

## **New Administrative Concerns: Hiring Off-The-Street Coaches— Staffing Salvation or Legal Liability?**

***Robin L. Chambers\****  
***Kent State University***

### **■ ABSTRACT**

Athletic departments are now in an era where the employment of part-time coaches has become a necessity in order to provide sufficient numbers of staff for their teams. Part-time coaches include any person who serves in a salaried and titled coaching position, either as an off-the-street coach (not a school employee) or as an in-house teacher for a grade or subject, who is assigned coaching duties. This need to employ part-time coaches comes at the same time that more athletes, when they become injured, are taking legal action against physical activity supervisors. Thus, the greater demand for coaches comes at a time when coaching decisions have greater consequences for employers. This article discusses the current status of coaches within the high school setting, the legal history of liability, and administrative policies which should enable schools to employ effectively both full-time staff members, certified to coach, and part-time coaches.

### **■ INTRODUCTION**

Since the late 1970's, many changes have occurred in the school systems and within athletic departments. Some of these modifications have taken place because more lawsuits than ever before have been directed at school administrators when students have been injured in physical activities (Maloy, 1988). Additionally, there is a serious shortage of qualified and "willing to participate" coaches. These new problems have created great concern for athletic administrators. On the one hand administrators are trying to present a safe, injury-free and competitive environment for athletes, while on the other hand, many are experiencing greater difficulty adequately staffing their athletic teams.

To address the problem, differentiated staffing (which has included using various kinds of coaches), beyond the use of the "traditional" PE teacher-coach, has been attempted. The first group includes using the inexperienced. For example, assigning in-house staff (such as certified subject teachers with no experience in coaching) or the hiring of applicants from outside of the school on a part-time basis (who may or may not be certified or experienced), has been instituted by many athletic departments. All part-time coaches who are not in a full-time, in-house position at a school would be considered as "off-the-street" coaches (Sisley, 1985).

**\* Editor's note:** Robin Chambers passed away in the summer of 1990. This issue of *JLAS* is dedicated in her memory.

The second category of coaches includes ex-athletes without teaching credentials or interested applicants without any formal education or course work in coaching. If liability is charged, the court may look upon this second group as being less qualified than the first (Horine, 1985). Administratively, it might be a wiser option to hire a credentialed teacher or a certified non-teacher than to employ a person from any of the other groups. Additionally, there is a third option for administrators, which might include the dropping of non-staffed sports from the program.

While the employment of individuals on a part-time basis may be a risky proposition at best, part-timers can offer a number of benefits (both financially and opportunity-wise) for an athletic department. They can be experienced and enthusiastic and may possess generative qualities and ideas. As Frost, Lockhart and Marshall (1988) have suggested, part-time staff are also generally less expensive to employ, can work non-traditional hours, and many times have certain expertise which the regular staff do not possess.

### ■ WHO ARE THE COACHES IN OUR SCHOOLS?

Although national standards for coaches for school-aged children have not been established, during this past decade, various researchers have attempted to determine the minimum requirements for coaching in various states. In 1980, Noble and Sigle surveyed 34 states and found that all allowed non-teachers to coach and in 20 of those states, the minimum requirement to coach was that the athletic staff person be at least 20 years of age. Further support for a lack of standard employment requirements or policies for coaches was found by Seefeldt and Gould (1980). They reported that in all but seven of the 43 states surveyed, a non-credentialed individual could be employed by a school system.

More recently, Nasstrom (1985) investigated the existence of non-faculty coaches in small high schools. The respondents in this study indicated that in order to maintain their athletic programs, these schools had to use non-faculty coaches. If hired from the "outside" these coaches quite often came into the institutions with very little understanding of training and conditioning principles, specific sport techniques, the exercise sciences, or coaching psychology (Odenkirk, 1986).

In a study conducted at Penn State, 85% of the 48 respondent states reported that they employed off-the-street coaches and only 29% of these states required their part-time coaches to obtain a state-issued coaching certificate (Sabock & Chandler-Garvin, 1986). Additionally, Sisley and Weise (1987) reported that only half of the states require a teaching certificate (for any type of coach) and 12 states require neither a coaching nor a teaching certificate in order to be employed as a coach.

### ■ THE ISSUE OF COACHING CERTIFICATION

A coaching certification or endorsement is designed to provide a minimum of professional preparation for those coaching junior and senior high school participants (Frost, Lockhart, & Marshall, 1988). In recent years, there has been an increased nationwide effort to require the certification of volunteer and off-the-street coaches (Oglesby, et al, 1987; Engh, 1988). Although AAHPERD suggested coaching standards be adopted as early as 1971 (Adams, 1979) and several states have proposed legislation which would require certification (Blodgett, 1986), there

has been considerable opposition to these recommendations.

Opposition to mandating certification has remained strong due to the already existing coaching shortage (Horine, 1985; Odenkirk, 1986; Johnson, Anderson & Jahas, 1986; Olson, et al, 1987). This situation would be exacerbated through the time needed for course work and expense of the schooling, none of which is currently guaranteed through release time or pay incentives. Finally, certification can only be used as a monitoring tool as it cannot insure the competence of a coach. This is especially germane in regard to the subjective methods used to verify gained coaching competencies (Sisley & Weise, 1987). Within the present systems employed, a coaching endorsement can only be used to document that certain competencies have been met.

## ■ LEGAL OBLIGATIONS

At one time, the use of non-certified or inexperienced coaches was considered a stop-gap measure by athletic departments. Now it is a necessity, as administrators are faced with the philosophical problem of either staffing with inexperienced personnel or reducing the program (NCSSAD, 1985).

This dilemma is usually solved by hiring less than qualified coaches. Kelley and Brightwell (1984) concluded that the decisions ranging from the planning and establishment of training and conditioning programs to the treatment of injuries have now come under the care of persons without adequate training. These coaches, not all of whom are inexperienced or uncertified as teachers, may be placing their athletes at risk because of their poor professional preparation (Sisley & Weise, 1987).

In most states, coaches are held to the duty of ordinary, prudent professionals, and injured students can sue for mere negligence. In a few states, such as California (*Wright v. Arcade School District*, 1964) and Illinois (*Woodman v. Litchfield*, 1968), the legislatures have extended to their state school employees provisions that guarantee immunity for ordinary negligence when a professional is acting *in loco parentis*. In those situations, in order to receive an award or to establish fault for damages, plaintiffs (the injured student or his or her guardians) must argue willful and wanton conduct of their supervisors. The courts have defined willful and wanton as those circumstances in which the supervisor demonstrates an absence of care for the life, person or property of others or exhibits indifference to potentially injurious consequences (*Krug v. Walldren*, 1919). In the landmark case of *Kobylanski v. Chicago Board* (1976), the court ruled that while institutional staff cannot be charged with guaranteeing pupil safety while acting *in loco parentis*, they must not inhibit the possibility for a safe activity environment through their acts of commission or omission.

The supervision of participants and the supervisor's own conduct during the activity potentially pose the most severe liability problems (Maloy, 1988). If an injury does occur, the courts have traditionally examined the quality (*Bernesak v. Catholic Bishop*, 1980) and the nature (*Barth v. Chicago Board*, 1986) of the supervision which was provided. This has included issues of quality and quantity, such as whether the personnel were adequately trained to assume the duties assigned or if there were a sufficient number of supervisors to cover the situation (Koehler, 1987). Specific allegations of negligence have scrutinized the areas of poor injury

prevention and treatment, whether harmful conditioning methods (*Vargo v. Svitchan*, 1981) or unethical tactics were used, and the failure to control student behaviors (Olson, et al, 1987).

### ■ UNQUALIFIED OR NON-QUALITY SUPERVISION

There have been several instances where unqualified personnel have supervised physical education classes or athletic competitions and students have been injured. The courts have determined that the proximate cause for many of these injuries was the lack of quality supervision, many times by incompetent staff persons (*Mancha v. Field Museum*, 1972; *Broward County v. Ruiz*, 1986).

In some typical physical education classes, supervisors have been charged with negligent instruction and supervision when students were injured. The following cases illustrate the dangers of allowing unqualified or unknowledgeable staff to supervise physical activities: an injured plaintiff charged negligence for spinal injuries received from a fall from a "knee hang" (*Kobylanski v. Chicago Board*, 1976), a broken neck from a backward somersault (*Landers v. School District*, 1978), and finally, facial trauma from being hit by a wooden bat during a softball class (*Ausmus v. Chicago Board*, 1987). The court found that non-quality supervision also occurred in *Rivera v. Board* (1960), where a non-certified teacher and teacher aide were placed in charge of 24 Spanish-speaking children. During a game of "bombardment," an injured student lost the sight of one eye. The court cited that the proximate cause of the injury was the incompetent actions by the non-Spanish speaking teachers who failed to control the students.

In a sports-related case, a high school girl was injured during an unauthorized but traditional game of "power-puff" tackle football. The classroom teacher/coach was charged with inadequate supervision because the girls had not been properly practiced, were not conditioned, and protective equipment had not been made available (*Lynch v. Board*, 1979). In *Perhaus v. Chicago Catholic* (1986), a high school student was injured during a club-sponsored game of rugby. Although the sport was not recognized by the school's affiliated league, the member teams had allowed one school to employ coaches who had little or no rugby experience and had hired assistant coaches who were not certified to teach. These facts were used to establish a suit of negligence. Finally, a 6.3 million dollar award was granted to a Seattle football player due to injuries incurred during a game. Horine (1985) reported that the court emphasized the fact that the coaches were not certified (they were considered non-quality), an element which may have contributed to the player's football injuries.

### ■ VICARIOUS LIABILITY

Due to the court's concern over supervision, several decisions have been handed down in which athletic directors or principals have been held personally liable for knowingly employing an incompetent coach. The administrator may be vicariously liable (under the master-servant relationship) for torts (civil wrongs which produce injury) committed by their employees (Clement, 1988). For example, if an administrator assigns a person duties for which he or she is not qualified or the purposes of those duties do not fall within the scope of their employment, the administrator can be sued (*Alexander & Alexander*, 1970). The

court has additionally defined the duty of a school board as the acting legal principal to insure that a coach is adequately trained and has the background and experience to supervise the specific activity for which he or she is responsible (Baley & Matthews, 1984).

The master-servant relationship was initially founded before the turn of the century in the *Western Stone Company v. Wahlen* case (1894). In this landmark decision, the court established the liability of an employer for negligently hiring someone the employer knew, or should have known, was not fit for the job. In one of the earliest activity-related cases of this type, a janitor was assigned to supervise play in a gymnasium after lunch. The janitor decided to take part in the activity and began tossing the children up in the air with his feet and a student was injured. The court found that the school board had failed to provide competent supervision and was liable for the boy's injury (*Garber v. Central School*, 1937).

This tenet has been recently applied to a number of cases in sports. In Michigan, an athletic director and a principal were both charged with failing to supervise properly a coach and a pre-season weight training program, in which a football player was injured. The court ruled that it was the responsibility of the athletic director to act as the authority and supervise and/or eliminate unsafe practices evidenced in the program (*Vargo v. Svitchan*, 1981). In *Verhel v. Independent* (1984), a number of high school cheerleaders were pursuing non-recognized school activities ("papering" a football player's house), and one girl was injured in an auto accident. Although the advisor knew about the activities, the staff person was not charged because she was inexperienced and had not been properly supervised. The court, therefore, deemed the public school district vicariously liable (35% comparatively negligent) for the accident.

## ■ POLICY RECOMMENDATIONS

Declining enrollments, budget cutbacks, reduction of young faculty members, and the expansion of sports for girls appear to be the major causes of the coaching shortage (Odenkirk, 1986; Sisley & Weise, 1987). Additionally, many certified teachers who are coaches no longer wish to coach because of low salaries, difficulty in trying to coach more than one sport, the desire to spend more time with family, the little regard for an extra coaching income, the failure to win, the lack of commitment by student-athletes, negative community pressures, the lack of available facilities, the desire to continue one's education, or the pressure to compete "year round" (Nasstrom, 1985). These situations have created conditions where more part-time coaches are being hired, a strategy which might place athletes at an even greater risk than normal competitive conditions.

When an accident has occurred and negligence has been charged, the court has traditionally scrutinized the quality or quantity of the supervisory practices. Although the court, to date, has not deemed the proximate cause of any athletic-related injury to be due to incompetent coaching, previous court rulings have indicated that the possibility exists.

## ■ STAFF SELECTION

It is this writer's opinion that the hiring of unqualified or non-quality coaches places athletes, athletic administrators and school districts in jeopardy. What is

needed are national standards to support state efforts, through mandated coursework requirements for coaching training programs (Lopiano, 1986) and more sensitivity by degree-granting institutions to support physical education majors' needs to enroll in coaching courses (Sabock & Chandler-Garvin, 1986). Until these practices are established, school districts, principals and athletic directors need to establish regulations and procedures (Gangstead & Esplin-Swensen, 1982) and to be more conscientious about their hiring practices (Maloy, 1988; Sisley & Weise, 1987). It is not prudent to have coaching "slots" filled with new faculty members honoring their contracts (with "other duties as assigned"), or unqualified, but winning coaches staffing our teams.

In conjunction with the development of more stringent hiring practices, administrators should also require that inexperienced teachers hired to coach, complete a coaching preparation program (Noble & Sigle, 1980) which includes First Aid and CPR certifications before commencing their duties. These measures can be accomplished through in-service opportunities, such as on-site workshops or walk-in coaching clinics operated by local colleges (*Athletic Business*, 1988) and financially supported by the school districts. Additionally, the athletic department should have available a current policy and procedure manual for all staff (Chambers, 1986), which should be required reading upon acceptance of a coaching position. Districts should also provide adequate liability, catastrophic and event-specific insurance policies for all staff and team members (Chambers, Ross, Kozubowski, 1987).

### ■ STAFF SUPERVISION

Once hired and functioning in a coaching capacity, all coaches should be continuously monitored by the athletic administrator. This is especially germane when dealing with off-the-street coaches who may not be as accessible or who may have different coaching and training philosophies from the employee's institution. The review process should begin with the administrator requesting that each coach submit, in writing, a detailed description of all pre-season conditioning practices. Each coach should also become knowledgeable in the system for reporting accidents, the policies for emergencies and documentation for treatments to athletes (Lloyd, 1985). The administrator or his or her designee should additionally supervise the coach and his or her players in the selection, fitting, maintenance, and repair of all athletic safety and protective equipment (Dougherty & Bonanno, 1985).

Finally, while all accidents cannot be avoided, the administrator, through diligent, accurate record keeping and effective communication, can positively aid in the development of a safer playing environment for all athletes. Whether through face-to-face meetings or by memo, the administrator and coach should communicate when necessary and be cognizant of each other's actions. At times, it might be better for the administrator to direct the coach to run a film or to discuss strategy than to risk a possible "invitation to disaster" by setting up a practice which the coach is unqualified to supervise (Appenzeller & Appenzeller, 1980).

### ■ CONCLUSION

The practice of staffing athletic teams with part-time coaches is a reality (Sabock & Chandler-Garvin, 1986) which may not change in the near future. To

adapt, administrators must be willing to work extremely diligently with these coaches to insure proper and safe conditions and a quality athletic experience for all student-athletes. As Odenkirk (1986) has stated, our profession can no longer ignore the medical and legal liabilities which can develop when unqualified personnel assume coaching responsibilities. Without these aforementioned measures, it could be sooner rather than later that the court begins to hold administrators accountable for students' injuries.

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