



WSSFC 2025

Substantive Track – Session 1

Under Review: A Discussion of Legal Challenges in High School Sports

Presenter:

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About the Presenter...

Joshua Frieser is a sports business lawyer and Principal Attorney at Frieser Legal. His practice is focused on representing athletes, agents, and sports businesses. Josh represents athletes in regulatory affairs proceedings, NIL, endorsement, and IP licensing agreements, as well as in related tax, trademark, and business planning matters. Josh also serves as counsel to sports agents and agencies, assisting clients with player representation agreements, client contract servicing and dispute resolution, employment/fee-split agreements, and navigating athlete agent laws and players association regulations.

1. Eligibility Issues (most common type of high school sports legal dispute)

The majority of lawsuits brought concerning high school sports participation are related to individual athlete eligibility issues. Usually, these cases are brought when a transferring athlete is denied eligibility at a new school, but are also brought when an athlete is suspended for in-competition conduct, in-school or out-of-school behavioral or academic issues, is limited from participating in outside competition (e.g., 7-on-7s), is homeschooled, or does not meet other participation requirements.

The WIAA Bylaws contain a comprehensive section on the Rules of Eligibility, which outlines a process for waivers and appeals. Some athletes who are unsuccessful through the process turn to litigation, making various claims. *Most* eligibility lawsuits against the WIAA are predicated on due process concerns.

a. WIAA Framework

The Wisconsin Interscholastic Athletic Association (WIAA) is the governing body for high school sports in Wisconsin. Its members are both public and private schools.

Transfer rule: WIAA Rules of Eligibility, Article II, Section 3(A)(1): “A student who transfers from any school into a member school will be subject to the transfer rules for one year, unless the transfer is made necessary by a total and complete change in residence by parent(s).”

Waivers: The year-in-residence rule can be waived based on extenuating circumstances. The WIAA reviews waiver requests on a case-by-case basis for extenuating circumstances.

Code of Conduct: The WIAA requires all member schools to have a code of conduct that is enforced against students for non-competition disciplinary actions. Additionally, Athletes ejected from a WIAA competition are suspended for the next competitive event.

b. Appeals

The WIAA requires that students are able to appeal suspensions for school conduct violations with the school or school district. The WIAA itself administers an appeal process for denials of eligibility for transfer waivers, forfeitures for schools based on ineligible athletes competing, and decisions of game officials.

c. Litigation Trends

Four cases have been filed against the WIAA so far this year. All four deal with the one-year post transfer eligibility restriction. Every case against the WIAA filed since the start of 2023 deals with the year-in-residence restriction. These cases very rarely make it past the preliminary pleadings (the court calendar moves much slower than the sports calendar). *Halter v. WIAA*, 2025 WI 10, 19 N.W.3d 58 (2025), is an exception. The case was originally filed in Racine County Circuit Court in 2019, finally decided by the Supreme Court of Wisconsin in April of 2025.

2. Other Types of Cases and Issues

a. First Amendment Free Speech Issues

First Amendment issues in the high school sports context are largely viewed as the same as in the non-sports school regulation context: students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,” but First Amendment rights do not extend to the same level of protection as for adults. Schools (and presumably, the WIAA) may regulate free speech to further legitimate objectives. Courts across the country have analyzed free speech in the high school athletics context the same as elsewhere, with the *Tinker* substantial disruption standard.

With the increase in outlets for student speech (i.e., social media), there are significantly more opportunities for student speech to become problematic to a school district. Examples of cases include players taking to social media to criticize coaches and officials, as well as posting graphic or explicit language.

Another recent trend is school districts regulating political speech, e.g., kneeling during the national anthem, wearing Black Lives Matter shirts during warm-ups, and branding certain flags during a medal ceremony. A contrast can be drawn between professional sports (where private employers have the ability to restrict employees from engaging in certain speech while on the job) and college and high school sports (where athletes are not employees and are usually being regulated by a state actor, such as a public high school or university).

b. Fourth Amendment Search and Seizure (Drug Testing)

In *Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995), the U.S. Supreme Court ruled that random drug testing of high school athletes is permissible. Where drug-testing programs are collectively bargained at the professional level, high school athletes have no bargaining rights and can have drug testing unilaterally imposed on them. The NFHS and WIAA do not require that school districts conduct random drug testing, but school districts can implement their own policies.

c. Concussion Legislation

In 2011, Wisconsin passed its concussion law, Wis. Stat. § 118.293, establishing educational requirements for coaches, mandatory removal from play, and return to play protocols. Across the country, nearly every state passed a similar law in the early 2010s. Since then, concussion reports have increased, although this is likely due to enhanced reporting requirements and not an increase in concussions. The Wisconsin law does provide limited immunity for coaches who do not remove an athlete from competition, so long as the coach or official’s conduct does not rise to gross negligence or willful misconduct.

d. Transgender Participation

In February of 2025, the WIAA repealed its transgender participation bylaw, prohibiting any athlete assigned male at birth to compete in girl’s sports. The new policy also prohibits any athlete assigned female at birth from participating in girl’s sports if they have begun hormone therapy. The bylaw change is consistent with a Presidential Executive Order aimed at prohibiting transgender athletes from competing in girl’s and women’s sports.

e. Review of Officiating Decisions

In the limited number of cases where high schools have sought to overturn officiating decisions, claims have been unsuccessful. It is unlikely that in the future, courts will review in-competition decisions from referees or officials.

3. State Action Doctrine in Wisconsin Post-*Halter*

Brentwood's substantial entwinement test had not been reviewed in any Wisconsin or federal court in the context of the WIAA's state actor status prior to the *Halter* case. In *Halter*, the Wisconsin Court of Appeals analyzed the issue and found that the WIAA was a state actor under the Supreme Court's *Brentwood* test. The state Supreme Court reversed the Court of Appeals' decision, but it did not analyze the issue of state action.

Across the country, nearly every state that has analyzed this issue post-*Brentwood* has found that high school athletic associations are state actors. Under a more complete analysis, the WIAA likely is too—it is nearly identical to the Tennessee high school athletic association in *Brentwood* in terms of the public and private school membership split, how it earns revenue, and the composition of its Board of Control. The issue has evaded judicial review for more than two decades (aside from the now-overturned Court of Appeals decision in *Halter*) and serves as a hurdle to future high school athletes that may have claims against the WIAA.

4. Commercialization of Youth and High School Sports

High school sports have become increasingly commercial enterprises. Prep academies (e.g., IMG Academy) have popped up throughout the country and families are investing tens of thousands, if not hundreds of thousands, of dollars in the athletic careers of their children. With the increasing financial opportunities available at the collegiate level, this is only set to increase. Positive ROI is not only feasible when and if the athlete makes it to the professional level—in many cases the ~\$80k/year investment pays off in years one or two of college via NIL and revenue-sharing deals.

5. Name, Image, and Likeness (NIL) Opportunities

The WIAA voted to permit high school athletes in Wisconsin to monetize their name, image, and likeness beginning with the 2025–26 academic year. The bylaw amendment aligns Wisconsin with about 40 states that have permitted NIL activity, either through state legislation or high school athletic association bylaw changes.

The new bylaw change allows high school athletes in the state to earn compensation for their NIL (i.e., sign endorsement and marketing deals) independently of their high school affiliation. As such, deals cannot include school names, logos, or uniforms. Likewise, school officials and coaches may not be involved in the process of procuring or facilitating deals. Moreover, the WIAA does not permit high school athletes in the state to hire an “NIL agent” or work with a marketing agency.

In addition to NIL opportunities available to high school athletes while they are still playing high school sports, NIL has become a significant factor in collegiate recruiting. In some cases, top athletes are promised hundreds of thousands or millions of dollars to compete at a particular

university. Frequently, those conversations (and executed contracts) occur while an athlete is still in high school.

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1

Overview

1. Eligibility Issues
2. Other Types of Cases and Issues
3. State Action Doctrine in Wisconsin Post-*Halter*
4. Commercialization of Youth and High School Sports
5. Name, Image, and Likeness (NIL) Opportunities



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2

1. Eligibility Issues

- Eligibility issues are the most common type of dispute in the high school athletics context.
- The vast majority of lawsuits brought nationwide concerning high school sports participation are related to individual athlete eligibility issues.
- Here in Wisconsin: the Wisconsin Interscholastic Athletic Association (WIAA) Bylaws contain its Rules of Eligibility.
 - Outlined process for waivers and appeals of denied waivers.

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1. Eligibility Issues: WIAA Framework

- Transfer rule: WIAA Rules of Eligibility, Article II, Section 3(A)(1): “A student who transfers from any school into a member school will be subject to the transfer rules for one year, unless the transfer is made necessary by a total and complete change in residence by parent(s).”
- Waivers: The year-in-residence rule can be waived based on extenuating circumstances. The WIAA reviews waiver requests on a case-by-case basis for extenuating circumstances.
- Code of Conduct: The WIAA requires all member schools to have a code of conduct that is enforced against students for non-competition disciplinary actions. Additionally, athletes ejected from a WIAA competition are suspended for the next competitive event.

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1. Eligibility Issues: WIAA Appeals

- The WIAA requires that students must be able to appeal suspensions for school conduct violations with the school or school district.
- The WIAA itself administers an appeal process for denials of eligibility for transfer waivers, forfeitures for schools based on ineligible athletes competing, and decisions of game officials.

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5

1. Eligibility Issues: Litigation Trends

- Four cases have been filed against the WIAA so far in 2025. All four deal with the one-year post transfer eligibility restriction.
 - Every case filed since the start of 2023 deals with this one issue.
- Because of the nature of the eligibility issues, it is rare for any case to make it past the initial pleadings.
- *Halter v. WIAA*, 2025 WI 10, 19 N.W.3d 58 (2025) is an exception, with the case being reviewed by the Supreme Court of Wisconsin earlier this year.

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2. Other Types of Cases and Issues: First Amendment Free Speech Issues

- First Amendment in the high school athletics context is largely similar to the non-sports student speech context.
 - *Tinker* substantial disruption standard is used to review school (and HSAA) regulation of speech.
- With increased outlets for student speech (i.e., social media), there are more opportunities for student speech to become problematic.
 - Examples: taking to social media to criticize coaches, posting of graphic or explicit language online.
- Regulation of political speech is a separate, but similar issue.

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7

2. Other Types of Cases and Issues: Fourth Amendment Search and Seizure (Drug Testing)

- In *Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995), the U.S. Supreme Court ruled that random drug testing of high school athletes is permissible.
- The NFHS and WIAA do not require that school districts conduct random drug testing, but school districts can implement their own policies.

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8

2. Other Types of Cases and Issues: Concussion Legislation

- In 2011, Wisconsin passed its concussion law, Wis. Stat. § 118.293, establishing educational requirements for coaches, mandatory removal from play, and return to play protocols.
- The statute does provide limited immunity for coaches who do not remove an athlete from competition, so long as the coach or official's conduct does not rise to gross negligence or willful misconduct.
 - There has not been any litigation of this issue to date.

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9

2. Other Types of Cases and Issues: Transgender Participation

- In February of 2025, the WIAA repealed its transgender participation bylaw, prohibiting any athlete assigned male at birth to compete in girl's sports.
- The new policy also prohibits any athlete assigned female at birth from participating in girl's sports if they have begun hormone therapy.
- The bylaw change is consistent with a Presidential Executive Order aimed at prohibiting transgender athletes from competing in girl's and women's sports.

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10

2. Other Types of Cases and Issues: Review of Officiating Decisions

- In the limited number of cases where high schools have sought to overturn officiating decisions, claims have been unsuccessful. It is unlikely that in the future, courts will review in-competition decisions from referees or officials.

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11

3. State Action Doctrine in Wisconsin Post-*Halter*

- *Brentwood*'s substantial entwinement test had not been reviewed in any Wisconsin or federal court in the context of the WIAA's state actor status prior to the *Halter* case.
- In *Halter*, the Wisconsin Court of Appeals analyzed the issue and found that the WIAA was a state actor under the Supreme Court's *Brentwood* test. The state Supreme Court reversed the Court of Appeals' decision, but it did not analyze the issue of state action.

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12

3. State Action Doctrine in Wisconsin Post-*Halter*

- Across the country, nearly every state or federal court that has analyzed this issue post-*Brentwood* has found that high school athletic associations are state actors. Under a more complete analysis, the WIAA likely is too.
- The issue has evaded judicial review for more than two decades (aside from the now-overturned Court of Appeals decision in *Halter*) and serves as a hurdle to future high school athletes that may have claims against the WIAA.

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13

4. Commercialization of Youth and High School Sports

- Youth and high school sports have become big business. With the increase of prep academies, families are investing tens or hundreds of thousands of dollars in the athletic careers of their children.
- With the increasing financial opportunities available at the collegiate level (i.e., NIL and revenue sharing), the ROI is much more feasible.

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14

5. Name, Image, and Likeness (NIL) Opportunities

- The WIAA voted to permit high school athletes in Wisconsin to monetize their name, image, and likeness beginning with the 2025–26 academic year. The bylaw amendment aligns Wisconsin with about 40 states that have permitted NIL activity.
 - Limitations on using school IP, involvement of school officials, and agents.
- In addition to NIL opportunities available to high school athletes while they are still playing high school sports, NIL has become a significant factor in collegiate recruiting.

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15

Questions?

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16