the best at his position on his team would receive less playing time than they would at a different school. A perfect example of this was on display in college football this season, North Texas walk-on Drew Mestemaker started his first game at quarterback since the 9th grade in their bowl game against Texas State. Mestemaker went to high school in Austin, Texas, and was forced to play safety and punter in high school because he happened to be behind an even better QB. Mestemaker likely would have benefited greatly from the new transfer rule, allowing a clearly competent quarterback to transfer to a school he would start at. Another situation where this rule would be useful is for a star player on a bad team to transfer to a better team where they'll have a better chance of getting recruited to college.

This is Gervin-Hawkins' third attempt to file this bill after previously being stiffed by coaches and athletic directors in previous legislative sessions. The opposition has stated concerns over the rise in recruiting this bill would lead to, but Gervin-Hawkins has countered by saying that recruiting already happens even though it is technically banned. She commented on working with the coaches and athletic directors, saying, "If we're blessed with getting it passed, I would love to sit down with the coaches' association and work through what they believe would be a good model to follow."

This bill is the natural evolution of a process started by the NCAA in 2021. Until that year, college athletes were required to sit out at least one year after transferring for athletic purposes, but the governing body's **rule change** allowed athletes the ability to transfer one time without punishment. That rule has further evolved and now allows athletes to transfer an unlimited amount of times without punishment, as long as they're in good academic standing.

This time frame is a monumental one for amateur sports as a whole. Beyond just the new transfer rules in the NCAA, the collegiate landscape has been reshaped in the past five years due to the legalization of Name, Image, and Likeness (NIL) rights among nonprofessional athletes. This shift has given amateur athletes unprecedented power, allowing them complete autonomy over their money and playing career. Further legal decisions within the past year have ruled that playing in junior college does not count towards your NCAA eligibility, theoretically paving the way for college athletes to have nearly decade-long careers.

Player empowerment first swept through professional sports with the allowance of free agency, then to the NCAA with unlimited transfers, and now potentially to high school sports where athletes could have complete control over their athletic careers.

The bill requires a two-thirds majority vote from the House to pass; if it does, it could go into effect as early as Sept. 1, 2025. Gervin-Hawkins believes it's vital to give all Texas high schoolers a chance to be successful. We'll soon see if the rest of the House agrees.

Austin Spears is a junior Sport Management major at UT Austin. He is currently an analytics intern with the Texas Longhorns baseball team and plans to pursue a career in sports law.

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Wrestling Fanatics: Referee Clears Gym, Legal Controversy Ensues

Dr. John Wendt

Takeaways

- A wrestling competition held at Ankeny High School against the top ranked team, Southeast Polk High School, became unruly in the stands such that the announcer warned the crowd that if the conditions did not improve the spectators would be asked to leave.
- According to the Iowa High School Athletic Association (IHSAA) handbook, spectators are not allowed to interfere with the enjoyment of the students participating, other spectators, or the performance of employees and officials supervising the school sponsored activity.
- During the wrestling competition at Ankeny, the crowd did not heed the announcer's warning and every spectator was ordered to leave, resulting in the remaining matches to take place in a nearly, completely empty gym.
- In more serious cases, the IHSAA handbook permits a school official to contact law enforcement to remove a spectator who disobeys the school official or district's order. If a spectator has been notified of exclusion and thereafter attends a sponsored or approved activity, he/she is then advised that his/her attendance will result in prosecution.

To say that Iowa High School Wrestling competition is "intense" is an understatement. The Iowa High School Athletic Association (IHSAA) describes Iowa as "Wrestling's Home and Heartbeat."[1] The ISHAA goes on to say, "At the center of our state's vibrant history, culture, and passion for sports, Iowa reigns as one of the nation's leaders in high school wrestling. Decades of championships and community support back the tradition of producing national and Olympic champions. The high school season of folkstyle wrestling culminates with the consistently sold-out state championships at Wells Fargo Arena in downtown Des Moines."[2] And that intensity was on full display on the January 9, 2025, contest between the top ranked Southeast Polk High School and number four ranked Ankeny High School which was held at Ankeny in front of a boisterous and packed house.[3]

One reporter emphasized the intensity of this competition, "If you have never been to a wrestling dual in Iowa, the fans on both sides of the mat – or sitting together on one if that is the preferred layout – are always involved, always yelling and always really believing they are not getting the benefit of the calls…Having covered many, many duals and tournaments over the years, the most interesting part of the wrestling community in Iowa is the actual passion they have for the sport as a whole. While some might wonder if the action outside the gym was just as intense, my guess is that fans from both sides probably came together to 'team up' in support against what was being called on the mats."[4]

In the 113-pound category Southeast Polk's Nico DeSalvo won a 19-7 major decision over Ankeny's Ben Walsh giving Southeast Polk a 34-0 lead, but then both wrestlers then proceeded to shove each other while they were shaking hands.[5] Both DeSalvo and Walsh were penalized one team point for flagrant misconduct. Frank Allen, a former wrestling referee and alumnus of Southeast Polk who was at the match said, "That was kind of the match that lit the fuse."[6] Video shows Southeast Polk's coach Jake Agnitsch approaching the scorer's table a number of times with Ankeny spectators booing. The Southeast Polk junior varsity and non-participating wrestlers had gathered on the floor close to the mat and were cheering raucously. And a short time later, the referee asked those athletes to move from the floor to the bleachers.

1 Iowa High School Athletic Association, *Wrestling*, IHSAA (2025), https://www.iahsaa.org/wrestling/ (last visited Jan 18, 2025).

2 *Id.*

3 Iowa High School Athletic Association, *Wrestling: 2025 Dual Team Rankings, Jan. 2*, IHSAA (Jan. 2, 2025), https://www.iahsaa.org/wrestling-2025-dual-team-rankings-jan-2/ (last visited Jan 18, 2025).

4 Dana Becker, *Southeast Polk-Ankeny Wrestling Dual Gets out of Hand, Entire Gym Ejected*, High School On SI (2025), https://www.si.com/high-school/iowa/southeast-polk-ankeny-wrestling-dual-gets-out-of-hand-entire-gym-ejected-01jh8976tdce (last visited Jan 18, 2025).

5 Central Iowa Sports Network, *CIML BOYS WRESTLING: SE Polk @ Ankeny*, (2025), https://www.youtube.com/watch?v=xAtOomdvr4o (last visited Jan 19, 2025).

6 Meghan MacPherson & Caleb Geer, *High School Wrestling Drama: Ankeny, Southeast Polk Wrestling Fans Ousted as Tensions Rise*, weareiowa.com (2025), https://www.weareiowa.com/article/sports/local-sports/fans-ejected-southeast-polk-ankeny-wrestling-dual/524-0d76d10f-d913-46ae-8161-dc9973ff5e7b (last visited Jan 18, 2025).

Spectators became more agitated before the 120-pound category as officials met at the scorer's table. Following a discussion with the referee the public address announcer Tom Urban read a statement calling for everyone to be respectful and warned the spectators that contestants needed to be treated with respect. That statement was met with sarcastic cheers by portions of the crowd.[7] Urban also warned that if the conditions did not improve the spectators would be asked to leave. When the conditions did not change, Urban announced, "Ladies and gentlemen, we ask that you please leave the gym immediately…Please calmly and quietly leave."[8] The entire stands were emptied; all parents, spectators and fans were asked to leave after that class. Cheerleaders sat idly. After about 20 minutes the final ten wrestlers competed in a nearly empty gym.

Former referee Allen said also that removing all spectators was unjustified: "I do not think that either team or either fan base, did anything wrong, not to the extent that they that they should have cleared out a gym…It's a bad look for wrestling, the sport, and it's a bad look for the officiating... there was no winners last night."[9] Former longtime Ankeny coach Dave Ewing said that he had never seen a mass ejection before: "Ten wrestlers didn't have their parents or good friends or any fans in the stands to watch them wrestle, and it was after about a 20-minute delay. Those are tough circumstances to try to compete under…It's a heated rivalry, and it got a little bit chippy in some of the matches…The referee was under a lot of pressure, and the situation got to a point where the administration had to get involved and try to resolve things and be reminded of sportsmanship and how important that is."[10]

Ankeny coach Jack Wignall blamed the referee and the overall lack and quality of referees: "The flagrant misconduct calls should not have been made, and it wasn't even administered right…The whole thing was not handled correctly."[11] Wignall went on to say, "I really don't think it got out of hand, but I can only imagine how flustered (the referee) must have been to think that that was his only option…I really feel bad for him, and I feel bad for the fans and the kids whose parents couldn't be in the gym to watch them wrestle. It was really just a crazy situation that got overblown. I hope it's a learning moment for the coaches' association." Finally, about the fan removal Wignall said, "It was his call, but I think it sheds a light on our referee shortage…The Iowa High School Athletic Association talks all the time about how they have to cancel events because we don't have enough referees. I don't know why we didn't have a better ref there – and I'm not calling him out – but what I am saying is that he was in over his head. You can't have a somewhat inexperienced referee for a CIML dual like that. It just sheds that light that nobody else was available to do that…[12]

Southeast Polk and Ankeny released a joint statement the following day saying, "We recognize that the events that transpired at last night's wrestling meet between Southeast Polk and Ankeny High School do not align with the values of sportsmanship and respect expected from all participants and spectators in the CIML. Both teams are working together as we move forward to foster a positive and respectful environment."[13] The ISHAA said that the director of officials and wrestling administrator was unavailable for comments and offered no clarification for the mass ejection.[14]

We have seen from the Covid years what it is like to compete in an empty arena.[15] Fan involvement is fun, maybe even necessary. However, there are also boundaries for acceptable fan behavior that don't cross over the line into referee or athlete abuse. There have been times, especially in soccer where referees have order fans to leave the area or games to be played in

7 Dan Holm, *No. 1 S.E. Polk Completes Dominant Win over Ankeny Matmen before Empty Gym*, (2025), https://ankenyfanatic.com/2025/01/10/no-1-s-e-polk-completes-dominant-win-over-ankeny-matmen-before-empty-gym/ (last visited Jan 18, 2025).

8 MacPherson and Geer, *supra* note 6.

9 *Id.*

10 Staff Writers Coach & A.D., *Iowa Wrestling Official Kicks out Fans during Dual Meet*, Coach and Athletic Director (2025), https://coachad.com/news/iowa-wrestling-official-kicks-out-fans-during-dual-meet/ (last visited Jan 18, 2025).

11 Holm, *supra* note 7.

12 *Id.*

13 Eli McKown, *Fans Removed from Gym during High School Boys Wrestling Dual between Southeast Polk, Ankeny*, The Des Moines Register (2025), https://www.desmoinesregister.com/story/sports/high-school/2025/01/10/southeast-polk-vs-ankeny-wrestling-dual-fans-asked-to-leave-empty-gym/77593458007/ (last visited Jan 18, 2025).

14 Staff Writers Coach & A.D., *supra* note 10.

15 Michael Hardy, *The Hushed Spectacle of Soccer Matches in Empty Stadiums*, (2020), https://www.wired.com/story/soccer-empty-stadiums/ (last visited Jan 20, 2025). *See also*, Calli McMurray, *How Playing in Empty Stadiums Affects Athletes*, (2021), https://www.brainfacts.org:443/thinking-sensing-and-behaving/thinking-and-awareness/2021/how-playing-in-empty-stadiums-affects-athletes-072621 (last visited Jan 20, 2025).

closed stadia.[16] It was unfortunate for everyone that the Southeast Polk – Ankeny competition concluded in an empty gym.

The National Federation of State High School Associations (NFHS) writes the playing rules for high school sports. Their goal is "to ensure that all students have an opportunity to enjoy healthy participation, achievement and good sportsmanship in education-based activities."[17] According to the NFHS Wrestling Case Book & Officials Manual, Section 12(4) "Conduct by a spectator that becomes abusive or interferes with the orderly progress of the match must be corrected by the referee...Wrestling will not be resumed until the offender has been removed."[18] According to Section 36.7(2) of the IHSAA Handbook "Sportsmanship. It is the clear obligation of member and associate member schools to ensure that their contestants, coaches, and spectators in all interscholastic competitions practice the highest principles of sportsmanship, conduct, and ethics of competition."[19] And finally, specifically dealing with public conduct on school premises the ISHAA Handbook very clearly states, "School sponsored or approved activities are an important part of the school program and offer students the opportunity to participate in a variety of activities not offered during the regular school day. School sponsored or approved activities are provided for the enjoyment and opportunity for involvement they afford the students. Spectators will not be allowed to interfere with the enjoyment of the students participating, other spectators, or with the performance of employees and officials supervising the school sponsored or approved activity…"[20] And to show how serious the IHSAA takes this issue, the Handbook goes on to say, "If the spectator disobeys the school official or district's order, law enforcement authorities may be contacted and asked to remove the spectator. If a spectator has been notified of exclusion and thereafter attends a sponsored or approved activity, the spectator shall be advised that his/her attendance will result in prosecution. The school district may obtain a court order for permanent exclusion from future school sponsored activities."[21]

On January 9, 2025, Southeast Polk won all 14 matches, and the final score was Southeast Polk 60, Ankeny minus-1 due to Ankeny's penalty in the 113-pound category.[22] Was that the result that coaches wanted? Was that "an opportunity to enjoy healthy participation, achievement and good sportsmanship in education-based activities"? Is that how student-athletes will remember that night? Did the referee handle the situation properly? While these teams are not scheduled to meet again during the regular season, they could possibly face each other during the road to the State Championships. The question is, "Do they want the same scenario?"

16 Associated Press, *Genoa Home Match against Juventus to Be Played without Fans after Crowd Trouble at Derby*, (2024), https://www.sportsnet.ca/serie-a/article/genoa-home-match-against-juventus-to-be-played-without-fans-after-crowd-trouble-at-derby/ (last visited Jan 20, 2025). *See also*, Associated Press, *Udinese to Play Home Game Minus Fans Following Racist Abuse Aimed at Opposing Player*, (2024), https://www.cbc.ca/sports/soccer/udinese-fans-barred-game-monza-italy-racial-abuse-1.7092074 (last visited Jan 20, 2025).

17 National Federation of State High School Associations, *About Us*, (2025), https://www.nfhs.org/who-we-are/aboutus (last visited Jan 18, 2025).

18 National Federation of State High School Associations, *2023-24 Wrestling Case Book & Officials Manual*, (2023), https://cdn1.sportngin.com/attachments/document/1d79-3089840/NFHS-WR-Casebook.pdf.

19 Iowa High School Athletic Association, *IHSAA Handbook*, (2024), https://www.iahsaa.org/wp-content/uploads/2024/11/2024-25-IHSAA-Handbook-FINAL.pdf (last visited Jan 18, 2025).

20 *Id.* at 77.

21 *Id.*

22 Becker, *supra* note 4.

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FTC Settlement with Stadium Security Company Evolv Technologies: Allegations and Implications

By Charles Keller

The Federal Trade Commission (FTC) has settled with Evolv Technologies, a Massachusetts-based company that makes AI-powered security screening systems. The FTC claimed Evolv misled customers about how accurately its Evolv Express scanners could detect weapons while ignoring harmless items. As part of the settlement, Evolv cannot make unproven claims about its products, and certain K-12 school customers can cancel their long-standing contracts.

Allegations Against Evolv Technologies

The FTC accused Evolv of making misleading claims

about its scanners' ability to detect all weapons and ignore harmless objects such as laptops, binders, and water bottles. Evolv marketed its scanners as more accurate, efficient, and cost-effective than traditional metal detectors. However, reports and real-world incidents raised concerns about these claims.

For example, in October 2022, an Evolv Express scanner failed to detect a seven-inch knife in a school, which was later used in a stabbing. After the incident, the school increased the scanner's sensitivity, but this led to a 50% false alarm rate. A 2021 test at a Major League Soccer stadium in Columbus, Ohio, found that Evolv's scanners missed two small handguns and only detected knives 58% of the time.

Additionally, the FTC alleged that Evolv altered a report from the National Center for Spectator Sports Safety and Security (NCS4) to remove negative findings about its scanners. Instead of sharing the full 52-page report, Evolv published a shortened 25-page version that omitted concerns about its scanners' ability to detect weapons.

A separate NBC 5 investigation found that Evolv scanners were installed at major venues including Wrigley Field and Soldier Field in Chicago, as well as in many schools. In some cases, the scanners flagged more than 85,000 false positives on laptops between August 2023 and April 2024. Despite detecting five knives, the scanners caused significant disruptions due to these false alarms.

Settlement Terms

Under the settlement, Evolv is prohibited from making unverified claims about:

- How well its scanners detect weapons or ignore harmless objects
- The accuracy of its scanners compared to metal detectors
- The speed and cost savings of its system
- The role of AI in improving security screening

Additionally, Evolv must notify certain K-12 school customers that they can cancel contracts signed between April 1, 2022 and June 30, 2023. However, schools that participated in a 30-day trial before purchasing the scanners or those that bought 15 or more scanners were not eligible for the return exemption.

Evolv is also facing lawsuits and internal investigations. The company admitted to misreporting revenue due to improper sales practices, which led to the resignation or termination of several executives, including its CFO. Investors have sued Evolv, claiming they were misled about the company's financial standing and product capabilities.

Evolv's Response

Despite the settlement, Evolv denies wrongdoing. Co-founder Michael Ellenbogan told the media, "While we admitted no wrongdoing, we're happy to resolve this matter and are pleased the FTC did not challenge the fundamental effectiveness of the technology and nor did the resolution include any monetary relief."

When NBC 5 asked for more details, an Evolv spokesperson told the media, "The FTC did not challenge the core efficacy of Evolv's products. We stand behind our technology and are pleased that our customers believe in the importance of our technology and have validated its performance at scale, balancing consistent detection with a positive security experience."

Broader Implications

This case is part of the FTC's larger effort to ensure AI-related claims are backed by facts. In 2024, the FTC launched Operation AI Comply, which targets misleading marketing of AI-based products. The FTC's action against Evolv signals increased scrutiny of AI-powered security systems, particularly those used in schools and public venues.

Security experts warn about the risks of over-relying on AI security screening. Don Maye from the investigative firm IVPM said the FTC's findings highlight major gaps in Evolv's technology. He advised schools and other customers to carefully examine Evolv's claims and consider alternative security measures.

Evolv's credibility may have been further damaged by its decision to reportedly withhold key findings from the NCS4 report. Instead of sharing the full study, the company released a version that removed concerns about weapons detection failures, according to news reportsd. These actions raised doubts about Evolv's transparency and reliability. Additionally, Evolv admitted to financial misstatements, which led to an SEC inquiry.

Expert Weighs In

According to Professor Gil Fried of the University of West Florida, and Editor-in-Chief of Sports Facilities in

the Law, "the implications for our industry are significant. As we are having a harder time finding employees to work events, we are relying more and more on technology to address concerns. If the technology cannot be reliable, whether being ineffective or breaking down, it will hamper our ability to bring folks into a venue as quickly as possible. This leads to fans getting upset and venues possibly having to increase personnel to ensure rapid processing of individuals."

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Office for Civil Rights Launches Title IX Investigation into Washington State School District

On the last day of February, the U.S. Department of Education's Office for Civil Rights Seattle Branch opened an investigation into the Tumwater School District (TSD) amid allegations that "it continues to violate Title IX by allowing male athletes to compete in girls' interscholastic athletics," according to a press release.

"This investigation follows evaluation of a complaint filed by the Foundation Against Intolerance & Racism (FAIR) on behalf of a 15-year-old female student-athlete in TSD who allegedly experienced sex discrimination and retaliation for speaking up against males in female sports."

"OCR's directed investigations of educational institutions, state boards of education, interscholastic associations, and school districts demonstrates that the Trump Education Department will vigorously enforce Title IX to ensure men stop competing in women's sports," said **Craig Trainor, Acting Assistant Secretary for Civil Rights.** "If Washington wants to continue to receive federal funds from the Department, it has to follow federal law."

"FAIR is thrilled that the Department of Education is opening a Title IX investigation of Tumwater School District in Washington. All female student-athletes in Washington are entitled to feel safe in sports and enjoy a fair opportunity to compete," said **Monica Harris, the Executive Director of the Foundation Against Intolerance & Racism.** "We deeply appreciate that schools and athletic associations are making efforts to create inclusive environments, but we also feel strongly that these efforts must not erode long-standing sex-based rights that are intended to protect girls."

State laws do not override federal antidiscrimination laws, and TSD and their member schools remain subject to Title IX and its implementing regulations so long as they receive federal funds.

According to the press release, FAIR, a nonpartisan, nonprofit organization, filed an OCR complaint alleging that "a 15-year old female student at TSD experienced sex discrimination preventing her from participating in her school's basketball game after she discovered during the warm-up session that a player on the opposing team was a male. The complaint alleges that TSD school officials had advance notice that the member of the opposing team was a male, yet let the match proceed. When the complainant asked that competition be limited to female athletes, the TSD school principal reportedly cited Washington Interscholastic Activities Association (WIAA) policy, which allows athletes to play on the team that conforms to their 'gender identity.' This led the complainant to remove herself from participation in the game for fear of her safety. The complaint also alleges that TSD is now "investigating" the 15-year-old female student for violating TSD's policies against bullying and harassment by 'misgendering' the male player.

"Despite President Trump's February 5 Executive Order and the Department of Education's guidance that Title IX protects students based on their biological sex, Washington state officials have publicly announced plans to violate federal antidiscrimination laws related to girls' and women's sports. For example, Superintendent of Public Instruction Chris Reykdal on February 6 sent an email to all Washington public school superintendents directing schools to 'continue to follow state law' allowing male athletes to compete against girls. On February 27, Tumwater School District Board of Directors adopted a resolution supporting an amendment to WIAA policy that would limit participation in the girls' sports categories to students whose biological sex is female."

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Study: Football Helmet Covers, like Guardian Caps, Do Not Reduce Concussions for High School Players

A study of 2,610 Wisconsin high school football players found that wearing soft-shell helmet covers, marketed as Guardian Cap helmet devices, during practice had no effect on the rates of sports-related concussions.

Results cannot be generalized to college and pro players due to differences in helmet covers, according to researchers at the University of Wisconsin School of Medicine and Public Health.

This is one of very few studies to evaluate how the caps perform in real-world conditions.

"Unfortunately, we found that using these devices may provide false reassurance to players and their parents who are hoping to reduce their kids' risk of concussion," said Dr. Erin Hammer, the study's lead author and assistant professor of orthopedics and rehabilitation at the school.

The study was published last month in the *British Journal of Sports Medicine*.

A research team led by Hammer, who is also a sports medicine physician at UW Health, followed players from 41 Wisconsin high school teams during the 2023 football season. Individual teams decided who would wear the caps. Some of the players wore the Football Guardian Cap XT during practice and some never wore them. The caps were not worn during games.

Upon comparing concussion rates between the 1,188 players who did not wear Guardian Caps during practice and the 1,451 players who did, researchers found no statistical difference between the groups. Of the 64 concussions sustained during practice, 33 happened to players wearing Guardian Caps, and 31 to those in the group without caps.

Head injuries were assessed by the teams' athletic trainers, who also kept track of helmet models, cap use and number of times a player practiced or played in a football game.

Data analysis showed that other factors had no bearing on concussion risk during the study, such as whether the players had experienced previous concussions, the brand of helmet they wore, years of tackle football experience, or whether the playing surface was artificial turf or grass.

Researchers observed nearly an eight-fold higher level of sports-related concussions during practices among female football players than male, 18.75% compared to 2.4%, but noted that the small number of female players in the study — three total — limited the generalizability of the finding.

Previous laboratory tests had suggested the extra padding in Guardian Caps could reduce forces to the head during impact.

Using a large sample size, Hammer's peer-reviewed study assessed real-world concussion rate differences between groups of players using the caps and not using the caps. She cautioned that the study cannot be generalized to collegiate and professional league levels of football, however, because those players wear a different, thicker model of the device.

The researchers advise that high school teams implement data-backed interventions to reduce sports-related head injury rates, such as employing athletic trainers and supporting rule changes to limit contact during practice. These interventions have been shown to reduce sports-related concussions by 64%. Additional risk reduction measures include training coaches in football safety, which halved concussion rates, and adding extra jaw padding to the helmets, which lowered rates by 31%.

"Given the size of our study, it seems that if Guardian Caps did protect against sports-related concussions in high school players, we would have seen that result," Hammer said.

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SPLIT

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vived the defendant's motion to dismiss, allowing his case to proceed through the U.S. District Court in Newark, NJ.

Fans of college sports recognize that the relationship between a head coach and a school's boosters can resemble a rocky marriage: when the team succeeds, the relationship seems blissful; when the team fails and the boosters want a new coach, it can resemble a bitter divorce.

A New Jersey case involving a frustrated high school baseball coach and a difficult booster club illustrates just how messy the split between coaches and high school boosters can be. In *Illiano v. Wayne Hills Board of Education*, 2024 U.S. Dist. LEXIS 28389 (D. N.J. February 20, 2024), the marriage between the coach and the boosters was on the rocks after just two months.

The Facts

The Wayne Hills High School (WHHS) baseball team was a program in flux, having employed five different managers from 2011 to 2017. Coming off an 11-16 season, WHHS hired an experienced New Jersey baseball coach, Scott Illiano, in November 2017. Illiano took the job even though he had learned that the team faced several issues, such as a miniscule budget of about $3,500 and a lack of assistant coaches—the team had two paid assistants while five "were required for proper supervision" of the student-athletes.

The Wayne Hills High School (WHHS) baseball team was a program in flux, having employed five different managers from 2011 to 2017.

To address these concerns, Richard Portfido, the athletic director, and Superintendent Mark Toback told Illiano that he could fundraise. Portfido suggested that the coach coordinate with the booster club to raise funds for additional assistants and the purchase of essential equipment. Two months after Illiano was hired, he met with the booster club to pitch a 12-month plan to rejuvenate the baseball program.

Almost immediately after the meeting, Illiano experienced problems with the equipment-purchasing process and the booster club's failure to follow its own by-laws and state law. The boosters allegedly undermined Illiano's authority. The second amended complaint alleges that the booster club violated Wayne Board of Education (BOE) policies, executive orders issued by Governor Phil Murphy, and regulations promulgated by the New Jersey State Interscholastic Athletic Association. Alleged violations include: serving alcohol at a team banquet; delaying the purchase of equipment; rigging booster club elections; giving $100 gift cards to WHHS players; ignoring requests to pay assistant coaches; and holding mass gatherings during the COVID-19 pandemic.

The booster club was suspended in 2019 and again in 2020 after Illiano complained to Portfido. Each suspension was short-lived however, because the BOE lifted them. Thereafter, the boosters and members of the BOE allegedly retaliated against the coach by: (1) claiming he took monetary kickbacks, (2) accusing him of trying to improperly influence booster club elections, and (3) misrepresenting the contents of a book he wrote in 2011.

On January 19, 2021, WHHS terminated Illiano's employment. Eleven months later, he filed a complaint in state court asserting these eight counts: (1) violation of 42 U.S.C. §1983; (2) violation of the New Jersey Conscientious Employee Protection Act (CEPA); (3) wrongful termination; (4) First Amendment Retaliation; (5) civil conspiracy; (6) tortious interference with economic advantage; (7) portraying the plaintiff in a false light; and (8) defamation. The named defendants were the BOE, the Wayne Hills Booster Club, BOE member Michael Bubba, three booster club officers, and three school officials or employees.

The Motion to Dismiss

On January 10, 2022, the defendants removed the action to U.S. District Court in Newark, where motions to dismiss the complaint were heard by Judge Susan Wigenton. The court dismissed the claims brought against one individual defendant and then considered the CEPA claim against the BOE and others. The defendants argued that because Illiano failed to report the alleged misconduct to his employer, he did not allege a prima facie CEPA claim.

To state a claim under the CEPA, a plaintiff must allege that: (1) he reasonably believed defendants were violating a law, rule, or public policy; (2) he performed a whistleblowing activity as defined by N.J. Stat. Ann. § 34:19-3; (3) an adverse employment action was taken against him; and (4) a causal relationship exists between the whistleblowing activity and the adverse employment action. The statute defines "employer" as: "[A]ny individual, partnership, association, corporation or any person or group of persons acting directly or indirectly on behalf of or in the interest of an employer with the employer's consent…"

The court denied the motion because Illiano adequately pleaded that the Club and some of its members acted as agents for the BOE and retaliated against him.

The BOE's motion to dismiss the third count (wrongful termination) was denied because the BOE allegedly failed to comply with its own policies governing boosters and "its own decision to terminate Plaintiff for blowing the whistle on that alleged dereliction of duty, is undoubtedly a violation of a clear mandate of public policy."

The court denied the motion filed by the school's principal and assistant principal on the fourth count (First Amendment retaliation). The plaintiff sufficiently alleged that they terminated him in part due to his complaints of misconduct and a book he wrote in 2011—both of which are protected speech.

To state a claim for tortious interference with prospective economic advantage against a member of the BOE and two other individuals in count six, Illiano needed to allege that: (1) he had reasonable economic expectations; (2) there was intentional interference by the defendants; (3) he probably would have realized the economic advantages absent the interference; and (4) the interference caused the damage. Though acts committed within the scope of employment with the BOE are protected, the court denied the motion because the alleged facts suggest that the acts were outside the scope of employment.

The court dismissed the seventh count (false light) as to the named board member because the one-year statute of limitations had expired. Dismissal was granted to three booster club defendants as to their comments regarding the plaintiff's book because they were not made public; however, the defendants' motion was denied as to their alleged intentional and offensive statements that Illiano had received kickbacks and interfered in the Club's election. Judge Wigenton denied the defendants' motions to dismiss the defamation claim on similar grounds.

Finally, the court ruled that the fifth count (civil conspiracy) could proceed against four individual boosters. To state a claim for conspiracy under New Jersey law, a plaintiff must plead these elements: (1) a combination of two or more persons; (2) a real agreement or confederation with a common design; (3) the existence of an unlawful purpose, and (4) proof of special damages. The plaintiff has adequately alleged that defendant Michael Bubba, while acting outside his employment with the BOE, conspired with three other defendants to tortiously interfere with Illiano's employment.

The Epilogue

Illiano turned his team's fortunes around, leading Wayne Hills to winning seasons in 2018, 2019, and 2020. He was replaced by Rob Carcich, who reportedly moved on after three seasons. Ironically, Illiano is reportedly working with a business that organizes fundraisers for interscholastic sports teams. Needless to say, the Wayne Hills High School baseball team is not listed on the business' website as a client.

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FOOTBALL

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ment escalated and caused multiple serious injuries to Drumm.

As a result, Drumm sued in state court, alleging Civil Rights violation for failure to investigate, creating a danger, discrimination pursuant to the Americans with Disabilities Act, failure to enforce the ADA, and breach a fiduciary duty. He sued the assailant for negligence, and all of the defendants for negligent infliction of emotional distress. The School District and coach removed the case to federal court and filed a motion to dismiss the claims. The Magistrate recommended granting the motion, subject to leave to amend two causes of action.

The Court stated that the Civil Rights Act could not be used a remedy for violations of the ADA, that no valid ADA causes of action were pled, and that the negligence claim was barred by Pennsylvania statute. The Court recommended giving Drumm an opportunity to replead his "State Created Danger" and ADA discrimination claims. *Drumm v. Beaver Area Sch. Dist., Report and Recommendations*, ("R&R"), 2:24-CV-00438-CB-MPK, W.D. Penn. (11-14-2024). The District Court affirmed and gave Drumm until January 10, 2025, to file an amended complaint (12-27-2024).

Background

The R&R took the following allegations from the Complaint. Drumm was enrolled in the School District and a member of the football team "when he was diagnosed with Generalized Anxiety Disorder and Attention Deficit Hyperactivity Disorder." The District was "advised" of the diagnosis "and his need for accommodations." Defendant Dr. Jeffrey Beltz, PhD., educational leadership, was the football coach and school principal. After joining the team, Drumm "began to suffer hazing and bullying", including being called "Shytard." Drumm's parents made Beltz aware of this "on multiple occasions," but he "dismissed the complaints a 'kids being kids.'" After Drumm's mother called once again to complain, Beltz told the team to stop the behavior because of the call from Drumm's mother.

This "only exacerbated the problem." First, Drumm experienced a broken toe during practice. Next, a teammate hit Drumm on the head with a tennis racket in gym class, resulting in a concussion. One day in the weight room, "Defendant Nicholas Collins came up behind Drumm and put him in a headlock until he lost consciousness. Collins then dropped Drumm to the floor, hitting his head. Drumm sustained severe and permanent injuries, including a concussion, post-traumatic stress disorder, a closed head injury, and cervical and lumbar spine injuries." The family ultimately moved to a different school district.

In Court

After the Complaint arrived in federal court, Beltz and the District filed a motion to dismiss. The R&R did not go well for Drumm. The first claim was an equal protection claim for a violation of Section 1983 against Beltz as an individual and official capacity for failing to investigate the allegations of bullying and harassment. Beltz asserted that Drumm failed to state a claim. In his opposition brief, "Drumm states that he is 'not seeking a claim against Beltz under the Equal Protection Clause and stipulates to striking" that from his Complaint. The R&R recommended dismissing this claim. The District Court agreed.

Claim II: State Created Danger

The second claim was a Civil Rights claim against Beltz and the District for a "State Created Danger." The R&R stated that to prevail, defendants must create or increase the risk of harm. The plaintiff had to prove that the harm was both foreseeable and direct; that the state actor acted with a degree of culpability that shocks the conscience; that the relationship between the plaintiff and defendant existed such that the plaintiff was a foreseeable victim of the defendant's acts or a member of a discrete class that was subject to harm; and that a state actor affirmatively used his or her authority in a way that created a danger to the citizen or rendered that citizen more vulnerable to the danger than had the state not acted at all.

The essence of Drumm's argument was Beltz's response to the call from Drumm's mother gave rise

to further bullying, which increased after Beltz told the team to stop harassing Drumm. Drumm attempted to distinguish *L. R. v. School District of Philadelphia*, 836 F. 3d 235, 244 (3d Cir. 2016), a case that held that there had to be a "drastic change" in the status quo. The R&R recommended that the cause of action be dismissed with leave to amend.

The District Court declined "to adopt the R&R's indication that a 'drastic change' to the status quo is required for Plaintiff to state a claim." "There is no indication" in L. R. v. School District that this "constitutes a necessary change." "Plaintiff has identified one affirmative act: Defendant Beltz 'told the students who were bullying him and harassing [him] to stop because his mother had called' to complain."

This "State Created Danger" theory "cannot be viewed as a strong one, in any event." The "harm" must be a "foreseeable and fairly direct result…of Beltz's mentioning, in his admonishment of the bullies," that Drumm's mother had called to complain. Although a "drastic change" was not required, at this point, the Court noted, the "mountains are, indeed, high" The Court has to "bear in mind the relatively lenient standards applicable at this stage." It "cannot resolve the issues on the present record." The cause of action could not proceed on the current record, but the Court did give leave to amend. The Court also informed Drumm that "he must also contend with Defendants' assertion of qualified immunity."

The Third Circuit "has acknowledged the 'inherent tension between federal qualified immunity jurisprudence and the concept of notice pleading,'" and a Rule 12(3) "motion for a more definitive statement (a vehicle invoked by defense counsel here, albeit regarding other counts. *Thomas v. Independence Twp*., 436 F. 3d 285, 299-302 (3d Cir. 2006)." Drumm "must" address the relevant standards in an amended complaint and "renewed motion practice likely to follow."

Claim III:

This claim arose solely against Collins for acting recklessly and negligently in the attack. He did not file a motion to dismiss.

Claim IV: Discrimination under the ADA

The fourth claim was against the School District. Drumm alleged that he experienced intentional discrimination prohibited by the ADA, that the District and Beltz owed him a duty to provide him with a properly supervised education and they breached this duty with deliberate indifference.

An ADA plaintiff must show that he or she has a disability; that he or she was otherwise qualified to participate in a school program; and was denied benefits of the program or was subject to discrimination because of that disability. 42 U.S.C. Section 12132, *Chambers v. Sch. Disk of Phila. Bd. of Educ*., 587 176, 189 (3d Cir. 2009). If damages are sought, a plaintiff must also show that the discriminatory conduct was intentional. *S.H. v. Lower Merion Sch. Disk*, 729 F. 3d 248, 262 (3d Cir. 2013).

This type of claim also requires showing that the defendant(s) had knowledge of the behavior. The knowledge must be "actual," not merely that a defendant "should have known." Furthermore, the plaintiff must prove that the defendant failed to act despite that knowledge. This means "a deliberate choice, rather than negligence or bureaucratic inaction." *S.H*., 729 F. 3d at 263. Drumm had not pled facts "that establish disability discrimination under the ADA." Beltz's actions and inactions "may indicate a callousness towards Drumm's needs," but the alleged facts do not indicate that the District or Beltz "were deliberately indifferent to Drumm's situation or knew

that Drumm's ADA rights were violated. In fact, as alleged, Beltz admonished Drumm's bullies to stop their harassment." The R&R recommended that the claim be dismissed, subject to leave to amend. The District Court did just that, adding "should Plaintiff wish to attempt a cure."

Claim V: Section 1983, Enforcement of the ADA

The fifth claim was a Civil Rights action against the School District and Beltz for failure to enforce the ADA. Drumm argued that a recent Supreme Court decision "created an entirely new scheme for analyzing whether Section 1983 may be used to bring a claim." *Health & Hosp. Corp. of Marion City v. Talevski*, 599 U.S. 166 (2023). The Magistrate believed that Talevski was "merely examining and illuminating its prior precedent—not establishing a new regime." Although there may not be consensus on this point, the "statutory scheme of the ADA is clearly comprehensive" and allows various remedies. This scheme "is incompatible with individual enforcement under § 1983." The R&R commended that Count V be dismissed with prejudice. Once again, the District Court abided by that recommendation.

Claim VI: Breach of Fiduciary Duty

The sixth claim was a breach of fiduciary duty against the School District and Beltz for failing to supervise Drumm. The defendants argued that the facts as pled did not establish such a duty. In his opposition, Drumm stipulated to the dismissal of this claim. The R&R concurred, and District Court agreed.

Claim VII: Negligent Infliction of Emotional Distress

This claim was for negligent infliction of emotional distress and was asserted against the District, Beltz and Collins. The District and Beltz argued that the claim was barred by the Pennsylvania State Tort Claims Act. Drumm again stipulated to dismissal. However, Collins did not move to dismiss this claim.

Status

The Court gave Drumm the opportunity to replead Claims II and IV, and dismissed with prejudice Claims I, V, VI, and Claim VII against the District and Beltz. Amendment "is limited to the topics contemplated herein," and he had just fourteen days to do so, including New Year's Day. Drumm did not file an amended complaint, so the federal law claims against Beltz, and the District are dismissed. Presumably the claims against Collins will be returned to state court.

Editorial

Awful. That word applies to the way Drumm was treated prior to the attack. Stronger words are required to describe the consequences of the attack. Yet could any deep pockets adequately compensate Drumm for the effects of his injuries? Drumm's condition required careful legal research and thought. Filing federal law claims in state court and almost immediately stipulating to dismiss three claims is perplexing.

Beltz's conduct is startling. Every elementary school student knows what will happen when a class is told that a mother called the school to complain about the way her child is being treated by other students. The bad behavior will intensify, and that much more so with a school football team. Dr. Beltz provided no leadership for Drumm. Can there be any doubt that he would have responded differently if his star quarterback was subject to harassment? Drumm deserved better.

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