

College Athletics and the Law

Practical Guidance on Athletics Laws and Regulations

VOLUME 15, ISSUE 11

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OF COUNSEL

Know how to respond to allegations of sexual misconduct involving coaches

By Timothy O'Brien, Esq.

Although one of the biggest sports-law-related headlines of this past year surrounded the multiple charges of sexual assault by a team physician, Larry Nassar, numerous other cases of inappropriate sexual contact involved coaches. The one consistent lesson learned across all of these cases boils down to the fact that these types of allegations can arise at any time, at any level, and in any sport. For example, sexual misconduct allegations have been filed by student-athletes of both genders against male coaches as well as female coaches, and at both the head coach and assistant levels, and run the gamut from unwanted contact to inappropriate statements, texts, and photos.

The nature and content of the allegations are often surprising and sometimes alarming. From the perspective of an athletics administrator, it might seem incomprehensible that a coach in today's day and age would engage

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LIABILITY

Gain insight into preparing to manage legal, compliance issues of college esports

By Claudine McCarthy, Editor

If you think competitive video gaming doesn't belong within the world of collegiate athletics, it just might be time for you to reconsider the way you define sports — or risk more than just failing to keep up with the times. In fact, varsity esports programs have already become established at more than 100 colleges and universities — a number that's experienced rapid and steady growth. Although some schools choose to establish esports as a club housed in student activities, many programs come under the purview of college athletics directors. And schools continue to invest an increasing amount in esports, including scholarships and aid, recruiting, coaches, tournaments, and stadium development.

Continued on page 4.

UMHB adds acrobatics and tumbling

When the University of Mary Hardin-Baylor in Texas adds an acrobatics and tumbling team in the 2019–20 school year, it will be the 26th U.S. college to add the sport. The school will join the National Collegiate Acrobatics and Tumbling Association because acrobatics and tumbling isn't recognized by the National Collegiate Athletic Association.

Two-Minute Drill

Each month, this feature will include legal pointers, lawsuits filed regarding college athletics, and other news involving athletes and athletics departments nationwide.

The NCATA hopes to eventually bring acrobatics and tumbling under the NCAA's emerging-sport

umbrella, reports the *Waco Tribune-Herald*. As of now, Baylor and Oregon are the only NCAA Division I schools with acrobatics and tumbling programs, and in Division III East Texas Baptist University also has a team. ■

Schools offer scholarships to video gamers

Northwood University will offer scholarships to students who play on the school's new competitive video-game team starting in the fall of 2019. The team will have about 20 students competing against other schools with esports teams. Each student can receive up to a \$3,000 scholarship. Northwood is

one of four universities in Michigan to develop an esports program in conjunction with the National Association of Collegiate Esports. The University of Missouri is developing an esports scholarship program for its team that will launch next fall. ■

College adds 3 new sports

National Park College introduced three new athletic programs for fall 2019: baseball, softball, and cross-country. The men's baseball and women's softball will be a part of the National Junior College Athletic Association Division II. The teams will practice and compete using the fields at Mountain Pine High School. Cross-country teams for men and women will participate in NJCAA DI. ■

Court overturns Title IX finding

An appellate court recently ruled the University of Southern California "failed to provide a fair hearing" to former tight end Bryce Dixon, who was expelled in 2015 after an investigation concluded he had nonconsensual sex with a student athletic trainer in 2014. Claiming the school's Title IX investigation lacked due process, Dixon challenged the decision in court, which put the expulsion on hold, but he wasn't allowed to rejoin the football team.

The school again expelled Dixon in 2016 after he was arrested for robberies, and he's serving a six-year sentence in state prison, reports the *Los Angeles Times*. ■

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Continued from page 1

in this type of conduct, but yet such problematic conduct continues to occur.

Any type of inappropriate sexual conduct violates an abundance of laws and policies, further underscoring the serious nature of these situations. Depending on their seriousness, the actions could be criminal in nature, either violating Title IX and state laws prohibiting sexual violence and harassment and/or violating the institutional and departmental policies and codes of conduct prohibiting discrimination, harassment, and personal relationships with student-athletes.

Raise awareness

That's why it's become more important than ever to raise coaches' awareness of what qualifies as permissible statements and actions. Athletics departments need to promote a clear understanding of the critical differences between welcome, supportive, congratulatory hugs and statements versus unwelcome, intrusive comments or touching any part of a student-athlete's body regardless of the coach's intent.

Although even one act of misconduct is unacceptable, an emerging concern for every school involves the possibility that the misconduct could continue undiscovered and unreported for an extended period of time and involve numerous victims. The Nassar case serves as an obvious example of how inappropriate conduct that occurs in a private setting can continue for an extended period of time until it's exposed, which can then lead to numerous additional victims coming forward with their experiences and legal claims.

These can quickly become hot-button and potentially explosive situations for the athletics department and the school as a whole. Given today's social-media-driven society, word can quickly spread and place the school in a precarious position if it isn't prepared with a plan of action for immediately responding to and dealing with these types of allegations. Knowing how the school will respond to alleged sexual misconduct by a coach and having a protocol in place in advance can make all the difference in the world. Indeed, next to the serious stain on the school's reputation and potential liability for a coach's sexual misconduct, the next most significant issue in both regards is the potential mishandling

and insufficient or delayed response by the school to such a claim.

Take action steps

To effectively prepare for these situations, athletics departments need to recognize the importance of addressing three primary areas: training and policies for coaches and student-athletes, internal notification requirements for when allegations arise, and allocation of responsibility for investigation and any personnel actions. Therefore, athletics administrators should consider taking the

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following steps:

➤ **Negate the "I didn't know" argument.** Coaches who stray across the line and act inappropriately will often claim ignorance and/or misunderstanding of the rules. To avoid this contention, ensure they sign off on the relevant policies and receive training on an annual basis. Similarly, student-athletes sometimes forget they ever received training, including such critical information as where to file reports. Therefore, it's important to maintain annual training records, posters, and informative online resource pages.

➤ **Establish notification requirements.** The days of handling sexual harassment or misconduct internally within the athletics department are long gone. Upon notice of the allegations, the school should consider requiring immediate notification of its general counsel and the use of its Title IX process. The critical component involves the immediate notification of and oversight by parties outside the athletics department. All coaches and staff members must know the importance of immediately complying with this requirement.

➤ **Investigate, and make interim personnel decisions.** Depending on the nature of the allegations, immediate action may be essential. The athletics director and general counsel should know in advance if an outside lawyer or consultant or specific school personnel will conduct the investigation. Also discuss in advance any relevant protocol that will be followed, such as temporarily placing the coach on administrative leave with pay during the investigation. Having a preplanned, uniform process allows for rapid action and avoids the potential for claims of discriminatory treatment of a coach.

Cases involving sexual misconduct allegations against coaches are never pleasant and can quickly spiral out of control. Therefore, investing the time and effort into advance planning now should help ensure an expedient, comprehensive, and fair response if and when such situations arise. ■

Continued from page 1

As the number of college esports teams continues to grow, so does the number of financial and legal implications for schools and students alike. To gain a better grasp of the potential impact of esports on college campuses, consider that professional video gaming has become a billion-dollar-plus worldwide industry, with professional gamers earning individual prizes reaching as high as \$4 million-plus. With all that money at stake, and lots of rules, regulations, and laws to learn, it's a safe bet that compliance violations, lawsuits, and public relations mishaps are sure to follow.

To help you learn how to prepare to manage the rapidly growing world of college esports at your school, *College Athletics and the Law* spoke with Steve Walkowiak, Esq.; and P. William Stark, Esq., litigation shareholders with the Video Game and Esports Group, based in the Dallas office of the law firm Greenberg Traurig, LLP.

Here's an excerpt from our interview, which has been edited for space and clarity:

Q Why should college athletics administrators have esports on their radar? Why should it matter to them?

A Because it matters to their students. Whether they have an official program, esports team, or club, their students are playing these games recreationally as a hobby whether or not it's an official club. It's a revenue-generator, a way to attract students to your program and to set your institution apart. Having an esports program and/or scholarship program may be a way to make that happen. Competitive esports and video gaming can also help prepare students for many ancillary careers, such as video game designers, streamers, production assistants, or other roles related to entertainment and hospitality. By partnering with your school's information technology or computer science department, your institution just might come up with the next hot game.

Q What's at risk if colleges don't pay attention to, or don't properly prepare for, esports on their campuses?

A Whenever people are engaged in activity representing your institution, to the extent it goes well, it reflects well on you; and to the extent it goes poorly, it reflects poorly on you. So, pay attention. You're going to have people who are gaming and conducting e-commerce on your servers. To the extent they're engaging in illegal or prohibited activities, that could put the institution at risk.

Q What challenges should colleges prepare for related to esports?

A In certain instances, if you're allowing or endorsing certain activities, you can have some liability for that. If you're endorsing the activity, the school should have some sort of framework, with an individual or department that reviews the rules of each individual game. It's not like soccer or baseball, where the rules of the game are the same across that sport. In esports, each publisher sets the rules for each game. Schools would be well-served to have an advisor, such as someone in IT or an attorney, to advise them about the risks and how to approach them from a gaming standpoint.

Q Which staff members and departments need to become educated and prepared for esports on campus?

A It depends on what your school wants to get out of it and what you want to provide to your students. Some schools are treating esports as athletics, so it would fall under the athletics department. Some are treating esports as a club that falls under student services. And some are trying to find a hybrid academic department, so it might fall under computer science.

Q What practical steps should college athletics administrators take now to prepare to manage the impact of esports on their campuses?

A Start working with the game publishers, to ensure full compliance with their rules and regulations to protect the school and the students who are going into careers related to esports.

Not following a game's rules can be a violation of the law and a criminal offense. A lot of game publishers right now are taking a very litigious approach in terms of their rules — they're looking at cheating as a form of theft because cheaters are essentially stealing revenue from them in terms of game time, advertising time, and purchasing time. Those who demonstrate how to cheat or exploit certain games can expect game publishers to try to remove them from the ecosystem to create an even playing field. Rule-following gamers see cheaters as decreasing their chances of winning fairly. We're seeing litigation solutions and bans, with people being barred from participating in certain games.

A number of game publishers want to see how existing laws or new laws can be adjusted or written from civil and criminal standpoints to deal with the revenue theft from their games. It's pretty murky

what the rules of the road are, and they change from game to game and day to day. It's a developing area of the law.

Esports in some ways is this decade's version of Napster, when schools were being ordered to take down entire groups of content or receiving cease-and-desist orders. Let's learn some lessons from that endeavor. You can either get ahead of this problem or it can punch you in the face.

Be proactive, get ahead of it, and develop relevant policies and procedures. Remember that if you have a policy and someone doesn't adhere to it, the policy helps protect the school from liability. It's also critical for schools to educate students about the very real dangers of corruption, cheating, and gambling.

Q What applicable laws should athletics administrators know?

A Institutions need to be aware of the laws worldwide. This is more important than ever, considering the increasing rise of international students and study-abroad programs. South Korea is very strict. A South Korean player attending a U.S. school who cheats while in the United States may face liability upon returning to South Korea. If a U.S. esports team travels to South Korea for a tournament and engages in cheating, the legal ramifications could impact that U.S. team. South Korea typically punishes cheating gamers with financial penalties and up to two years in prison.

Cheating in South Korea, the United States, and other countries may lead to bans. They're essentially ending these people's careers by banning them from that game. Some of these bans are coming down for cheating committed as a teen. So once a college gamer goes pro, the game publisher can look back at that gamer's history (readily available on the software); discover unauthorized activity, such as boosting or even just giving the game control to a professional; and a career is over.

As soon as an institution embraces esports at the competitive level or as part of its academic curriculum, these are the sorts of issues they need to keep up with to stay in compliance and prevent violations.

Q Who makes the money from competitive esports?

A It depends. A college student could be in his school's esports club or competitive academic team that wins or places in a tournament during the week, and then on the weekend he plays in a non-school-affiliated tournament and wins prize money. The question becomes: Is he a pro gamer or a college student-athlete governed by the NCAA? Or can he even be a professional in one game and an amateur in another? The amateurism controversy will come very soon.

Prize money varies wildly from a few hundred to millions of dollars. The average salary of a professional U.S. gamer is now six figures, and there are players who make seven figures. Esports is a billion-dollar industry and growing. (*For a ranking of competitive gamers' prize earnings, go to* Esportsearnings.com.)

Q What can your firm do to help colleges prepare for and manage the challenges, liabilities, risks, and violations that might arise around esports?

A Esports is a very complicated and rapidly changing area of the law. We believe we're deeply positioned as the only major American law firm dedicated to esports and video games. We understand the risks and opportunities presented, and know how to mitigate those risks and maximize those opportunities.

For more information, email Stark at starkb@gtlaw.com or follow him on Twitter: @pwilliamstark, or email Walkowiak at walkowiaks@gtlaw.com or follow him on Twitter: @eSport_Law. Or visit www.gtlaw.com/en/capabilities/gaming/video-game-and-esports. ■

Collegiate esports association offers support

The National Association of Collegiate Esports is a nonprofit membership association organized by and on behalf of its 80-plus member institutions. The membership collaborates to develop the structure and tools for varsity esports programs, including laying the groundwork in areas such as eligibility, path to graduation, competition, and scholarships. NACE has 1,500-plus student-athlete gamers receiving a total of \$9 million in esports scholar-

ships and aid. The nearly three-year-old organization hosts an annual national convention and provides members with a private discord server (voice-over software) for athletics directors and coaches.

In 2016, only seven colleges and universities had varsity esports programs. Now, at least 100 schools have varsity esports programs.

For more information, go to <https://nacesports.org/>. ■

Make your professional development plans now

Review our list of professional development opportunities for 2019–20 and consider which ones are most suited to your department's needs. ■

Dates & Location	Sponsoring Organization	Convention Name	Description	Website
April 11–15, 2019 West Palm Beach, Fla.	National Association of Intercollegiate Athletics	Annual NAIA National Convention	Educational sessions and legislation discussions.	www.naia.org/ViewArticle.dbml?&DB_OEM_ID=27900&ATCLID=205320337
April 29 – May 1, 2019 Clearwater Beach, Fla.	Alliance for Intercollegiate Sports Medicine	Annual Meeting	Educational sessions for athletic trainers and physicians.	www.theaism.com/symposium
May 13–15, 2019 Indianapolis, Ind. June 3–5, 2019 Denver, Colo.	National Collegiate Athletic Association	Regional Rules Seminars	Educational sessions for employees and students with varying responsibilities, backgrounds, and expertise.	www.ncaa.org/about/resources/events/regional-rules-seminars
May 16–18, 2019 Phoenix, Ariz.	Sports Lawyers Association	Annual Conference	Educational presentations to promote the understanding, advancement, and ethical practice of sports law.	www.sportslaw.org
May 28–31, 2019 Greenville, S.C.	National Christian College Athletic Association	Annual Convention	Legislative meetings, divisional breakout sessions, educational sessions, and guest speakers.	http://www.thencaa.org/tournaments/?id=386
June 6–13, 2019 Orlando, Fla.	National Association of Collegiate Directors of Athletics	NACDA & Affiliates Annual Convention	Professional development and networking.	nacda.com/sports/2018/7/17/convention-nacda-convention-html.aspx
June 24–27, 2019 Las Vegas, Nev.	National Athletic Trainers' Association	Clinical Symposia and AT Expo	Educational advances, networking, and trade show.	https://convention.nata.org
July 26–28, 2019 Indianapolis, Ind.	American Academy of Neurology	Sports Concussion Conference	Concussion experts present up-to-date best practices and emerging scientific information.	https://www.aan.com/conferences/sports-concussion-conference/
Oct. 6–8, 2019 Dallas, TX	Collegiate Athletics Leadership Symposium	Annual Symposium	Networking and education for invited athletics administrators and search firm executives.	www.adsymposium.us
Oct. 13–15, 2019 Phoenix, Ariz.	Women Leaders in College Sports (formerly known as National Association of Collegiate Women Athletics Administrators)	National Convention	Leadership training, networking, and speakers.	www.womenleadersincollegesports.org/convention
Jan. 22–25, 2020 Anaheim, Calif.	National Collegiate Athletic Association	Annual Convention	Professional development workshops and conference meetings.	http://www.ncaa.org/about/resources/events/convention

— Compiled by Claudine McCarthy, Editor

Advance racial equity by uncovering unconscious bias

By Halley Sutton

WASHINGTON, D.C. — “Unconscious bias lives in all of us,” said Mee Moua, principal at Interdependent Group LLC and consultant at the W.K. Kellogg Foundation, at a session on advancing racial equity presented at the annual conference of the Association of American Colleges and Universities.

Moua and Mike Wenger, senior AAC&U fellow, senior consultant on race relations at the W.K. Kellogg Foundation, and an adjunct faculty member teaching courses in race relations and institutional racism at George Washington University, shared strategies for working toward uncovering unconscious bias, and learning to relate to the perceived “other” to advance racial equity on campus. They said the following considerations are good places to start to open up potentially difficult experiences:

✓ **Create a safe space for conversations.** Racial healing circles are an important component of breaking down racial hierarchies and learning to see each other as, first and foremost, human beings. “It’s the pillar that focuses on ways to heal from the wounds of the past to build mutually respectful relationships across perceived racial and ethnic lines of differences,” Moua said.

✓ **Focus on stories that affirm humanity.** Difficult topics such as confronting internal bias can lead to resistance, or can be difficult for people to handle without feeling, or placing, blame. Focusing on sharing stories, rather than solving a problem, will help people connect more authentically, Wenger said.

✓ **Form a habitual practice.** “When we do this work habitually, two things happen. Individuation occurs that unveils our common humanities in ways

About the author

Halley Sutton is assistant editor of *Enrollment Management Report*, also published by Jossey-Bass, A Wiley Brand. For more information about that publication, please go to www.wileyonlinelibrary.com/journal/emt. ■

that allow us to see people for their true selves, qualities, and attributes,” Moua said. We also see a transformation of perspective — sharing stories leads us to walk metaphorically in the shoes of a person we may perceive as the other, she added.

✓ **Have a process in place before racially charged incidents occur.** The GWU campus experienced an incident where graffitied swastikas appeared on campus buildings, Wenger said. The work of racial healing circles to foster deep understanding and difficult conversations can be scaled for student communities in times of need.

✓ **Check in after the conversations.** Follow up on a regular basis to learn how participants see a change after the workshop. Following up is also a good way to get feedback about the efficacy of training, so you can tweak and assess as needed for the next workshop, Wenger said.

✓ **Expect pushback.** Even at the Kellogg Foundation, Wenger said he’s experienced pushback when attempting to put these techniques in practice. “For some people, the touchy-feely stuff is out of their norms,” he said. For others, the conversations are deemed too uncomfortable and difficult to want to partake in. ■

Review building blocks of a racial healing circle

Mee Moua, principal at Interdependent Group LLC and consultant at the W.K. Kellogg Foundation; and Mike Wenger, senior AAC&U fellow, senior consultant on race relations at the W.K. Kellogg Foundation, and an adjunct faculty member teaching courses in race relations and institutional racism at George Washington University, shared strategies for breaking down racial barriers, uncovering unconscious bias, and fostering racial equity on campus.

They explained the components for creating successful racial healing circles in your department:

- Sit in a circle.
- Conduct an opening ceremony that sets the energy or tone of the circle.

- Anchor intentions before beginning any conversation.
- Find intentionally diverse facilitators to lead the group.
- Ensure the group is made up of participants with different ethnic and sociocultural backgrounds.
- Pair participants before beginning conversations.
- Set expectations for use of the space.
- Give a strong prompt that gives each pair the opportunity to share strong, personal stories and practice deep listening.
- Invite participants to share stories with the rest of the circle.
- Foster a group reflection on the stories shared.
- Conduct a closing ceremony that helps give a sense of closure for participants. ■

Dixie State to join WAC

Dixie State University plans to join the Western Athletic Conference, effective July 1, 2020. The school will become the ninth member of the conference in 2020–21, joining Utah Valley University, California Baptist University, Chicago State University, Grand Canyon University, the University of Missouri-Kansas City, New Mexico State University, Seattle University, and the University of Texas Rio Grande Valley, reports *fox13now.com*. ■

AAC welcomes KCU

The Appalachian Athletic Conference will add Kentucky Christian University as a new full-time member beginning with the 2019–20 season. KCU, which will be the 16th full member of the AAC, joins Union College as the only member schools to be located in Kentucky.

KCU sponsors 14 intercollegiate athletic programs, with 11 sports to compete in the AAC right away, reports the *Grayson Journal-Enquirer*. KCU currently competes in football in the Mid-South Conference. ■

NATA, APTA commit to collaboration

The National Athletic Trainers' Association and the American Physical Therapy Association have made a commitment to collaborate to promote the health and wellness of individuals as well as to engage in efforts to advance population health. NATA and APTA have released statements encouraging their members and stakeholder communities to follow their lead by joining forces to increase the quality of patient care by taking the following steps:

- Educating each other and the public on academic preparation and contemporary clinical training of both professions.
- Promoting regulation that represents the education and training of each health care profession.
- Collaborating on increasing access to both AT and PT services.
- Promoting and encouraging leadership and participation of both ATs and PTs in initiatives that advance youth sports safety and health while providing care to physically active people across all levels of competition and recreation.
- Sharing best practices and successful models of interprofessional practice.
- Collaborating on best practices and models of care that highlight the value of athletic training and physical therapy across health care.

NATA and APTA have also stated their joint commitment to working together to explore the feasibility of developing principles on model state legislation, joint public relations initiatives, youth sports safety guidelines and initiatives, and other opportunities that will positively impact patient care. ■

Big East, Riot Games to partner

The Big East Conference and Riot Games, the creator of League of Legends, an online game, announced a partnership to launch the spring 2019 Big East League of Legends championship.

Seven of the Big East Conference's 10 schools will participate in the competition.

Following a regular season, which started in January 2019, the top four teams will compete for the Big East League of Legends championship title, with the winner and runner-up earning berths to the League of Legends College Championship Play-in, with a chance to reach the League of Legends College Championship.

In March 2018, the Big East launched an esports pilot program, partnering with ESL, an independent esports company. Big East participating schools competed in two titles, League of Legends, and Rocket League® by Psyonix, culminating with the Big East Esports Invitational Powered by ESL in April 2018. ■

Big East, MSG extend partnership

The Big East Conference and The Madison Square Garden Company announced an extension through 2028 of their agreement to hold the Big East Tournament at Madison Square Garden. The agreement also ensures the tournament will be staged on its traditional dates at the close of college basketball's regular season.

The 2019 Big East Tournament will be played March 13–16.

Back in 1981, the Big East and the Garden signed their first agreement to bring the tournament to MSG. ■

CONTACT US

Do you have a comment, question, suggestion, or story idea?

If so, please contact

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Did university violate woman's right to privacy?

By Aileen Gelpi, Esq.

The plaintiff, a former girlfriend of the University of Wisconsin-Madison's head basketball coach, sent an email in February 2015 to the chancellor, expressing concerns about the coach. She wrote that the coach was manipulative and deceptive, and that he shouldn't be coaching and mentoring young men.

You Make the Call

This regular feature details a recent court case. Review the facts. Think about how you would have handled the situation. Then test your legal knowledge by trying to determine how the court ruled. ■

She asked the university to prevent the coach from being abusive toward women, having a negative impact on student-athletes, and violating university rules.

UW officials released her email and name to the media, which led to threats, harassment,

and ridicule.

The plaintiff filed a lawsuit against the university and others claiming a violation of her right to privacy.

The defendants filed a motion to dismiss.

Van Ert v. Blank, et al., No. 16-C-770 (W.D. Wis. 01/26/18).

Did the court dismiss the lawsuit?

A. Yes. The judge dismissed the complaint, ruling that communications sent via email don't generally have an expectation of privacy unless the sender so specifies in the communication itself.

B. Yes. The judge dismissed the complaint, holding that the plaintiff couldn't have an expectation of privacy because the email identified her name and account information.

C. No. The judge denied the motion to dismiss, ruling that the highly personal and private information contained in the email created an expectation of confidentiality.

D. No. The judge denied the motion to dismiss, holding that the author of an email doesn't waive their right to privacy by failing to specifically request that the communication be kept confidential.

Correct answer: B.

The district judge said the U.S. Constitution sometimes guaranteed a right to be left alone.

He acknowledged that the plaintiff's email contained intimate and personal information about her, but said that the public had an interest in knowing about allegations of public employee misconduct, especially when those employees were in positions of responsibility and visibility.

The judge also ruled the plaintiff's identity was significant to the public, because her email was sent to influence a high-level official on matters of university administrative and employment policy. He said it was unreasonable for a person sending an email to a public official to believe the email wouldn't be seen by others.

Finally, he stated that even if the plaintiff expected confidentiality, she didn't demonstrate that she sought to preserve the contents of her email as private.

The judge dismissed the lawsuit, ruling the plaintiff couldn't have reasonably expected confidentiality because she: (1) chose a method of communication that transmitted the identifying account of the sender and (2) included her name in the email. ■

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DISABILITY

Judge dismisses claim

Case name: *Walter v. Birdville Independent School District*, No. 4:18-CV-301-A (N.D. Tex. 08/20/18).

Ruling: The U.S. District Court, Northern District of Texas dismissed a claim that had been brought against a school district pursuant to the Americans with Disabilities Act.

What it means: An impairment that only diminishes a student-athlete's ability to play doesn't amount to a qualifying "disability" under the ADA because it isn't a major life activity.

Summary: Birdville High School basketball player Jane Doe sustained a knee injury in 2017.

When Doe wasn't allowed to return to the team after successful surgery, her mother filed a lawsuit on her behalf that asserted several claims. One was a violation of the ADA.

The school district filed a motion to dismiss that claim.

The district court judge said there was a big difference between an "impairment" and a qualified "disability" protected by the ADA.

He explained that Doe was required to show her injury substantially affected a "major life activity," and ruled that participating in sports wasn't a major life activity, even though it had the potential to lead to a lucrative career.

The judge dismissed the ADA claim. ■

TITLE VII

Judge decides in favor of university

Case name: *Hall v. Alabama State University*, No. 2:16-cv-593 (M.D. Ala. 08/27/18).

Ruling: The U.S. District Court, Middle District of Alabama granted a partial summary judgment in favor of Alabama State University.

What it means: To succeed in a Title VII wage-discrimination lawsuit, a plaintiff must show: (1) she belongs to a protected class, (2) she received low wages, (3) similarly situated employees received higher compensation, and (4) she was qualified to receive a higher wage.

LAWSUITS & RULINGS

This regular feature summarizes recent court or agency records in rulings of interest to athletics administrators. Lawsuit court records are summarized by Richard H. Willits, Esq. ■

Summary: The plaintiff was hired by Alabama State University in 2005 as the head softball coach at an annual salary of \$34,000.

Six years later, a man was hired as the head baseball coach at an annual salary of \$125,000.

Because the plaintiff was making slightly less than \$40,000 when the baseball coach was hired, she filed a lawsuit that claimed ASU had violated Title VII in many different ways over the years. One was the difference between the two salaries.

The university filed a motion for summary judgment, contending that the baseball coach's résumé was far better than the plaintiff's with respect to experience, win-loss record, and the scholastic performance of the student-athletes he had coached.

The judge also said: (1) the plaintiff couldn't substitute her business judgment for the university's and (2) a court wasn't a super-personnel department.

Although the judge allowed other portions of the lawsuit to continue, he granted a summary judgment in favor of ASU on the pay-disparity claim. ■

DUE PROCESS

Court affirms trial judge's decision

Case name: *Heath v. College of Charleston, et al.*, No. 17-2427 (4th Cir. 08/17/18).

Ruling: The U.S. Court of Appeals, 4th Circuit affirmed a trial judge's refusal to enter a preliminary injunction against the College of Charleston.

What it means: Before a government deprives an employee of continued employment, it must provide him with notice of the charges and an opportunity to present his side of the story.

However, those protections don't need to be very elaborate if adequate post-termination procedures are available.

A fired employee isn't entitled to a "name-clearing" hearing unless false and defamatory allegations about him are made public.

Summary: After he was fired as the College of Charleston men's baseball coach in 2017, the plaintiff filed a lawsuit claiming a lack of due process because he had been entitled to hearings before and after termination.

He also asked the court to issue a preliminary injunction that ordered the college to conduct both hearings.

The district court judge said that before a government deprived an employee of continued employment, it must provide him with notice of the charges and an opportunity to present his side of the story. However, he explained that those protections didn't

need to be very elaborate if adequate post-termination procedures were available.

The judge ruled that the plaintiff received all of the due process to which he was entitled because: (1) he had been notified of the charges, (2) he specifically responded to them, and (3) the remedy of a breach-of-contract lawsuit was available to him.

The judge also ruled that the plaintiff wasn't entitled to a "name-clearing" hearing because there was no allegation that any false or defamatory information had been made public.

The judge refused to enter a preliminary injunction because he concluded that the plaintiff was unlikely to succeed in the lawsuit.

The appellate court later affirmed the ruling. ■

FREE SPEECH

Judge rules in favor of coach

Case name: *Wright v. Denison Independent School District, et al.*, No. 4:16-cv-615 (E.D. Texas 08/20/18).

Ruling: The U.S. District Court, Eastern District of Texas granted a summary judgment in favor of a varsity baseball coach.

What it means: Some retaliatory actions in a school setting — even if they actually chill speech — are too trivial to violate the First Amendment. Although losing playing time isn't petty to a student-athlete, it's a regular and expected event during a season. Not every unjust and unfair experience is actionable.

Summary: The plaintiff, a varsity baseball player, reported to the administration in 2016 that his coach had: (1) made sexual comments about his mother on several occasions and (2) encouraged him to cheat during a game.

The coach allegedly benched the plaintiff after learning about that report.

The plaintiff filed a lawsuit against the district and the coach that made several claims. One was retaliation for exercising his right of free speech.

The defendants filed a motion for summary judgment, arguing that minor slights arising from coaching decisions didn't justify a retaliation claim.

The plaintiff responded that the benching was significant because: (1) the coach wielded substantial power over his future career and (2) it diminished his attractiveness to scouts.

The district court judge said some retaliatory actions in a school setting — even if they actually chilled speech — were too trivial to violate constitutional rights.

She also said the plaintiff had only presented his own opinion that the benching resulted from anything other than a coaching decision.

The judge acknowledged that losing playing time wasn't petty to a student-athlete but said it was a regular and expected event during a season. She also emphasized that not every unjust and unfair experience was actionable.

The judge granted a summary judgment in favor of the defendants. ■

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Support, preparation key to successful leadership

By Claudine McCarthy, Editor

To stretch a tight budget, Ingrid Wicker McCree, Ed.D., director of athletics at North Carolina Central University, continuously looks for creative and innovative strategies. It helps that she has surrounded herself with “really strong, really competent” staff members who know how to maximize resources, increase revenue, and manage the department’s budget, she said.



INGRID WICKER
MCCREE

Through resource acquisitions involving marketing, ticket sales, special events, and giving programs, the department has increased its revenue each year for the last

five years, McCree said. She described herself as “a very data- and fact-driven person who thinks about every risk of every decision and scenario.” And she works hard to provide constituents and leaders with more information than just what’s required.

For example, in presentations to the trustees, McCree will not only come prepared with the answers to their questions and the information they requested in a previous meeting but she will also take it one step further by presenting how NCCU compares to other schools in the conference and top 10 Football Championship Subdivision programs in the National Collegiate Athletic Association.

In essence, McCree approaches such presentations from a competitive standpoint, trying to be even more prepared than required for the next meeting and “always trying to anticipate what the next question is.” She also sees herself as “coaching the trustees” and therefore places great value on being present.

McCree’s approach has proven beneficial during her 27-year career in college athletics, with 24 of those years at NCCU, where she began her current role as AD 10 years ago, culminating in becoming a recipient of the 2017–18 Under Armour AD of the Year Award for the FCS. She attributes her accomplishments to “being firmly grounded” in her Christian faith, support from her family, “awesome bosses who encouraged me to take risks and lead this program through lots of change,” and “coaches and staff members who pushed me and supported me.”

As a woman in the male-dominated field of college athletics, especially as an AD, McCree said she’s found it “hard to be heard and to be seen,” and has faced “a little more scrutiny and pressure” to prove she can lead well and do her job well and “to justify the decisions” she makes.

To encourage other women to succeed in spite of the challenges facing them in college athletics, McCree works to be very intentional with and accessible to all women staff members and coaches, as well as student-athletes who have expressed the desire to work in athletics. And she offers everyone various professional development opportunities.

Try innovative solutions to common challenges

McCree also looks for innovative solutions to some of the biggest challenges facing college athletics. For example, to meet the increasing needs in the areas of mental health and wellness among student-athletes, some schools are hiring full-time mental health counselors within the athletics department. Because it can be challenging to provide enough counselors to meet increasing demands, 80 percent of McCree’s staff recently completed mental health first-aid certification, which is also being offered to other staff and faculty. Although they aren’t certified to diagnose or treat, they are certified to recognize symptoms and make referrals, she noted.

If you’d like fresh insight into managing the challenges in your department, consider following McCree’s advice:

- Bring great — not just good — people into your department.

- Seek feedback from all constituents, so you won’t be blindsided. Maintain an open-door policy for student-athletes, and let them know they come first. To monitor the temperament of your department’s programs, alumni, and others, read blogs — and maintain a thick skin while doing so.

- Advise coaches to talk to academic staff and athletic trainers to learn more about student-athletes and to ensure everyone is working together to meet student-athletes’ needs.

- Evaluate coaches. Then, tell them the areas they’re managing well and the areas they need to improve. Encourage them to use that information to better themselves and their programs.

- Treat every member of your department with kindness and respect. Remember that every person matters and is extremely important to building your organization’s culture.

- Be as resourceful and as prepared as possible. Take advantage of every professional development program for management and leadership. Educate yourself formally and informally.

- Develop a background in budgeting and tap into a network of people with expertise in that area.

You may follow McCree on Twitter: @FemaleAD. ■