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Heat Stress at Summer Camp

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At Issue: Summer camps can offer children a wide range of choices including games, boating, hiking, wilderness experiences and other great outdoor activities. Many camps have an intramural sports program as well. With activities taking place during the hottest part of the year, heat stress is a concern that should be noted by all of those involved with running camps.

Heat stress may include heat stroke, heat exhaustion, cramps, fatigue and rash. These conditions can affect children and counselors playing outdoors or in indoor environments with no air conditioning. Heat stress can have a wide range of effects on someone, ranging from fatigue and nausea to, in the most extreme cases, death. With the proper precautions, any consequences from the extreme heat and humidity can be limited.

Having a properly trained workforce will help employees under-

stand how the heat may impact both campers and themselves. There are ways to help minimize the likelihood of anyone suffering from heat stresses. Some of them include:

- Having a water cooler to promote hydration;
- Educating employees on the risks, symptoms and treatment of heat stress;
- Setting up a policy that does not allow campers to go anywhere alone;
- Encouraging both campers and counselors to wear light-colored, loose-fitting and breathable clothing;
- Spending more time in the early mornings or late afternoons doing outdoor activities;
- Taking breaks throughout the day;
- Drinking water as opposed to caffeinated drinks.

The most important aspect counselors can focus on is maintaining the proper level of hydration. Drinking water throughout the day helps to withstand the warm weather and remain outdoors at the same time. If camps have a large population of young children,



a requirement should be in place to have designated water breaks at certain times.

The summer is a great time to be outside and enjoy the warm weather. When counselors and campers work together, it will help promote a safer environment for all. Taking some simple, precautionary measures allows everyone to enjoy themselves and stay out of harm's way. With this in mind, everyone can have a happy and healthy summer! ■

Look for our new columnists!

Donna Lopiano, the Honorable Lawrence Brennan and Donald McPherson share their insight about school violence and legal issues.



Fair Play

By Donna A. Lopiano, Ph.D., President, Sports Management Resources

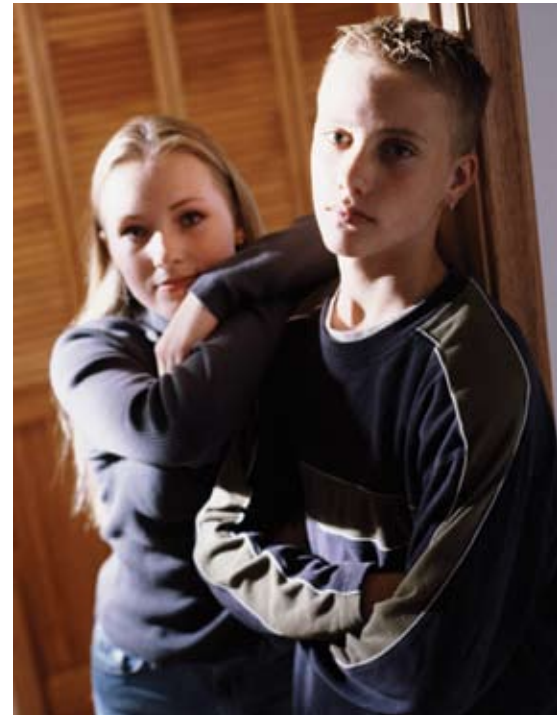
How can schools or colleges help control unnecessary violence in sports?

School and college administrators should have extensive conversations with their athletic directors to be sure that preventative steps are being taken to avoid the occurrence of violence within the game and on the playing field and in the stands. The real challenge is to ask what can every coach and administrator do to clearly define and separate the notions of aggression, competition and respect for our opponents from doing violence with intent to maim or engaging in speech with intent to express hate. Can we explain the difference between making a clean block or crisp tackle and initiating body contact with the intent to do harm? Can we remove hate language and the denigration of any group from the locker room (and classroom, and hallways) and make it clear that both are unacceptable? Change occurs one person at a time with one small act at a time. Administrators should consider implementing all of the following:

1. Establish an annual program or workshop for athletes and coaches at which the issues of diversity, hate and violence are addressed.
2. Embrace diversity and anti-violence training in the work-

place for all staff members, event security and event staff.

3. Use an advertising page in the athletic event program and on Web pages to educate spectators about sportsmanship, being sure to distinguish acceptable and unacceptable aggression on the playing field. Such pages could even be sold to a sponsor to generate revenue.
4. Refuse to advertise your sports or other school programs in or produce print or electronic media that celebrates violence, objectifies any class or group, or salutes any team or individual who does not demonstrate respect for the person or others.
5. Insist that coaches proactively address the distinctions between acceptable and unacceptable physical contact and aggression in meetings with assistant coaches and players, remembering that many coaches are part-timers or volunteers and have little or no training in these issues.
6. Require coach, security and event staff training in handling issues of violence and expressions of hate on and off the field of play during competitive events.
7. Be sure the athletic director has a program in place that teaches athletes how to object to violent or insulting language on the part of any



coach, teammate or opponent, including slurs against women, homosexuals or hate language in any form. Every athletic director should be making strong statements to coaches, student-athletes and other athletic department employees about the importance of speaking out against wrongs of action and language in a non-aggressive, professional and appropriate manner.

8. At the conference, state or national governance association level, athletic directors should be instructed to support stiff penalties and removal from play for any player who attempts to intentionally injure another and suspension or termination of coaches who advocate such play. ■



View from the Bench

By Hon. Lawrence J. Brennan (ret.), Associate General Counsel, Wright Risk Management

Retaliation Claims: Traps For Unwary Employers

Employment discrimination cases are always difficult for independent school employers. For schools, there are multidimensional considerations – negative public relations, reputation damage, impact on staff morale, uncertain legal defense and indemnification issues, governmental agency investigations, and potential collateral retaliation claims.

Employment practices liability encompasses claims alleging sexual and other forms of illegal harassment, employment-based discrimination, wrongful termination, and retaliation. They continue to be a liability loss exposure for schools.

“Retaliation” is an adverse action taken against an employee for engaging in protected activity which consists of either opposing a practice made unlawful by one of the employment discrimination statutes (the “opposition” clause) or participating in any manner in an investigation, proceeding, or hearing under an applicable statute (the “participation” clause).

The Equal Employment Opportunity Commission (EEOC) is the federal agency responsible for the enforcement of federal anti-discrimination laws. It enforces the laws that protect workers who fall into different categories, or who have certain characteristics — including race, color,



religion, gender, national origin, age or a qualified disability. Aggrieved employees file a complaint with the EEOC. Thereafter, they may file a lawsuit within 90 days after receiving a notice of a “right to sue” from the EEOC.

The federal laws enforced by the EEOC include:

- *Title VII of the Civil Rights Act of 1964 (Title VII)*
Prohibits employment discrimination involving race, color, religion, gender or national origin.
- *Age Discrimination in Employment Act of 1967 (ADEA)*
Protects workers who are 40 years of age or older from workplace age discrimination.
- *Title I and Title V of the Americans with Disabilities Act of 1990 (ADA)*
Prohibits discrimination against individuals with

qualified disabilities.

- *Equal Pay Act of 1963 (EPA)*
Addresses sex-based wage discrimination between men and women engaged in similar employment.
 - *Civil Rights Act of 1991*
Addresses several aspects of workplace discrimination, and strengthens federal civil rights laws by providing for monetary damages in cases of intentional employment discrimination.
- In addition to federal laws, employers also face potential liabilities from state and local human rights laws. These complement federal statutes by prohibiting employment discrimination based on additional categories, including sexual orientation, receipt of public assistance

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or genetic information (predisposition to a particular disease because of a person's genetic history). A state division of human rights administrative law judge may also be empowered to award substantial compensatory and punitive damages, as well as to compel remedial action.

Recent United States Supreme Court retaliation decisions

1. Crawford v. Metropolitan Government of Nashville and Davidson County, Tennessee. On January 26, 2009, the United States Supreme Court unanimously ruled that the anti-retaliation provisions of Title VII of the Civil Rights Act of 1964 apply to employees who are cooperating with their employer's internal investigation concerning sexual harassment.

Although the plaintiff was not the individual who filed the initial complaint, she stated that she had also been harassed. Subsequently, she was fired.

The Supreme Court, in remanding the case back to the District Court, held that the anti-retaliation provision's protection extends to employees who, although not complainants themselves, cooperate with their employers' internal investigations and answer questions related thereto.

In 2008, the United States Supreme Court issued three separate opinions in retaliation cases:

2. In Gomez-Perez v. Potter, the plaintiff, a 45-year-old postal worker in Puerto Rico, alleged that her employer violated the Age Discrimination in Employment Act of 1967 (ADEA) by subjecting her to retaliatory actions as a result of filing an administrative complaint. Among other complaints, the plaintiff alleged that she was accused of sexual harassment, that her name was written on anti-sexual harassment posters, and that her work hours had been drastically reduced.

Associate Justice Samuel A. Alito, writing for the 6-3 majority, held that "discrimination based on age" includes retaliation. Employment decisions affecting employees and applicants over 40 years of age must be free from discriminatory intent or impact.

3. In CBOCS West, Inc. v. Humphries, the Supreme Court remanded this case to the federal District Court for a trial on the retaliation claim commenced under 42.U.S.C. §1981, the equal contract violation claim.

The plaintiff, Hendrik G. Humphries, a former assistant manager at a Cracker Barrel restaurant owned by CBOCS West, Inc. timely filed a race-based employment complaint with the EEOC and received a "right to sue" letter. He then filed his complaint in the federal District Court alleging that his employer's actions violated both Title VII of the Civil Rights Act of 1964 and the Equal Contract provision of 42 U.S.C. §1981.

In writing for the 7-2 majority, Associate Justice Stephen Breyer rejected CBOCS' argument that §1981 retaliation, if permitted in employment-related retaliation claims, would overlap with Title VII and its carefully-devised administrative procedures. The significance of this decision is that it permitted the plaintiff to pursue his §1981 contract violation retaliation claim at trial.

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4. In Meacham v. Knolls Atomic Power Laboratory, the Supreme Court ruled 7-1 that in defending a disparate-impact claim brought under the Age Discrimination In Employment Act (ADEA), the employer bears both the burden of production and the burden of persuasion for the “reasonable factors other than age” (RFOA) affirmative defense.

This lawsuit stemmed from the layoff of workers involved with the design of prototype naval nuclear reactors. Thirty of 31 salaried employees were more than 40 years old.

In writing for the majority, Associate Justice David Souter noted “...there is no denying that putting employers to the work of persuading fact finders that their choices are reasonable makes it harder and costlier to defend than if employers merely bore the burden of production; nor do we doubt that this will sometimes affect the way employers do business with their employees.”

Additional Concerns for Independent School Administrators

These decisions reflect emerging law in which claimants, who can also include non-party

employee witnesses, allege that they received adverse and discriminatory actions arising from employers’ internal Title VII-related investigations.

The “graying” of teachers and administrators in the independent school workforce is happening as baby boomers rapidly approach retirement age. It should not go unnoticed that this group of highly educated individuals will be extremely sensitive to poorly chosen comments, or to any direct or indirect efforts to hasten their departures, particularly in view of these recent Supreme Court decisions.

Recommendations

Certainly, retaliation is easy to allege but more difficult to prove. Nevertheless, the United States Supreme Court has now definitively ruled that retaliation claims are available in age discrimination, Title VII employment discrimination, and §1981 contract violation cases.

School administrators must be cognizant of the varied implications of employment discrimination claims. Their policies and procedures must reflect awareness of the potential legal rights of the accuser, the accused and even co-employee witnesses.

Stigmatization of involved employees must be avoided whenever possible. Of course, interim remedial actions must be undertaken to defuse potentially volatile situations. However, they should be undertaken in a manner that attempts to preserve and safeguard the dignity of everyone involved pending the final determination and resolution of allegations.

The motive and intent of employers in employment litigation may well be the subject of intense scrutiny of the many electronic devices and systems on which inculpatory and incriminating documents, statements, and e-mails may be permanently stored, particularly in this new era of text messaging, Twittering and blogs. ■

*Hon. Lawrence J. Brennan
retired as Acting Justice of the
New York State Supreme Court
in September 2006.*



How I See It

By Donald McPherson, President of Don McPherson Enterprises, LLC

Where do Bullies come from?

Bullies come in many forms and operate in many ways for different reasons. The obvious, overtly “mean” students have always been on our radar and for them we have created detention and suspension. We have more casually labeled them the “big bully” and they are often known entities from which we caution less assertive students to stay away. However, the bullying and behaviors that are more difficult to address are those that are less obvious and even more difficult to detect. Such bullying may involve compliant victims who are eager to join a socially elite group or can take place over a span of several years as students matriculate. The language and attitudes in these cases mirror that of the larger culture. The result of such prolonged behavior usually manifests in explosive episodes that seem difficult to trace.

Students who attempt or commit suicide, or bring lethal violence to schools are certainly the exception; however such incidents have shed light on the subtle and pervasive bullying that goes beyond a lone disgruntled teen who comes from a difficult home environment. Cyber-bullying and homophobic language that torment and alienate have been at the center of recent tragedies and poignantly underscore this point.

To truly understand the impact of subtle behavior, we need to



look no further than our behavior as adults.

The social hierarchies of the larger culture play out in schools every day and often support how many bullies function. Society values athletes; the wealthy, charismatic, and even “good looks” are based on predominant cultural “norms.” Being outside or on the lower end of the hierarchy may leave anyone, especially children, vulnerable to teasing and eventual bullying. Like most forms of interpersonal conflict, violence is the end game. Verbal and psychological abuse are more common and typically always precede physical violence.

The reality of this social hierarchy in schools is that very few students fit in all categories. The vast majority of students are talented or possess admirable qualities that range across the spectrum. And, like crabs in a barrel, they constantly find ways to rise above one another and socially

it begins with teasing language. Smart students tease those less academically astute; students who are better dressed and groomed (which is usually a sign of greater family wealth or stability) tease those who are not and so on.

In the subtle bullying that comes from social hierarchies, consensus is often necessary and adult compliance is usually unknowing and most powerful.

Several years ago, in a workshop for high school students who were mentoring an elementary school class, one of the high school boys told me of a group of fifth grade students who tried to coerce him to join their bullying. Another member of their class had soiled his pants in the first grade and, four years later, was still being teased about it. The attempt to enlist the high school student

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came from the understanding that hierarchies exist and that it's best to be a part of the higher class than not. The elementary students who were teasing were looking for validation from the "cool" high school student. When the high school student would not comply, suddenly the student who was being teased had an ally—an adult (or older student with status) who did not stand by while bullies teased. At that point, he no longer had to be invisible, to accept the taunting to belong. He was empowered by the support.

As I think of the boy who went to school every day, grade one through five with the same group of students, I thought of the impact of such behavior on his sense of self. I admire all those who have channeled such frustration into positive behaviors and understand those who don't. It is for this reason that I have turned to "prevention" by addressing and teaching social competency and awareness rather than punitive measures in response to incidents. This is especially important since the explosive

incidents that get our attention represent a vastly limited picture of the bullying that occurs each day in our schools. ■

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