Legal Issues In
High School Athletics
Hackney Publications

In This Issue

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

High School Student-Athlete with F-1 Visa Permitted to Play Football After Federal District Court in Utah Grants TRO

*By Gina M. McKlveen, Esq.**

TAKEAWAYS

- An F-1 visa is a non-immigrant visa that allows international students to study full-time in the United States.
- In early 2024, UHSAA adopted the Student Visa Eligibility Rule, which provided that "international students on F-1 visas were only eligible for non-varsity level sports competition unless the school attended by that student opted for an independent status or forfeited its eligibility for postseason competition."
- Zachary Szymakowski, an Australian citizen who obtained a F-1 visa to attend and play varsity football at Juan Diego Catholic High School sought a Temporary Restraining Order (TRO), enjoining UHSAA from enforcing the Student Visa Eligibility Rule and alleging that the rule violated Equal Protection Clause of the Fourteenth Amendment.

See VISA on page 16

Negligence Lawsuit Against Rockwall-Heath Coaches for Injuries to Students

By Charles Keller

TAKEAWAYS

- Valencia Smith, representing her minor child, G.A., filed a lawsuit against several coaches at Rockwall-Heath High School, alleging that their actions, specifically punishing student-athletes with excessive physical exercise, resulted in hospitalization and various injuries.
- The lawsuit in this case claims the coaches breached this duty by enforcing unsafe workouts and ignoring warnings from the school district's athletic director, Russ Reeves, who had explicitly warned against using physical exercise as punishment.
- In negligence lawsuits, it's important to remember: The coaches have a legal responsibility to ensure the safety of student-athletes.

A legal case in Rockwall County, Texas, highlights serious concerns about negligence in high school athletics. Valencia Smith, representing her minor child, G.A., has filed a lawsuit against several coaches at Rockwall-Heath High School, alleging that their actions during a January 2023 workout led to significant injuries.

See LAWSUIT on page 19

WIAA & NFHS Partner to Equip HS with 'Life-Saving' AEDs

The Wisconsin Interscholastic Athletic Association (WIAA) has announced an initiative aimed at "enhancing the safety and well-being of student-athletes, coaches and spectators across the state."

The WIAA distributed Automated External Defibrillators (AEDs) to 24 high schools throughout Wisconsin, in partnership with the National Federation of State High School Associations Foundation. Fourteen of the AEDs were distributed randomly at the Area Meetings. Two schools in each of the seven districts received the units. The remaining 10 were distributed using the Department of Public Instruction Free & Reduced lunch data.

"The safety of student-athletes is our top priority," said Stephanie Hauser, Executive Director of the WIAA. "By supplying additional AEDs to schools we are taking a proactive step toward ensuring a safe environment for all participants in interscholastic athletics."

Sudden cardiac arrest is a leading cause of death among young athletes. AEDs, when used promptly, can significantly increase the chances of survival. This initiative aligns with the WIAA's commitment to promoting the health and safety of all student-athletes, coaches and spectators.

"The NFHS Foundation was instrumental in this initiative, offering partial funding and support for distributing AEDs. "We are proud to partner with the WIAA on this vital mission," said NFHS Foundation President, Davis Whitfield. "Together, we can make a significant impact and save the lives of young athletes across Wisconsin by providing access to this essential device."

The distribution of AEDs is a significant step towards creating a safer environment for high school sports in Wisconsin. The WIAA requires all paid head coaches to be AED and first aid certified, and all WIAA member schools are required to have an emergency action plan. The WIAA and its partners are committed to continuing their efforts to protect the health and well-being of student-athletes, coaches, and spectators.

"We are grateful for the support and partnership of the WIAA and the NFHS Foundation in providing our school with an AED," said Alex Larson, Athletic Director for Abbotsford High School. "This new addition will greatly enhance our ability to respond to any potential emergencies during sporting events, ensuring the safety and well-being of our student-athletes, coaches, and spectators."

Legal Issues in HIGH SCHOOL ATHLETICS

HOLT HACKNEY
Editor and Publisher

JEFF BIRREN, ESQ.
Senior Writer

GARY CHESTER, ESQ.
Senior Writer

ROBERT J. ROMANO, ESQ.
Senior Writer

ERIKA PEREZ
Design Editor

Please direct editorial or subscription inquiries to Hackney Publications at:

P.O. Box 684611
Austin, TX 78768
info@hackneypublications.com

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

Competitor in Race Falls Short with Negligence Claim

TAKEAWAYS

- All-comers track meets allow runners of all ages and types to participate and the races are not limited by age or gender. Also, participants do not pre-register and the composition of races is based on who attends that day.
- West Ranch High School Track Coach Rick Tyson participation in an all-comers track meet as a pacer during a race that began with a waterfall start became the basis of a high school track athlete's negligence claim against Tyson and the School District, after she fell and injured her knee.
- Both the trial and appellate court found that there is an inherent risk competing in an all-comers meet and a waterfall start heightens that inherent risk even more.

In a unanimous verdict, a panel of three California state appeals court judges affirmed a lower court's ruling that a high school track athlete assumed the risk of injury when she fell during a race and suffered a knee injury.

In December 2018, the Long Beach Unified School District (District) sponsored an all-comers track meet at Long Beach Poly High School (LBPHS). The incident involving Plaintiff Alexandra Grande, a junior at Valencia High School, occurred during a 600-meter race during the meet.

The court noted that an all-comers track meet is typically held during the preseason for runners to practice. Runners of all ages and types can participate. Races are not limited by age or gender. For example, master level athletes (i.e. experienced runners) may run in any race they choose. Individual races are generally organized by ability and availability. If there is room in a race, a master level athlete typically may participate. In all-comers track meets, participants do not pre-register and the composition of races is based on who attends that day.

During a 600-meter race, West Ranch High School Track Coach Rick Tyson ran as a pacesetter. All the other competitors were high school females. The race started with a waterfall start, which meant the starting line curved upward starting in lane 1 and ending in lane 8. Part of the strategy to running a race with a waterfall start involved the runners merging into the inner lanes to gain an inside position. At the starting lineup, Grande positioned herself in lane 4. Tyson lined up between lanes 2 and 3 to Grande's left and behind her. There were two runners in between them. After the start of the race, Grande began to move from lane 4 toward the inside lanes. Video taken by Grande's father showed Grande fell when she was directly in front of Tyson near the beginning of the race.

In her deposition, Grande claimed that Tyson caused her fall. Specifically, she testified that his right arm pushed into the back of her left shoulder, and then his right leg went into the back of her left knee, which made her fall and tear her anterior cruciate ligament (ACL).

She also testified that "you assume the risk of — I guess you'd say impeding on another runner. But yeah, everyone knows that we could get elbowed; we could get tripped up in the beginning. Everyone knows that."

Meanwhile, Tyson, who held the same certification as a track coach for a Division 1 school, had significant experience as competitor and coach. Tyson testified that he and other coaches "agreed a pacesetter was needed in the 600-meter race because the runners were 'taking off too fast' and 'exhausting themselves the first third of the race.'" Tyson testified he was the only coach willing and able to run as a pacesetter.

Crystal Irving, the head track coach and athletic director at the host school, approved Tyson's request to serve as pacesetter. Tyson recalled he shouted an announcement that he would be a pacesetter for the 600-meter race and that the race official made the same announcement at the beginning of the race. Grande, her father, and her coach denied hearing any such announcement by Tyson or anyone else. But they all saw Tyson line up, although they did not know why he was running. Tyson asked the race official where he should line up, and the official indicated Tyson had chosen a "good spot." Tyson testified that he placed himself to provide visual and audio cues for the runners to understand whether to speed up, slow down, or stay where they were. Pacing is meant to help athletes establish a rhythm.

The aforementioned Irving was also experienced, having organized several such all-comers meets over

the last seven years. She noted that "pre-season" meets deviated regular season meets in several ways, including the fact that pacesetters were "absolutely" allowed in such meets.

Grande ultimately sued the School District and Tyson for negligence for allowing "a rather large adult male" (Tyson) to run alongside teenaged girls, which unjustifiably increased the risk of harm ordinarily associated with a 600-meter race. Grande's theory of liability was that Tyson's participation in the race increased the risk of harm beyond what was inherent in a race that allowed for runners to merge lanes. She also alleged Tyson "breached his duty of care to Grande by engaging in unnecessary and reckless behavior that increased the risk of harm."

The defendants moved for summary judgment, arguing the assumption of risk doctrine barred Grande's claims. Each argued Grande's injury was caused by an inherent risk of running in a race that involved a waterfall start and allowed all comers, who could be of different ages, genders, sizes, and skill levels. In essence, both defendants argued they did not owe Grande a cognizable duty, which is an essential element of her negligence claim.

Further, they contended that the "nature of the meet" meant that Tyson was not an anomaly, that other larger athletes could have competed, putting Grande and other competitors at risk.

The trial court agreed, granting summary judgment in favor of the District and Tyson. It held Tyson's presence in the race did not increase the risks inherent in the sport simply because he was a coach or larger than the other runners. The court further observed the nature of an all-comers track meet meant a woman of Tyson's size and Grande's age could have participated in the race. As a result, Tyson's presence did not increase any inherent risk.

Grande appealed, arguing that "the trial court incorrectly applied primary assumption of the risk principles."

In its analysis, the court noted that "to establish a cause of action for negligence, the plaintiff must show that the 'defendant had a duty to use due care, that he breached that duty, and that the breach was the proximate or legal cause of the resulting injury.'" *Brown v. USA Taekwondo* 2021, 11 Cal 5th 204, 213, 276 Cal. Rptr. 3d 434, 483 P.3d 159.

Of additional relevance, the court in *Knight v. Jewett* (1992) 3 Ca. 4th 296 308-309, 11 Cal. Rptr 2nd 2, 834 P.2d 696, recognized two types of assumption of risk: primary and secondary. In primary assumption of risk cases, "a defendant owes no duty to protect the plaintiff from a particular risk of harm" and "the lack of a duty of care operates as a complete bar to recovery, without regard to whether the plaintiff's conduct was reasonable or unreasonable, and without regard to the plaintiff's subjective awareness or understanding of the potential risk." (*Staten v. Superior Court* (1996) 45 Cal. App.4th 1628, 1632, 53 Cal. Rptr. 2d 657 (*Staten*).) By contrast, in secondary assumption of risk cases, "the defendant does owe a duty of care, but the plaintiff knowingly encounters the risk," and in that situation "liability is apportioned by comparative fault." (Id.) In other words, "primary assumption of risk applies to the question of duty and secondary assumption of risk applies to the calculation of damages." (*Shin v. Ahn* (2007) 42 482, 499, 64 Cal. Rptr. 3d 803, 165 P.3d 581 (*Shin*).)

The appeals court then rendered its findings.

First, the court found that there is an inherent risk competing in an all-comers meet. Furthermore, a waterfall start heightens that inherent risk even more. Turning to Grande's argument that Tyson "increased the inherent risk due to his: size and weight; position in line; aggressive movement toward the front of the pack; and carelessness," the court was unmoved. "Grande does not argue that Tyson's position, assertiveness, or lack of awareness constituted intentional or reckless conduct," it noted, which would have triggered a closer look from the court.

As for the plaintiff's negligence argument against the District, the court found that Grande presented no material evidence that the District "increased the ordinary inherent risks of the race."

Alexandra Grande v. Long Beach Unified School District et al.; Ct. App. Calif., 2d App. Div; B316228; 10/7/24

Return to Table of Contents

Wrestling Fanatics: Referee Clears Gym

By Dr. Jeffrey Wendt

TAKEAWAYS

- On January 9, 2025, despite warnings from the announcer during an intense high-school wrestling competition, spectators continued to act disrespectfully toward contestants, so spectators were asked to leave, which resulted in the last 10 wrestlers competing to a nearly empty gym.
- Iowa High School Athletic Association (IHSAA) guidelines provide that when spectators disobey a school official or district's order, law enforcement may be contact and asked to remove the spectator from the event. Then, if the same spectator, having been notified of his or her exclusion, attends a sponsored or approved event, that spectator will face criminal prosecution for such attendance.
- According to the National Federation of State High School Associations (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."

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.

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

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).

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 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

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).

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).

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?"

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.

Return to Table of Contents

Five-Star High School Football Player Sues North Carolina State Board of Education Over NIL Prohibitions

By Tatiana M. Terry, of Ogletree Deakins

TAKEAWAYS

- Since 2021, North Carolina private school athletes have been allowed to earn money with NIL deals while their public school counterparts have not, but in 2023 the NCHSAA changed its rules to allow public school athletes to earn compensation with NIL deals.
- However, after North Carolina General Assembly's Senate Bill 452 became law in late 2023, North Carolina State Board of Education's and North Carolina Department of Public Instruction created name, image, and likeness (NIL) prohibitions that ban current public high school athletes from earning NIL money during high school.
- North Carolina is one of only twelve states that do not permit public high school athletes to benefit from NIL deals before the collegiate level.
- The outcome of *Brandon v. North Carolina State Board of Education* will determine the career trajectory of high-school student-athletes based in North Carolina, North Carolina public school sports teams, ticket sales,

collegiate recruiting, collateral income generated by local sports, and the long-standing tradition of North Carolina public high schools developing elite athletes.

Rolanda Brandon—the mother of sixteen-year-old star quarterback Faizon Brandon, the Greensboro, North Carolina, Grimsley High School football player who has committed to play for the University of Tennessee Volunteers in 2026—recently filed a lawsuit on behalf of her son in Wake County Superior Court, challenging the North Carolina State Board of Education's and North Carolina Department of Public Instruction's name, image, and likeness (NIL) prohibitions that ban current public high school athletes from earning NIL money during high school.

Quick Hits

The mother of a top-rated high school football prospect has sued the North Carolina State Board of Education and North Carolina Department of Public Instruction on his behalf over the state's name, image, and likeness (NIL) prohibitions for high school athletes.

The lawsuit's outcome will affect public school athletes' ability to monetize their NIL value until July 2025 when the North Carolina State Board of Education revisits this prohibition at its annual meeting.

Former collegiate athletes have begun to file similar NIL suits.

What is the significance of the lawsuit? Long term: The lawsuit's outcome will affect North Carolina public school athletes' ability to monetize their NIL value for years to come. Short term: Current public school athletes like Faizon Brandon are potentially losing out on thousands of dollars every day.

The Lawsuit

On August 23, 2024, Rolanda Brandon, as parent and guardian of her son, Faizon Brandon, filed a complaint alleging that the state board of education had exceeded its authority by preventing her son and other North Carolina public school athletes from generating income based on their NIL rights.

Notably, more than three years ago, on July 1, 2021, the National Collegiate Athletic Association (NCAA) adopted groundbreaking policies permitting athletes at its member schools to utilize their NIL rights for commercial purposes, following in the footsteps of several state laws. NIL activities include signing autographs, making public appearances, taking photographs, and selling or endorsing merchandise, among other things. Overall, NIL policies give athletes the right to publicize themselves and gain monetary benefit from the publicity. Naturally, NIL activities then began to emerge at the high school level.

In North Carolina, the public schools and private schools took diverging positions on NIL policies. The North Carolina High School Athletic Association (NCHSAA), which governs public schools, prohibited NIL activities for its members, but the North Carolina Independent Schools Athletic Association (NCISAA), which governs private schools, permitted their members to earn compensation with NIL deals. Simply put, since 2021, North Carolina private school athletes have been allowed to earn money with NIL deals while their public school counterparts have not.

The NCHSAA soon reversed course. In May 2023, the NCHSAA changed its rules to address this issue and allowed public school athletes to earn compensation with NIL deals. However, on October 3, 2023, the North Carolina General Assembly's Senate Bill 452, authorizing the state board of education to regulate public high school athletes' use of their NIL for commercial purposes, became law.

On April 30, 2024, Brandon received the NIL offer that is at the center of the lawsuit. According to the complaint, "a prominent national trading card company" offered Brandon a deal to sign memorabilia before he graduated from high school—an agreement that would provide Brandon and his family with "financial security for years to come." The deal would allow Brandon to monetize his NIL until his projected high school graduation date in December 2025.

The state board of education approved a temporary rule on June 6, 2024, preventing North Carolina public school athletes from earning compensation under NIL deals, effective July 1, 2024.

The complaint alleges that Brandon attempted to resolve this dispute with the state board of education approximately a week before the rule became effective, but he did not receive a response until July 3, 2024—two days after the ban became effective.

The complaint further alleges that the trading card company has already hinted at rescinding the deal if an agreement cannot be reached. As the state board of education's rule stands right now, Brandon may not sign the offered NIL deal, if he wants to maintain eligibility, and he could lose the deal—causing him to miss out on substantial earnings.

On the same day that she filed the complaint, Rolanda

Brandon, on behalf of her son, filed a motion for preliminary injunction set to be heard on September 30, 2024, in Raleigh, North Carolina, in conjunction with the underlying lawsuit.

A motion for preliminary injunction requests that the court prevent a party from taking action while a case is pending. Brandon's motion seeks to prohibit the state board of education from enforcing its July 1, 2024, NIL ban until the resolution of the lawsuit. To prevail, Rolanda Brandon must show (1) a likelihood of success on the merits of the claim, and (2) her son will suffer irreparable harm unless the injunction is issued.

NIL in North Carolina: Public Schools vs. Private Schools

North Carolina is one of only twelve states that do not permit public high school athletes to benefit from NIL deals before the collegiate level. As noted above, this restriction does not apply to private schools. Athletes enrolled in private schools competing in the NCISAA are permitted to make commercial use of their NIL rights. For example, David Sanders, the No. 4 overall prospect for 2025, who plays for Charlotte's Providence Day School (and who also committed to the University of Tennessee), has a website devoted to selling merchandise with his image.

The outcome of Brandon v. North Carolina State Board of Education holds potential consequences for North Carolina high school athletics. Why would any star athlete in the state of North Carolina choose to play in public school, uncompensated, when opportunity exists up the road to receive a scholarship or paid tuition, play for a local private school, and earn NIL income? Or this: Star athletes born and raised in North Carolina could choose to move to one of the thirty-eight states permitting NIL deals for high school athletes. Losing homegrown talent would likely have significant consequences for the Tar Heel State's members of top-tier collegiate athletic associations.

In addition, North Carolina has a long history of producing homegrown elite athletes who often choose to attend college in their home state. The state's NIL restrictions could significantly affect North Carolina public school sports teams, ticket sales, collegiate recruiting, collateral income generated by local sports, and the long-standing tradition of North Carolina public high schools developing elite athletes. It is a tradition most North Carolinians are proud of, and do not want to lose.

Return to Table of Contents

Federal Judge Denies Connecticut Defendants' Motion to Dismiss Title IX Claim Involving Trans Issue

TAKEAWAYS

- Four student athletes filed a complaint against Connecticut Association of Schools (CIAC) that alleged they were denied "opportunities at elite track-and-field levels" because CIAC sanctioned events permitted transgender girls to race against them.
- These plaintiffs sought an injunction to remove athletic records/times achieved by trans athletes in sports inconsistent with their biologically assigned sex.
- After the plaintiffs filed an amended complaint that alleged a long history of systematic discrimination against women and girls in high school athletics in Connecticut, the Second Circuit found enough merit in this complaint to deny CIAC's motion to dismiss as a matter of law.

A federal judge from the District of Connecticut has denied the Connecticut Association of Schools (CIAC) and its co-defendants' motion to dismiss a claim brought by four student athletes, who alleged that they

were denied "opportunities at elite track-and-field levels" when the defendants facilitated the participation of transgender athletes against them.

The latest decision came after the U.S. Court of Appeals for the 2nd Circuit remanded the case back to the district court, and the plaintiffs - Selina Soule, Chelsea Mitchell, Alanna Smith, and Ashley Nicoletti - filed an amended complaint, which led to the instant opinion.

The plaintiffs were former high school track athletes who raced against transgender girls in events sanctioned by the CIAC. Their original complaint alleged trans girls have unfair physiological advantages over their cis gender competitors, and as such, "students who are born female now have materially fewer opportunities to stand on the victory podium, fewer opportunities to participate in post-season elite competition, fewer opportunities for public recognition as champions, and a much smaller chance of setting recognized records, than students who are born male." To remedy these purported Title IX violations, the plaintiffs-appellants sought monetary relief and injunctions to:

1. Prevent future enforcement of the Transgender Participation Policy, thereby barring transgender athletes from participating in CIAC-sponsored sports inconsistent with their biologically assigned sex; and
2. Remove athletic records/times achieved by trans athletes in sports inconsistent with their biologically assigned sex."

The district court, however, dismissed each claim on April 25, 2021, determining that the request for enjoinment became moot after Andraya Yearwood and Terry Miller (the trans athletes at the center of the case) graduated in June 2020. The court further stated that the plaintiffs' arguments concerning the records were speculative, and the request for damages was barred.

That led to the appeal to the 2nd Circuit, its decision remanding the claim, and the amended complaint.

In addition to the chronology of events, the amended complaint alleged that the defendants' "conduct negatively impacted the plaintiffs by conveying the dispiriting message that their interests and aspirations as student athletes were less worthy of protection than those of their male counterparts on the boys' team.

"The amended complaint further alleges, either explicitly or by fair implication, that when the plaintiffs or their parents complained to the defendants, the response they received was dismissive at best. For example, a representative of CIAC told Chelsea Mitchell's mother that further complaints on her part would receive no response and school officials admonished Chelsea herself to stop complaining.

"Finally, the amended complaint alleges that there has been a long history of systematic discrimination against women and girls in high school athletics in Connecticut."

"Finally, the amended complaint alleges that there has been a long history of systematic discrimination against women and girls in high school athletics in Connecticut. Construed most favorably to the plaintiffs, this allegation implies that the defendants would have responded differently if similar complaints about unfair competition had been made by and on behalf of boys."

The court found enough merit to the plaintiff's argument in the amended complaint.

The "allegations of the amended complaint, accepted as true and construed favorably to the plaintiffs, provide the basis for a disparate-treatment claim within the scope of Title IX's implied private right of action; the plaintiffs' home schools are potentially liable for subjecting the plaintiffs to discrimination under their athletic programs in violation of Title IX; and the impact of Pennhurst State School & Hospital v. Halderman, 451 U.S.1, 101 S. Ct. 1531, 67 L. Ed. 2d 694 (1981) on the plaintiffs' ability to obtain nominal damages, attorneys' fees and costs cannot be determined at this time as a matter of law. Accordingly, the motions to dismiss are denied."

Return to Table of Contents

High School Football Hit Sparks Federal Lawsuit

By Joseph M. Ricco IV

TAKEAWAYS

- After a high school quarterback experienced a late hit during one of the biggest high school football events in Pierce County, Washington, causing him to suffer broken jaw and temporary paralysis, he sued the school district for its failures to ensure a safe environment for players.
- The quarterback's family claims that Peninsula High's football program has a history of encouraging aggressive and dangerous play, specifically with regard to the head coach and athletic director, who allegedly created a culture where targeting and injuring players—especially quarterbacks—was tolerated or even encouraged.
- The family also claimed the district failed to make sure there were enough medical staff on-site, which caused an unsafe delay in treatment, nearly 30 minutes between the incident and when the injured player received medical attention, which reflects a pattern of negligence when it comes to student-athlete safety.

The Peninsula School District in Pierce County, Washington, is at the center of a federal lawsuit after a high school football rivalry game took a dangerous turn. During the 2023 "Fish Bowl", an annual showdown between Gig Harbor and Peninsula High Schools, a late hit on Gig Harbor's quarterback left him with a broken jaw and temporary paralysis. The lawsuit claims that Peninsula High's football program encourages overly aggressive play and accuses the district of failing to ensure proper medical care at the game. This article takes a closer look at the allegations and the broader questions this case raises about safety and accountability in high school sports.

Background and Allegations

The Fish Bowl is one of the biggest high school football events in Pierce County, Washington. It's a heated rivalry game between Gig Harbor High School and Peninsula High School that draws thousands of fans each year. The 2023 game, however, ended in controversy. A late hit on Gig Harbor's quarterback left him with serious injuries, including a broken jaw and temporary paralysis. He reportedly lost feeling in his legs for several hours after the game, and his family is now suing the school district over what happened.

According to the lawsuit, this wasn't just an isolated incident. The quarterback's family claims that Peninsula High's football program has a history of encouraging aggressive and dangerous play. The complaint points to head coach Ross Filkins, who is also the school's athletic director, saying he created a culture where targeting and injuring players—especially quarterbacks—was tolerated or even encouraged. The suit also includes a screenshot of a social media post allegedly shared by Filkins, celebrating the late hit, which the family argues reflects a harmful mindset within the program.

The lawsuit also raises questions about how the school district handled safety during the game. Shockingly, the injured player didn't receive medical attention for nearly 30 minutes, as emergency responders were busy with another situation. The family also says the district failed to make sure there were enough medical staff on-site, which caused an unsafe delay in treatment. They argue that this lack of planning put their son at even greater risk and reflects a pattern of negligence when it comes to student-athlete safety.

Implications for Safety and Accountability

This lawsuit raises questions about safety and accountability in high school sports. The claims of a "culture of aggression" at Peninsula High School certainly highlight concerns about whether winning is being prioritized over player safety. Schools also have a responsibility to create an environment where competition doesn't come at the cost of young athletes' well-being. If the allegations are true, this case could push districts to rethink coaching practices and take a closer look at how they oversee athletic programs.

The issue of medical preparedness is another major focus of the case. The alleged delay in treatment for the injured quarterback points to the risks of inadequate planning for emergencies at high-contact sporting events. For schools, ensuring proper medical coverage isn't just a best practice—it's a necessity. Depending on the outcome, this case may prompt districts nationwide to

reevaluate their safety protocols to avoid similar situations and the potential legal fallout.

Closing Thoughts

The allegations against the Peninsula School District raise difficult but necessary questions about how high school sports are managed. This case is not just about one injury or one game—it's about the responsibility schools have to protect their athletes and promote a safe environment. As the lawsuit progresses, it will likely spark important conversations about safety protocols, coaching practices, and the broader culture of high school athletics. Whatever the outcome, this case serves as a reminder of the risks young athletes face and the steps schools must take to keep them safe.

Joseph M. Ricco IV is a junior sport management and government double major at the University of Texas at Austin. Joseph is actively involved as a Texas Longhorns football recruiting operations intern and currently works with Pro Football Focus as a data collector. He also has experience as a training camp operations intern with the Kansas City Chiefs. Joseph aims to leverage his sports management and legal knowledge to pursue a career in football administration.

References

Grant, H. (2024, November 5). PCVA law files lawsuit against Peninsula School District following violent incident at a high school football game. Pfau Cochran Vertetis Amala PLLC. **https://www.pcva.law/news/pcva-files-lawsuit-against-peninsula-school-district-following-violent-incident-at-a-high-school-football-**

Henry, C. (2024, November 1). Family of football player injured in 2023 Fish Bowl sues peninsula school district, coach. Gig Harbor Now. **https://www.gigharbornow.org/news/education/fish-bowl-lawsuit-2023-parents-sue-peninsula-school-district-coach-ross-filkins/**

Swaby, N. (2024, October 30). King 5 Seattle - youtube. king5. **https://www.king5.com/article/news/local/football-players-injuries-lawsuit-against-peninsula-school-district/281-cbcf2eea-7663-4b0d-b124-107ea1cd0c5e**

Return to Table of Contents

The Latest on Concussion Lawsuits Against Amateur Sports Organizations

By John Sadler

Positive Outcomes But Sports Insurance Concerns Linger Over CTE

The sports insurance industry has been fearful of concussion / brain injury lawsuits for over 12 years. Concussions were on the front burner of underwriter concerns, but with a number of positive litigation outcomes, they have been recently leapfrogged by **sex abuse / molestation** concerns.

But, recent studies have linked repeated head injuries to **Chronic Traumatic Encephalopathy** (CTE), a neurodegenerative disease. Although CTE can currently only be diagnosed post-mortem via autopsy, the potential development of a blood test or other diagnostic tool could significantly alter the landscape of concussion-related litigation.

As a result, amateur sports organizations must implement serious brain injury risk management programs to combat this threat.

History Of Recent High Profile Concussion Lawsuits And Their Outcomes

At least seven high-profile lawsuits have been filed against amateur sports associations, alleging negligence in their handling of concussions and concerns over long-term athlete safety. Below are the notable cases in chronological order along with the outcomes.

1. Bukal vs. Illinois High School Association

- **Court:** Cook County Circuit Court, Illinois
- **Cause of Action:** The class action lawsuit filed against the Illinois High School Association (IHSA) by former football player Daniel Bukal was dismissed in 2015. The lawsuit, the first of its kind against a state high school sports association, claimed that IHSA failed to protect athletes from concussions.
- **Outcome:** The court ruled that the IHSA had implemented sufficient safety measures and that imposing further liability could negatively impact the sport. Additionally, Illinois law's "Contact Sports Excep-

tion" further shielded IHSA from liability. The case was dismissed with prejudice in 2015.

2. In Re National Collegiate Athletic Association Student-Athlete Concussion Injury Litigation

- **Court:** U.S. District Court for the Northern District of Illinois
- **Cause of Action:** Plaintiffs accused the NCAA of failing to protect student-athletes from the dangers of repeated concussions. The suit claimed that despite being aware of the risks, the NCAA did not implement appropriate safety protocols for concussion management and prevention.
- **Outcome:** A $75 million settlement was reached in 2016. This settlement primarily provided for medical monitoring of former athletes rather than individual damages. The court noted that while the NCAA had a duty to protect student-athletes, the settlement's terms favored preventative care over compensation for existing injuries. Importantly, this case set a precedent for providing long-term health monitoring to those exposed to concussive risks.

3. Archdiocese of Milwaukee Catholic Youth Football League Concussion Lawsuit

- **Court:** Milwaukee County Circuit Court, Wisconsin
- **Cause of Action:** This case involved a youth football player whose parents alleged that the Catholic Youth Football League was negligent in managing concussions, failing to adequately educate coaches and players on the dangers of head trauma, and not implementing proper return-to-play protocols.
- **Outcome:** The court dismissed the case in 2017, ruling that while the league could have been more proactive, it had met the minimum legal standards of care as per state regulations. The court's reasoning highlighted the difficulty in proving liability when concussion management standards were either loosely defined or evolving, and organizations were often in technical compliance with the law.

4. Archie and Cornell vs. Pop Warner and USA Football

- **Court:** U.S. District Court for the Central District of California
- **Cause of Action:** The lawsuit filed by Kimberly Archie and Jo Cornell against Pop Warner and USA Football was ultimately dismissed. Archie and Cornell sued, claiming that their sons' deaths were linked to Chronic Traumatic Encephalopathy (CTE) as a result of head injuries sustained during their time playing youth football. The suit alleged that Pop Warner and USA Football failed to adequately warn participants and their families of the long-term risks associated with head injuries.
- **Outcome:** In 2019, a federal judge in California dismissed the case, ruling that the plaintiffs had failed to provide sufficient evidence to show that the organizations' actions directly caused their sons' deaths. Specifically, the judge noted that while the risks of concussions are serious, the plaintiffs could not definitively link their sons' CTE to their time in Pop Warner football, particularly given the current limitations of CTE diagnosis, which can only be confirmed post-mortem.

5. Pop Warner Little Scholars Concussion Class Action

- **Court:** U.S. District Court for the Central District of California
- **Cause of Action:** Parents of children who played Pop Warner football alleged that the organization was negligent in warning participants and parents about the long-term risks of concussions. The plaintiffs argued that Pop Warner downplayed the dangers of repeated head trauma and failed to implement concussion safety protocols.
- **Outcome:** In 2019, the case was dismissed due to insufficient evidence linking Pop Warner's conduct directly to the plaintiffs' injuries. The court found that the organization had implemented some safety measures, and the plaintiffs failed to prove gross negligence. This ruling underscores the challenge of establishing causality in concussion litigation, particularly when symptoms of brain injuries may not manifest for years.

6. California High School Football Concussion Case (Rashaun Council vs. Grossmont Union High School District)

- **Court:** San Diego Superior Court, California
- **Cause of Action:** A California family sued after their son continued to play football despite showing signs of a concussion. The family alleged that the coaching staff and school district were negligent in not pulling their son from the game, which led to severe long-term injuries.
- **Outcome:** In 2020, the family received a $7.1 million settlement. The case was settled after the family successfully defeated a summary judgment motion, resolving the case before it went to trial.

7. Oregon High School Football Concussion Case (*Dawna Martin and Todd Martin v. Hermiston School District 8R et al.*)

- **Court:** U.S. District Court, Oregon
- **Cause of Action:** An Oregon family is seeking $39 million in damages after their son suffered severe neurological issues, including memory loss and depression, following a high school football concussion. The lawsuit alleges that the school district failed to take appropriate action to protect the student after his injury.
- **Outcome:** The case is ongoing as of 2023. The lawsuit survived dispositive motions in 2019, meaning it avoided dismissal at that time, but no settlement has been reached as of the last reports.

Second Impact Syndrome

Second Impact Syndrome (SIS) is a rare but severe condition that occurs when a person sustains a second concussion before fully recovering from an initial one. This can lead to rapid and catastrophic brain swelling, often resulting in severe neurological damage or even death. SIS is most common in young athletes, whose brains may be more vulnerable to such repeated trauma. The key to preventing SIS is ensuring that individuals do not return to physical activity until fully healed from the first concussion, as even a mild second impact can have devastating consequences.

The California and Oregon high school concussion cases above are clearly instances of second impact syndrome and negligent return to play when symptoms were exhibited. Plaintiffs will continue to prevail in these types of cases. Most concussion / brain injury risk management attention is given to recognizing signs and symptoms, immediate removal, return to play protocols, and medical clearance. Widespread education on this topic provided by current risk management programs to players, coaches, administrators, and parents should greatly reduce the instances of this type of injury and related litigation.

The Role of CTE in Litigation

One of the major obstacles plaintiffs face in concussion-related lawsuits is proving a direct link between head trauma sustained in youth sports and long-term conditions like CTE. Currently, CTE can only be definitively diagnosed post-mortem through an autopsy, which complicates claims of negligence related to CTE since living plaintiffs cannot demonstrate the condition. However, research is underway to develop **diagnostic tools**, such as blood tests or imaging techniques, that could identify CTE in living individuals. Should a reliable diagnostic test for CTE be developed, it could dramatically change the legal landscape. The ability to diagnose CTE in life would give plaintiffs a powerful tool to prove their injuries were caused by inadequate concussion management. This could open the door to more successful lawsuits and potentially larger settlements, as it would be easier to establish causation and long-term harm.

Success Rate and Implications for the Future

The success rate of concussion-related class action lawsuits against amateur sports organizations has been mixed. Some lawsuits, like the NCAA settlement, have provided for medical monitoring and preventive care, but many others have been dismissed due to the difficulty in proving negligence or causation. Courts often struggle to assign liability in cases where organizations were in compliance with state regulations at the time or where the causal link between a player's injury and the organization's negligence is unclear.

What This Means for the Future

The future of concussion litigation may hinge on advancements in medical diagnostics. If CTE or other concussion-related conditions can be diagnosed in living individuals, it will likely lead to a surge in successful lawsuits. Organizations will face greater pressure to implement stringent concussion protocols and to ensure they meet the highest standards of care. In the meantime, the lawsuits that have already been filed have pushed many organizations to improve their safety practices. More rigorous concussion protocols, coach education, and return-to-play guidelines are becoming the norm in youth sports. However, until a reliable test for CTE or other long-term effects of concussions is available, plaintiffs will continue to face challenges in proving their cases.

Return to Table of Contents

Concussions Slow Brain Activity of High School Football Players

A new study of high school football players found that concussions affect an often-overlooked, but important brain signal. The findings were presented last month at the annual meeting of the Radiological Society of North America (RSNA).

Reports have emerged in recent years warning about the potential harms of youth contact sports on developing brains. Contact sports, including high school football, carry a risk of concussion. Symptoms of concussion commonly include cognitive disturbances, such as difficulty with balancing, memory or concentration.

Many concussion studies focus on periodic brain signals. These signals appear in rhythmic patterns and contribute to brain functions such as attention, movement or sensory processing. Not much is known about how concussions affect other aspects of brain function, specifically, brain signals that are not rhythmic.

"Most previous neuroscience research has focused on rhythmic brain signaling, which is also called periodic neurophysiology," said study lead author Kevin C. Yu, B.S., a neuroscience student at Wake Forest University School of Medicine in Winston-Salem, North Carolina. "On the other hand, aperiodic neurophysiology refers to brain signals that are not rhythmic."

Aperiodic activity is typically treated as 'background noise' on brain scans, but recent studies have shown that this background noise may play a key role in how the brain functions.

"While it's often overlooked, aperiodic activity is important because it reflects brain cortical excitability," said study senior author Christopher T. Whitlow, M.D., Ph.D., M.H.A., Meschan Distinguished Professor and Enterprise Chair of Radiology at Wake Forest University School of Medicine.

Cortical excitability is a vital part of brain function. It reflects how nerve cells, or neurons, in the brain's cortex respond to stimulation and plays a key role in cognitive functions like learning and memory, information processing, decision making, motor control, wakefulness and sleep.

To gain a better understanding of brain rhythms and trauma, the researchers sought to identify the impacts of concussions on aperiodic activity.

Pre- and post-season resting-state magnetoencephalography (MEG) data was collected from 91 high school football players, of whom 10 were diagnosed with a concussion. MEG is a neuroimaging technique that measures the magnetic fields that the brain's electrical currents produce.

A clinical evaluation tool for concussions called the Post-Concussive Symptom Inventory was correlated with pre- and post-season physical, cognitive and behavioral symptoms.

High school football players who sustained concussions displayed slowed aperiodic activity. Aperiodic slowing was strongly associated with worse post-concussion cognitive symptoms and test scores.

Slowed aperiodic activity was present in areas of the brain that contain chemicals linked with concussion symptoms like impaired concentration and memory.

"This study is important because it provides insight into both the mechanisms and the clinical implications of concussion in the maturing adolescent brain," said co-lead author Alex I. Wiesman, Ph.D., assistant professor at Simon Fraser University in Burnaby, British Columbia, Canada. "Reduced excitability is conceptually a very different brain activity change than altered rhythms and means that a clear next step for this work is to see whether these changes are related to effects of concussion on the brain's chemistry."

The results highlight the importance of protective measures in contact sports. The researchers cautioned that young players should always take the necessary time to fully recover from a concussion before returning to any sport.

The findings from the study may also influence tracking of post-concussion symptoms and aid in finding new treatments to improve recovery.

"Our study opens the door to new ways of understanding and diagnosing concussions, using this novel type of brain activity that is associated with concussion symptoms," Dr. Whitlow said. "It highlights the importance of monitoring kids carefully after any head injury and taking concussions seriously."

Other co-authors are Elizabeth M. Davenport, Ph.D., Laura A. Flashman, Ph.D., Jillian Urban, Ph.D., Srikantam S. Nagarajan, Ph.D., Kiran Solingapuram Sai, Ph.D., Joel Stitzel, Ph.D., and Joseph A. Maldjian, M.D.

VISA

Continued from page 1

- The Utah District Court concluded there is a strong likelihood that UHSAA Student Visa Eligibility Rule is unconstitutional and granted Szymakowski's request for a TRO, relying on established Supreme Court precedent that the Equal Protection Clause protects "'aliens as well as citizens'" and that held "'all persons lawfully in this country shall abide ... on an equality of legal privileges with all citizens.'"

The United States Constitution's Equal Protection Clause embedded in the Fourteenth Amendment makes clear that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States… nor deny to any person within its jurisdiction the equal protection of the laws." Over the years, the Supreme Court of the United States has interpreted the Equal Protection Clause (hereinafter referred to as "EP clause") to apply to both citizens and noncitizens alike. *See*, *e.g.*, *Plyler v. Doe*, 457 U.S. 202, 215, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982). Recently, a federal court for the District of Utah, Central Division, was at the center of an alleged EP clause violation when a local high school association attempted to exclude a noncitizen student-athlete with an F-1 visa from playing on the varsity football team. *See Szymakowski v. Utah High Sch. Activities Ass'n*, 2024 U.S. Dist. LEXIS 189990.

The Key Players

The plaintiff to this dispute is Zachary Szymakowski, an Australian citizen who is currently a senior student at Juan Diego Catholic High School (hereinafter referred to as "Juan Diego") located in Draper, Utah. *See id* at 1. Prior to enrolling at Juan Diego, Szymakowski testified that "he researched high schools across the United States and chose Juan Diego both for the academic and athletic opportunities he could receive there, and because he wished to receive a Catholic-oriented education." *Id* at 3. Thereafter, he obtained an F-1 visa that was lawfully issued by the United States.

An F-1 visa is a non-immigrant visa (meaning "an applicant must not evince an intent to remain permanently in the United States" Id at 26) that allows international students to study full-time in the United States. There are application fees, issuance fees, and various forms and requirements, such as maintaining a full course of study and enrolling in a program that leads to a degree, diploma, or certificate, that must be completed to be considered eligible for this type of visa.

During his junior year, Szymakowski "made the Juan Diego varsity football team and started as the team's punter in nine out of ten games during the 2023-2024 season." Id at 4. Juan Diego operates under the guidance of one the named defendants, the Utah High School Activities Association, Inc. (hereinafter referred to as "UHSAA"), "an organization that governs high school athletics and fine arts activities at 159 member schools." Id. Beginning in 2023, UHSAA heard and considered testimony from F-1 visa student-athletes who alleged mistreatment by their coaches. See id at 5. Then, in early 2024, UHSAA began receiving letters and emails detailing further mistreatment of international student-athletes and improper recruitment efforts, which lead to deeper investigations revealing information that some F-1 visa student-athletes were sleeping on the floor of a host family home, becoming homeless, or living on their own. See id at 6, 33.

"In response to concerns about the recruitment of international athletes, the UHSAA Constitution and Bylaws Committee met and determined that the rule about eligibility of F-1 student athletes should be examined." Id at 8. By late spring 2024, UHSAA adopted a rule, the Student Visa Eligibility Rule, stating that "international students on F-1 visas were only eligible for non-varsity level sports competition unless the school attended by that student opted for an independent status or forfeited its eligibility for postseason competition." Id at 2. Szymakowski, through his football coach and his international student advisor at Juan Diego, attempted to obtain an exception to the new rule; however, just before the start of the 2024-2025 football season Szymakowski earned that UHSAA denied his requested exception. See id at 11. In turn, Szymakowski, alongside his parents, obtained counsel with Foley & Lardner and asserted that the new UHSAA rule violated the Equal Protection Clause of the Fourteenth Amendment and asked the court for a preliminary injunction, or temporary restraining

order (hereinafter referred to as "TRO") enjoining the rule's enforcement as it applies to Szymakowski for the remainder of his 2024 football season. See id at 11, 13.

TRO Legal Standard

A plaintiff seeking a TRO must establish (1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008). The likelihood-of-success and irreparable-harm factors are "the most critical" in the analysis. *Nken v. Holder*, 556 U.S. 418, 434, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009). In its order and memorandum, the district court considered each of the TRO factors in the context of the facts presented by Szymakowski.

First, the court determined and neither the plaintiff nor the defendant disputed the fact that UHSAA is a state actor. *See id* at 16. Generally, a private association, such as a governing athletic organization like UHSAA, will be considered a state actor when the actions of the association form a "sufficiently close nexus" to the State, such that the association's actions may be treated as the actions of the State. *See id*. In this case, because UHSAA is considered a state actor it was subject to the language of the Fourteenth Amendment that reads, "No state shall… deny to any person within its jurisdiction the equal protection of the laws." *See id.* The court next analyzed whether Szymakowski was likely to succeed on the merits of his claim that UHSAA's Student Visa Eligibility Rule is unconstitutional because it violated the EP clause by necessarily discriminating based on a person's alienage. In its analysis, the court also reviewed the level of judicial scrutiny to apply to this type of rule.

Equal Protection Clause and Level of Scrutiny

UHSAA argued, unpersuasively, that Szymakowski was not treated any differently from similarly situated F-1 visa students. *See id* at 16. The court correctly critiqued this argument stating, "Courts would never find equal protection violations if they only compared an individual member of a class to other members of the same class against which the state law was alleged to discriminate." *Id*. Thus, the court concluded, "The rule therefore treats Mr. Szymakowski differently on the basis of his alienage." *Id* at 17. Several cases cited by the court, including cases decided by the Supreme Court, have found that "the Equal Protection Clause protected 'aliens as well as citizens' and held that 'all persons lawfully in this country shall abide ... on an equality of legal privileges with all citizens.'" *Takahashi v. Fish and Game Commission*, 334 U.S. 410, 419-20, 68 S. Ct. 1138, 92 L. Ed. 1478 (1948). Other cases have ruled that "classifications by a State that are based on alienage are 'inherently suspect and subject to close judicial scrutiny.'" Graham v. Richardson, 403 U.S. 365, 372, 91 S. Ct. 1848, 29 L. Ed. 2d 534 (1971).

There are essentially three levels of scrutiny courts apply in reviewing the constitutionality of certain rules. The first, and lowest level of scrutiny, is rational basis review, which analyzes whether state action is rationally related to a legitimate government interest. Rules that discriminate against a person based on age are typically subject to rational basis review. The second, and middle tier, is intermediate scrutiny, which means a rule must be substantially related to an important state interest. Cases involving sexual orientation are subject to intermediate scrutiny. Finally, strict scrutiny, the highest level of review, presumes the rule is unconstitutional unless the state demonstrates that the rule is necessary to achieve a compelling state interest and the rule is narrowly tailored to achieve that interest by the least restrictive means. Rules that discriminate based on race are required to meet strict scrutiny standards.

Usually, cases involving rules that discriminate based on alienage are subject to strict scrutiny, but not always. There is a "political-function exception" that courts apply narrowly. *See Bernal v. Fainter*, 467 U.S. 216, 220-21, 104 S. Ct. 2312, 81 L. Ed. 2d 175 (1984). For instance, the Supreme Court applied rational basis review to state laws that excluded aliens, or noncitizens, from political and governmental functions. See Foley v. Connelie, 435 U.S. 291, 295-96, 98 S. Ct. 1067, 55 L. Ed. 2d 287 (1978) (upholding New York statute that restricted aliens from working as police officers); Ambach v. Norwick, 441 U.S. 68, 81, 99 S. Ct. 1589, 60 L. Ed. 2d 49 (1979) (agreeing that New York may prohibit aliens who are eligible for citizenship but who refuse to seek naturalization from employment as an elementary or secondary school teacher); Cabell v. Chavez. Salido, 454 U.S. 432, 447, 102 S. Ct. 735, 70 L. Ed. 2d 677

(1982) (holding that California may require probation officers to be citizens). In more recent years, the Fifth and Sixth Circuit Courts have applied rational basis review to state laws that regulate nonimmigrant aliens. *See Szymakowski* at 23, citing *League of United Latin American Citizens (LULAC) v. Bredesen*, 500 F.3d 523, 526 (6th Cir. 2007) and *LeClerc v. Webb*, 419 F.3d 405, 410-11 (5th Cir. 2005).

The court in the present case expressly declined to apply rational basis review, finding the restrictions placed on Szymakowski by the UHSAA's Student Visa Eligibility Rule were not related to any political or governmental functions (i.e. political-function exception does not apply) and outwardly declining to "adopt a rule whereby state law classifications that affect resident aliens are subject to the highest level of scrutiny, whereas state law classifications that affect nonresident or nonimmigrant aliens are subject to the lowest." *Id* at 23-24, 26. But rather than go all the way up the scrutiny scale to subject the rule to strict scrutiny, the court applied a heightened version of intermediate scrutiny.

To survive heightened scrutiny, a law or rule must be "substantially related to a sufficiently important government interest." Fowler v. Stitt, 104 F.4th 770, 794 (2024). UHSAA alleged that one of its important state interests was an interest in preventing the mistreatment of students on F-1 visas. *See Szymakowski* at 32. However, the court, again rightfully criticized this interest, calling out UHSAA's proposed solution to F-1 visa student-athlete mistreatment, barring these international students from postseason competition altogether, as "penaliz[ing] the victim of this abuse more than the perpetrator." *Id* at 34. A second important interest cited by UHSAA in an attempt to justify its rule was "an interest in ensuring fair competitions for high school students in Utah." *Id* at 32. The court poked holes in this argument also. Specially, the court acknowledged, "UHSAA has an important interest in ensuring that its member schools abide by the same set of rules. But the UHSAA also has an important interest in ensuring that all students can participate." *Id* at 35. While the court recognized that UHSAA has an important interest in preventing illegal recruitment practices, "UHSAA has addressed this issue with a rule relating to transfer students—but rather than applying this rule equally to both national and international transfer students, the UHSAA also adopted the Student Visa Eligibility Rule that applies only to international students." *Id* at 37-38.

Moreover, the court looked to other states for guidance on how their athletic associations implemented rules regarding F-1 visa student-athletes. The court found "these state athletic association rules—many of which the UHSAA reviewed in crafting its policy limiting F-1 visa students' participation in athletics—provide less restrictive regimes to achieve the school district's stated goal to ensure international students' well-being and discourage inappropriate recruiting activities." *Id* at 46. Because UHSAA's Student Visa Eligibility Rule did not use the least restrictive means to accomplish its stated interest it failed to satisfy the heighted level of intermediate scrutiny applied by the court in this case.

As a result, the court found the rule violated the EP clause.

Supremacy Clause Also Examined

In addition to analyzing the EP clause to assess the merits of Szymakowski's case, the court also examined the Supremacy clause. This clause is another principle established in the U.S. Constitution that essentially outlines the order of legal precedence in our county's judicial system. The Constitution and other federal laws are considered the supreme law of the land and will take precedence over any conflicting state laws. In this instance, the court determined "[w]hile F-1 visa holders are subject to many restrictions, it is for Congress and not the UHSAA to impose those restrictions." *Id* at 46. According to the court, "Athletics is not the only field in which high schools compete with each other, and the court is wary of rules that deny opportunities to one class of students but not another on the grounds of the student's immigrant status—a determination that is more appropriately regulated by Congress." *Id* at 47. Based on the application of both the EP clause and the Supremacy clause to the facts, the court ultimately found Szymakowski demonstrated a substantial likelihood that he will succeed on the merits of his claim.

Proving the Remaining Elements of Requested TRO

Because the court has found a substantial likelihood that the Student Visa Eligibility Rule poses an ongoing violation of Szymakowski's rights under the Equal Protection Clause, the court similarly found that Szymakowski made a strong showing of irreparable harm. In reaching this

decision the court wrote, "the evidence demonstrates that Mr. Szymakowski's failure to compete with his high school football team at the varsity level could affect his chances of admission to American universities… Mr. Szymakowski's missed opportunity to play tonight be made up elsewhere at a later date. For Mr. Szymakowski, his varsity season is fleeting—he is a senior with just one game left in the regular season. Tonight's game and any postseason play are the last opportunities for Mr. Szymakowski to impress scouts in this singularly critical way." *Id* at 48, 50. The court recognized the value in extracurricular activities, "including the right to participate in high school varsity football," and a loss of his opportunity to play and potential loss of college opportunities, according to this court, "constitutes irreparable harm." *Id* at 50, 51.

Despite UHSAA's arguments that it would be harmed by the TRO, the court was once more, not persuaded.

Regarding the public interest, the court determined the public is "best served by a decision that upholds the equal protection of the laws to all persons who are lawfully within the state's jurisdiction." Solidifying the constitutional principle that equal protection means equal for all.

The Ruling on the Field

In reaching its ruling, the Utah District Court concluded there is a strong likelihood that UHSAA Student Visa Eligibility Rule is unconstitutional. The court granted Szymakowski's request for a TRO, allowing him to play in Juan Diego's final game of the 2024-2025 regular season without forfeiting Juan Diego's eligibility for postseason play. Finally, the court enjoined UHSAA from enforcing of the Student Visa Eligibility Rule only as it applies to Szymakowski.

This case is a textbook-worthy lesson about the American value of equality for all in action.

Gina is a licensed attorney in Maryland, New York, and Pennsylvania. Her practice and experience ranges from handling civil and criminal domestic violence cases, involvement in personal injury and product liability lawsuits, and instruction in the areas of sports, entertainment, and art law. She is a first-generation law school graduate and alumna of The George Washington University Law School.

Return to Table of Contents

LAWSUIT

Continued from page 1

The Incident

The incident occurred during a high school athletics class where student-athletes were reportedly punished with excessive physical exercise. According to the lawsuit, students were forced to complete over 300 push-ups in a single session for minor infractions like wearing the wrong attire, being late, or failing to hustle.

The intense physical exertion led to multiple cases of rhabdomyolysis, a condition caused by muscle breakdown that can release harmful proteins into the bloodstream and potentially damage the kidneys. The lawsuit claims that many students were hospitalized, and the effects of the condition could have long-term consequences.

The plaintiff alleges that the coaches, led by head coach John Harrell, ignored safety protocols, failed to monitor students for signs of distress, and denied them necessary water breaks during the session. These actions, according to the lawsuit, amounted to gross negligence.

Who is Being Sued?

In addition to head coach John Harrell, the lawsuit names several assistant coaches as defendants, including Chadrick A. President, Lucas Lucero, Joshua Rohmer, Seth McBride, Cody Monson, Chance Casey, Jake Rogers, Joseph Haag, Brody Trahan, Garrett Campfield, Alex Contreras, and Jordan Wallace.

Each coach is accused of participating in or failing to prevent the harmful workouts. The lawsuit alleges that all the defendants ignored clear instructions from the school district's athletic director, Russ Reeves, who had explicitly warned against using physical exercise as punishment.

The complaint also states that the assistant coaches contributed to the unsafe environment by either enforcing the excessive workout or failing to intervene. For instance, the lawsuit claims some assistant coaches

assigned additional push-ups without regard for the students' physical condition. Others, it alleges, supported a "group punishment" approach, in which the entire class was penalized for the actions of one student.

The named defendants also allegedly engaged in a whisper campaign to shift blame for the injuries onto the students. Internal communications revealed attempts to suggest that the affected students' symptoms were caused by the use of nutritional supplements. However, an investigation found no evidence to support these claims.

Expert Witnesses in the Investigation

The investigation into the Rockwall-Heath lawsuit involved 58 interviews with student-athletes, coaches, and others connected to the incident. It also included a review of documents, photos, emails, texts, and security footage to gather important evidence.

Three expert witnesses were consulted during the investigation:

1. **Dr. Salman Bhai** is a neurologist and specialist in muscle-related disorders. He works at UT Southwestern Medical Center and Texas Health Presbyterian Hospital in Dallas. Dr. Bhai reviewed the medical records of the affected students to assess the physical impact of the injuries.
2. **Scott Anderson** is a certified athletic trainer with over 40 years of experience. He was the Head Athletic Trainer at the University of Oklahoma until his retirement in 2022. Anderson provided insight into whether the coaches followed proper safety protocols during the workout.
3. **Scott Bennett** is a strength and conditioning specialist with over 30 years of experience. He is the CEO of the Collegiate Strength and Conditioning Coaches Association. Bennett helped evaluate the safety of the strength training methods used during the workout.

These experts helped confirm that the coaches' actions were unsafe and contributed to the injuries sustained by the students.

The Lawsuit

The plaintiff argues that the coaches acted negligently in several ways:

- **Ignoring Warnings**: The district's athletic director, Russ Reeves, had warned the coaches not to use physical exercise as punishment, citing potential legal issues.
- **Lack of Oversight**: The coaches allegedly did not watch for signs of distress among students.
- **No Breaks**: Students were not given adequate water or rest during the workout.
- **Blaming the Victims**: The lawsuit claims the coaches tried to blame the students' injuries on nutritional supplements, but an investigation found no proof of this.

Legal Analysis

The lawsuit focuses on negligence, which requires proof of four elements:

- **Duty of Care**: The coaches had a legal responsibility to ensure the safety of students.
- **Breach of Duty**: The lawsuit claims the coaches breached this duty by enforcing unsafe workouts and ignoring warnings.
- **Causation**: The plaintiff alleges that the coaches' actions directly caused the injuries.
- **Damages**: G.A. suffered physical and emotional harm, with medical expenses exceeding $250,000.

Conclusion

The Rockwall-Heath lawsuit highlights serious concerns about safety in school sports, questioning whether safety rules are being followed and coaches are being held accountable. By naming multiple defendants, the complaint highlights that all coaches on the team share responsibility for protecting their athletes.

The case also draws attention to the risks of using extreme physical punishment as discipline. It emphasizes the need to reject unsafe practices and prioritizes student safety.

As the case progresses, it serves as a reminder of the importance of protecting student-athletes. The allegations suggest the coaching staff failed to meet basic safety standards. A ruling for the plaintiff could send a strong message against negligence and harmful practices in sports, encouraging schools nationwide to adopt stricter policies and improve coaching training to protect athletes' health and safety.

Charles Keller is a former Division I tennis player and a recent graduate from the University of Texas at Austin with a degree in Sport Management.

Return to Table of Contents