

EMPLOYMENT AND ATHLETIC LIABILITY

**OREGON SCHOOL SAFETY OFFICERS ASSOCIATION
Annual Conference 2017**

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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.
- <http://www.oregon.gov/ode/students-and-family/equity/civilrights/Documents/TransgenderStudentGuidance.pdf>



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

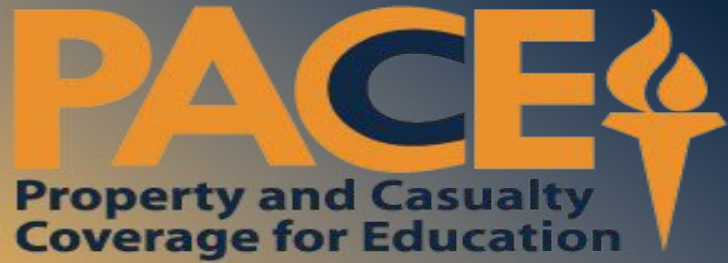
- One person should be designated to fill out the form
- Sign and date
- Identify all witnesses with titles and contact information
- Person with first-hand knowledge should fill out form
- Indicate what care was provided
- Store all incident report forms centrally



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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