

Insights, News & Events

PLAYING IT SAFER: MANAGING CONCUSSION-LITIGATION RISK IN K-12 ATHLETICS

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Following a week-long trial in May, an Iowa jury concluded that Bedford High School was negligent in the way it handled a head injury to former high school freshman football player Kacey Strough. The jury awarded Kacey \$1 million, which, according to media reports, is the largest recorded verdict in a high school athletics head-injury case. What can your school do to prevent something like this happening to your students and your school?

The *Strough* Case In A Nutshell

Kacey Strough was a freshman football player with a pre-existing medical condition known as a "cavernous malformation," which consists of abnormally formed blood vessels in the brain. He suffered a head injury while playing football, but the school allowed him to keep practicing and playing. He also alleged that his teammates engaged in bullying behavior which aggravated his injury, repeatedly throwing footballs at his head.

Eventually Kacey's brain sustained bleeding as a result, and his subsequent lawsuit claimed that a school nurse was negligent in failing to notify the football coaches of his potential concussion and brain injury. It also claimed the school was negligent in failing to follow up

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with his grandmother, who was taking care of him, to make sure he was seen by a physician.

According to the lawsuit, these failures ultimately led Kacey to the hospital, where he underwent surgery to remove a blood clot near his brainstem. He has permanent injuries and currently uses a wheelchair, facts that likely played a significant role in the million-dollar verdict.

Putting The Verdict In Perspective

Does the *Strough* litigation and verdict portend storm clouds on the horizon for high school athletics programs? Perhaps, although it bears noting that the number of actual lawsuits in this area remains fairly low and the success rates for students mixed.

With that said, there are almost seven million high school students participating in athletics, and a recent Centers for Disease Control and Prevention study indicates a 57% increase in emergency room visits for concussions and other traumatic brain injuries by youths aged 19 and younger. Further, the verdict comes on the heels of high-profile concussion litigation against the NCAA and the NFL for football-related injuries, the latter being settled for upwards of \$1 billion. Also pending is a recently filed class-action lawsuit against the Illinois High School Athletics Association over its head injury policies.

Given this confluence of astronomical numbers, heightened awareness of brain injury danger, and significant media attention to litigation and settlements, schools should develop a sound plan for promoting athlete safety with a special emphasis on head trauma.

What Does An Athletics Risk-Management Concussion Plan Look Like?

Here are some of the key ingredients of a sound risk-management plan in this area:

- **Know The Law.** Over the last several years, all 50 states have passed laws on youth concussion safety. At a minimum, you should consult with counsel to

determine what your state law requires and craft your policies and practices accordingly.

- **Train And Document.** Educate students and faculty – even those not involved in athletics – on the signs and symptoms of concussions and what to do if they suspect a student is suffering from concussion symptoms. You also should make sure that participants and their parents understand the inherent risks of athletics participation. All of these efforts should be documented just in case you end up in litigation.
- **Consider Releases And Waivers.** Releases and waivers of future claims can be a powerful risk management tools in this area. The enforceability of these agreements varies by state and you should consult with counsel to ensure that your release and waiver is enforceable.
- **Give Healthcare Professionals Autonomy.** Athletics healthcare professionals, such as team doctors or athletic trainers, should have unchallenged authority to determine the removal and return-to-play status of injured athletes. Coaches should have no role whatsoever in these determinations. Schools should attempt to ensure that the doctors and trainers do not report to coaches, or are otherwise not influenced by coaches in making these determinations.
- **Use Fitness-For-Sports Clearances.** Prior to any participation, student athletes should receive a physical evaluation and clearance by a licensed medical professional. Additionally, when students are held out because of an injury, their return should be conditioned on receiving a written clearance to return to play from a medical professional. In some instances, a school should consider whether a student with a history of concussions should be allowed to participate in athletics at all.
- **Evaluate Safety Equipment Regularly.** The pace of equipment development – especially helmets – is amazing. Like all new technology, though, fitting

players with the most “high tech” equipment is expensive. With an increase in head-trauma awareness and associated litigation, schools’ cost-benefit analysis when making purchasing decisions needs to be reevaluated and procurement departments may want to consider erring on the side of seeking expensive, but safer, equipment.

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