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TO RENEW OR NOT TO RENEW: ADDRESSING COMPLAINTS AGAINST COACHES

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I. INTRODUCTION

From serious allegations of verbal or physical abuse to general unhappiness about playing time, athletic directors and other school administrators regularly receive complaints about athletic coaches from parents, students, and other members of the community. Separating the valid concerns of misconduct from the frivolous claims about coaching style can be a difficult task. As a result, school administrators must be prepared to address the complex issues that arise when parents and community members raise allegations against a coach. This presentation will provide guidance and practical tips for dealing with those complaints.

II. HIRING OF COACHES

A. Hiring.

1. **Unlicensed Coaches.** Pursuant to Minn. Stat. § 122A.33, a school district may hire an individual who does not have a bachelor's degree or a license

as a head varsity coach to fill a head varsity coaching position at a secondary school if the person:

a. Has knowledge and experience necessary to coach the sport as determined by the school board;

b. Can verify completion of six quarter credits, or the equivalent, or 60 clock hours of instruction in first aid and the care and prevention of athletic injuries; and

c. Can verify completion of a coaching methods or theory course.

B. Criminal Background Checks.

1. Minnesota law **requires** a school hiring authority to request a criminal history background check from the Bureau of Criminal Apprehension ("BCA") on "all individuals who are offered employment in a school." Minn. Stat. § 123B.03, subd. 1(a). This requirement also applies to individuals, except enrolled student volunteers, who are offered the opportunity to provide athletic coaching, regardless of whether compensation is paid. *Id.*

2. An applicant for a coaching position is not eligible to begin employment, and a volunteer coach is not eligible to begin providing services until the individual provides a completed (signed) "criminal history consent form" and a check or money order (payable either to the school or the BCA directly) in the amount of the actual cost of performing the criminal background check. Minn. Stat. § 123B.03, subd. 1(a).

   a. *Conditional hire pending completion of background check.* A school may hire an individual pending completion of a background check, but must notify the individual that employment may be terminated based on the results. A school is not liable for failing to hire or for terminating an individual's employment based on the result of a background check. Minn. Stat. § 123B.03, subd. 2(a).

   b. *Providing services pending completion of background check.* A school can allow a (volunteer) coach to provide coaching services pending the *completion* of the background check as well. Minn. Stat. § 123B.03, subd. 2(a).

   c. *Potential Defense to Liability.* Completion of the mandatory criminal background check, as well as a thorough reference check,

is evidence that might protect the school district against a negligence claim based on hiring the particular individual. *See, e.g., Doe 175 ex rel. Doe 175 v. Columbia Heights School District*, 873 N.W.2d 352 (Minn. App. 2016).

C. Preferential Treatment. School districts should be aware of hiring requirements imposed by statute or contract with respect to coaching vacancies.

1. Prior to 1998, a school district was required by statute to post a varsity head coaching position with its present teaching staff for 30 days before offering a head coaching position to an unlicensed individual. In addition, the position could not be offered to an unlicensed individual if licensed coaches had applied for the position. Despite this language, the statute was not interpreted to restrict a school district's inherent managerial authority to decide that a licensed applicant was not suited for a coaching position and select a qualified unlicensed coach. *In the Matter of Arbitration Between ISD 2358 and Minnesota Education Association,* BMS Case No. 93-PA-693.

2. School districts may be required by contract to give preferential treatment to internal candidates when hiring a coach. However, unless specifically barred by the language of a contract, a school district may still evaluate and determine the qualifications of an internal candidate and make a decision that the candidate is not qualified for a coaching position. *In Re ISD 861 and Winona Education Association,* BMS Case No. 06-PA-684.

III. COMPLAINTS

A. Investigating Complaints.

1. Listen to what the complainant has to say, but do not make judgments regarding the substance of the allegations or promises regarding the way that the investigation will be conducted.

2. Do not make statements that minimize the significance of the complaint.

3. Act promptly and appropriately.

4. Do not promise confidentiality.

5. Do not discuss the complaint with anyone but the person designated to process and investigate complaints in the school district.

a. Depending on the nature of the complaint, the district's policies may require you to report the complaint to a specific individual.

6. Assure the complainant that retaliation will not be tolerated and that the school district will take steps to ensure that retaliation does not occur.

7. Document the complaint. Make a written summary of what the complainant told you, your observations of his or her demeanor, the names of potential witnesses, and any other relevant information you may have.

8. If the district found it necessary to take corrective action, it should diligently monitor the situation to ensure that the offensive conduct ceases and no retaliation occurs.

9. The worst reaction to a complaint is to do nothing, or to be perceived as doing nothing. Although many complaints about coaches will fall into the playing time category of typical complaints, some will require more serious action.

   a. Failing to follow the district's reporting and investigation policies with respect to allegations of discrimination, harassment, hazing and other types of complaints may expose the district to liability.

B. Open Forum Complaints and Restrictions.

1. Public participation policy.

2. Establish guidelines by which an open forum can be conducted in a regular and internally consistent manner.

3. The school board retains the discretion to limit discussion of any item to a reasonable period of time as determined by the school board. If a group or organization wishes to address the school board on an agenda item, the school board should reserve the right to require designation of one or more representatives or spokespersons to speak on behalf of the group or organization.

4. Personal attacks by anyone addressing the school board are unacceptable. Persistence in such remarks by an individual shall terminate that person's privilege to address the school board.

5. The school board should reserve the right to impose such other limitations and restrictions as necessary in order to provide an orderly, efficient and fair opportunity for those present to be heard.

IV. NONRENEWAL OF COACHING ASSIGNMENTS

A. Notice and Hearing Rights. Prior to 1978, coaches were not entitled to notice and or a hearing prior to termination or nonrenewal of a contract, even if they were terminated midseason. *See Stang v. Independent School District No. 191*, 256 N.W.2d 82 (Minn. 1977); *Chiodo v. Board of Education* 215 N.W.2d 806 (Minn. 1974); *In the Matter of Hahn*, 386 N.W.2d 789, 791 (Minn. App. 1986).

B. Nonrenewal of a Coaching Contract. "[A] person employed as a head varsity coach has an annual contract as a coach that the school board may or may not renew as the board sees fit." Minn. Stat. 122A.33, subd. 2.

1. Notice. If a school board declines to renew the coaching contract of a head varsity coach, the coach must be notified within 14 days of the decision. If the coach requests reasons for the nonrenewal of his or her contract, the board must give the coach its reasons in writing within ten days of receiving the request. Minn. Stat. § 122A.33, subd. 3.

2. Opportunity to respond. Upon a coach's request, a school board must provide a coach with a reasonable opportunity to respond to the reasons for the nonrenewal of the coach's contract at a board meeting. Unless the meeting is closed pursuant to the provisions of Minnesota's Open Meeting Law related to private data, the coach may request an open or closed board meeting. Minn. Stat. § 122A.33, subd. 3.

3. *Christopher v. Windom Area School Board*, 781 N.W.2d 904 (Minn. App. 2010). In this case, a coach challenged the school district's decision not to renew his contract as head boys' basketball coach. Among the issues raised by the coach were allegations that the school district violated his rights outlined in Section 122A.33 and his constitutional due process rights because he was entitled to and did not receive the right to have his case heard before a neutral hearing officer, to "confront his accusers," or to subpoena witnesses in his own defense during the school board's nonrenewal process.

a. The Court rejected the coach's contention that he was entitled to rights related to a hearing before a neutral hearing officer because the plain language of Section 122A.33 offered limited rights that were honored by the school district.

b. The Court also rejected the coach's argument that the denial of a hearing before a neutral hearing officer violated his due process rights because he did not have a property interest in his coaching position. Since the coach's position was by annual appointment, any property interest he had in his coaching position ended when his annual contract ended.

C. 2013 Revision to Law.

1. "The existence of parent complaints must not be the sole reason for a board not to renew a coaching contract." Minn. Stat. § 122A.33, subd. 3.

2. Enacted after high-profile coaches were ousted based on demanding parent complaints as an attempt to remove power from parents. This law is believed to be the first of its kind in the nation.

3. Despite this language, the United States District Court for the District of Minnesota still held that Section 122A.33 does not create any property interest in a coaching position beyond the expiration of the annual contract. *McGuire v. Indep. Sch. Dist. No 833*, 146 F.Supp.3d 1041 (D. Minn. 2015). In so holding, the court concluded that the "parent complaints" language was merely "informational." The *McGuire* case has been appealed. Briefing has been completed, but oral argument has not yet occurred.

V. TERMINATION OF COACHING DUTIES

A. Termination of Coaching Duties. A school board may terminate the coaching duties of an employee who is required to hold a license as an athletic coach from the Commissioner of Education, as it sees fit, for any reason which is found to be true based on substantial and competent evidence in the record. Minn. Stat. § 122A.58, subd. 2.

1. Notice. Before a school district terminates the coaching duties of an employee who is required to hold a license as an athletic coach from the Commissioner of Education, the district must notify the employee in writing and state its reason for the proposed termination. Minn. Stat. § 122A.58, subd. 1.

2. Hearing. A coach may make a written request for a hearing on the termination before the school board within 14 days of receiving notification of the termination. The board must then hold a hearing within

25 days. The termination is final upon order of the board after the hearing. Minn. Stat. § 122A.58, subd. 1.

a. The hearing procedures mirror those found in Minn. Stat. § 122A.40, subd. 14. Both the board and the coach may be represented by counsel at their own expense. Counsel may present arguments and examine and cross-examine witnesses. The board must first present evidence to sustain the coach's termination and then receive evidence presented by the coach. Each party may then present rebuttal evidence. The clerk of the board has the authority to issue subpoenas for witnesses and production of records at the request of either party or the board is required to employ a court reporter to record the proceedings at the board hearing.

b. ***In the Matter of Hahn***, 386 N.W.2d 789 (Minn. App. 1986). The notice and hearing requirements of Minn. Stat. 122A.58 do not apply in situations where a school district decides not to renew a contract for coaching duties and does not terminate the duties during the life of an existing contract.

c. ***Buecher v. Independent School District No. 623***, 2002 WL 64454 (D. Minn. 2002). Minn. Stat. § 122A.58 does not apply to a coach who is not employed by a school district as a teacher required to hold a license from the state. In this case, there was a dispute about whether a head swimming coach employed by a school district for nearly 20 years had a property interest in his coaching position for the purpose of asserting a claim that the coach's due process rights were violated when he was terminated. The Court declined to answer this question because it determined that even if the coach had a property interest in his position, the district afforded him adequate due process when it gave the coach written notice it was investigating allegations against him, gave the coach verbal notice of specific charges against him in a face-to-face meeting in which the coach had an attorney present to assist him, and offered the coach an opportunity to respond to charges against him at a school board meeting he ultimately decided not to attend.

d. **Decision.** The board must issue a written decision regarding the termination within ten days after a hearing. If the board decides to terminate the coach's coaching duties, the decision must state the reason on which it is based and include findings of fact based upon competent evidence in the record.

VI. DISCIPLINE

A. Procedure. If coaching positions fall within the ambit of an applicable collective bargaining agreement, any procedural requirements outlined in the contract for the imposition of discipline must be followed. School districts must also be mindful of due process protections.

1. School districts may be required to abide by their own disciplinary due process policies and provisions that may be construed to apply to coaches.

2. Coaches generally have a constitutionally protected property interest in their positions during the life of a coaching contract. Thus, school districts should ensure that any disciplinary proceedings comport with the minimum due process requirements of fair notice and fair hearing.

B. Discretion. It is primarily the function of management to determine the proper penalty after it has been determined that an employee has violated a rule or engaged in conduct warranting disciplinary action. *See, e.g., In the Matter of Arbitration Between ISD No. 728 and Elk River Education Association,* BMS Case No. 11-PA-0395.

1. Management should act in good faith upon a fair investigation and impose a penalty that is consistent with discipline applied in other similar situations.

2. As a general proposition, discipline will not be set aside or modified unless management has abused its discretion to determine a proper penalty through engaging in discriminatory, unfair, or arbitrary and capricious action.

VII. DEFAMATION CLAIM BY COACH AGAINST PARENT

A. *McGuire v. Bowlin*, 932 N.W.2d 819 (Minn. 2019), *settled in June 2022 for $50,000*.

1. Facts: McGuire was a high school girls' basketball coach from 2012 until 2014. While he was a coach, the parents of several students complained about his conduct, including allegations that he swore at practice, touched players in inappropriate ways, and flirted with players. The school district ultimately placed McGuire on paid administrative leave and non-renewed his contract. Even after he was no longer a coach, one of the parents continued to make negative statements about McGuire, including e-mailing a newspaper article to another parent and stating that McGuire

was involved in a crime mentioned in the article. McGuire ultimately sued the complaining parents for defamation. The trial court granted the Defendants' motion for summary judgment on the grounds that McGuire was a "public official" and there was no evidence that the Defendants "knowingly or recklessly" made false statements about him.

2. **Issue:** The only issue considered by the Minnesota Supreme Court was whether McGuire, as a high school basketball coach, was a "public official" for purpose of defamation claims.

3. **Holding:** The Minnesota Supreme Court held that McGuire was not a "public official." It reasoned that the "interest society has" in basketball coaches' duties, including supervising team decisions and strategies, scheduling games, and oversight of the basketball program, does not overcome the interest in protecting an individual's reputation. Therefore, McGuire could not be considered a "public official." McGuire's claims against three of the Defendants were dismissed on other grounds, but the claim against the fourth Defendant was allowed to proceed.

4. **Post-Supreme Court Proceedings.**

On July 12, 2022, the Parties settled the case over six-and-one-half years after the original complaint was filed. As part of the settlement, the parent also gave the coach a signed three-page letter admitting that her allegations regarding him were false. This included specific admissions that she had lied about the coach- including allegations that he inappropriately touched, pushed, or bullied her daughter.

VIII. CAMPS AND CLINICS

A. Compliance with the District's Facility Use Policy. The school district should require the coach to follow the school district's facility use policy if the camp or clinic is to be held on school district property.

B. Liability Insurance. If the district's facility use policy does not require a user to obtain liability insurance, the district should condition a coach's use of school facilities for a for-profit camp on obtaining liability insurance in which the school district is named as an additional insured.

C. Require Written Disclaimer of District Sponsorship. Since the coach is going to be responsible for all aspects of the camp or clinic, including hiring staff, supervising campers, etc., the district should require that all written materials and presentations regarding the camp or clinic clearly state that the camp or clinic is

not sponsored by the school district and that the school district will not be liable for any accidents or injuries that occur at the camp or clinic.

1. If the district is found to be a sponsor of the camp, it may be liable for injuries incurred by students participating in the camp. *See, e.g., Verhel v. Independent School District No. 709*, 359 N.W.2d 579 (Minn. 1984). The district may also be responsible for providing accommodations to disabled students participating in the camp, if it is found to be a school-sponsored activity. *See, e.g., Indep. Sch. Dist. No. 12 v. Minn. Dept. of Educ.*, 788 N.W.2d 907 (Minn. 2010).