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In This Issue

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Court Finds No Constitutional Violation of School District's Ban of Grandparent from School District Basketball Game

By Cara H. Wright, Esq. Adjunct Professor at Trinity

TAKEAWAYS

- The First Amendment is not without its limitations and exceptions.
- One exception to an individual's constitutional right of assembly is that government officials may stop or disperse public demonstrations or protests where clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order appears.
- Any conduct at events by spectators, such as school sporting games, is regulated by not only the Constitution, but also various school district policies.
- Liberty interests of grandparents do not include visitation with grandchildren, and therefore, there is no constitutional right to attend a grandchild's school event if the grandparent is not the legal guardian.

See BASKETBALL on page 11

From the Field to the Courtroom: A Gridiron Negligence Case

By Joseph M. Ricco IV

TAKEAWAYS

- A former Glades Central High School football player alleges that multiple individuals and organizations, including school officials, the Florida High School Athletic Association (FHSAA), and the National Football League (NFL), failed to provide necessary medical care and subjected him to harmful practice drills, leading to severe brain injuries.
- The plaintiff alleges several failures by the defendants including, (1) failing to evaluate the plaintiff or remove him from play despite repeatedly showing symptoms of head injuries, such as dizziness, headaches, and confusion; (2) failing in their respective duties to protect student-athletes; (3) failing to implement concussion protocols; (4) ignoring and/or dismissing the risks associated with repeated head trauma; (5) concealing information about the dangers of concussions; and (6) failing to disseminate critical safety information to lower levels of play, including high schools.
- Should a court rule in favor of the

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Fifth Circuit Affirms Ruling that Cheerleader Failed to Show 'Harm She Suffered' in Title IX Case

TAKEAWAYS

- When a plaintiff alleges that a school has an official policy of intentional discrimination on the basis of sex, the 'proper test' under Title IX is whether the school 'intended to treat women differently on the basis of their sex.'
- To hold a School District liable for a civil rights violation, a plaintiff 'must allege sufficient factual content to permit the reasonable inference (1) that a constitutional violation occurred and (2) that an official policy attributable to the school district's policymakers (3) was the moving force behind it.'
- Failing to tie allegedly inequitable funding to harms suffered by a plaintiff in anything other than a speculative and conclusory manner will likely result in a dismissal of that plaintiff's claims.

The Fifth U.S. Circuit Court of Appeals has affirmed the ruling of a district court, finding that a plaintiff "failed to plead either a Title IX or a constitutional cause of action" in a lawsuit against her school district. This is "because although she contended that the school district funded boys' and girls' sports differently, she failed to tie the allegedly inequitable funding to the harm she suffered at cheerleading practice in anything other than a speculative and conclusory manner."

Plaintiff Cloe Murphy sued the Northside Independent School District in San Antonio, Texas for sex discrimination under Title IX of the Education Amendments of 1972, Pub. L. 92-318, 86 Stat. 373, 20 U.S.C. §§ 1681-88. She further claimed the School District violated her constitutional right to due process. The basis of her lawsuit was the "severe and permanent injuries" sustained after her cheerleading coach forced the cheerleading team to complete 150-200 "frog jumps" after she was late to practice. She developed rhabdomyolysis, a "serious syndrome due to direct or indirect muscle injury." She alleged that her injuries were the result of the inequitable

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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

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The NIL Stalemate: Issues Emerge in North Carolina Over NIL Rights

By Gregg Clifton & Haley Gorey

While the focus of attention on college athletics remains on the recent *House v. NCAA* settlement and the submission of the proposed settlement documents to be reviewed and discussed by Senior U.S. District Judge Claudia Wilken on September 5th, the world of high school Name, Image and Likeness (NIL) rights to student-athletes continues to grow. As the number of states authorizing NIL rights approaches 40, the need to understand the nuances of the varying state law becomes increasingly crucial. Most recently, on July 24, 2024, the Florida State Board of Education (see our blog post on the decision **here**) put an end to a years-long debate by officially joining the other states in permitting high school athletes to participate in NIL arrangements without sacrificing their amateur status. The Florida bill highlights the importance of formal agreements when engaging in NIL activities in an effort to combat undisclosed pay-for-play deals. Additionally, Florida addressed concerns of the new policy fostering unfair competition by prohibiting NIL activities during a student-athlete's transfer season. South Dakota also made headlines in July by adopting a similar policy allowing high school athletes in the state to benefit from their NIL. However, despite the growing national shift toward recognizing and cultivating exploration of this new revenue stream for young athletes, one major athletic high school athletic powerhouse – North Carolina – is still navigating the complex terrain of NIL regulations, offering a very controversial option for NIL rights for the state's high school athletes.

North Carolina Maintains Controversial Split in NIL Authorization for High School Athletes

In May 2023, the North Carolina High School Athletic Association (NCHSAA) approved a proposal that would have allowed high school athletes to monetize their NIL beginning July 1, 2023. While the proposal awaited final ratification from the State Board of Education (the Board), state legislators decided to step in and usurp the NCHSAA's authority, proposing to block the new policy by stripping the NCHSAA of its rulemaking authority. North Carolina Bill 636 was passed by the state legislature, which formally stripped the NCHSAA of much of its authority, including its ability to oversee NIL policies. This a rarity, as most state legislatures do not typically interfere with the rulemaking role of the state associations overseeing high school sports. Although the bill ultimately died in the House of Representatives, North Carolina's lengthy legislative process put the proposal on hold for over a year. When the Board finally addressed the issue at a June 6, 2024 meeting, it reversed the NCHSAA's initial position and barred NIL activities for student-athletes attending public high schools in the state, while the state's independent athletic association, which oversees private school athletes, has authorized student-athletes in non-public schools to be able to pursue their NIL rights. Specifically, athletes at public high schools in North Carolina are not able to profit off their name, image and likeness through: public Appearances or commercials, autograph signings, athletic camps and clinics, sale of non-fungible tokens (NFTs), product endorsements, and personal, in-person promotional activities and social media.

The Board's decision has created a dramatic rift in policy across the state as student-athletes attending private institutions were granted the green light by the North Carolina Independent Schools Athletic Association (NCISAA) to capitalize on and explore NIL opportunities at the nearly 100 private schools for which it oversees and governs athletics. While the NCISAA's authorizes these restricted NIL opportunities, their policy also mirrors those found in many other states by banning collectives and restricting NIL activities relating to controlled substances, adult entertainment and alcohol. This split in regulations between private schools and public schools has raised concerns among coaches statewide, who fear that top prospects will gravitate toward private schools where NIL opportunities are available, and thus creating an uneven playing field in high school athletics across the state.

Most recently, the NCHSAA presented the findings of its 2-year long study of NIL for high school athletes in hopes of persuading the Board to align its NIL policy with that of North Carolina private schools and a majority of states. The Board heard NCHSAA's presentation at the end of July and it is expected that a vote on a unified statewide NIL policy could occur later this year to eliminate the current NIL advantage being offered to private school athletes, to the detriment of the state's tremendous pool of public school high school athletes.

Federal Court Sides with School District and Its Decision to Ban Parent from Games

TAKEAWAYS

- The plaintiff alleges that the defendants violated his First Amendment rights to freedom of speech by retaliating against his speech to Boyd County High School, to the KHSAA, on social media, and directly to the defendants and by banning him from the District's facilities; however, a video from the incident depicts the plaintiff taunting one of the defendants before being escorted out of the gym by police.
- Fighting words are not protectable speech under the First Amendment.
- The plaintiff's invitation to exchange "fisticuffs" is the very epitome of fighting words, and thus, fall well outside of First Amendment protections of free speech.

A federal judge from the Eastern District of Kentucky has granted a school district's motion to dismiss a claim brought by a parent, who claimed his Constitutional rights to free speech and due process were violated when the school district banned him from sporting events.

Plaintiff Jerry Spurlock was banned from the facilities owned and operated by Ashland Independent Schools (District). He filed this lawsuit against the District, its Superintendent Sean Howard, Principal of Paul Blazer High School Jamie Campbell, and Athletic Director of Paul Blazer High School James Conoway, alleging that the ban violates his Constitutional rights to free speech and due process.

"This case arises from the often-intense culture of high school sports," noted the judge in the opinion.

Spurlock is the freshman high school basketball coach at Boyd County High School. His son is a student at that school and is a member of the high school basketball team. Spurlock alleges that during his son's eighth grade year, the then-basketball coach at Paul Blazer High School, Jason Mays, attempted to recruit his son to transfer to the District and play for Paul Blazer. Spurlock, "presumably surreptitiously, recorded that conversation and ultimately, it was released on social media in September of 2022." Both the District and Boyd County High School reported the recording to the Kentucky High School Athletic Association (KHSAA). The KHSAA investigated and found that Coach Mays had violated its rules pertaining to impermissible recruiting. Thereafter, in November of 2022, the District fired Coach Mays.

Spurlock described Mays as "having unprecedented success" as the coach for the Paul Blazer team. He further claimed that following Mays' dismissal, he and his son were subject to retaliation. He alleged that the defendants permitted and even encouraged its staff, students, and basketball fans to harass them. He added that there were antagonizing comments, chanted obscenities and lewd gestures aimed at him and his son during four basketball games in late 2022 and early 2023. He further claimed that the Principal of Paul Blazer High School Jamie Campbell's wife "ambushed him" after the February 3, 2023, matchup between Paul Blazer and Boyd County. He alleged that she stared him down and stood where he was intending to walk. He claimed that she berated him, "why the fuck are you speaking to me, why are you saying anything to me?"

He further alleged that, "upon information and belief," Defendant Campbell directed his wife to initiate the interaction with him. He claimed that Defendant Campbell then attempted to follow him into the parking lot to confront him.

On March 7, 2023, Boyd County played Paul Blazer in the Regional Championship at Morehead State University. Spurlock stated that during the game obscenities and lewd gestures were again aimed at him from Paul Blazer's student section. He alleged that Campbell mouthed "fuck you" toward him. Spurlock claimed that after the game, he attempted to "make a complaint" to the Paul Blazer staff, but that its students, staff and administrators threatened him and that he was ultimately escorted out of the gym by police "for his own safety." He alleged that "at no point during this interaction did [he] make threatening remarks toward the defendants, staff or students."

In their previous filings with the court, the defendants stated that at the March 7 game, Spurlock behaved aggressively toward Paul Blazer's staff and even challenged Campbell to "meet him outside." The defendants submitted a video of this incident, which was reviewed by the Court. "Consistent with the plaintiff's allegations,

there were chants and lewd gestures from the student section as the spectators began to approach the gym floor and exit," wrote the court. "However, the video depicts the plaintiff taunting Campbell before being escorted out of the gym by police."

Three weeks later, by letter dated March 28, 2023, the District, through counsel, informed Spurlock that he would "not be permitted to enter or remain upon the premises of any Ashland Independent School District property or any District event." In support of what the parties refer to as the "No Trespass Order," the letter cited Board Policy 10.21, which charges the Board with the "responsibility to maintain safe, harassment-free schools, school activities, and workplaces for student and staff to minimize disruptions to the District's programs." The letter stated that on March 7, 2023, the plaintiff "made threatening or harassing communications toward District employees and/or their family members relating to the District's basketball program and students on the team."

About six weeks later, Spurlock sent a letter to Howard, recounting the instances of the alleged harassment against him and his son. The plaintiff also asked for proof as to "why he had been banned from the Districts' premises."

On August 15, 2023, Howard emailed Spurlock and advised him that he had reviewed the plaintiff's complaint as well as the documentation and video clips submitted by him and that he had found no support for the plaintiff's allegations of intimidation or harassment.

He also reiterated that the March 2023 letter restricting the plaintiff's attendance from Ashland events was based on "legitimate concerns about the plaintiff's communications about District employees and his conduct at sporting events." Howard advised Spurlock that the "restrictions would remain in place through June 30, 2024, at which time the circumstance would be reviewed to determine if the restrictions could be modified or ended."

On December 27, 2023, Spurlock sued the aforementioned defendants, seeking declaratory and injunctive relief, as well as attorney's fees and costs. Specifically, the plaintiff alleged that banning him from any of the facilities owned or operated by Ashland Independent Schools was part of an ongoing campaign of retaliation against him for his exercise of his constitutional right to free speech. Spurlock claimed that in instituting the ban, the defendants also deprived him of his constitutional right to due process.

The plaintiff "alleges that the defendants violated his First Amendment rights to freedom of speech 'by retaliating against [his] speech to Boyd County High School, to the KHSAA, on social media, and directly to Defendants and by banning him' from the District's facilities," wrote the judge.

"To establish a claim for First Amendment retaliation, the plaintiff must show that (1) he engaged in protected conduct; (2) there was an adverse action taken against him 'that would deter a person of ordinary firmness from continuing to engage in the conduct;' and (3) 'there is a causal connection between elements one and two—that is, the adverse action was motivated at least in part by the plaintiff's protected conduct.' Thaddeus-X v. Blatter, 175 F.3d 378, 394 (6th Cir.1999).

"As this court previously found, the plaintiff's claim fails at the first step of the inquiry. He has not plausibly alleged that he engaged in 'protected conduct.' At the March 7 basketball game, the plaintiff appeared to threaten Campbell and challenged him to 'meet him outside.' He dared one of the defendants to nothing short of a fist fight before escorted off the premises by local law enforcement. 'Fighting words' fall well outside of the First Amendment's bounds. Indeed, "an invitation to exchange fisticuffs" is the very epitome of fighting words. Texas v. Johnson, 491 U.S. 397, 409, 109 S. Ct. 2533, 105 L. Ed. 2d 342 (1989)."

The court continued: "To the extent that the plaintiff continues to contend that something other than his conduct on March 7 resulted in the ban, the timeline of events belies this claim. The restriction or 'ban' was put in place only after, and in response to, his conduct on March 7."

The plaintiff "has not plausibly alleged that he engaged in constitutionally protected speech, much less that the District's decision to prohibit him from being on school property pursuant to Board policy and Kentucky law violated his constitutional rights. As such, his claim for retaliation must be dismissed."

Spurlock v. Ashland Indep. Sch. Bd. of Educ.; E.D. Ky; CIVIL ACTION NO. 23-124-DLB-EBA; 7/31/24

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Federal Court Rules School District Must Allow Transgender Middle School Athlete to Try Out for Team

TAKEAWAYS

- Federal law trumps state law.
- Moving forward from this case, school boards should be wary of state department of education model policies that prevent transgender athletes from trying out for the sports team for which the athlete identified with on the basis of gender identity.
- This Federal Court noted there is a strong public interest in educational institutions being free of discrimination of all kinds, including on the basis of gender identity.
- Here, the plaintiff demonstrated a likelihood of showing that she was excluded from participation in girls' tennis on the basis of sex and that she was harmed as a result in violation of Title IX.

A federal judge from the Eastern District of Virginia has granted a preliminary injunction, finding that a local school board in Virginia may have violated both Title IX and the Equal Protection Clause of the U.S. Constitution when it blocked a transgender middle school athlete from trying out for the sports team for which the athlete identified with on the basis of gender.

Importantly, "Janie Doe" was issued a birth certificate between seven-years-old and eight-years-old in which she was declared female. Specifically, Doe had been diagnosed with gender dysphoria and had been undergoing ongoing treatment for years, with puberty blockers, ensuring she would not experience male puberty.

Aged 11 at the time of the lawsuit and a middle schooler at a Hanover County public school, Doe will now be permitted to try out for the girls' tennis team for the 2024-25 year.

The Hanover County School Board relied on the 2023 Virginia Department of Education (VDOE) model policies in preventing Doe from trying out.

"Janie has established that the Board excluded her, on the basis of sex, from participating in an education program when it denied her application to try out for (and if selected, to participate on) her school's girls' tennis team," wrote the judge.

Hanover County School Board's actions "contravene the strong public interest in educational institutions being free of discrimination of all kinds," the court's opinion continued, "including on the basis of gender identity."

Elaborating on the ruling, the court noted that if the board were to continue to exclude Doe from the team she previously qualified for, Doe would "face a litany of harms ranging from medical regression, social isolation and stigma, financial and logistical burdens, and the dignitary harms of either 'outing' her as transgender or communicating that transgender students are not welcomed or encouraged to participate in school athletics at all."

ACLU Weighs In

"This ruling should make every school board – not just Hanover – think twice before using VDOE's model policies to justify discrimination against its students," said ACLU of Virginia Senior Transgender Rights Attorney Wyatt Rolla, who helped represent Doe.

Transgender athlete bans have sparked lawsuits in many of the 25 states that have enacted them, according to ACLU of Virginia Legal Director Eden Heilman.

"This order is a reminder to school boards that protecting transgender young people is part of protecting girls' sports," Heilman said. "And it's a flashing red light to any Virginia school board that might be tempted to think that VDOE's anti-trans model policies give it license to abuse its power. As the court reminded Hanover County School Board in its ruling, no state policies can shield Virginia schools from accountability for violating federal law."

As additional support, Heilman pointed to the Fourth Circuit Court of Appeals recent decision in **B.P.J v. West Virginia State Board of Education**, a case with what the judge in the instant case called a "strikingly similar" fact pattern. That court found West Virginia violated Title IX by barring a transgender middle schooler from participating on a team in which she aligned with.

"Federal law trumps state law, not vice versa," wrote the Fourth Circuit in that case, "and those who violate federal law cannot defend on the grounds that they were simply following state law."

The judge in the instant case addressed both the alleged violations of Title IX and the Equal Protection

Clause of the U.S. Constitution in the instant opinion.

"With respect to her Title IX claim, Janie has demonstrated a likelihood of showing that she was excluded from participation in girls' tennis on the basis of sex and that she was harmed as a result," the judge wrote. "With respect to her equal protection claim, Janie has demonstrated a likelihood of showing that the challenged policy fails intermediate scrutiny because it is not substantially related to the important governmental interest of ensuring 'fairness in competition for all participants.'"

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Court Dismisses High School Athlete's Claim that Due Process Right Were Violated After She Was Kicked Off Team

TAKEAWAYS

- To succeed in a due process claim, a plaintiff must prove that she has been deprived of a life, liberty, or property interest.
- There are a handful of non-binding cases where courts have found a property interest in participation in school sports.
- Student-athletes, even those with scholarship offers or potential scholarship offers, according to binding court precedent, do not have a due process interest in continued participation in school sports.

A federal judge from the Eastern District of Tennessee has dismissed the claim of a high school athlete, who claimed her due process rights were violated when her high school basketball coach kicked her off the team "without a hearing," which she alleged caused a college to rescind an offer for a full athletic scholarship.

The plaintiff in the case was Sable Winfree, a student at Warren County High School and, at the time, a member of the women's basketball team.

The incident occurred on November 15, 2023, when Mendy Stotts, the women's basketball coach and an individual defendant in the case, pulled the plaintiff out of practice to speak with her in the hallway. Stotts, allegedly, "yelled" at the plaintiff, "saying she was tired of the plaintiff's disrespect towards her" and then accused the plaintiff of calling her the "f-word" during practice. She went on to tell her that she "no longer wanted her as part of the basketball team." That same night, the plaintiff emailed Phillip King, one of the school's athletic directors, to request a meeting.

At the time of the incident, Winfree had been offered a full scholarship to play basketball at Trevecca Nazarene University.

The following day, the plaintiff and her mother met with King and Assistant Principal Anna Geesling to discuss the incident. The plaintiff's mother explained that she had never heard about any disciplinary proceedings prior to the plaintiff being kicked off the team, according to the complaint. Another meeting was held the next day, this time with King, Principal Chris Hobbs (also a co-defendant), Stotts, the plaintiff, her parents, her grandparents, and a family friend. At the meeting, Stotts said she had evidence that the plaintiff said "the f-word," while the plaintiff stated that there were witnesses who would testify that she did not say the "f-word," according to the complaint. However, the plaintiff was not allowed to present those witnesses. At the end of meeting, Stotts dismissed her from the basketball team. Hobbs upheld Stotts' decision. Two weeks after the plaintiff was dismissed from the team, Trevecca Nazarene rescinded the scholarship offer. The plaintiff alleged she also "had anticipated" scholarship offers from Middle Tennessee State University and Tennessee Tech University, but these offers never came.

On April 4, 2024, the plaintiff sued, alleging that the defendants violated her due process rights by dismissing her from the team without a hearing and defamed her by falsely stating that she had said "the f-word." The

defendants subsequently moved for judgment on the pleadings, pursuant to Rule 8 of the Federal Rules of Civil Procedure, which requires that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief."

In its analysis, the court considered whether students have a property interest in playing on a school sports team "when they are faced with suspension or removal from their respective teams, and that removal results in the student-athlete losing one or more athletic scholarships to colleges or universities."

The court noted that in order to establish a due process claim, the plaintiff must show that she has "been deprived of a life, liberty, or property interest." Tomaszczuk v. Whitaker, 909 F.3d 159, 164 (6th Cir. 2018) (quoting Ashki v. INS, 233 F.3d 913, 921 (6th Cir. 2000)).

The instant plaintiff pointed to a handful of "non-binding cases where courts have found a property interest in participation in school sports," according to the court. "This is hardly a deep bench of cases, and, regardless, the plaintiff's argument runs afoul of binding precedent. While the court recognizes the practical impact that a scholarship offer often has on the ability of a student to obtain a higher education, it does not have the discretion to ignore the weight of binding precedent." Ultimately, the court ruled that since the plaintiff "does not have a due process interest in continued participation in school sports, her due process claim must be dismissed."

The court next turned to the plaintiff's state-law defamation claim, in which she argued that the defendants defamed her by falsely alleging that she said the "f-word."

"Because the claim over which the court has original jurisdiction has been dismissed, the basis for the court's original jurisdiction is extinguished," the court noted. "The court finds that the interests of judicial economy and abstaining from needlessly deciding state-law issues weigh in favor of declining to exercise supplemental jurisdiction over the remaining state-law defamation claim."

Sable Winfree v. Warren County School District, et al.; E.D. Tenn.; Case No. 4:24-cv-35; 7/29/24

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Fellowship of Christian Athletes Gets a Legal Victory in Bid to Bring Religion into DC High School

TAKEAWAYS

- The Fellowship of Christian Athletes (FCA) welcomes any student to participate in so-called "huddles" where student-athletes come together for prayer, testimonies, and Bible study, but asks that its student leaders, who lead prayer, religious teaching, and Bible study, agree with its religious beliefs.
- Ninth Circuit precedent has held that that California school district unlawfully penalized FCA for its religious beliefs and used a double standard that failed to treat FCA like all other student groups.
- Here, after FCA filed a federal lawsuit against a DC public school for stripping the student organization of its official recognition due to its religious beliefs, the U.S. District Court for the District of Columbia ruled that FCA can return to the school campus, and it can ask its leaders to embrace its core religious beliefs.
- The Court concluded that antidiscrimination laws, like all other laws, must be applied evenhandedly and not in violation of the Constitution.

A federal judge in the District of Columbia (D.C.) has ruled that the Fellowship of Christian Athletes (FCA) may return to a high school in D.C. and continue advocating for its religious beliefs.

Founded in 1954, FCA is a religious ministry that "supports student-athletes committed to living out their Christian faith on and off the playing field." Specifically, FCA helps form "huddles" on college, high school, and middle school campuses, where student-athletes "come together for prayer, testimonies, and Bible study."

The impetus for the litigation occurred in 2022 when an FCA huddle returned to the campus of Jackson-Reed High School in D.C. after a brief pause during the pandemic. Two weeks later, however, a part-time

freshman baseball coach told local FCA staff that because of FCA's beliefs, there was "no place for a group like FCA in a public school." He filed a complaint with D.C. Public Schools (DCPS) accusing Jackson-Reed of violating the District of Columbia Human Rights Act by allowing FCA on campus.

Because of the coach's complaint, DCPS immediately stripped the Jackson-Reed FCA huddle of official recognition, stopped it from meeting, removed it from the list of student clubs, deleted its club website, and launched a formal investigation into FCA. During the investigation, FCA representatives "explained to DCPS that any student is welcome to participate in FCA huddles; all FCA asks is that its student leaders—those who lead prayer, Bible study, and religious teaching—agree with its religious beliefs. Despite these facts, DCPS kicked FCA off campus at Jackson-Reed, and offered to let Jackson-Reed back on campus only if it assured that anyone could lead FCA, 'regardless of … religious affiliation, or personal belief.'"

FCA SEEKS EQUAL ACCESS TO PUBLIC SCHOOL CAMPUSES

After losing official recognition, FCA unsuccessfully appealed the decision, with the argument that DCPS "could not exclude FCA from campus because it asks its leaders to agree to its beliefs. In fact, Jackson-Reed already recognizes many student groups formed around particular beliefs and characteristics—including the Asian Student Union, which is 'for students of Asian heritage,' and the Wise Club, which offers a 'separate space for young women.' DCPS itself even runs entire schools that condition admission on race and sex. So for DCPS to start selectively targeting FCA over its religious leadership requirements clearly violates the law," according to the FCA, which was represented by Becket, a law firm that specializes in religious freedom.

FCA filed a federal lawsuit against DCPS on May 7, 2024. The complaint points to a similar Becket case involving FCA, **Fellowship of Christian Athletes v. San Jose Unified School Distric**t, in which an FCA club won its right to return to campus after "being harassed and kicked out of public schools in San Jose, CA, for its leadership requirements." The "en banc" Ninth Circuit Court of Appeals ruled in 2023 that San Jose unlawfully penalized FCA for its religious beliefs and used a double standard that failed to treat FCA like all other student groups. In spring 2024, FCA asked the court for the same equal access to public school campuses in D.C. On July 11, 2024, the court **ruled** that FCA can return to Jackson-Reed High School's campus and that it can ask its leaders to embrace its core religious beliefs.

In its ruling, the court wrote that "antidiscrimination laws 'have done much to secure the civil rights of all Americans.' 303 Creative LLC v. Elenis, 143 S. Ct. 2298, 2307 (2023). But antidiscrimination laws, like all other laws, must be applied evenhandedly and not in violation of the Constitution. See id.

"Unfortunately, it appears that this command was not followed at Jackson-Reed High School.

The Fellowship of Christian Athletes requires its student leaders, but not its members, to affirm their commitment to the group's beliefs. Among those beliefs is a prohibition on sexual relations outside of marriage between a man and a woman. For this, FCA lost its official status at Jackson-Reed. As a condition for reinstatement, the District forced FCA to choose between official school recognition and its religious principles. Such treatment is at odds with that received by secular groups at Jackson-Reed that appear to limit membership on the basis of other protected characteristics and/or ideological alignment.

"At this stage, FCA has shown that the District's application of its Anti-Discrimination Policy is likely to run afoul of, at the very least, the Religious Freedom Restoration Act and the Free Exercise Clause. The Court will, however, narrow the scope of the requested injunction. The

Court thus grants in part and denies in part FCA's Application for Preliminary Injunction." The opinion can be viewed at: **https://becketnewsite.s3.amazonaws.com/20240711213931/2024-07-11-_-FCA-DC-Opinion.pdf**

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Study: Cognitive Test Is Poor Predictor of Athletes' Concussion

Part of the NCAA's standardized concussion evaluation failed to distinguish athletes who were actually injured, a study shows.

When college athletes are evaluated for a possible concussion, the diagnosis is based on an athletic trainer or team physician's assessment of three things: the player's symptoms, physical balance and cognitive skills.

Research published recently suggests that almost half of athletes who are ultimately diagnosed with a concussion will test normally on the recommended cognitive-skills test.

"If you don't do well on the cognitive exam, it suggests you have a concussion. But many people who are concussed do fine on the exam," said Dr. Kimberly Harmon, the study's lead author. She is a professor of family medicine and section head of sports medicine at the University of Washington School of Medicine.

Harmon said her sideline experiences as a team physician for the UW Huskies caused her to wonder how to accurately interpret the cognitive-screening portion of the Sport Concussion Assessment Tool (SCAT). Introduced in 2004 by the Concussion in Sport Group, the SCAT (now in its fifth iteration, SCAT5) was intended to standardize the gathering of information from athletes with a potential head injury.

The SCAT first prompts an athlete about whether they are experiencing any of 22 symptoms such as headache, nausea or blurred vision, and symptom severity. Then the tool tests the athlete's cognition in several ways.

First come questions of orientation. (What day is it? What month is it?) Then a test of immediate memory, in which a list of 10 words is read aloud to the athlete, who is asked to restate the list. This sequence is repeated three times. Then the athlete's concentration is tested by having to repeat short sequences of numbers in reverse order. Then comes a prescribed evaluation of the athlete's balance, after which the athlete is again asked to recall the 10 words from the first list.

In Harmon's experience as a team physician, she saw that "some people were concussed and they did well on the recall tests. Some people weren't concussed and they didn't do well. So I thought we should study it," she said.

The study involved 92 NCAA Division I athletes who sustained a concussion between July 13, 2020, and Dec. 31, 2022, and who had a concussion evaluation within 48 hours. The investigators also recruited 92 of the concussed players' teammates as matched control subjects, each of whom was given the SCAT5 screening within two weeks of the incident concussion.

All athletes in the study had previously completed NCAA-required baseline concussion screenings. The investigators found no significant differences in baseline scores between the athletes with and without concussion.

Harmon and colleagues analyzed the study participants' SCAT5 responses and found that the word-recall tests had little predictive value for concussion. In fact, almost half (45%) of the concussed athletes performed at or above their baseline cognitive-test results, the researchers reported.

Instead, the study showed that the most accurate predictor of concussion were the athletes' responses to questions about their symptoms.

"If you get hit in the head and go to the sideline and say, 'I have a headache. I'm dizzy. I don't feel right,' I can say with pretty good assurance that you have a concussion," Harmon said. "I don't need to do any testing. The problem is that some athletes don't want to come out. They don't report their symptoms or may not recognize their symptoms. So then you need an objective, accurate test to tell you whether you can safely put the athlete back on the field. We don't have that right now."

During in-game evaluations for a concussion, team trainers and physicians must quickly synthesize the available evidence and make their best clinical judgment about a player's health. The responsibility for a safety-first decision, though, also lies in part with the athletes, the study's authors wrote:

"Although an increase in symptoms is highly suggestive of concussion, this relies on accurate reporting by the athlete who may not report symptoms because of a desire to return to play, a fear of letting teammates down, minimizing the seriousness of concussion,

difficulty discerning symptoms, a delay in symptom development, or other reasons."

"We are still short of the holy grail, which is an objective test for concussion," Harmon said. "For now, this study shows how important it is for athletes to disclose their symptoms."

The study was funded in part by University of Washington alumni Jack and Luellen Cherneski and the Chisholm Foundation.

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BASKETBALL

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PARTIES

The Plaintiff in this case is Raymond Foote, Sr., ("Plaintiff") grandfather of student T.F., who attended a public school in Defendant, Whitehall Central School District ("School District"). Defendant Patrick Dee ("Defendant Dee") is the current Superintendent for the School District. Defendant, Ethan Burgess ("Defendant Burgess") is the current Principal of the school where the incident occurred. Defendant Keith Redmond ("Defendant Redmond") is the School District's Athletic Director and head coach of the boys' varsity basketball team as well as coach of T.F. at the time of the incident.

FACTS

On January 24, 2022, Defendant Redmond, was coaching the boys' varsity basketball team at a school in the School District. Defendant Redmond's son, Matthew Redmond ("Matthew"), approximately age 20 was operating the shot clock. After the basketball game, Plaintiff's son, Raymond Foote Jr. greeted and hugged his son, T.F. (Plaintiff's grandson). Once T.F. went to the locker room, Raymond Foote Jr., began directing profane and threatening statements at Matthew, Defendant Redmond's son. As Raymond Foote, Jr. was being pulled away from Matthew, Plaintiff proceeded down to the floor and walked over to Matthew. Video evidence shows that Plaintiff and Matthew exchanged words in raised voices and that he directed profane statements at Matthew. Plaintiff insinuated that he would be waiting outside for Defendant Redmond. Once Plaintiff exited the gymnasium, he stood in the doorway and continued to make comments to Matthew and others. Plaintiff was asked to leave the area and at times refused to do so.

Matthew subsequently reported the conduct of Plaintiff and his son, Raymond Foote, Jr. to his father, Defendant Redmond. Defendant Redmond later told Defendant Dee that, upon hearing what had happened to Matthew, he was concerned for their safety. Later that night, Defendant Redmond called the local county Sheriff's Department and reported the incident. An investigation occurred which included Defendant Redmond obtaining statements from witnesses in his capacity as the School District's Athletic Director. All of the witness statements indicated that Plaintiff was seen yelling at Matthew using profanity, stating negative comments about Defendant Redmond's coaching style, and that Plaintiff was asked to leave and at times refused. It is important to note, that there is a longstanding history between Plaintiff and Defendant Redmond in regard to his coaching of both T.F and Raymond Foote, Jr.

After reviewing the video and witness statements, Defendant Burgess sent a letter to Plaintiff on January 25, 2022 informing him that his privileges for the upcoming game were revoked and that the ban may be extended into the future pending further review. Plaintiff was also notified that Superintendent Defendant Dee would be furthering the investigation due to receipt of multiple complaints of unbecoming behavior at the game. Once Plaintiff received the letter, he called to ask why he was being "punished." Defendant Burgess explained that Plaintiff engaged in disruptive, profane, and threatening behavior after the basketball game in the presence of students, parents, and community members.

On January 26, 2022, Defendant Dee sent a certified letter to Plaintiff and Raymond Foote, Jr., that officially banned them from school activities for the 2021-22 season due to the incident that violated the School District Policy and also Section II of the NYSPHSAA Guidelines for appropriate behavior. Plaintiff was aware of the School District policies in place on January 24, 2022, concerning the conduct of attendees at school events. After Plaintiff received the letters, Plaintiff called and

left voicemails and messages for both Defendant Dee and Defendant Burgess in anticipation of meeting. Plaintiff expressed an interest in speaking with Defendant Dee about T.F.'s playing time on the basketball team, and Plaintiff's belief that Defendant Redmond should not be employed by Defendant School District. Defendant Dee did not return Plaintiff's calls because he was prohibited from speaking with Plaintiff about T.F. since Plaintiff is not T.F.'s parent or legal guardian.

Plaintiff did not attend any school events for the rest of the 2021-2022 year. T.F. was a member of the School District basketball team for the 2022-2023 school year. Plaintiff attended T.F.'s basketball games during the 2022-2023 school year without any incidents being reported. T.F. graduated at the end of the 2022-2023 school year. There are no current restrictions on Plaintiff's ability to attend or participate in School District events.

ANALYSIS

Plaintiff raised two claims under the First Amendment and the Defendants filed a Motion for Summary Judgment against those claims.

Right of Assembly

In general, "the ***First Amendment*** prohibits the government from 'abridging the freedom of speech, or of the press,' and guarantees the right of the people to peaceably assemble.'" However, in reference to this specific case "'government officials may stop or disperse public demonstrations or protests where clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears.'" ***Johnson, 859 F.3d at 171 (Papineau v. Parmley, 465 F.3d 46, 56-57 [2d Cir. 2006])***. The Court noted the gymnasium where the incident between Plaintiff and Defendants occurred is considered a public forum. As a result, any conduct at events by spectators is regulated by not only the Constitution, but also various District policies, as well as NYSPHSAA Guidelines. The Court argued it is clear that Plaintiff's conduct at the basketball game on January 24, 2022, "violated not only district policy, but *also Section II NYSPHSAA Guidelines for appropriate behavior*." The Guidelines specifically allow for a spectator to be prohibited from attending events based on a person's behavior.

While the Plaintiff argued that he "did not raise his voice above the person he was speaking with" and was not close to Matthew; the video evidence and witness statements contradict his statement. Additionally, it is irrelevant on whether Matthew raised his voice in response to Plaintiff. Video evidence showed instead that Plaintiff and Matthew were only a few feet apart during the first half of the encounter. Video evidence also indicated Plaintiff waited outside the gymnasium when asked to wait in a different place. Finally, Plaintiff's own deposition testimony confirmed that he used profanity while speaking with Matthew and made unflattering comments. Based on the foregoing, the Court stated that Plaintiff's conduct reasonably could be considered negative, derogatory, or inappropriate for a high school basketball game where students and parents were present. The Court agreed that Defendants' choice to exclude Plaintiff from school events for the remainder of the school year was reasonable.

Also, the Court noted the Plaintiff's ban was upheld because it was viewpoint-neutral. "[A] rule is neutral as to viewpoint if it is 'based only upon the manner in which the speakers transmit their messages . . ., and not upon the messages they carry.'" ***Tyler v. City of Kingston, 593 F. Supp. 3d 27, 32 (N.D.N.Y. 2022***) (Hurd, J.) (quoting ***Turner Broadcasting Sys., Inc. v. F.C.C., 512 U.S. 622, 645, 114 S. Ct. 2445, 129 L. Ed. 2d 497 [1994]***). Plaintiff argued the ban was intended to punish him for saying unflattering and derogatory comments about Defendant Redmond. This is incorrect, as Defendant Redmon was not involved in Defendant Dee and Burgess' decision to ban Plaintiff based on his conduct. The Court indicated Plaintiff did not provide any evidence to raise a genuine dispute of fact regarding whether any animus or personal dislike by Defendant Redmond might have contributed to his ban. The Court specified that Plaintiff's behavior clearly violated district policy and NYSPHSAA Guidelines. The Court ruled Plaintiff's claim for a violation of his ***First Amendment*** right of assembly cannot succeed and granted Summary Judgment to the Defendants.

Retaliation for Speech

"To establish a prima facie ***First Amendment*** retaliation claim, a plaintiff must show (1) 'that the speech or conduct at issue was protected' from the particular retaliatory act alleged; (2) that the retaliatory act qualified as an 'adverse action [taken] against the plaintiff'; and (3) 'that there was a causal connection between

the protected speech and the adverse action.'" ***Heim v. Daniel, 81 F.4th 212, 221 (2d Cir. 2023***) (quoting ***Shara v. Maine-Endwell Cent. Sch. Dist., 46 F.4th 77, 82 [2d Cir. 2022]***). The relevant issue appears to be whether there was a causal connection between the comments and Plaintiff's ban from school events for the remainder of the school year. The Plaintiff argued that the ban was imposed because of the content of his comments about Defendant Redmond. However, Defendants had a reasonable basis for their decision to exclude Plaintiff from school events as such conduct reasonably could be interpreted as violating NYSPHSAA spectator conduct guidelines. The Court stated there is no evidence other than Plaintiff's speculative assertions of improper motive to contradict Defendants evidence denying that they were in any way motivated in their actions by Plaintiff's statements about Defendant Redmond's coaching abilities. The Court ruled that Plaintiff's claim could not succeed and granted Summary Judgment to Defendants.

Deprivation of Liberty

The ***Fourteenth Amendment*** prohibits a state from "depriv[ing] any person of life, liberty, or property, without due process." U.S. Const. Amend. XIV, § 1. The Court noted that "to state a claim for violation of procedural due process under ***§ 1983***, a plaintiff must plausibly allege '(1) that he [or she] possessed a protected liberty or property interest; and (2) that he [or she] was deprived of that interest without due process.'" ***Potrzeba, 2023 U.S. Dist. LEXIS 227159, 2023 WL 8827178, at *9*** (quoting ***Rehman v. State Univ. of New York at Stony Brook, 596 F. Supp. 2d 643, 656 [E.D.N.Y. 2009]***). The specific issue in this case is whether Plaintiff, as a grandparent (not legal guardian) possesses a recognized liberty interest related to attending athletic events for his grandchild. The general law is that non-custodial grandparents do not possess a constitutional right to visitation with a grandchild. Drawbridge v. Schenectady Cnty. Dep't of Soc. Servs., 21-CV-0117, 2023 U.S. Dist. LEXIS 132789, 2023 WL 4888599, at *2 (N.D.N.Y. Aug. 1, 2023) (Scullin, J.) (collecting cases).

Plaintiff argued the Court should recognize a general Constitutional liberty interest in a grandparent's relationship with their grandchild. Here, T.F. lived with Plaintiff at the time of the incident, although Plaintiff was not the legal guardian. However, the Court noted only one case, in a different jurisdiction nearly 50 years ago, supports the Plaintiff's argument. The Court reiterated that liberty interests of grandparents do not include visitation with grandchildren, and therefore, would absolutely not extend to a Constitutional right to attend a grandchild's school event if the grandparent is not the legal guardian.

Finally, even if Plaintiff showed a relevant liberty interest in attending T.F.'s school events, the Court does not need to decide whether due process was constitutionally sufficient because Defendants are entitled to qualified immunity.

Based on the foregoing, the Court granted Defendants' Motion for Summary Judgment. The ban of Plaintiff Raymond Foote, Sr., due to his conduct after the interscholastic game in the School District gymnasium did not violate Plaintiff Raymond Foote, Sr. 's constitutional rights.

Foote v. Bd. of Educ. of Whitehall Cent. Sch. Dist.

United States District Court for the Northern District of New York

July 11, 2024, Decided; July 11, 2024, Filed

1:22-CV-0815 (GTS/CFH)

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NEGLIGENCE

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plaintiff, legal standards and policies that emphasize accountability at all levels of sport and potentially spurring legislative action to enforce stricter safety regulations could be implemented, leading to a broader reckoning within the sports community regarding ethical and legal responsibilities.

A high-stakes legal battle has emerged in Palm Beach County, Florida, as Marlon Miguel Brown, a former Glades Central High School football player, filed a verified tort complaint for negligence. Brown alleges that multiple individuals and organizations, including school officials, the Florida High School Athletic Association (FHSAA), and the National Football League (NFL),

failed to provide necessary medical care and subjected him to harmful practice drills, leading to severe brain injuries. This lawsuit claims these negligent actions contributed to Brown's diagnosis of chronic traumatic encephalopathy (CTE) and post-concussion syndrome (PCS). The following article will explore the detailed allegations, the defendants' legal responsibilities, and the broader implications for athlete safety and sports law.

Brown's Allegations

Marlon Miguel Brown, who played football at Glades Central High School in Palm Beach County, Florida, has made grave accusations against prominent figures and institutions in the sports community. Brown was a dedicated football player, participating actively in the school's program from his freshman through senior years. He played various positions, including tight end, wide receiver, and safety, which often exposed him to high-impact collisions on the field. Despite the physical demands and evident risks of the sport, Brown claims he and his teammates were not provided with the necessary medical care or guidance to manage these dangers effectively.

According to the lawsuit, Brown was subjected to numerous unsafe practice drills, notably the "Bull Ring" and "Pit Drill," which involved intense physical contact and helmet-to-helmet collisions. These drills, used as both regular practice routines and punitive measures, allegedly caused Brown to sustain multiple concussions and sub-concussive hits. Brown asserts that despite repeatedly showing symptoms of head injuries, such as dizziness, headaches, and confusion, he was neither evaluated by medical personnel nor removed from play. This neglect, Brown claims, persisted throughout his high school career, culminating in a series of severe head injuries that have led to chronic traumatic encephalopathy and post-concussion syndrome.

The lawsuit further alleges that the defendants, including school officials, coaches, the FHSAA, and NFL failed in their respective duties to protect student-athletes. Brown also states that there were no concussion protocols in place and that the coaching staff, under the direction of Head Coach Jay Seider, ignored or dismissed the risks associated with repeated head trauma. Additionally, the NFL is accused of concealing information about the dangers of concussions and failing to disseminate critical safety information to lower levels of play, including high schools.

Legal Responsibilities of the Defendants

The defendants in Marlon Miguel Brown's lawsuit hold significant legal responsibilities, stemming from their roles and duties within the educational and sports institutions involved. The Palm Beach School District, including its officials and employees, had a fundamental duty to ensure the safety and well-being of their students, particularly those participating in high-risk activities like football. This duty encompasses providing adequate medical care, implementing safety protocols, and ensuring that coaches and staff are properly trained to handle injuries, especially head trauma. Brown alleges that the school district and its representatives, including Principal Dr. Effie Greer and Head Coach Jay Seider, failed to meet these responsibilities, contributing to his severe injuries.

The FHSAA, as the governing body of interscholastic athletics in Florida, is responsible for establishing and enforcing rules and regulations to protect student-athletes. This includes mandating concussion protocols, ensuring that schools have certified athletic trainers available during games and practices, and educating athletes and coaches about the risks and symptoms of traumatic brain injuries. According to Brown's complaint, the FHSAA neglected these duties, allowing unsafe practices to continue unchecked and failing to intervene despite clear evidence of harmful conditions at Glades Central High School.

The NFL, while primarily focused on professional athletes, also has a broader responsibility to the football community due to its influence and resources. The lawsuit claims that the NFL, through its Mild Traumatic Brain Injury Committee, had knowledge of the long-term dangers of concussions and sub-concussive hits, but it failed to disseminate this critical information to lower levels of the sport, including high school programs. By allegedly concealing findings about the link between football and brain injuries, the NFL is accused of exacerbating the risks faced by young athletes. Brown's case argues that the NFL's negligence in educating and protecting the broader football community contributed to the unsafe environment he experienced, highlighting a need for greater oversight and transparency at all

levels of the sport.

Broader Implications

The outcome of Marlon Miguel Brown's lawsuit could have far-reaching implications for athlete safety and sports law, prompting institutions to re-evaluate and strengthen their safety protocols to protect athletes from brain injuries. This case may lead to stricter mandatory concussion protocols, regular training for coaches on injury management, and the increased presence of medical personnel during high-risk activities, setting a new standard for future generations. Additionally, a ruling in favor of Brown could influence legal standards and policies, emphasizing accountability at all levels of sport and potentially spurring legislative action to enforce stricter safety regulations. This could also pave the way for comprehensive legal frameworks that hold organizations accountable and encourage other injured athletes to come forward, leading to a broader reckoning within the sports community regarding ethical and legal responsibilities.

Looking Ahead

Marlon Miguel Brown's lawsuit against key figures and organizations in athletics underscores the critical need for comprehensive safety measures and accountability in high-contact sports. This case could serve as a catalyst for significant reforms, compelling schools, athletic associations, and professional leagues to adopt stronger protocols to prevent traumatic brain injuries. The legal responsibilities outlined in Brown's complaint highlight the gaps in current practices and the dire need for comprehensive concussion management and education. As this case progresses, it will be essential to observe how these institutions respond and whether they take meaningful steps to protect athletes at all levels. The outcome of this lawsuit not only holds the potential to transform the landscape of athlete safety, but also to lead broader changes in sports law, ensuring a safer future for athletes everywhere.

Joseph M. Ricco IV is a rising 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 while also preparing to join the Kansas City Chiefs as a Training Camp Operations Intern and Pro Football Focus (PFF) as a Data Collector. He aims to combine his sports management and legal knowledge to make significant contributions within sports law.

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TITLE IX

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funding practices and inadequate training at the school.

The district court dismissed her claim for a failure to state a claim, pursuant to Federal Rule of Civil of Procedure 12(b)6. The plaintiff appealed.

In its analysis, the panel of judges noted that "when a plaintiff alleges that a school has an official policy of intentional discrimination on the basis of sex, the 'proper test' under Title IX is whether the school 'intended to treat women differently on the basis of their sex.' *Pederson v. La. State Univ.*, 213 F.3d 858, 882 (5th Cir. 2000).

Murphy failed to allege "facts suggesting that the School District 'intended to treat women differently on the basis of their sex.' See id. The coach's punishment of the cheerleading team was not part of a 'facially discriminatory' policy at the school. See *Arceneaux v. Assumption Par. Sch. Bd.*, 733 F. App'x 175, 179 (5th Cir. 2018).

Indeed, Murphy alleged that "such punishment violated the School District's express policy. As stated in her Complaint, under School Board policies, neither 'physical education staff nor any other school or community personnel . . . are permitted to use physical activity or physical education class or athletic practices as a form of punishment.' Although she contended that the School District funds boys' and girls' sports differently, she failed to tie this allegedly inequitable funding to the harm she suffered at cheerleading practice in anything other than a speculative and conclusory manner. Consequently, the plaintiff has failed to state a claim for intentional discrimination under Title IX."

The panel went on to note that the plaintiff "devotes a large portion of her brief to regulations promulgated by the Department of Education regulating college sports. See 34 C.F.R. § 106.41; *Title IX of the Education Amendments of 1972; a Policy Interpretation; Title IX and Intercollegiate Athletics*, 44 Fed. Reg. 71,413. Even if the cited regulations concern intentional discrimination rather than disparate impact discrimination, the plaintiff's claim fails, because she has not alleged 'enough facts to state a claim to relief that is plausible on its face.' *Twombly*, 550 U.S. at 570, 127 S. Ct. at 1974.

"As for the plaintiff's § 1983 claim, to hold the School District liable under that statute, she 'must allege sufficient factual content to permit the reasonable inference (1) that a constitutional violation occurred and (2) that an official policy attributable to the school district's policymakers (3) 'was the moving force' behind it.' *Littell v. Hous. Indep. Sch. Dist.*, 894 F.3d 616, 622-23 (5th Cir. 2018) (citing *Doe ex rel. Magee v. Covington Cnty. Sch. Dist. ex rel. Keys*, 675 F.3d 849, 854, 865-66 (5th Cir. 2012) (en banc)).

"The plaintiff's claim fails at step one of the municipal liability analysis, because she has not pleaded that a constitutional violation occurred. *Littell*, 894 F.3d at 623. The plaintiff's argument is foreclosed by this court's binding precedent in *Moore v. Willis Independent School District*, 233 F.3d 871, 875 (5th Cir. 2000). In that case, a gym teacher who had observed a fourteen-year-old male student 'talking to a classmate during roll call' ordered the student to do 100 'ups and downs' as punishment. *Id*. at 873. In the following days, the student was diagnosed with rhabdomyolysis and renal failure. *Id*. This court stated that the Fifth Circuit has 'held consistently that, as long as the state provides an adequate remedy, a public school student cannot state a claim for denial of substantive due process through excessive corporal punishment, whether it be against the school system, administrators, or the employee who is alleged to have inflicted the damage.' *Id*. at 874. Moore controls this case. The imposition of exercise as punishment is not a constitutional violation. See *id*."

"Because the Plaintiff has failed to plead either a Title IX or a constitutional cause of action, the judgment of the district court is affirmed."

Murphy v. Northside Independent School District; 5th Cir.; No. 23-50369; 4/10/24

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