

MANAGING CRISIS BEFORE THE CRISIS



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CRISIS HANDLING IN CASES **INVOLVING STUDENT ATHLETES**

I. EXAMPLES OF POOR CRISIS HANDLING.

A. STUDENT RACIAL GESTURES

December 9, 2021

During a basketball game between Elmont Memorial High School and Mephram High School, a crowd member made a racist gesture aimed at the Elmont players. According to a post on Facebook group, someone in the Mephram stands Tuesday night called out: “Here monkeys, come and get it” while holding a bunch of bananas.

Bellmore-Merrick Central School District Superintendent Michael Harrington told parents in a letter that the incident was an “unfortunate and unacceptable act of behavior.” Harrington said the district “acted upon this situation immediately.” While Harrington wouldn’t detail specific discipline, the student got a three-day suspension.

Mephram superintendent Harrington said he reached out to officials at the Elmont School District and offered apologies. “We deeply regret the hurt and harm that this incident caused the Elmont community and members of our own community.” Harrington said.

Harrington wants parents to have a heart-to-heart conversation with their children about the harmful effects of racism and intolerance. “We are fully committed to providing an instructional setting that promotes an environment that is respectful and inclusive of all and does not accept racism, intolerance or discrimination of any type.”

B. SEXUAL MISCONDUCT BY TEACHERS AND COACHES

December 8, 2021

The school board in the bayside village of Babylon, on Long Island, sent out a letter that said an unidentified teacher had been removed from his post, pending an investigation into unspecified “disturbing allegations.”

Brittany Rohl, 28, who graduated in 2011, sent her own letter detailing a relationship with a married teacher who she said had begun grooming her when she was 16 years old. They began a sexual relationship shortly after her 18th birthday, she said.

Ms. Rohl said that she had asked to read the letter aloud virtually from her home in Gainesville, Fla., at a school board meeting on November 15 that the board had denied

her request, saying only people who were physically present could speak, Ms. Rohl said. So she booked a plane ticket to New York.

At the board meeting, Ms. Rohl found she was not alone. Over a dozen alumnae followed her remarks at the podium. One after another, they spoke of sports coaches who had touched them inappropriately when demonstrating techniques, teachers who had texted privately with students and had them at their homes unsupervised, and a predatory culture so well-known that older girls would warn incoming seventh graders which teachers they should stay away from.

After the meeting, which stretched past midnight, five additional teachers were placed on paid leave while the concerns were being investigated. No charges have been filed relating to any of the allegations.

Linda J. Rozzi, the Babylon schools' superintendent, did not respond to an email requesting a response to the allegations.

Deirdre Gilligan, a spokeswoman for the school district, declined to respond to any specific allegations, including claims that school officials, including the superintendent, had known about the issues for years and had done nothing. In an email, Ms. Gilligan said little more than that the school district had received the reports and was investigating.

"The district does not tolerate abuse of any kind, takes all allegations very seriously and is committed to acting upon each and every claim we receive," Ms. Gilligan wrote in a statement. "We commend the brave individuals for coming forward and sharing their voices."

The New York Times contacted the six teachers who were placed on leave, as well as other teachers who have been accused of wrongdoing, but did not receive responses from any. The Times is not naming those who have been accused because they have not been criminally charged and the accusations are still under investigation.

The school district has taken some steps to try to address the allegations. This month, the Crime Victims Center, a Long-Island based nonprofit group that advocates for victims, will begin providing sexual harassment training for all school personnel. The center will also conduct training for employees on their obligation to report child abuse or neglect; under New York State law, all school staff members who have contact with children must report such claims. The rule has been in effect for teachers since 1973.

Still, calling the reports "troubling," Letitia James, New York's attorney general, announced an investigation into the high school last month.

A tennis coach was investigated by the school after a student accused him of things like tapping students on the behind and lifting their skirts with his racket.

The coach was removed from his position with the tennis team but remained a teacher of special education.

C. DEATH AT FOOTBALL PRACTICE
August 18, 2017

In August 2017, several football players watched in horror as a 400-pound log struck a football player on the head during a preseason conditioning practice on the field killing him instantly.

The junior player, and several other athletes were attempting a conditioning exercise used to train Navy SEALs, which involved carrying a 400-pound log above their heads. But SEAL training teams of five or more men typically lift logs that weigh about 200 pounds – and the Sachem football players were teenagers, not military recruits.

Several of the coaches declined to comment for this article – including the head coach, Mark Wojciechowski. After initial inquiries by The New York Times about safety protocols to Dr. Ken Graham, the superintendent of the Sachem Central School District, a communications consultant said in an email that the district was not involved in the training camp. Though the practice took place on the school's field and included the school's coaches, it was overseen by the Sachem East Touchdown Club, which raises money for the football club. The president and vice president for the club did not return calls requesting comment.

The Sachem Central School District said in a statement on Wednesday that it “will assess the status of the team's activities over the course of the next several days.” The district said that in addition to a police investigation, an internal district investigation had been opened.

There was deep anger at the news media, a student said, “and the news reporters invading everybody's privacy.” “It's not completely wrong to ask for information,” she said, “but showing up and filming everybody outside the funeral, that's not right.”

D. HIGH SCHOOL FOOTBALL HAZING – LOCKER ROOM
November 8, 2014

Groton, New York, this community came to grips with what some call a culture of hazing. In Groton almost all agree that two high school upperclassmen who used an unsupervised locker room as an arena to haze and bully a freshman teammate went far beyond any reasonable limits and into criminality.

Superintendent James Abrams, who as head of the district has taken responsibility for the messaging related the crimes on the high school campus.

On September 10, a warm, overcast Wednesday afternoon, more than a dozen athletes went about their normal locker room routines. Then in one row, two teenagers took hold

of a teammate, subdued him in a double arm bar and, acting together, repeatedly harassed and subjected the victim to physical contact that made him fear injury, according to court records.

Abrams recorded an audio message that a hazing incident had occurred at the high school, and broadcast that message to the phones of every parent in the school district.

Instead of bringing calm, the attempt at transparency backfired in the eyes of many. Parents of football players scrambled for information from their sons about what happened, and whether their child was involved – either as perpetrator or victim – and left space for everyone else in the district to form their own supposition.

School officials responded by canceling that Friday's football game.

Parents of football players allege school officials took an overly aggressive approach to discovering evidence, sometimes using intimidation and not doing enough to dispel the notion that all players were guilty.

Some felt a misdemeanor charge for the two young men fell far short of justice. A dean of Cornell University said: "Sometimes we just kind of say, "this is what happens, this is part of growing up. I did it, so it's OK if you do it," he told parents and Groton community members during a presentation organized to inform town members about the dangers of hazing.

After the first divisions started to spread in Groton following the revelations in September, some parents created a large banner with the school logo and assurance that "varsity football has our support."

Abrams and the school district announced a committee led by athletic director Billie Downs to revise the code of conduct to more explicitly lay out language, expectations, mechanisms to prevent recurrences.

"In any crisis, there is always looking back. Those closest to it have looked at what our actions were and how we responded and now we are trying to learn from them." James Abrams, Superintendent.

He expects the revised code will define what is considered hazing and provide structures to address responses to future problems. He said the committee is looking for feedback before it gets sent to the board, which would need to approve any measures. He expected recommendations to be ready by January.

The district hired an outside investigator to look into the culture of hazing among students, and to whether adult football coaches had direct knowledge of the bullying or should have known that bullying was taking place.

Abrams did not know when that investigation would be complete.

E. FOOTBALL COACH ABUSE
November 17, 2016

He was the head football coach at an elite prep school. He was also a serial pedophile who openly terrorized students for twenty-five years. So why did nobody stop him? He served as a manager for the varsity squad. When Foglietta took Poly to the Ivy Prep School league championship, he was widely regarded as one of the best high school football coaches in New York City.

A 2009 lawsuit accused Foglietta of sexually abusing students throughout his quarter-century tenure at Poly Prep.

He abused them at his house upstate, in Highland Falls, where he took kids from school on the weekends. He abused them at Poly Prep: in the showers, in the dirt-floor gym, in the squash courts, and in the big green Chevy Impala he parked on a side street near school.

Foglietta tried to sexually assault a player. The player pushed the Coach away, hard, and took a swing at him. Student and his parents met with William Williams, the headmaster of the school, and Harlow Parker, the dean of students and head of athletics. When the player told Williams and Parker that Foglietta had “tried to jack him off,” the headmaster and dean called him a liar in front of his parents. The administrators threatened to expel him if he persisted in spreading rumors.

About a year later, the player and his parents met with Williams and Parker a second time. This meeting came about after he reported seeing several boys masturbating and fellating Foglietta in his green Impala. Williams and Parker again denied the allegations. They told the parents that their son was on “thin ice.”

Williams said that he talked to a few teachers at the school but otherwise conducted no investigation. “It was inconceivable to us that Foglietta would do something like that,” he said. “He didn’t seem like the kind of guy who would do that, not at all.” Williams said that he, too, had seen Foglietta with kids in his car, but he believed there was nothing nefarious about it. “He took kids to games. He took kids to go get hamburgers,” he said. “If you can find a teacher that does that in a day school, you’re lucky.” Williams concluded, “The boy just did not seem credible to us.”

An eighth grader on full scholarship continued to report other incidents of abuse, even though his parents believed the school and had warned him not to squander the opportunity that Poly represented. Ultimately, the school board decided that the student was a troublemaker who was not meeting his obligations as a scholarship student. He was asked not to return for his sophomore year.

Foglietta retired in a blaze of glory at the end of the 1991 academic year. He was feted by the school and the alumni association at an event held at the Downtown Athletic Club, which Williams, Andersen, and Esposito – who took over as head coach – all attended.

The new headmaster, David Harman, was quickly confronted with the unfinished business of decades. Two years after Harman became headmaster, a lawyer sent Harman a letter that reiterated the accusations his client had made in 1991. He wanted an investigation. The same year, another student wrote a letter to Harman describing the circumstances of his own abuse.

Poly's board of directors asked Williams to write down what he remembered about the accusations he'd heard during his time as headmaster. The Poly Prep board hired a lawyer named Peter Sheridan to conduct an investigation into the allegations against Foglietta.

In October, about a month after the investigation began, Harman wrote a letter to all alumni. He said he'd "recently received credible allegations" about Foglietta's abuse. The Sheridan investigation, he wrote, was ongoing, and he insisted on his and the board's "firm intention to address this subject on a foundation of trust." But this misleading disclosure was built on sand. The allegations that Harman called "recent" were disclosed to alumni four years after Foglietta died, eleven years after a parent sent his letter, thirty years after the first student and his parents first complained to Williams, and thirty-six years after another student first sounded the alarm. Worse, the school did not permit Sheridan to complete his investigation, and no formal report was ever prepared.

In 2009, Paggioli and several other plaintiffs – twelve eventually joined the case, some of them as John Does – filed a lawsuit. Instead of alleging abuse, the plaintiffs charged Poly Prep under federal racketeering laws. They alleged that the school had engaged in a forty-year criminal conspiracy to cover up Foglietta's sexual abuse. The coach, they said, had abused "dozens if not hundreds of boys" while the school's administrators, they claimed – including Williams and Harman – had "knowledge of Foglietta's sexual abuse of numerous boys at or near Poly Prep."

The racketeering case was settled in December 2012, but only after a scorched-earth legal process that left many alumni bitter. During the proceedings, the plaintiffs requested access to the investigation that Peter Sheridan had conducted in 2002, along with his notes. Poly Prep's lawyers insisted at first that Sheridan's investigation was privileged, and then that it was preliminary.

F. WHAT IS A MONELL CLAIM?

Monell v. Dep't of Soc. Servs., 436 U.S. 658 (1978).

The City of New York, its Mayor, its Department of Social Services, the Department's Commissioner in his official capacity, the City's Board of

Education, and the Board's Chancellor were sued by a class of female employees of the Department and the Board. The gravamen of the complaint was that the Board and the Department had, as a matter of official policy, compelled pregnant employees to take unpaid leaves of absence before such leaves were required for medical reasons, and that the defendants were thus liable under *42 USCS 1983*, which imposes civil liability on every "person" who deprives another of his federally protected rights. The Supreme Court held that local governments, municipal corporations, and school boards were "persons" subject to liability under 1983, and thus were not wholly immune from 1983 suits; that as "persons" subject to liability under 1983, local governing bodies could be sued directly for monetary, declaratory, or injunctive relief where the action that was alleged to be unconstitutional implemented a policy statement, ordinance, regulation, or decision officially adopted by that body's officers, or where constitutional deprivations were visited pursuant to governmental "custom," even though such custom had not received formal approval through the body's decision making channels.

II. MANAGING MEDIA IN CASES INVOLVING STUDENT ATHLETES

A. PRE-INCIDENT PLANNING: Hold a crisis planning meeting

1. CHECKLIST:

- a. Appoint a spokesperson or team ahead of time. Head of Athletic Department, Coaches, Superintendent of School or Principal of School.
- b. Alert broker/carrier. Assemble list of insurance contacts and cell phone numbers and emails and get information.
- c. Assemble a legal team. Pre-approve experienced attorneys. Obtain counsel's cell phone numbers.

2. WHO WILL BREAK THE NEWS?

- a. Attorney/legal team? Who on the legal team? Senior or named partner?
- b. The police department? Coach, Head of Athletes, Superintendent of Schools? Principal? School Board President?
- c. The news media? Does the school have a media consultant?
- d. Who will participate in the news conference? In what order?

- e. Obtain employees involved? No statements from employee involved in the accident to the press.
- 3. HOW, WHEN AND WHERE WILL THE ANNOUNCEMENT BE MADE.
 - a. At the scene?
 - b. At school?
 - c. At hospital?
 - d. Choose a setting.
- 4. DETAILS OF THE INCIDENT.
 - a. LESS IS MORE.
 - b. Defer public statement until more facts are released through a thorough investigation.
 - c. Acknowledge only known facts.
 - d. Do NOT prematurely take a position before all facts are in.
 - e. SAMPLE LANGUAGE:

“This is what we know so far. It’s too early to determine the cause, but we are investigating it and are devoting all necessary resources to it. Reasonable and proper safety precautions have been taken, to protect the student body, and there is no continuing danger to the public. We will provide updates as we get more information.”
- 5. HOW CLOSE TO ALLOW THE MEDIA TO THE SCENE?
 - a. Conference with legal team and employees involved.
- 6. MANAGE TEAM AND SCHOOL’S SOCIAL MEDIA.
 - a. Put social media policies in writing.
 - b. Constantly train on proper social media usage.
 - c. Monitor social media presence.
 - d. Advise employees about their verbal and written communications and/or a letter. They have legal privileges.

- e. Consider a social media SHUTDOWN or BLACKOUT.
- 7. CONSIDER SUSPENDING EMPLOYEES INVOLVED, WITH OR WITHOUT PAY.

B. IMMEDIATELY POST INCIDENT

- 1. SHUT DOWN COACHES, TEACHERS AND STUDENTS FROM INTERVIEWING AND DISCUSSING TOPICS ON SOCIAL MEDIA OR HAVING ANY DISCUSSIONS WITH THE MEDIA.
- 2. MONITORING OF SOCIAL MEDIA.
 - a. Consider calling a pre-screened public relations company.
 - b. Carefully choose language in all contact with press i.e., interviewed and press releases.
 - c. Inform coaches and athletes of the legal status of their communications.
 - d. Explain the risks of “casual” email conversations.
- 3. PRESERVE EVIDENCE.
 - a. Documents:
 - i. Issue document hold orders to suspend routine records destruction (See page 13)
 - b. Duty to preserve electronic mail. Review source of electronic media including emails and other internal data boxes.
 - c. Witnesses:
 - i. Identify and interview witnesses, consider hiring outside law firm or investigator to do so; pre-approve investigator, preferably retired police officers familiar with procedure.
 - ii. Instruct witnesses on privileges, creation of new documents and email;
 - iii. Determine use of internal investigation;
 - iv. Respond to investigative agency requests or subpoenas;
 - v. Collect and manage relevant documents including electronic records.

- d. Videos:
 - i. Obtain and preserve.

EXAMPLE:

- e. Spoliation – The Village of Pomona in Rockland County was ordered to pay \$42,940 in attorney’s fees based on a federal judge’s finding last year that two village officials knowingly destroyed evidence in a zoning and land-use case.

The fee award followed the Court’s finding that the Mayor and former village trustee were guilty of spoliation of evidence for destroying a Facebook page and related materials germane to the underlying case. This represented a “rare case where bad faith, and a clear intent to deprive plaintiffs of evidence at issue, was sufficiently clear from the face of the record” for him to grant the sanctions. The fees pertain to the plaintiffs’ cost of pursuing the sanctions for spoliation.

C. GENERAL ADVICE

- 1. Pre-plan.
- 2. Control the narrative.
- 3. Accommodate reporters.
- 4. Compassion and sympathy to all. DO NOT respond with denials, blame shifting.
- 5. Never panic, never lie.
- 6. Never respond “NO COMMENT”.
- 7. Never use bad language or criticize the media.
- 8. DON’T SPEAK OFF THE RECORD. There is no “off the record”.
- 9. Always have a crisis plan.

D. POST CRISIS ANALYSIS

- 1. Revise existing crisis response plan as needed.
- 2. Conduct crisis post mortem and make needed changes to procedures.

3. Prepare “lessons learned” evaluation of the crisis.
4. Evaluate insurance needs and policy limits.
5. Consider need for public relations consultant – on retention.
6. Consider additional athletes and coaches employee training.
7. Consider additional preventive legal counseling.

E. CRISIS PREVENTION

1. Hold workshops on crisis prevention. Instruct athletes and coaches about legal issues arising from what they do on a daily basis.
2. Implement crisis response plan.
3. Conduct crisis response drills.
4. Review and update compliance programs.
5. Conduct audit of “high risk” incidents.
6. Review procedures for document retention.
7. Advise employees how to write incident reports.
8. Advise coaches and athletes on the document retention policy.
9. Advise coaches and athletes on proper social media usage and media contact.

III. LEGAL HOLD LETTER

A. Preservation of Evidence

1. Send to all individuals who may have direct knowledge or be in custody of documents related to the matter.
2. Ask each individual:
 - a. To preserve all documents, whether in electronic form or paper form, potentially relevant to the claim;
 - b. Conduct a search for any and all potentially relevant documents and gather them in one location; and

- c. To identify all other individuals employed by the municipality who may have direct knowledge or potentially relevant documents.
2. Documents include, but are not limited to, the following:
 - Letters
 - Contracts
 - Memoranda
 - Spreadsheets
 - Images
 - Emails
 - Voicemails
 - Text messages
 - Calendar entries.
3. The destruction of relevant documents is prohibited and the failure to comply could result in disciplinary action, such as dismissal and/or civil or criminal penalties.
4. Documents should be preserved until further instruction.
5. Documents should NOT be created in order to provide the requested information.
6. Send throughout the litigation.

B. Example of Legal Hold Letter



101 GREENWICH STREET
22ND FLOOR
NEW YORK, NEW YORK 10006
(212) 766-1888
FAX (212) 766-3252
WWW.MDAFNY.COM

2022

Attn:

RE: Date of Loss: December 16, 2016

Dear _____:

Please be advised that _____ has assigned us to represent the School District in the above referenced claim.

You have received this letter because you have been identified as someone who may have direct knowledge or custody of documents related to this matter. It is incumbent upon you to preserve all documents potentially relevant to this claim. If you are aware of any other individuals employed by the School District who may have potentially relevant documents, kindly notify this office immediately so that we may send a similar letter to said individual.

The destruction of documents pertinent to litigation, audit or investigation is strictly prohibited. Compliance with this request requires your immediate attention. Employees who fail to comply are subject to disciplinary action, including dismissal, in addition to potential civil or criminal penalties.

Documents may include letters, contracts, memoranda, notes, presentations, spreadsheets, graphs, animations, images, e-mail messages and attachments, voicemail, instant messages, word processing documents and calendar entities, and it does not matter whether these documents are stored on a hard drive, network database, network drive, back-up tape, laptop, thumb-drive, CD ROM, DVD or similar removable storage media, home computer, mobile phone, smart phone or mobile device (such as a Blackberry, iPhone or iPad).

ALL DOCUMENTS MUST BE PRESERVED.

- Do NOT delete e-mails or electronic files relating to the matter (whether sent or received);
- Gather all of your paper documents in one location and remember nothing can be discarded;
- Nothing may be deleted from your network drive or local hard drive (i.e. laptop or PC) relating to this matter; and
- Voicemails related to the matter must be preserved.

When in doubt, DO NOT delete or discard. Be reminded that we are required by law to take these steps. It is important that you adhere to the Legal Hold until you receive further instructions. You are required to conduct a diligent search even if you don't find any responsive documents, electronic files or e-mails. You should not create documents in order to provide the requested information.

If you have any questions or concerns with regard to the Legal Hold, please contact me immediately. Thank you in advance for your cooperation and attention to this important matter.

Very truly yours,