



NJPSAFE

LEGAL ONE —

*Law, **E**thics and **G**overnance for **A**ll **L**eaders, including an
Overview of **N**ew and **E**merging Issues*

Athletics and Human Resources: Elevating Professionalism in Athletics

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Presentation Materials

Today's document(s) can be accessed at

<https://tinyurl.com/LO-NJSIAA-251111>



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Upcoming Sessions

December 17, 9:30 - 12 virtual

Connecting the Dots: Moving the Athletic Program from an Island to a Team Approach

January 14, 9:30 - 12 virtual

Athletics and School Finance

Key Topics for Today

- Recruiting, Screening and Training Athletics Staff
- Addressing the Coach who is Not Your Full Time District Employee
- Establishing Clear Expectations and Protocols
- Ensuring Non-Discrimination and Reasonable Accommodations
- Engaging in Effective Evaluation and Progressive Supervision
- AD Collaborating with HR

Group Discussion

- What are some of the common issues that Athletic Directors must address that require collaboration with Human Resources?
- Where can the same protocols that HR uses for other settings be applied to athletics? Where do they need to be changed or adapted?
- What can you do as AD to elevate the professionalism of your athletics staff?

RECRUITING, SCREENING, HIRING AND TRAINING ATHLETICS STAFF AND VOLUNTEERS

Foreseeable Issues

- Coach fails to disclose prior employment where there was contact with children (e.g., working in a convenience store as a teenager).
- Volunteers with regular contact with children have not received criminal background check and/or training on reporting requirements and other obligations.
- Employees of a vendors, who have regular contact with children, are not properly vetted and trained.
- Coach is not trained on acceptable parameters of coaching, then repeats coaching techniques he or she experienced as an athlete, even though those approaches are no longer acceptable.
- Coach is otherwise not a district employee and was not trained on, and therefore does not know, district-specific protocols for reporting and/or responding to various types of incidents.
- Legal exposure increases for individuals and district

References/Background Checks

- Criminal Background Checks
- **Social Media Postings**
- References
 - Immediate Supervisor
- Most Recent Evaluation
- Pass the Trash Law
 - ALL prior positions with contact with children over past 20 years (e.g. summer job at convenience store)
 - Any pending investigations or findings of child abuse or sexual misconduct with children
 - Broad view of pending investigations (e.g. investigating comments on social media that were not directed at students, but could be seen by students)
 - ***Don't Wait Until Last Minute to Do This!!!***

Scenario

- Your district is unable to hire a full time Athletic Trainer and decides to contract with a private vendor to provide an athletic trainer as needed for school events. The vendor assures the district's Athletic Director that the trainer has been properly vetted and has no prior criminal history, and says there is no need for the trainer to go through the NJDOE criminal background check process, because the vendor has their own internal process.
- What should you do?

Criminal Background Checks

- See N.J.S.A. 18A:6-7.1
- Statutes covers BOTH district employees and vendors, as well as volunteers with regular pupil contact
- “A board of education ... shall not employ for pay **or contract for the paid services** of ... any other person serving in a position which involves regular contact with children” without first ensuring that the required criminal background check has been completed.

Criminal Background Checks

FAQs from Office of Student Protection, NJDOE -
<https://www.nj.gov/education/crimhist/>

Which applicants or employees are required to undergo the Criminal History Record Check?

If the job position is mentioned in the statute (N.J.S.A.18A:6-7.2) i.e. teaching staff member, substitute teacher, teacher aide, child study team member, school physician, school nurse, custodian, school maintenance worker, cafeteria worker, school law enforcement officer, school secretary or clerical worker, regardless of pupil contact, the individual must submit to the Criminal History Record Check. **In addition, any individual that has “regular pupil contact” must also undergo the Criminal History Record Check.** “Regular pupil contact” is determined by the employing education facility in consultation with the school attorney.

What other employees have regular pupil contact?

Which “volunteers” does this apply to???

Disclosure – Pass the Trash

A.B. v. BOE of the City of Hackensack, Commissioner 10/21/2021, aff'd App. Div. 10/5/2023

- **Teacher challenged BOE release of information concerning her former employment** as a teacher in the Hackensack school district; sought employment with the Clifton BOE. (2019) BOE contended that it was obligated to release the information.
- **Pursuant to “Pass the Trash”, N.J.S.A. 18A:6-7.6 through 7.13**, Clifton submitted a questionnaire to Hackensack inquiring about whether petitioner had been the subject of a child abuse or sexual misconduct investigation. **The Board answered “Yes” and that petitioner had resigned while the allegations were pending or under investigation.** As a result, Clifton withdrew its offer to hire the teacher.
- While employed in Hackensack (2013) teacher shared two sexually explicit posts on social media to which several students had access. “Kiss me, I’m Irish, F*** me, I’m Irish,” “Women say, men only think with their penis – Ladies, don’t be afraid to blow their minds.”
- Hackensack board became aware of posts, considered taking disciplinary action. Teacher, her union representatives, and her legal counsel met with the Board and its legal representation, resulting in a settlement agreement (4/25/13) including teacher’s resignation. **Agreement contained a confidentiality provision with the disclaimer “to the extent provided by law.”**

Disclosure – Pass the Trash

A.B. v. BOE of the City of Hackensack, Commissioner 10/21/2021, aff'd App. Div. 10/5/2023

- Commissioner finds that it is **reasonable that the Board conducted an investigation into sexual misconduct** based on petitioner's actions. Petitioner's social media posts could meet the definition of electronic communications that are directed toward or with a student that are designed to establish a sexual relationship with the student, such as making sexually suggestive comments. **It is sufficient that her actions could meet the definition and that the Board opened an investigation.**
- Commissioner agrees with the ALJ that **N.J.S.A. 18:6-7.12 did not exempt settlement agreements entered into before June 1, 2018 from the mandatory disclosure** provisions of the "Pass the Trash" statute. Petitioner also consented to the disclosure of information by signing an authorization form and that her settlement agreement provided a waiver of its confidentiality provision when required by law.
- **Appellate Division affirmed.**

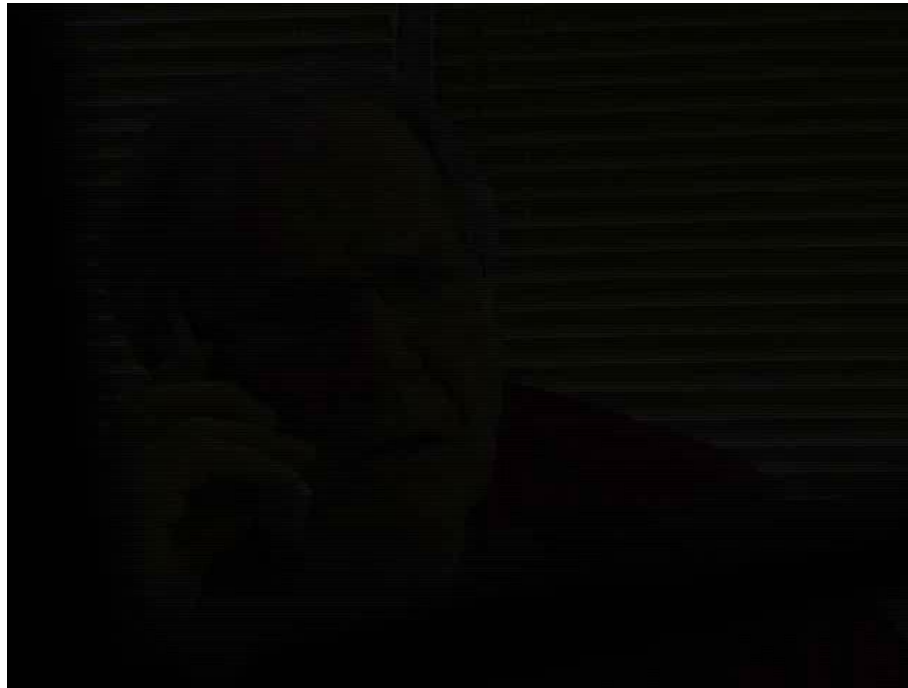
Interviewing Process

- For head coach, assistant coach, athletic trainer, volunteer
- Initial hire versus renewal
- Value of conducting interviews
- Role of interviewers
- Standard questions, time, method
 - Avoid Zoom for some, in-person for others
 - Avoid 10 minutes for some, 60 minutes for others
- Follow up for those not recommended for hire

Volunteer Staff

- Nothing is for free!
- National Signing Day – Others wanting to be present with student
 - (Consider establishing expectations for coaches to be connected to their student athletes – letter going to all seniors - “please let me know”)
- Medical personnel
- Coaches
- Personal Trainers
- Potential Liability
- Wanting to be on the sidelines - dangers

What Would You Do???



Group Discussion

- What legal issues are raised by the video?
- How should the Athletic Director respond?
- What steps can be taken to protect the coaches and the AD?
- What happens if the AD goes along with what the Board President is requesting?
- What steps can be taken proactively to reduce the chances of this occurring?

Hiring Decisions

- Procedures over Politics
- School Ethics Act issues – improper involvement of BOE members in hiring process
- Last part is standard – Superintendent recommending to BOE, Board approval
- What if BOE rejects or is about to reject the recommendation?
- Proactively addressing foreseeable issues – e.g. social media post that is concerning but can be explained
- Ensure there are no “surprises” at the last moment

Professional Learning for Athletics Staff

- Responding to Emergent Health Needs
 - e.g., Janet's Law, Paul's Law, Opioid Antidotes, Concussion Protocols, etc.
- Student Records/Confidentiality
- Reporting Obligations
 - HIB, Hazing, Crimes, Abuse, Neglect, Dating Violence, etc.
- District-Specific Protocols
 - Who to get to with various reports
- Don't Forget Coaches who aren't your full-time employees!
- Don't Forget Volunteers with regular student contact

Staff Reporting Obligations

- Child Abuse
 - Imminent Danger to Self/Others
 - HIB
 - Bias-Related Act
 - Dating Violence
 - Under the Influence
 - Suspected Steroid Use
 - Possession/Distribution Drugs
 - Weapons
-
- **BEWARE OF THE “DRIVE BY” REPORT, TAKE TIME TO PROPERLY REPORT AND DOCUMENT CONCERN**
 - **RECOGNIZE THAT SOME ISSUES CANNOT BE HANDLED INTERNALL, WITHIN THE TEAM**

ADDRESSING THE “NON-EMPLOYEE” COACH

Foreseeable Issues

- Failure to recognize that the coach who works in another district is STILL YOUR EMPLOYEE
- Coach is unaware of district protocols
- Not provided with critical student information despite having a “legitimate educational interest”
- Isolated from other staff involved in athletics who do work together during the school day
- Bringing external issues from their workplace into your district
- Legal exposure increases for individuals and district

ESTABLISHING CLEAR EXPECTATIONS AND PROTOCOLS FOR ATHLETICS STAFF

Foreseeable Issues

- Each coach takes dramatically different approach to day-to-day coaching (some have detailed plans others go day-to-day)
- Potential increases for claims of favoritism, bullying, discrimination
- Potential increases for failing to meet reporting obligations
- Each sport/team can feel like its on an island, and not part of a larger school community
- Legal exposure increases for individuals and district

Proactive Meetings

- AD meeting with head coaches prior to every season
- Mandatory attendance, sign in
- Address current events nationally – state - local, relevant revisions to district policies and protocols
 - E.g. review who is allowed to be on the sidelines, dangers of improper actions on sidelines, safety issues that may arise

Head Coaches

- Key points to address in first meetings with assistant coaches, student athletes
- Communication with students – transparency, usually pushing out and not two-way, avoid personal device
- Protocols for handling sensitive information
- Protocols for addressing sportsmanship and HIB issues that arise
- Protocols for addressing health and safety issues
- Review of issues unique to that team or sport (e.g. boys' soccer and sportsmanship)
- Standards and process for annual evaluation
- Process for progressive supervision if needed

Assistant Coaches

- Review of overlapping issues for head coach and assistant coaches
- Role of AD v. head coach in directly addressing assistant coaches
- Expectations for what head coach must communicate to all assistant coaches
- Standards and process for annually evaluating assistant coaches
- Process for progressive supervision if needed
- Clear understanding of issues that must be brought to AD and/or others

Athletic Trainer

- Criminal background check even if not your direct employee
- Role of trainer in working with school nurse, school physician, parents, student, emergency response
- Clear understanding of parameters for physical contact with students

Security at Athletics Events

- Protocols for home v. away v. other settings (park)
- When is outside law enforcement necessary
- Planning for response to foreseeable scenarios
 - Parents going onto the field
 - Students climbing over a fence
 - Responding to a fight mid-game and afterwards

Other Staff at Events

- Staff as spectators
 - “See something, say something”
 - Still on, even if there with family/friends
- Staff serving as volunteers for events
- When/if allowed on sidelines
- Established methods of communication for urgent matters

Volunteers

- If regular pupil contact must have criminal background check
- Clearly defined responsibilities, chain of command
- Recognition of reporting requirements
 - HIB, under the influence, suspected abuse, etc.

ENSURING NON-DISCRIMINATION AND REASONABLE ACCOMMODATION

Foreseeable Issues

- Discriminatory language being used by spectators
- “Trash talk” by players escalating to discrimination
- Requests for reasonable accommodations by students (or even coaches) denied
- Legal exposure increases for individuals and district

Defining Sportsmanship

- **NJSIAA Sportsmanship Statement**
- Officials will read the following statement before every NJSIAA event at all levels (No Paraphrasing):
- The NJSIAA requires officials to enforce all rules regarding unsportsmanlike conduct by coaches and players. There will be no tolerance for any negative behavior, such as taunting, trash talking and verbal, written, or physical conduct related to **race, gender, ethnicity, disability, sexual orientation, or religion**. Such behavior will result in being ejected from this event. All participants must respect the game and respect their opponents.

Reasonable Accommodation

- Does the student athlete have a 504 plan or otherwise eligible for protection under 504/ADA?
- Would the requested accommodation fundamentally alter the nature of the sport or event?
- Remember, accommodations may also be requested by a coach or other member of the athletics staff

Sports Participation

- No qualified student with a disability can be denied the opportunity to participate in physical education and athletic activities:
 - Schools **cannot prejudge** a student's participation in athletics because of a disability;
 - **Courts** generally favor allowing qualified athletes with physical disabilities to participate;
 - Students and parents **must understand the risks** of participation and consent to same.

Sports Participation

- This means making **reasonable modifications** and providing those aids and services that are necessary to ensure an equal opportunity to participate, unless the school district can show that doing so would be a fundamental alteration to its program.
 - Alexander v. Choate, Southeastern Cmty. Coll. V. Davis, 442 U.S. 397 (1979)

Appropriate Skill Level

- Equal opportunity **does NOT mean:**
 - that every student with a disability is guaranteed a spot on an athletic team for which other students must try out.

What is a Fundamental Alteration?

... it alters such an **essential aspect of the activity** or game that it would be unacceptable even if it affected all competitors equally.

Example – shortening the length of a football playing field; making a football 3x as large so sight impaired can better see it.

Remember!

- Even if a specific modification would constitute a fundamental alteration...
 - The school is **still required to determine if other modifications might be available** that would permit the student's participation.



Written Emergency Action Plan

- Required for all districts
- Expansive v. small athletic fields
- At home v. off-site v. during transit v. local park owned by municipality or county
- Plans for situations with one coach, versus large number of coaches
- Student going in ambulance – what do you do???
- Does everyone know the plan? What training has been provided? When is it provided to staff?

Levels of Response

- Timely response critical!
- Chain of Command
- Coach/Others Immediate Response
 - Danger of coach going rogue!
- Athletic Director
- Principal
- Superintendent
- Affirmative Action Officer
- Title IX Coordinator
- Anti-Bullying Specialist
- Law Enforcement

Bias-Related Acts

- **Bias-Related Incidents** – school employee in the course of his/her employment develops reason to believe that a “bias-related act” has been committed or is about to be committed on or off school grounds.
 - Note failure to report could violate NJLAD!
- **“Bias-Related”** means that an incident is directed at a person, group of persons, private property, or public property that is motivated in whole or in part by racial, gender, disability, religious, sexual orientation, or ethnic prejudice. **A bias-related incident need not involve conduct that constitutes a criminal offense.**
- **MUST REPORT TO LOCAL LAW ENFORCEMENT and COUNTY PROSECUTOR’S OFFICE**

3.16 Reporting Bias-Related Acts

- Reporting requirement
 - A school employee who becomes aware that a bias-related act has been committed, or is about to be committed, must immediately notify the school principal (or designee if the principal is unavailable)
 - A designated school official (typically the school principal or a central office administrator) promptly notifies the local police department and the bias investigation official for the county prosecutor's office
 - IF there is reason to believe that an act of violence has been or is about to be committed as part of the bias-related act, then local police and county prosecutor's office must be immediately notified.

Motive and Reporting

Bias-Related Acts to Law Enforcement

- Very DIFFERENT from assessing if HIB
 - HIB looks at reasonable perception of victim, reporting to law enforcement looks at motive of the alleged offender
- “In weighing whether a student’s conduct meets this definition and triggers a mandatory report [to law enforcement], school officials should consider whether the student’s conduct was motivated by a protected category.”
- “When weighing motive, educators may therefore consider:
 - the context of the incident and
 - the age, maturity, and competency of the student(s) implicated in a potential bias-related act,since those factors would be considered by law enforcement and county prosecutors.”

Discrimination Claims and Protected Classes

- Employers--including parochial schools and public-school districts--may not discriminate against staff or students based on:
 - Race
 - Creed
 - Color
 - National origin
 - Ancestry
 - Age
 - Genetic information
 - Pregnancy
 - Sex
 - Religion
 - Disability
 - Military service
 - Atypical cellular blood trait
 - Nationality
- NJ LAD
 - Marital/domestic partnership/civil union status
 - Affectional or sexual orientation
 - Gender identification or expression
 - Hair

Review of General Discrimination Law Standards

The Plaintiff bears the initial burden of establishing a ***prima facie*** case of discrimination under the 3 step, burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) by a preponderance of the evidence.

- Preponderance of the evidence means “more likely than not” that the alleged harassment occurred.
- Lesser standard than Criminal Court’s “beyond a reasonable doubt.”
- Discrimination / harassment may be determined to have occurred even if law enforcement chooses not to pursue a criminal investigation

Review of General Discrimination Law Standards

Step 1 – Plaintiff – Staff Member’s First Burden

The Plaintiff must show that:

- S/he is a member of a protected class;
- S/he is qualified for the position;
- S/he suffered an adverse action
 - Examples include termination, denied a raise/promotion, forced to resign/retire, being excluded, etc
- The circumstances surrounding the adverse action gives rise to an inference of discrimination
 - Example – a male employee/student was allowed to do something when a female in the same/similar position was not

Proof of Discrimination

Step 2 – Defendant’s Burden

- If the Plaintiff satisfies the first burden, the burden shifts to the Defendant to rebut the Plaintiff’s claim by “articulating some legitimate, nondiscriminatory reason” for the adverse action.

Review of General Discrimination Law Standards

Step 3 – Plaintiff’s Second Burden

- If the Defendant meets its burden of the McDonnell Douglas test, the Plaintiff must show that the Defendant’s proffered reasons are pretextual, and are not the real motivation for the adverse action.
- To show that the proffered reasons are pretextual, the Plaintiff must present sufficient evidence to allow a reasonable person to either:
 1. Disbelieve the Defendant’s articulated legitimate reasons; or
 2. Believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the Defendant’s actions.

Laws You Should Be Aware Of

- New Jersey Law against Discrimination – N.J.S.A. 10:5-12
- New Jersey's Anti-Bullying Bill of Rights
- New Jersey Conscientious Employee Protection Act (CEPA)
- New Jersey Equal Pay Act
- New Jersey Civil Union Act of 2007
- NJ CROWN Act
- Americans with Disabilities Act
- Title VI of the 1964 Federal Civil Rights Act
- Title VII of the 1964 Federal Civil Rights Act
- Title IX of the Education Amendments of 1972
- Equal Pay Act of 1963 (EPA)
- Equal Protection Clause of the 14th Amendment
- The Age Discrimination in Employment Act of 1967 (ADEA)
- The Individuals with Disabilities in Education Improvement Act (IDEIA/IDEA)
- Section 504 of the Rehabilitation Act of 1973
- Pregnant Worker's Fairness Act (PWFA) – 2014

Title IX

- Federal law, applies to all school districts
- Protects against sexual harassment or other gender-based discrimination
- Critical to constantly assess areas of student interest
- Athletics Context
 - Comparable opportunities for boys and girls
 - Comparable resources, equipment, facilities
 - Protects adults and students
 - e.g. coach who raises concern about unfair treatment for girls team
 - e.g., Member of athletics staff who is being sexually harassed

NJ Law Against Discrimination

- Enacted in 1945, first of its kind state civil rights law
- Provides strong protections based on a wide range of protected characteristics
- Covers employment, places of public accommodation, housing, business transactions
- Amended in 1992 to cover sexual orientation
- Amended in 2006 to cover gender identity
- 2007 – LW v. Toms River – applies to students, requires comprehensive, pro-active approach
- Amended in 2018 – Equal Pay Act
- Amended in 2019 – CROWN Act
- Expands protections provided under federal law
- **NO NEED TO PROVE INTENT TO DISCRIMINATE**
- Generally relied on by plaintiffs more than comparable federal law

NJLAD Punitive Damages Requirements

- A LAD claim for Punitive Damages requires the Plaintiff to prove two things by clear and convincing evidence
 1. Actual participation by upper management or willful indifference, and
 2. Especially egregious conduct
- N.J. Stat. Sec. 2A:15-5.12

Holidays/Religious Expressions

- Religious Holidays
- Religious Accommodation – *Groff v. DeJoy*
 - Title VII requires an employer to show that providing requested religious accommodation will result in **substantial increased costs** to employer. USPS must satisfy that burden to justify required employee to work on Sundays.
- Religious Expression
 - [Kennedy v. Bremerton SD](#) (June 27, 2022). Case involved coach who engaged in prayer immediately after games on the 50-yard line. District determined not to renew coach due to his failure to follow district policy and continuing to engage in religious speech in violation of Establishment Clause. U.S. Supreme Court determined that district violated rights of coach under First Amendment

Political Expression

- National anthem/flag salute
- Danger of personal political beliefs being pushed on students
- Staff First Amendment rights analyzed differently than student rights
 - Pickering v. Tinker
 - More limited rights for staff members

Staff First Amendment Rights

Pickering v. Board of Education, 391 U.S. 563 (1968)

Pickering Balancing Test

- **Did the statement concern a matter of general public concern?**
- **Was the employee speaking as a private citizen or during the course of his duties?**
 - *See Also: Garcetti v. Ceballos* (2006) – Statements by public employees made pursuant to their employment have no First Amendment Protection
- **Was the statement likely to disrupt a close working relationship?**
- **Recent Case Law**
 - Melnyk - No First Amendment rights for teacher to alter required curriculum
 - Czaplinski - Security guard terminated for comments related to police officer shooting
 - O'Brien - First grade teacher terminated based on comments regarding students

ENGAGING IN EFFECTIVE EVALUATION AND PROGRESSIVE SUPERVISION

Foreseeable Issues

- Coach may never receive a formal evaluation, creating potential claims that renewal/non-renewal decisions are being made for arbitrary OR illegal reasons
- Minor issues that are not addressed in a timely manner may escalate and result in preventable harm to students, staff, others
- Claim that IF IT ISN'T IN WRITING IT DIDN'T HAPPEN
- Legal exposure increases for individuals and district

Staff Performance Issues

- Patterns may begin to emerge
- Do issues involve:
 - Competence
 - Professionalism
 - Insubordination
 - Incapacity
 - Conduct Unbecoming
 - Staff/Student
 - Healthy Workplace
 - Discrimination

Investigating Staff Behavior

- KEY QUESTION
 - Who is handling the investigation??? AD, Principal, AAO, Title IX Coordinator, Superintendent, Other?
- Follow Policy
 - Healthy Workplace Environment Claim v. Discrimination Claim (different processes)
- No “drive by” notices!
- District should notify staff member if they are under investigation, provide reasonable opportunity to have representation present
 - Understand role of rep (NOT to interfere, take over, answer Qs)
- Advise staff member NOT to discuss matter during investigation, NOT to approach other parties or witnesses
- Provide opportunity for written statement
- Review all evidence, interview all parties prior to reaching conclusion
- Provide staff member with final outcome and written conclusion regarding each allegation
- Are you consistent in addressing comparable staff behavior?
 - No anti-union animus, playing favorites, implicit bias, etc.

Just Cause Test

- 1. FAIR NOTICE** Did management make the worker aware of the rule or policy which they are being accused of violating?
- 2. PRIOR ENFORCEMENT** Has management recently enforced the rule or policy or penalized other workers for violating the same rule or policy?
- 3. DUE PROCESS** Did management conduct an interview or hearing before issuing the discipline, take action promptly and list charges precisely?
- 4. SUBSTANTIAL PROOF** Was management's decision to accord discipline based on credible and substantial evidence?
- 5. EQUAL TREATMENT** Is the punishment management is proposing consistent with the punishment other workers received for the same or substantially similar offense?
- 6. PROGRESSIVE DISCIPLINE** During the disciplinary process, did management issue at least one level of discipline that allowed the employee an opportunity to improve?
- 7. MITIGATING AND EXTENUATING CIRCUMSTANCES** Was the discipline proportional to the gravity of the offense, taking into account any mitigating, extenuating or aggravating circumstances?

Evaluation Model?

- Does it exist for athletics staff?
- Is there a clear rubric?
- Is it relevant for all sports/staff?
- Is it well understood by AD, head coach, assistant coaches, athletic trainer, etc.?
- Does it provide meaningful feedback and direction for improvement?
- Is there evidence of good faith effort to address areas of concern?

Summative Evaluations

- Do they exist?
- Is there an understanding that all staff receive the highest marks?
- Is it completed in a timely manner?
 - e.g. Prior to making decisions on renewal
- How is the Summative used in making renewal decisions?
- Are similar issues recurring over time and not being addressed?

Progressive Discipline

- Paper trail is critical
- Demonstrate fairness, no discriminatory intent
- Is there clear delineation of issues requiring immediate correction versus those that require ongoing professional development and support?
- Does the issue rise to such a level that it impacts more than the individual's ability to serve as a coach?

Renewal/Nonrenewal

- No tenure rights, but cannot choose to non-renew for illegal reasons – See Jackson v. Birmingham where U.S. Supreme Court held that a coach could not be let go as a form of retaliation for raising Title IX concerns
- Is there clear documentation of issues
- Remember – even though coaches do not attain tenure, cannot be let go for illegal reasons
 - CEPA (NJ whistleblower law)
 - NJLAD, Title IX, etc.

Tenure Charges

- Conduct Unbecoming
- Inefficiency
- Incapacity
- Other Just Cause
- Does the existing documentation support your case?
- Have you done a rational cost/benefit analysis?

Weingarten Rights

- An employee's right to representation in an interview applies to situations where the employee reasonably believes the investigation at the interview will result in disciplinary action.
- An investigatory interview is one in which a supervisor questions an employee to obtain information which could be used on a basis for discipline or asks an employee to defend his/her conduct.

Weingarten Rights

- If the Supervisor denies the request and continues to ask questions, this is an unfair labor practice and the employee has a right to refuse to answer any questions.
- The employee must clearly request representation before or during the interview in order to claim this right.
- The employer/supervisor has no duty to inform the worker of this right.

RAISING AWARENESS OF THE SCOPE OF THE ROLE OF ATHLETIC DIRECTOR

Foreseeable Issues

- District may decide to assign major additional duties to person serving as AD
- Issues may fall through the cracks if AD is not provided sufficient support or collaboration from others
- Criticisms by parents with their own agendas may be given credence due to lack of awareness of scope, breadth of AD role and effectiveness of AD in doing the job
- AD who is very effective more susceptible to political pressures and loss of position
- Legal exposure increases for individuals and district

Job Description/Demands

- Does it exist?
- Does it capture the full scope of responsibilities and time commitment
- Are major new responsibilities being added on without consideration of impact on core functions of AD?

Communicating AD Role to Key Players

- Superintendent
- Board of Education
- Community
- Need to address potential temptation of adding on other responsibilities

COLLABORATING WITH HR

Foreseeable Issues

- Major differences could emerge in protocols and practices for addressing staff needs compared to established HR protocols
- Potential for disciplinary action for failure to follow district protocols even though they do not align well with needs of athletic department
- Legal exposure increases for individuals and district

Key Aspects of Collaboration

- Regular meetings between Athletic Director and Director of Human Resources
- Athletics Staff being formally incorporated into the district's onboarding and ongoing professional development plans
- HR Director and AD collaborating to apply and adapt existing district policies, protocols, and templates for screening, interviews, evaluations, discipline, etc. to athletics staff

QUESTIONS???

Conclusion

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- Participants are authorized to use the LEGAL ONE materials provided in this training to offer turnkey training within the respective participant's school district or place of employment, provided that participants provide proper credit to LEGAL ONE for having developed said materials and further provided that such turnkey training is offered at no charge.
- If you have any questions about this presentation or suggestions for future seminars, please send an email to legalone@njpsa.org

4 ESSENTIAL PROGRAMS IN SCHOOL LAW EDUCATION

LEGAL ONE (Law, Ethics and Governance for **All** Leaders, including an **O**verview of **N**ew and **E**merging issues) is the leading provider of education law workshops, online courses, and webinars for school leaders, educators, and other key stakeholders. We can also provide you and your entire team in-district training on any school law matter.



Workshops & Webinars

Live or On-Demand. In-Person or Virtual. Sessions of legal issues in education taught by LEGAL ONE attorneys and subject matter experts.

01



In-District Presentations

Professional learning that is specific to your district with options ranging from comprehensive multi-day series down to a single hour.

02



Online Courses

You have the flexibility to take the course wherever and whenever you choose and to focus more time on the aspects that are most relevant to you.

03



Podcast Episodes

Helping you understand complex legal issues, in brief segments. The format includes legal analysis and commentary and interviews with key stakeholders.

04



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FEATURED EPISODE

School Athletics, Sportsmanship and Legal
Liability



ORIGINAL AIR DATE:
MAY 19, 2025

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DATE

THURSDAY, JANUARY 22, 2026



TIME

9:00AM TO 1:00PM



PRESENTER

SANDRA L. JACQUES, ESQ., LL.M., *ASSISTANT
DIRECTOR OF LEGAL EDUCATION*



FEE

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LOCATION

LIVE ONLINE



Hot Issues in School Law WORKSHOP . . .

In Partnership with TMI Education. What were the most important changes in state and federal law that occurred during the 2024-2025 school year? What must you do to address these changes moving forward? This seminar will address key topics, including: - Changing legal requirements related to Due Process Rights, diversity, equity and inclusion and student health and safety;- Understanding the Sick Leave Law and Staff Excessive Absenteeism Issues;- Recent legislation and case law regarding HIB, TEACHNJ, Title IX, NJ Law Against Discrimination, FERPA, and Staff Evaluations- Changing federal law requirements and guidance from the U.S. Department of Education- Student and Staff First Amendment rights, including Social Media and AI Issues;- Recent developments regarding employee, student and parent rights; and- New and important School Law Issues occurring and developing at the time of the Workshop

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