



# LEGAL ISSUES IN HIGH SCHOOL SPORTS

Alabama High School Athletic Association  
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# LAWYERS!!!!!!!

- ❑ 14,000 Lawyers in Alabama
- ❑ Five Law Schools in Alabama
- ❑ 463 students entering law school each year (on average)
- ❑ 485 Admitted to the Bar just in 2017 (407 passed the bar exam, 50 admitted by reciprocity, and 28 admitted by transfer of UBE score)

# SOVEREIGN IMMUNITY:

## **ALA. CODE § 36-1-12(c)(1-5)**

(c) An officer, employee, or agent of the state, including, but not limited to, an education employee, is **immune from civil liability** in his or her personal capacity when the conduct made the basis of the claim is based upon the agent's doing any of the following:

- (1) Formulating plans, policies, or designs.
- (2) Exercising his or her judgment in the administration of a department or agency of government, including, but not limited to, examples such as:
  - a. Making administrative adjudications.
  - b. Allocating resources.
  - c. Negotiating contracts.
  - d. Hiring, firing, transferring, assigning, or supervising personnel.
- (3) Discharging duties imposed on a department or agency by statute, rule, or regulation, insofar as the statute, rule, or regulation prescribes the manner for performing the duties and the state agent performs the duties in that manner.

# SOVEREIGN IMMUNITY:

- (4) Exercising judgment in the enforcement of the criminal laws of the state, including, but not limited to, law enforcement officers' arresting or attempting to arrest persons.
- (5) Exercising judgment in the discharge of duties imposed by statute, rule, or regulation in releasing prisoners, counseling or releasing persons of unsound mind, or educating students.

## **ALA. CODE § 36-1-12(d)(1-2)**

(d) Notwithstanding subsection (c), an education employee, officer, employee, or agent of the state is **not immune from civil liability** in his or her personal capacity if:

- (1) The Constitution or laws of the United States, or the Constitution of this state, or laws, rules, or regulations of this state enacted or promulgated for the purpose of regulating the activities of a governmental agency require otherwise; or
- (2) The education employee, officer, employee, or **agent acts willfully, maliciously, fraudulently, in bad faith, beyond his or her authority**, or under a mistaken interpretation of the law.

# “Willful Conduct” APJI 29.01 [PL]

- ▶ Defendant’s conduct is willful if the evidence shows:
  - ▶ 1. (He/she) was aware that under the circumstances (his/her) act(s) or failure to act would cause harm to someone;
  - ▶ 2. (He/she) intended for (his/her) act(s) or (his/her) failure to act to cause harm to someone; and
  - ▶ 3. (He/she) caused harm to (name of plaintiff).
- ▶ It is not necessary that (name of defendant) intended to harm a specific person; it is enough that (he/she) intended that (his/her) conduct would harm someone.

# “Beyond his or her authority”

→ A state Agent “acts beyond authority” and is therefore not immune when he or she fails to discharge duties pursuant to detailed rules or regulations, such as those stated on a checklist

## **Giambrone v. Douglas – Alabama Supreme Court (2003)**

- Wrestling practice (Coach [200 lbs] vs. 15-year old [130 lbs])
- Coach argued no rules or regulations on how to conduct practice were ever “adopted”
- Evidence: But, coach did receive AHSAA Guidelines and NFW and Athletic Directors
- Code of Conduct – should not arrange competitions between individuals whose physical abilities are widely disparate

**“We cannot agree that such guidelines and rules must be adopted by the Board before they create a duty on Douglas’s part.”**

# SPORTS INJURIES

## Elias V. Winnetonka High School & Davis

### Missouri Court of Appeals

- Football Player – Multiple Injuries (including broken ankle)
- Team's Assistant Coach participated in full contact scrimmage
- Lower Court applied statutory immunity
- Court of appeals says not block gross negligence or intentional tort

**POINT: Must use reasonable care**

**Statutory Immunity not an absolute shield**



## Mileto v. Sachem Central School District (New York)

- Football coaches violated duties
- 400 pound log carried by Mileto and four others in preseason football camp
- Drill used by Navy Seals and Green Berets
- Fell on Mileto's head and killed him
- Asking for \$15 million
- 2018 – A second suit has now been filed against School District for failing to provide counseling for teammates

## Ray v. Chelsea School District

### Michigan Supreme Court

- Cross Country runner injured when hit by car
- Pre-dawn team training in darkness
- Negligence vs. Gross Negligence

## Bush v. St. Louis Convention and Sports Complex

- Professional but impacts High School Athletics
- \$4.95 million compensatory and \$7.5 million punitive
- New Orleans Saints Running Back – Reggie Bush
- Punt Return – out of bounds
- “Concrete Ring of Death”
- Tore left ACL

### **Point: Keep Premises Safe!**

- Ex. Unpadded gym walls  
Glass doors near playing surfaces  
Equipment placed next to fields

## Maser v. Bound Brook Board of Education

### New Jersey Appellate Court

- Reversed judgment for the Board
- Junior Varsity Baseball Coach
- Third Base Coach – Instructed athlete to slide
- Serious ankle injury
- Immune from liability unless “reckless”
- Sent back to lower court to address “reckless” or not

**Point: Courts will decide if telling a player to “slide” is reckless or not**

# CONCUSSION

## Swank v. Valley Christian School

### Washington Supreme Court

- Friday Night Game - injured
- Monday – Doctor diagnosed concussion
  - “no practice, no play” –
- Thursday – Mother calls doctor
  - Gets Medical Clearance –
- Game – Swank appeared sluggish and confused
  - Played anyway --
- Hit in head, staggered to sideline, vomited, collapsed
- Died two days later

## Council v. Union High School District

- 14-year-old freshman on Monte Vista High School football team – played in October 2013 game
- Teammate informed coach Council not playing well and should come out – “shushed by coaches”
- 15 or 20 minutes after the game Council was sick, vomited and told coach he had a headache
- Coach asked series of questions to determine condition – did not appear to be seriously injured
- Called mother instead of 911 – Council’s father found him slumped over with head between his legs and covered in his own vomit
- Taken to emergency room – diagnosed with concussion and subdural hematoma
- Emergency surgery, on ventilator for approximately 9 months, extensive rehab, trouble seeing
- **Settled - \$7.1 million**

# Baker-Goins v. First Baptist School of Charleston

## South Carolina

- Jury awarded \$5.87 million
- Basketball – two concussions five weeks apart
  - After first, completed the “Return to Play” Protocol
  - But, the jury still awarded \$5.87 million

**Point: Even if you follow the protocol, you need to err on the side of caution  
DO NOT just check the boxes  
Make sure fit to play**

# Council v. San Ramon Valley USD

## California

- \$7.1 million settlement
- Coaches not remove student from the game
- Despite being told by teammates
- Father took him to hospital afterward
- Emergency surgery
- Permanent brain injury

Evidence: Not one of the coaches had completed the required concussion training program



# CONSTITUTIONAL ISSUES

# SOCIAL MEDIA

## Bell v. Itawamba County School Board

- Student expelled from extracurricular activities and suspended from school
- Posted a rap song accusing two coaches of inappropriate conduct with female students
- Did not violate free speech rights based on “substantial disruption” standard

## Social Media

- U.S. District Court - Pennsylvania
- Cheerleader dismissed from squad
- Posted on Snapchat
  - Photo of her and a friend holding up middle finger
  - “\_\_\_\_\_ school”
  - “\_\_\_\_\_ softball”
  - “\_\_\_\_\_ cheer”
  - “\_\_\_\_\_ everything”

Ruled: Being dismissed violated student's free speech rights because “no substantial disruption”

# FREEDOM OF RELIGION

## Kennedy v. Bremerton

U.S. Court of Appeals – 9<sup>th</sup> Circuit

- School District is not required to allow high school football coach to pray on the field at the end of each game
- 2000 decision: Prayer at sports events sponsored by “state actors” violates the Establishment Clause
- But, students are not limited by the Establishment clause and can pray anytime they choose

# Matthews v. Kountze Ind. School District

## Texas Court of Appeals

- Display of Bible verses on run-through banners held by cheerleaders was protected as “private speech”
- **Note:** Court ignored . . .
  - \*cheer squad was school-sponsored
  - \*cheer sponsor was a public employee
  - \*Display banner looked like government-endorsed speech
- Affirmed by Texas Supreme Court in 2018

## National Anthem Protests

### U.S. District Court - California

- Ruled in favor of Native American player who took a knee during the anthem to protest racial and ethnic injustice
- Several fans started yelling racial and ethnic slurs at the student
- School implemented policy banning political protests

Court Ruling: Schools do not have the authority to limit student speech unless it “materially and substantially” interferes with the educational process

**Point: Yelling at the student did not meet the test**

# INVASION OF PRIVACY

## State v. Mathers

- Need safeguards to protect privacy in restrooms, locker rooms, and showers against photography
- 29-year-old photographed 70-year-old woman
- Posted on Snapchat
- Mathers argued no reasonable expectation of privacy
- **Court Disagreed:**
  - No One would expect a nude photo taken without permission to be disseminated to tens of thousands on social media.
- Codes of Conduct should prohibit use of cameras in such areas

# SEXUAL HARASSMENT

## Class Action v. Custer County School District

### Montana

- Athletic trainer (never certified)
- Alleged to have abused over 100 male students over 28 years
- Alleges school coaches and administrators were aware

Standard: Did someone in a position to take remedial action have knowledge of the abuse and exhibited deliberate indifference?

Knowledge + Deliberate Indifference

**Point: Take immediate action**



# Stephen v. Westerly School of Long Beach

## California

- Teacher-student
- \$25.3 million
- Comparative negligence – school to pay \$9 million



# Some Ugly Statistics

- **Much hazing is actually sexual assault and is often mislabeled.**
- **Teammate-on-teammate sexual assaults occur in all types of sports in public schools.**
- **Boys made up the majority of aggressors and victims in teammate attacks – some suffering serious injury and/or trauma.**
- **Since the beginning of 2014, more than 150 incidents of alleged hazing in school athletics programs have been reported by national media, many including physical abuse or sexual assaults.**
- **Courts tend to find school and athletics personnel vicariously liable where the official had knowledge that hazing was occurring and exhibited deliberate indifference to correcting the situation.**

# HAZING

## Doe v. Hamilton County Dept of Education

- East Tennessee School District, Principal, Athletic Director & Basketball Coach
- Freshman at Ooltewah High School
- Cabin during a road trip
- Sodomized with a pool cue
- Three convicted of aggravated rape, aggravated assault
- Athletic Director pled guilty for failure to report child abuse
- Long history of hazing incidents

## Damascus High School

### Maryland

- Four football players sodomized with a broomstick
- Next day, incident was reported to school officials
- Reported to law enforcement
- Investigation: “Brooming” ritual went back many years
- Four charged as adults – First Degree Rape
- One charged as a juvenile – Second Degree Rape

**Point: It is not “hazing.” It is criminal.**

# Another Hazing

## Lake Owego School District

- Two former coaches and a parent volunteer
- 14-year-old dancer
- She and other freshman students
- Sprayed with water pistols, syrup and feathers and told to wrestle

## Numerous Recommendations:

- ✓ Define prohibited behavior
- ✓ Have reporting and investigation protocols
- ✓ In-service for athletic personnel
- ✓ All students and parents receive copies of policies

## Gambling

U.S. Supreme Court

New Jersey

- Murphy v. NCAA – struck down as unconstitutional certain portions of a 1992 federal law that banned most states from allowing sports gambling
- This opened the door for states to allow betting on sports events

### LAW PASSED IN AT LEAST

Nevada

Delaware

New Jersey

Mississippi

West Virginia

New Mexico

Pennsylvania

Rhode Island

- Bills introduced in many others
- Summary: Lead to betting on professional and college sports events through the placement of bets at casino sports books, race tracks, off-betting parlors and eventually online
- So far: No gambling on high school and youth sports...