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Negligence and Duty of Care in High School Athletics: A Legal Analysis of Athlete Safety in the Valparaiso High School Case

Takeaways

- Schools can face negligence claims not only for unsafe practice drills, but also for inadequate supervision, improper athlete pairings and delayed or insufficient medical evaluation after an injury occurs.
- Athletic departments should regularly review and enforce protocols for non-contact drills, concussion response, coach supervision and athlete matching by size, age and experience to reduce injury risks and potential liability.

By Hannah G. Bleikamp

In 2026, a lawsuit was filed against Valparaiso Community Schools after an athlete suffered serious injuries during a non-contact drill (Feurer & Savini, 2026). The football player, Malakai Solomon, was participating in a non-contact drill without protective equipment in which two other players allegedly used excessive force, resulting in Malakai falling and hitting his head on a hard surface. He sustained a severe concussion and wrist injuries, including a fracture in one wrist.

Malakai's parents claimed that the drill was not properly supervised in addition to alleging that the coaches did not provide proper medical care following the injury (Feurer & Savini, 2026). Medical attention was only given once Malakai contacted his father, after which he was taken to the hospital.

See VALPARAISO on page 10

School District That Ignored Heat Advisory May Face Trial for Soccer Player's Heat Stroke

Takeaways

- Holding practices or conditioning sessions during extreme heat—even if technically before a heat advisory begins—does not eliminate a school's potential liability if reasonable heat-safety precautions are not followed.
- An "optional" workout may not be legally viewed as truly voluntary if athletes reasonably believe that skipping the session or taking breaks could affect their playing time or standing with coaches.
- Courts may allow juries to decide whether coaches' failures to provide adequate hydration, shade, supervision and heat monitoring created risks beyond those inherent in sports participation, limiting the effectiveness of assumption-of-risk defenses.

By Gary Chester, Senior Writer

The National Weather Service generally issues heat advisories when the heat index—a combination of temperature and humidity—reaches 100-105 degrees Fahrenheit. A heat advisory is a warning to limit outdoor activity, hydrate, and stay in cool environments. There is no exception for scholastic sports.

See HEAT on page 11

Law Firm Calls for Stronger Youth Sports Safety Following Fatal Lacrosse Injury

By Gil Fried, Editor in Chief

Hagens Berman Sobol Shapiro LLP is calling for stronger safety protections for youth athletes following the death of 16-year-old Mercer Island High School lacrosse player Eliot Abramson, who died after being struck in the neck by a lacrosse ball during a college recruiting event.

According to the Mercer Island School District, Abramson was injured June 1 when a lacrosse ball struck him below his helmet during play. He lost consciousness and was transported to Harborview Medical Center, where he died June 7.

In a statement released in June, Hagens Berman co-founder Steve Berman said the incident highlights the need for greater oversight and improved safety measures in youth sports.

"Too many times our firm has witnessed the tragedy of harm befalling an athlete due to negligence, lack of safety oversight, improper instruction, lack of concussion management and other blatant failures to protect the lives of players on the field," Berman said. "Athletes like Eliot deserve better protection."

The firm said its sports litigation practice has represented plaintiffs in concussion-related litigation involving organizations including the NFL, NCAA, FIFA, U.S. Soccer, U.S. Water Polo and Pop Warner football.

It also cited previous litigation that resulted in changes to concussion management and return-to-play protocols for college athletes, as well as litigation that helped eliminate heading for the youngest youth soccer players.

Berman said the firm's sports litigation team is reviewing the circumstances surrounding Abramson's death to better understand the incident and identify potential safety lessons.

"Our hearts are broken for Eliot's family and our community," Berman said. "Protecting our most vulnerable players through equipment, policies and safety practices is paramount."

The firm did not announce any legal action related to Abramson's death. It said its attorneys are examining the facts surrounding the incident as part of their ongoing work on sports safety issues.

The circumstances surrounding the injury have drawn renewed attention to player safety in youth lacrosse, including protective equipment standards and on-field safety protocols. Authorities have not publicly alleged wrongdoing in connection with the incident.

Legal Issues in HIGH SCHOOL ATHLETICS

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Department of Education Signals Renewed OCR Enforcement Focus on Adult Sexual Misconduct in K-12 Schools

By Alexis F. Trumble, Attorney with Parker Poe

On July 10, 2026, the U.S. Department of Education issued a "Dear Colleague" letter announcing a new national K-12 initiative focused on preventing and responding to allegations of sexual misconduct by adults in positions of authority within schools. The initiative includes 20 directed Office for Civil Rights (OCR) investigations and signals a renewed federal enforcement focus on school district responses to allegations of staff-on-student sexual misconduct.

Although the department's announcement does not create new legal requirements or promulgate new regulations, it serves as a reminder that OCR intends to closely scrutinize district compliance with existing obligations under Title IX and the Elementary and Secondary Education Act (ESEA). Districts should be prepared for OCR to devote increased resources to reviewing their responses to allegations of adult sexual misconduct involving students.

What the 'Dear Colleague' Letter States

According to the department, OCR is launching a national initiative aimed at addressing reports of sexual misconduct committed by school employees and other adults in positions of authority. As part of that initiative, OCR announced 20 directed investigations into districts whose civil rights data collection (CRDC) submissions raised concerns to the administration regarding reporting or handling of staff-on-student sexual misconduct allegations.

The 'Dear Colleague' letter highlights several areas that OCR intends to emphasize in its enforcement activities, including:

- School districts' responsibilities to respond promptly and appropriately when they have actual knowledge of sexual harassment or abuse allegations.
- District obligations to conduct meaningful investigations and not merely defer to law enforcement investigations. The department expressly states that referral to law enforcement, standing alone, does not satisfy a district's Title IX obligations.
- Accurate reporting of staff-on-student sexual misconduct through CRDC.
- Compliance with ESEA provisions designed to prevent districts and educational agencies from assisting employees who engaged in sexual misconduct in obtaining new educational employment, a practice often referred to as "passing the trash."
- Training school officials to recognize, report, and address sexual misconduct allegations involving students.



Why This Matters for School Districts

The announcement signals that sexual misconduct investigations are once again likely to become a visible OCR enforcement priority. While many districts have understandably devoted significant attention in recent years to other Title IX developments, including those impacting athletics operations, OCR's latest actions suggest that the agency will devote increased resources to reviewing district responses to allegations involving school employees and students.

The department's guidance also reinforces a longstanding compliance principle that can present practical challenges for school administrators: a district's Title IX responsibilities often continue even when law enforcement, child protective services, or other agencies are investigating the same allegations. OCR's position is that districts must independently assess their Title IX obligations, provide appropriate supportive measures, and take steps reasonably designed to address and prevent sex-based discrimination within the educational environment.

Districts should also expect increased scrutiny of documentation practices, investigative completeness, records retention, data reporting, and employment-related procedures addressing allegations of employee misconduct. The department specifically emphasized concerns regarding incomplete investigations, failure to meaningfully follow up on complaints, and practices that may permit employees accused of misconduct to obtain positions elsewhere without appropriate disclosure.

What School Districts Should Consider Doing Now

In light of the department's announcement, school districts should consider taking the following steps:

- Review Title IX policies, procedures, and investigation protocols applicable to employee-on-student sexual misconduct allegations.

- Ensure administrators understand when district obligations are triggered and how those obligations interact with law enforcement or child protective services investigations.
- Evaluate whether current practices provide for prompt, thorough, and well-documented investigations of sexual misconduct allegations.
- Review CRDC reporting processes to confirm that incidents involving staff and students are being tracked, coded, and reported accurately.
- Assess hiring, reference-check, resignation, separation, and personnel-record practices to ensure compliance with applicable laws addressing employee sexual misconduct.
- Confirm that employees receive appropriate training regarding reporting obligations, escalation procedures, and retaliation prohibitions.

- Consult with legal counsel regarding particularly complex allegations, overlapping investigations, personnel actions, or questions regarding Title IX and ESEA compliance.

Bottom Line

The department's July 2026 initiative does not establish new compliance obligations, but it sends a clear signal that OCR intends to devote renewed attention to how K-12 school districts prevent, investigate, document, report, and respond to allegations of adult sexual misconduct involving students. Districts should take this opportunity to review their existing practices and identify any areas requiring additional training, documentation, or legal review.

Montana Supreme Court Rules High School Athletic Association Denied Student Due Process in Eligibility Dispute

Takeaways

- When an athletic association has discretion to grant or deny eligibility waivers, schools and governing bodies should ensure students receive clear notice, a meaningful opportunity to be heard and a written explanation of the decision to satisfy due process requirements.
- Athletic directors should avoid giving families informal assurances about eligibility before receiving an official ruling from the state association, as reliance on those statements can contribute to disputes and potential litigation.
- Even if a student graduates before an eligibility case is resolved, courts may still hear the case if it raises recurring issues of public importance, meaning association policies and procedures can remain subject to judicial review.

By Nicholas Stegmann and Dr. Michael S. Carroll

The Montana Supreme Court reversed a lower court ruling on April 22, 2026, finding that the Montana High School Association (MHSA) failed to provide a student with constitutionally sufficient due process when it denied his request to play basketball as a fifth-year senior. The decision in *Hert v. Montana High School Association* (2026), may bring some clarity to questions that courts have struggled to address in the past regarding student-athlete eligibility and due process, because the timing of athletic seasons caused similar cases to expire before reaching a final ruling. In previous cases, students either graduated or completed eligibility before the court could hear the case, rendering the dispute moot. The Montana Supreme Court used this case to establish minimum standards of procedure that MHSA must follow whenever it applies its discretionary waiver process to students with constitutionally protected interests in extracurricular participation.

Background

Zayne Hert began attending Colstrip High School (CHS) in Rosebud County, Montana, in the Fall of 2019 and played basketball during his freshman year. When the COVID-19 pandemic forced the school to remote instruction during the 2020-21 school year, Zayne struggled with virtual learning, failed several classes, and lost academic eligibility to compete on the basketball team that season.

Discussing Zayne's future eligibility, his father Kelly Hert spoke with CHS Athletic Director Andrew Torgerson about whether Zayne could play basketball as a fifth-year senior if he were to repeat his sophomore year. Torgerson indicated he believed Zayne would qualify but was not sure and would therefore look at it, but he never followed up. Relying on that informal word, Zayne's parents decided to have him repeat his sophomore year and graduate in five years rather than attempt to gain extra credits to finish in four.

Zayne repeated his sophomore year during the 2021-22 school year, raised his grades, and rejoined the basketball team. He played again during the 2022-23 school year, his fourth year of high school. Near the end of that year, CHS Principal Robin Nansel informed Zayne that MHSA would not allow him to compete in MHSA activities during his upcoming fifth year. MHSA did not contact Zayne or his parents directly in this matter.

The barrier Zayne faced was the MHSA's Semester Rule, spelled out in Article II, Section 8, Rule 8.1, which limits a student's eligibility to participate in MHSA contests to four consecutive years or eight consecutive semesters, after entering ninth grade. Because Zayne entered ninth grade in 2019, the rule closed his eligibility window following the 2022-23 school year, regardless of him having repeated his sophomore year.

The Appeal to MHSA and Its Denial

The Montana High School Association provides a process for contesting eligibility decisions. Under Article I, Section 5, Rule 5.3, the MHSA Executive Board holds purpose to modify application of a rule in emergency or exceptional circumstances, but only when three conditions exist: the circumstances fell entirely beyond the control of the student, parents, or school; granting relief would not prejudice other students or schools; and the waiver would not violate the purpose of the rule.

On May 22, 2023, Principal Nansel sent a letter to the MHSA Executive Board on the Herts' behalf, explaining Zayne's circumstances and stating that the family sought a waiver of the Semester Rule specifically. The Executive Board conducted a Zoom hearing on August 16, 2023, at which the Herts presented their case. The Board voted unanimously to deny the waiver at the close of the hearing and told the Herts orally of the denial but did not publicly deliberate or articulate its reasoning. MHSA sent no written notice of its decision to Zayne or his parents. On August 17, 2023, MHSA sent a letter to Principal Nansel stating only that the Board had denied the request and that Zayne would continue to be ineligible for his remaining high school career.

The Herts filed suit against MHSA and its Executive Director Brian Michelotti in the Sixteenth Judicial District Court, Rosebud County, asserting that the denial violated Zayne's due process rights under the Montana Constitution. They sought relief under Montana Code Annotated (MCA) Section 27-8-201, which authorizes courts of record to declare rights and legal relations. A preliminary injunction allowed Zayne to participate in basketball during the 2023-24 season while the case proceeded. The basketball season ended and Zayne graduated before the district court reached a final decision. The district court then granted summary judgment in favor of MHSA, holding that the claims had become moot once the season concluded and Zayne left.

The Supreme Court's Decision

Justice Ingrid Gustafson wrote the opinion for a unanimous court, joined by Chief Justice Katherine M. Bidegaray and Justices Beth Baker, Laurie McKinnon, and Jim Rice. Justice Rice also filed a separate concurrence. The court confronted two questions: whether the case had become moot, and whether the district court erred in granting summary judgment for MHSA.

On mootness, the court acknowledged that Zayne's graduation and the conclusion of the basketball season had eliminated any remedy that could directly benefit him, as this is the typical circumstance that renders a case moot. The court applied the public interest exception to the mootness doctrine, which Montana courts invoke when three conditions exist: the case presents an issue of public importance, the issue will likely recur, and an answer will guide public officers in performing their duties. The court found all three conditions met. MHSA eligibility disputes arise across the state with regularity, they resolve, or lapse, within a single athletic season by their nature, and that recurring pattern had left students, families, and MHSA without authoritative guidance on what due process demanded.

The court concluded that dismissing on mootness grounds would allow the same gap in procedure to persist indefinitely.

On the merits, the court based their analysis in Montana Constitution, Article X, Section 1, which declares the state's goal to build a system of education that develops the full educational potential of each person, and under which the Montana Supreme Court has previously held that extracurricular activities constitute part of the educational process. The court reaffirmed that while interscholastic sports do not rise to the level of a fundamental right under the Montana Constitution, students' interest in competing carries constitutional protection: once the MHSA offers a sport, that interest acquires protection against unconstitutional deprivation.

The court rejected the district court's framing of that interest as a mere privilege or contractual entitlement. Because Zayne held a constitutionally protected interest, MHSA's discretionary waiver process had to satisfy due process. The court found that MHSA's conduct fell well short of that standard: the Board sent no written reasoning to Zayne or his family, disclosed none of the evidence it relied upon, and directed its only written communication to the school principal rather than to the affected family. That approach, the court held, blocked judicial review of the Board's decision.

The court established three minimum procedural requirements the MHSA must meet when it applies discretionary waiver criteria affecting a student's constitutionally protected interest in extracurricular participation: first, notice of the issues the Board will decide; second, a meaningful opportunity for the student to be heard; and third, a written record and decision adequate to permit judicial review. The court reversed the district court and remanded for entry of declaratory relief consistent with those requirements.

Significance of the Ruling

The decision carries consequences for MHSA and member schools throughout Montana. By invoking the public interest exception, the court created precedent on questions that previously escaped definitive resolution because student plaintiffs graduated or their seasons ended before appeals concluded. Going forward, MHSA waiver denials must provide direct notice to the student of the issues under consideration, a genuine opportunity to be heard, and a written decision explaining the outcome in sufficient detail to support judicial review.

The Montana High School Association has not publicly commented on whether it plans further proceedings or will revise its waiver procedures in response to the ruling.

Nicholas Stegmann is a Sport Management instructor at Columbia College in Columbia, Missouri. He is also a student in the Sport Management doctoral program at Troy University.

Michael S. Carroll serves as a Professor of Sport Management at Troy University, where he specializes in sport law and risk management within the sport and recreation industries. A prolific scholar, he has authored over 40 articles and delivered more than 50 presentations at professional conferences. Dr. Carroll also plays a vital role in mentorship, working closely with candidates in Troy's doctoral program. He lives in Orlando, FL.

Game Changer: IHSAA's New PBA Rules Let Hoosier High School Student-Athletes Get Paid

By Conner Glass, Church Church Hittle + Antrim

Indiana high school student-athletes may now profit from their name, image and likeness (NIL) without jeopardizing their amateur status. The Indiana High School Athletic Association (IHSAA) Board of Directors approved its new “Personal Branding Activities” (PBA) bylaws during the association’s annual review meeting last May.

The approval of the new PBA rules marks a seismic shift in Indiana high school athletics. Prior to the approval, Indiana was one of only a handful of states that still prohibited NIL monetization for high school athletes. Although Indiana still lacks any sort of state law on the matter, the IHSAA has decided to catch up with the rest of the country.

Under the new bylaws, student-athletes may “monetize their brand through social media, personal appearances, and endorsements unrelated to their school athletic participation.”[1] Students may not, however, represent their IHSAA member school or perform athletic services as part of what the IHSAA refers to as their “PBA activities”.[2] Additionally, students may not enter into any PBA deals affiliated with gaming or gambling, alcohol, tobacco, cannabis, illegal or banned substances, sexually explicit material, or firearms or weapons.[3]

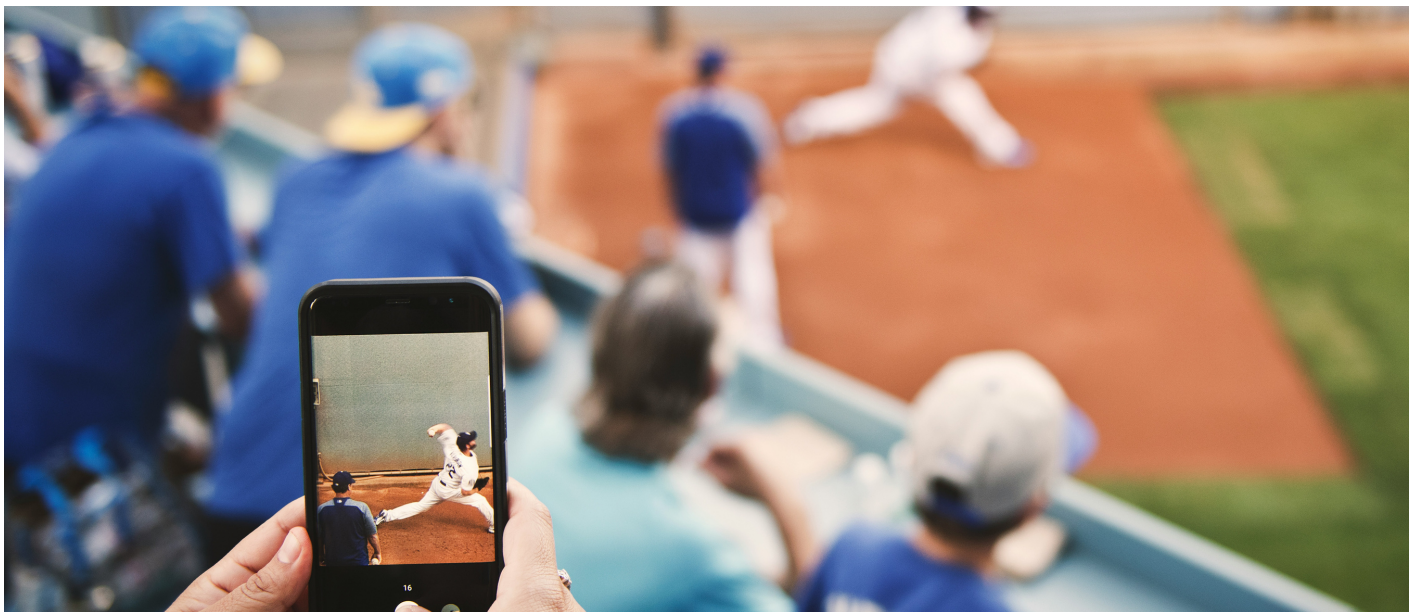
The PBA bylaws require students engaging in “PBA activities” to notify their school’s athletic director in writing within 48 hours of entering into any PBA agreement.[4] Schools are required to provide annual educations to student-athletes regarding PBA rules, requirements, and potential consequences of violations, which may amount to up to a year of ineligibility.[5]

Notably, the IHSAA seems to be primarily focused on differentiating its PBA rules from the current NIL landscape in college athletics. “Unlike the current college system, where schools often play a direct role in NIL compensation, the new rules keep high schools out of arranging or funding deals for student-athletes,” IHSAA Commissioner Paul Neidig said in a public statement.

However, this distinction may prove to be more difficult than the IHSAA anticipates. For example, the PBA rules prohibit student-athletes from accepting benefits from “PBA collectives that work on behalf of, in conjunction with, affiliated with, or for the benefit of any Member School.”[6] What if a business owner who has donated to a school in the past wants to pay a student-athlete to promote her business? Is that business owner considered a PBA collective affiliated with the school?

The NCAA has been dealing with a similar issue, as payments from “associated entities” count towards an institution’s revenue sharing cap. There has been disagreement among college sports stakeholders as to what is considered an “associated entity,” with the most recent example involving the University of Nebraska, in which a neutral arbitrator ruled in favor of the College Sports Commission’s decision to reject NIL deals coming from associated entities that exceeded the cap. Now, the parties are looking to the courts to resolve their disagreement.

The IHSAA has already published a Q&A and hosted an educational webinar on its new PBA rules, but the most important thing to monitor moving forward will be how these rules are enforced.



Wisconsin Judge Dismisses Athlete Eligibility Lawsuit as Moot, Leaving WIAA Free to Consider Sanctions Against State Football Champion

Takeaways

- A temporary court injunction allowing an athlete to compete may not permanently protect a school from sanctions if the underlying eligibility dispute is later dismissed, so programs should carefully assess the long-term risks of playing athletes whose eligibility remains contested.
- Eligibility decisions can have consequences long after a season ends, underscoring the importance of thoroughly documenting transfer circumstances, hardship requests and communications with state associations before allowing an athlete to compete.

By Holt Hackney

A Wisconsin circuit judge has dismissed as moot a lawsuit that allowed an Arrowhead High School football player to compete during the 2025 season, a ruling that could leave the school's Division 1 state championship vulnerable to sanctions by the Wisconsin Interscholastic Athletic Association (WIAA).

Waukesha County Circuit Judge Paul Bugenhagen Jr. ruled July 1 that the legal dispute over former Arrowhead player Tristen Seidl's eligibility no longer presented a live controversy because Seidl had graduated and the football season had ended. The ruling dissolved the temporary injunction that had permitted Seidl to play while the case was pending, although the judge declined to address whether the WIAA may now impose penalties on either Seidl or Arrowhead High School.

Background

The dispute arose after Seidl transferred to Arrowhead High School before his senior season following a series of family relocations caused by a 2023 fire that destroyed the family's home in Dousman, Wisconsin.

According to court filings, the Seidl family initially believed their home could be repaired and remained connected to the Kettle Moraine School District. After learning in early 2025 that the home would have to be demolished, the family made permanent its residence within the Arrowhead School District and transferred Seidl before his senior year.

The WIAA determined Seidl was ineligible under its transfer rules, which generally prohibit students who transfer during their senior year from participating in varsity athletics absent an approved hardship waiver. The association denied both Seidl's transfer request and his request for an exception based on extenuating circumstances.

After exhausting the WIAA's internal appeals process, the Seidl family filed suit in Waukesha County Circuit Court in August 2025. They alleged the WIAA improperly denied Seidl eligibility and argued the association's decision-making process was unlawful. The family also contended inaccurate information submitted during the transfer process contributed to the denial.

Temporary injunction

On Sept. 5, 2025, Bugenhagen granted a temporary injunction allowing Seidl to play varsity football for Arrowhead while the litigation proceeded. The injunction prevented the WIAA from enforcing its eligibility determination during the season.

Seidl played throughout the 2025 season, helping Arrowhead capture the WIAA Division 1 state championship with an 18-15 victory over Bay Port.

Dispute over mootness

After the season concluded and Seidl graduated, the parties disagreed over whether the lawsuit should continue.

The Seidl family sought to keep the case alive and asked the court to make the injunction permanent. Their attorney argued dismissal would expose both Seidl and Arrowhead to possible WIAA sanctions, including forfeiture of games and the potential loss of the state championship.

The WIAA opposed continuing the litigation, arguing the original controversy—whether Seidl could play during the 2025 season—had ended. The association also maintained that eligibility determinations fall within its authority and warned that a permanent injunction could affect how eligibility disputes are handled across Wisconsin's member schools.

The court's ruling

Bugenhagen agreed that the case had become moot.

The judge concluded that the only live issue presented when the lawsuit began was whether Seidl could participate during the 2025 football season. Because that season had ended and Seidl was no longer a high school athlete, the court found there was no longer a justiciable controversy requiring judicial intervention.

Bugenhagen acknowledged concerns that the WIAA could later sanction Seidl or Arrowhead but characterized those consequences as speculative and dependent upon future discretionary action by the association rather than a present legal dispute. Because no sanctions had yet been imposed, the court concluded those issues were not ripe for adjudication.

Potential consequences

The dismissal leaves any further action in the hands of the WIAA.

As of the July 1 hearing, neither Seidl nor Arrowhead had been sanctioned. However, because the temporary injunction has ended without a final ruling on the merits of Seidl's eligibility, the association could determine whether any disciplinary action is warranted under its rules.

Potential penalties could include forfeiture of contests or other sanctions affecting Arrowhead's 2025 state championship, although the WIAA had not publicly announced any decision following the ruling.

The Seidl family's attorney indicated following the hearing that the family would not pursue further litigation, leaving the matter, and the fate of Arrowhead's championship, with the WIAA.

Little Rock District Takes Steps to Address Title IX Concerns at Central High

The Little Rock School District is taking short-term steps to address concerns about the treatment of Central High School's softball program, including allowing the softball and baseball teams to share the school's new baseball field during the upcoming academic year.

The district also has defended its handling of vacancies for Central's head softball coach and an assistant football coach after parents questioned why the softball opening was advertised as a stipend-only position while the football position was paired with a teaching job.

The facility dispute arose after the district spent about \$5 million on a new on-campus baseball field while Central's softball team continued to practice and play at an off-campus facility that district officials acknowledged needed improvements.

Title IX, the federal law prohibiting sex discrimination in education programs receiving federal funding, requires schools to provide male and female athletes with equitable opportunities, treatment and benefits. Facilities, coaching and scheduling are among the factors considered when evaluating a school's athletic programs.

In May, Little Rock school board members approved a short-term plan under which Central's baseball and softball teams will practice and play games on the baseball field. District officials said the arrangement is intended to address the immediate disparity while the district considers a permanent softball facility.

Superintendent Jermall Wright said identifying a location, securing funding and constructing a softball complex could take several years.

"While we do not know how long the short-term option will be in place, we have repeatedly communicated that it will take multiple years to identify a site for the new softball facility, determine a funding source and construct the facility," Wright said. "That will take longer than one school year."

Parents have questioned whether the baseball facility can be converted efficiently and safely for softball. Among the unresolved issues are the costs of a portable outfield fence, temporary backstop walls and daily field conversion and maintenance.

Parents also expressed concern that sharing the facility could reduce practice time and the number of home games available to both teams once their seasons begin.

Wright said the district's athletic director is working with Central's athletic department to coordinate the teams' schedules. He noted that other district athletic teams already share facilities.

District employees also told the board they would examine the maintenance and operational costs associated with converting the field between baseball and softball configurations.



Separately, Wright responded in June to questions about how the district advertised Central's head softball coaching vacancy. The job was initially posted as a stipend-only position, while an assistant football coaching opening was advertised with a teaching position.

Wright said the difference resulted from the circumstances surrounding the vacancies rather than unequal treatment.

According to Wright, Central's former softball coach resigned from the coaching assignment but remained employed by the district as a teacher. As a result, no teaching vacancy was created when the softball position became available.

The employee who held the assistant football coaching position, by contrast, resigned from both the coaching assignment and a teaching position, allowing the district to advertise the two openings together.

Wright said a candidate selected as head softball coach could be matched with an available teaching position if an opening exists in an area for which the candidate is licensed.

"Each school's staffing needs are unique, and one coaching position vacancy announcement may include a teaching position, and another may not," Wright said. He added that the differing postings did not constitute discrimination or a Title IX violation.

The district has said it remains committed to addressing concerns about the softball program through immediate measures and a longer-term facility plan. Parents, however, continue to seek details about scheduling, field conversion expenses and the timeline for providing the softball team with a permanent home.

Expert Witness Reveals Why the Concussion Lawsuit Against This Football Coach Failed

By Chris Fore

I was retained by a school district's attorneys as an expert witness in a concussion lawsuit filed by a player and his parents against the school's head football coach. My role was to review the evidence and determine whether the coaching staff met the applicable standard of care in managing player safety.

The school district and coaching staff ultimately prevailed in the case. My hope in sharing this experience is that district leaders, site administrators, and coaches can learn from it. The litigation cost the district tens of thousands of dollars, took approximately 10 years from the date of injury to the final court decision, and placed a significant emotional and professional burden on the coaching staff throughout the process.

In preparing my opinions, I reviewed the plaintiff's complaint, deposition transcripts, district policies and procedures, and other relevant documents. My conclusions were straightforward: the head coach and his staff took player safety seriously, concussions were not a systemic issue on the 2012 football team, the student-athlete's claims regarding a head injury during the game in question lacked credibility, and several opinions offered by the plaintiff's experts were unsupported or overstated.

Player Safety Was a Priority

The head coach consistently placed safety above all else. In his deposition, he stated, "My first responsibility is to put safety ahead of winning." He also testified that a single sign or symptom of a head injury was enough to remove a player from a game, consistent with accepted concussion protocols.

When the student-athlete complained of feeling unwell and reported a headache during a scrimmage, the head coach immediately removed him from practice and did not allow him to return. Assistant coaches also monitored players closely. When the head coach observed the player vomiting water, he checked on him, and an ambulance was called shortly thereafter.

The player's own deposition supported this culture. He testified that coaches never instructed players to play through injuries and confirmed there was no coercion between the game in which he claimed he suffered a head injury and the following contest. He also acknowledged that if a player reported a headache, coaches required an evaluation. These practices reflected a responsible approach to concussion management rather than negligence.

Concussions Were Not a Teamwide Issue

The student-athlete's testimony also undercut any claim that the program had a broader concussion problem. When asked whether any other players suffered head injuries or concussions during his time on the team, he responded, "No, it



was just me... nobody else suffered any concussions or anything like that."

While one player's experience alone cannot establish whether a program is safe, this testimony did not support allegations of a systemic failure to protect athletes.

The Alleged Game Concussion Lacked Credibility

The student-athlete's account of sustaining a concussion during the game became less persuasive when viewed alongside the broader record.

During his deposition, when first asked about injuries from that game, he mentioned only a leg cramp rather than a head injury. He later claimed he told an assistant coach his head hurt during the second half, but that coach testified the player never reported head pain. Another assistant coach who worked directly with him by position likewise testified he had no knowledge of any head injury. The student-athlete did not ask to leave the game, request medical attention, or display obvious signs that would have triggered intervention.

Additional evidence suggested he may have concealed his symptoms. In a Facebook Messenger exchange with a teammate, he wrote, "I have a concussion but don't tell anyone." Members of the coaching staff later asked whether he was ready to play in the following game, and he indicated that he was. During the practice week after the alleged injury, he reportedly stated that his head "wasn't bad anymore." He also did not seek medical treatment immediately after the game.

Taken together, this evidence suggested that the player managed his symptoms privately rather than fully reporting them to the coaching staff.

Evaluating the Plaintiff's Expert Opinions

One of the plaintiff's experts appeared to place greater weight on the student's account than on the testimony of multiple coaches. During his deposition, however, the expert acknowledged an important point: if a player does not report symptoms and coaches observe no signs consistent with a concussion, there is no trigger for concussion protocols. In my view, that acknowledgment reflected the practical realities coaches face during competition.

I also found aspects of another expert's testimony regarding helmet fitting to be unpersuasive. She asserted that the coaches lacked sufficient knowledge of proper helmet fitting, yet there is no widely recognized national or state standard requiring coaches to receive specific helmet-fitting training. Equipment manufacturers provide guidance, but practices vary, and many helmets are distributed without detailed fitting instructions.

Some of her recommendations also raised questions. For example, she testified that "the crown of the helmet is one finger length above the eyebrow." As stated, that measurement lacks precision and could be interpreted in ways that would position a helmet improperly, making it difficult to apply consistently in practice.

Conclusion

Based on the evidence presented, I concluded that the head coach and his staff fulfilled their responsibilities regarding player safety. They removed players at the first sign of potential injury, encouraged athletes to report symptoms, and responded appropriately when the plaintiff exhibited symptoms during the earlier scrimmage.

The evidence also showed that the student-athlete did not clearly report symptoms during the game in question and, by his own statements, minimized the injury while asking others not to disclose it. Those facts weighed heavily in evaluating the coaching staff's actions.

This case illustrates one of the fundamental challenges in high school athletics. Coaches are expected to remain vigilant for signs of injury, but they also depend on honest communication from athletes, particularly when symptoms are not outwardly apparent. In my opinion, the evidence did not support a finding of negligence against the school district, the head coach, or the football program.

Chris Fore is a veteran Administrator, Athletic Director, and Head Football Coach from Southern California; he currently serves as a Principal. He has written four books and produced coaching manuals, available at EightLaces.org. Both schools where he served as Athletic Director set school records for championships won in a single school year, and were recognized for both sportsmanship and academic excellence. Fore holds a Master's in Coaching and Athletic

Administration and multiple education credentials. A Certified Athletic Administrator, he served as President of the California Coaches Association (2018–2021) and has held various other leadership roles in several different organizations. A sought-after speaker, Fore has contributed to national sports publications and appeared on radio and podcasts. He also serves as an expert witness in athletic lawsuits.

Valparaiso

Continued from page 1

In this case, plaintiffs Malakai and his father sued defendants Valparaiso Community Schools and the football coaching staff. The lawsuit claimed negligence and failure to protect the athlete's safety. The suit alleges numerous breaches of duty, including the fact that the coaches did not monitor the drill and ensure that the non-contact drill was executed correctly and without excessive force. The drills were also done without proper protective gear. The plaintiffs claimed that the actions were foreseeable, especially considering that the drill was conducted by pairing older players with younger ones. The case also states that negligence occurred when the coaching staff did not appropriately assess Malakai's injuries, specifically his suspected head injury. The plaintiffs are seeking damages for the injury and medical costs, including physical pain and suffering, mental and emotional distress, actual medical expenses, loss of enjoyment of life, permanent impairment and/or disfigurement, and other damages.

The outcomes of this case should not be limited to the financial recovery for the plaintiffs, but the organizational, industry, and player welfare outcomes. The legal outcome will most likely be a financial compensation settlement to the Solomons for injuries and medical costs. If the settlement is not taken, the case may be taken to trial in which negligence, liability, and duty of care would be determined.

Athletic organizations should review safety protocols for contact and non-contact drills in addition to the supervision requirements. Although common, concussion protocols should be enforced and reviewed annually. Coaches and instructors should take care when pairing athletes for drills to take into account age, size, and experience so as to avoid mismatching injuries. Organizations should place an emphasis on staff training on risk management and risk response. The sport industry should become more aware of the liability around allowing contact during a non-contact drill. State associations have rules in place to reduce the number of athletes in training settings in addition to timelines for contact with football. When these rules are not followed, the team may experience consequences. These rules help improve athlete safety and awareness for emergency response obligations. The current standing of the case is still pending and no final court ruling has been determined.

Heat

Continued from page 1

On July 21, 2017, 16-year-old Patrick Clancy participated in an optional off-season conditioning session for the boys soccer team at Monticello High School (MHS) in Albemarle County, Virginia. Matthew Pearman, the school's athletic director, determined that it was safe to start the session at 8 a.m., two hours before a heat advisory went into effect.

Stuart Pierson, the team's head coach, conducted the session on a field with no shade. He did not provide the players with water. Clancy collapsed later that day and was diagnosed with "exertional heat stroke." In *Clancy v. Pearman*, No. 0383-25-2 (Va. App. April 21, 2026), the teen alleged permanent injuries due to the gross negligence of Pearman and Pierson. The trial court held that the plaintiff had assumed the risk of heat stroke as a matter of law and granted summary judgment to the defendants. Clancy appealed.

Did the 16-Year-Old Plaintiff Assume the Risk of Heat Stroke?

The primary issue in the appeal was whether Clancy voluntarily took part in the training session with the knowledge that the extreme heat presented a health risk. The voluntary soccer activity ended when the heat advisory started, but the plaintiff and others were still on the field removing equipment after the heat advisory began. Under Virginia law, whether one assumes the risk of an injury from a known danger is a question for the jury "unless reasonable minds could not differ on the issue."

Clancy argued that the trial court erred in finding that he assumed the risk of heat-related injury because the court did not consider whether he assumed an additional risk: that Pierson would violate the appropriate standard of care imposed on a coach. Pierson allegedly failed to: (1) accurately measure the temperature on the athletic field; (2) provide cool water or shade; and (3) monitor the players for "the risk of exertional heat injury."

A three-judge appellate panel reversed the trial court's ruling because assumption of risk does not apply where the defendants' negligence "creates risks that the plaintiff is not aware of and that are beyond the risks ordinarily expected from participating in the activity." In their defense, Pearman and Pierson argued that the players had access to a nearby building with water fountains and air conditioning. But the court found a triable issue of fact as to whether the defendants' alleged gross negligence exacerbated or enhanced the safety risks inherent in a conditioning session conducted during a heat wave.

An additional issue was whether Clancy *voluntarily* participated in the training session. To rebut the defendants' argument that the event was optional, Clancy said that he felt pressure to attend the session, fearing he "would be less likely to play" during the regular season and would be judged by Pierson if he asked to take a break or decided to leave. Clancy

asserted that the coach showed some "attitude" when he mentioned sunburn during the activity.

Was the Case Barred by Contributory Negligence?

In addition to dismissing the complaint based on assumption of risk, the trial court ruled that Clancy's own negligence barred his recovery. The trial judge found that Clancy contributed to his own injuries by failing to take the necessary actions to protect himself, because at some point student athletes "have to say, I am not feeling well, I'm feeling sick."

The appeals court noted that minors aged fourteen and older are presumed capable of understanding and avoiding danger absent proof of an inability to do so. However, the court recognized that "the conduct of minors over fourteen is not measured by adult standards but, instead, by the 'degree of care [that] children of the same age, experience, discretion[,] and knowledge would exercise under the same or similar circumstances.'"

Clancy drank sixty ounces of water before the training session and brought with him and consumed more water during the session. He and his mother thought the coach would move the session indoors if it became too hot. Clancy also suggested to the court that confusion and irrational behavior are symptomatic of exertional heat injury. In his interrogatory answers, Clancy stated that John Jardine, an emergency room physician, would testify that confusion and disorientation are symptoms of exertional heat stroke.

The Court of Appeals ruled that objectively reasonable minds could disagree about whether Clancy was negligent in failing to remove himself from play after he began to feel ill. The judges also indicated that Clancy's alleged failure to remove himself from the activity was related more to a failure to mitigate damages than to contribution. A failure to mitigate damages does not necessarily bar all claims.

The court explained Virginia law as follows: "If the plaintiff's injury occurs because [he] failed to exercise reasonable care contemporaneously or concurrently with the negligent act of the defendant, [that failure] constitutes contributory negligence that bars [his] recovery." [By contrast, a] "plaintiff's duty to mitigate damages ... arises ... after [a] defendant's tortious conduct."

The opinion continued: "If the jury were to find that Pearman and Pierson were grossly negligent for holding the session outside in the heat and that Clancy was not at fault for deciding to attend the conditioning session in the first place but was at fault for not resting when he began to feel ill, the jury might properly conclude, at most, that Clancy failed to mitigate his damages."

The defendants did succeed with one argument. The appeals court affirmed the trial court's ruling that a portion of the testimony of the plaintiff's expert athletic trainer, Dr. Casa, was inadmissible because he is not a medical doctor. The court stated that under Virginia law "only a medical doctor [is qualified to] testify as to the causation of a human physical injury." (*Fitzgerald v. Commonwealth*, 273 Va. 596, 602 (2007)).

Even though Dr. Casa earned a Ph.D. in exercise physiology and serves as a professor of kinesiology at the University of Connecticut, he does not possess a medical degree. The court further stated: “Having a Ph.D. in a potentially relevant field of study does not render one qualified to give a medical diagnosis and opinion about causation.”

The Court Recognized the Disparity Between the Parties

A major takeaway from this decision is the Virginia Court of Appeals’ recognition of the potential pressure on scholastic athletes to participate in team events. In evaluating the assumption of risk defense, some courts ignore the potential ramifications of a student athlete refusing to participate in an activity; they consider whether one knew and appreciated the risk but not whether they took the risk voluntarily. There are judges who do not appreciate the authority that coaches have over high school students. It is far different from professional athletes who have a union to support them.

Assumption of risk requires voluntary exposure to a known risk. There are times when minors believe that if they skip a dangerous activity, the coach will remove them from the team or not give them playing time. Or young students in grade school might believe it would be insubordinate to disobey any directives from coaches or teachers. If so, then participation in an unsafe activity might not be voluntary. This court astutely recognized that the issue is for a jury to determine.

Finally, student athletes in Virginia and elsewhere would be well served if high school sports associations adopted a concise but informative risk management document circulated by the Idaho High School Activities Association. The IHSAA’s Fourteen Duties for Athletic Administrators and Athletic Coaches Related to Negligence Litigation discusses in detail the legal obligation of coaches to properly supervise, assess, instruct, and condition student athletes. (A copy may be found here: <https://idhsaa.org/asset/Athletic%20Directors/14%20Legal%20Duties%20Admin-Coaches%20copy.pdf>.)

Spoiler alert: The “Duty to Maintain Safe Playing Conditions” section states in part... “Athletes should not be subjected to intense or prolonged conditioning during periods of extreme heat and humidity...”