EMPLOYMENT AND ATHLETIC LIABILITY
OREGON SCHOOL SAFETY OFFICERS ASSOCIATION
Annual Conference 2017

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OREGON SCHOOL BOARDS ASSOCIATION
AGENDA

- Equal Pay Act
- Minimum Wage
- Employment Contracts
- Fingerprinting and Criminal Background checks
- Sexual Abuse Training
- Athletic Title IX Compliance
- Transgender Student Athletes
- Negligence Claims
- Non-Employee Drivers
- Athletic Clubs
- Liability Waivers
- Incident Report Forms
- PACE Preloss
EQUAL PAY ACT

• New law, most provisions take effect Jan. 1, 2019
• Cannot inquire about salary history
• Cannot discriminate with respect to wages and benefits
• Coach pay equity?
MINIMUM WAGE

• Increased July 1, 2017 to $11.25, $10.25, and $10.00 per hour.

• Do coaches get paid minimum wage?
EMPLOYMENT CONTRACTS

• Superintendent, licensed administrators and licensed teachers must have a contract
• CBA members have a contract
• Coaches do not need contracts!
Fingerprinting and Criminal Background Checks

• Any person having direct, unsupervised contact with students.
• "Direct, unsupervised contact with students" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision.
• Coaches and volunteers, contractors—bussing companies!
• Use same process for everyone.
• OSBA Model Board Policy GCDA/GDDA
• When in doubt, do or require the background check!
Sexual Conduct/Child Abuse Reporting Laws and Required Training

• Oregon’s sexual conduct laws require that all school employees receive annual training regarding sexual conduct and reporting obligations—coaches and substitutes are employees!
• Law does not apply to contractors or employees of contractors, but it is highly recommended.
• Make part of your contract with the contractor—think about bussing companies!
Title IX and Athletics

- A law that prohibits gender discrimination in education. Applies to all aspects of education, not just athletics.
- Booster Clubs—are funds being equitably spent between the genders?
- What is the Football counterpart?
- Do baseball and softball have equitable facilities?
- What dates and times are the girls and boys games?
Transgender Student Athletes

• Non-OSAA athletics--transgender students should be allowed to participate with team they identify with.

Transgender Student Athletes-OSAA Rules

Female-to-Male:
- No hormones=boys or girls teams
- Testosterone=boys team only unless OSAA approval

Male-to-Female:
- No hormones=boys team only unless OSAA approval
- After one year of hormone treatment, may participate on girl team

http://www.osaa.org/docs/handbooks/osaahandbook.pdf
Negligence Claims

4 Elements:

1. A Duty: a standard of care to protect students from unreasonable risk
2. Damages - lack of care resulted in student damage (or injury)
3. A Breach of Duty - or failure to conform to a standard of care
4. Proximate or legal cause - breach of duty caused student injury
Legal Duties

• Supervision
• Safe Equipment, Facilities, and Property—Inspections
• Proper Instruction
• Appropriate Response to Injuries
• Staff Training
• Follow laws, policies, regulations and rules
• Plan, foresee, and maintain records
Non-Employee Vehicle Drivers

• Students, parents, other volunteers, contractors—bussing services
• Signed consent and waiver?
• Insurance?
• Fingerprinting/Criminal Background Checks?
• Sexual Abuse and Reporting Training?
Athletic Clubs

• Do parents and students understand that it is a club and not a school sponsored sport?
  – Advertised in the school?
  – Do they use the school logo/mascot?
  – Do they identify themselves as the District’s team?

• Require club to follow facility use procedures like any other outside group.
Permission Forms and Liability Waivers

Common Form Problems:

• Doesn’t adequately describe activity (where, level of supervision, rules, transportation, etc.)
• Fails to emphasize voluntary nature of activity
• No signatures or dates
• OSBA/PACE Preloss has model forms!
• PACE Preloss review
Incident Report Forms

• One person should be designated to fill out the form
• Sign and date
• Identify all witnesses with titles and contact information
• Person with first-hand knowledge should fill out form
• Indicate what care was provided
• Store all incident report forms centrally
PACE PRELOSS

• Preloss legal assistance – available for issues that may lead to a claim under PACE coverage documents
• Legal assistance, up to approximately $1,000 per issue, is already paid for as part of premiums
• If a member consults an OSBA attorney for preloss assistance before terminating an employee (includes non-renewal), the deductible is waived on a claim arising from that termination
We’re here to help

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