

PIAA Approves NIL Rule for High School Athletes

by Nicole W. Williams, Esq.

On December 7, 2022, the PIAA (Pennsylvania Interscholastic Athletic Association) voted to permit high school athletes to monetize their Name, Image, and Likeness (“NIL”). The move allows high school athletes to earn money through endorsements, advertisements, promotions, and social media activities. There are, however, some limitations on how and what NIL activities an athlete may engage in.

Article II, Section 3, Paragraph J has been added to the 2022-2023 PIAA Constitution and Bylaws. Within 72 hours after entering into any type of NIL agreement, a student or their parents/guardians must notify the Principal or Athletic Director of their school. Athletes are strictly prohibited

from engaging in NIL activities involving adult entertainment products and services; alcohol products; casinos and gambling, including sports betting, the lottery, and betting in connection with video games, on-line games and mobile devices; tobacco and electronic smoking products

and devices; opioids and prescription pharmaceuticals; controlled dangerous substances; and weapons, firearms and ammunition. Once an agreement has been entered into, an athlete may not engage in NIL pursuits during team and/or school activities. Athletes are also prohibited from wearing any identifying mark, logo, or insignia of an NIL partner during any team and/or school athletic activities, unless part of the standard school uniform for that sport, and from wearing apparel identifying their school when engaging in NIL activities.

The PIAA also sets forth requirements for schools and their employees. First, the PIAA directs that NIL agreements may not be used as an incentive for a decision to enroll in a school or join a team. Furthermore, schools and their employees, booster clubs, coaches, administrators, alumni, and other affiliated individuals from soliciting, arranging, negotiating, or paying for a student’s NIL, except when that student is their own child.



Nicole Williams

Schools need to understand these new rules to avoid jeopardizing student athlete eligibility.

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Taxes or Fees: Reviewing a Recent Commonwealth Court Decision

by Ira Weiss, Esq.

On January 4, 2023, the Commonwealth Court of Pennsylvania issued a decision in *The Borough of West Chester v. Pennsylvania State System of Higher Education and West Chester University of Pennsylvania of the State System of Higher Education*, No. 260 M.D. 2018, holding that the Borough of West Chester’s charge related to stormwater management (“Charge”) provides “benefits that are enjoyed by the general public,” such as decreased flooding, erosion and pollution, as opposed to “individualized services provided to particular customers.” As a result, the Charge constituted a tax from which the PA State System of Higher Education (“PASSHE”) and West Chester University (“University”) are immune, rather than a fee for service.

In 2016, the Borough Council enacted code provisions for the Charge to further construct, operate, and maintain its stormwater management facilities. The Charge was imposed on owners of all developed properties benefitted by the Borough’s stormwater management system. The amount of the Charge for which the owner was responsible was dependent upon the amount of impervious surface on the property. PASSHE and the University refused to pay invoices for the Charge in 2017, 2018, and 2019 based on their belief that the Charge constituted a tax. The Borough filed a petition for declaratory judgment with the Commonwealth Court against PASSHE and the University seeking to establish that the Charge is not a tax, but a fee for service which they are required to pay. The Borough argued that PASSHE and the University derived a discrete benefit as the owner of a developed property in return for the payment of the Charge, which proved that it constituted a fee for service rather than a tax. PASSHE and the University disputed this and instead argued that the Charge was a tax because the projects it funded were designed to provide a “general benefit” and promote “the welfare of all” (quoting *In re Broad St. in Sewickley Borough*, 30 A. 1007 (Pa. 1895)).

In determining whether the Borough’s Charge constituted a tax or a fee for service, the Court gave weight to the testimony delivered by the Borough’s Manager that owners of both developed and undeveloped properties in the Borough receive the same general benefits from projects funded by the Charge and that managing stormwater provides “a general benefit to the [c]ommunity” by, for instance, preventing damage to public infrastructure. The Court further found that the Borough provided no evidence that PASSHE and the University derived a discrete benefit from payment of the Charge. The Court also found that the Charge



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Case Update: Attorneys Fees in Universal Masking Case

by Jocelyn P. Kramer, Esq.

As first reported in our Spring 2022 edition, two masking cases involving local districts were filed in the Western District of Pennsylvania. As a reminder, claims were brought against North Allegheny School District and Upper Saint Clair School District under the Americans with Disabilities Act, as amended, and Section 504 of the Rehabilitation Act.



Jocelyn Kramer

Plaintiffs requested immediate injunctive relief to maintain mandatory universal masking in schools. While one Judge in the Western District Court enjoined North Allegheny from enacting a mask-optional policy, another Judge in the same Court denied the plaintiffs' motion in Upper St. Clair and allowed the mask-optional policy to move forward. Both rulings were appealed but before the Third Circuit could consider either of the appeals on their merits, the Centers for Disease Control and Prevention (CDC) changed the way it determined transmission in communities. As a result, the Third Circuit ruled that the cases were moot and ordered that the appeals and the underlying cases be dismissed. The plaintiffs subsequently filed a request that the school districts pay their attorney fees of over \$100,000. Both Judges in the Western District ruled against the plaintiffs and denied their request for fees. Plaintiffs appealed again to the Third Circuit, and in January 2023, the Third Circuit denied both appeals and ruled in favor of the school districts holding that the plaintiffs were not prevailing parties and were not entitled to recover their fees. Attorney Kramer and Attorney Hall of WBK successfully defended Upper St. Clair School District in this matter. ♦

WBK News

- WBK is pleased to announce that effective October 1, 2022, Annemarie Harr Eagle and Rebecca Heaton Hall were promoted to partners at the firm.
- Attorney Kelly Perkovich has recently rejoined WBK. Attorney Elizabeth Sattler also recently joined the firm.
- Attorney Jocelyn Kramer was appointed as the Sectional Director (W-3) for the Pennsylvania School Board Solicitors Association (PSBSA). She was also appointed to serve on the Local Rules Advisory Committee for the United States District Court in the Western District of Pennsylvania.
- Attorney Megan Turnbull was appointed as the Sectional Director (W-2) for the PSBSA. She will be a panelist at the Allegheny County Bar Association's CLE titled: "What You Need to Know About Allegheny County Tax Assessment Appeals" in March.
- Attorney Annemarie Harr Eagle co-authored a Law Review Article with The Honorable Maureen E. Lally-Green and Dr. Bridget Green titled: Doing the Right Thing the Right Way the First Time: Decision-making in Public and Private Arenas Regarding the Use of Service Animals. The Article was published in the 45th volume of the University of Arkansas at Little Rock Law Review.
- Attorney Rebecca Heaton Hall will be speaking with Jessica Dirsmith at LRP Institute in New Orleans on April 19, 2023. Their topic is: Special Education Strategies to Address Truancy and School Refusal.

Taxes or Fees: Reviewing a Recent Decision, *continued*

did not constitute a special assessment subsidizing a particular project of limited duration. As a result, the Commonwealth Court sided with PASSHE and the University and granted judgment as a matter of law.

What does this decision mean for school districts? Under a system like that described in the West Chester case, many school district properties will generate significant charges because of the impervious surface areas on their properties. While unreported and therefore not precedential, the decision is based on long settled legal principles that if a governmental charge benefits the public at large as opposed to the entity paying the fee or charge, it is a tax. Tax exempt entities like school districts would be exempt from these charges. In this time of budget challenges under Act 1 and the assessment situation in Allegheny County, there could be financial relief for districts where charges are determined to be taxes rather than fees. If you have questions on how this case may impact your district, please reach out to WBK or your solicitor. ♦

NIL Rule for High School Athletes, *continued*

As they enter this new territory, it is important that schools are aware of their responsibilities. On January 12, 2023, the PIAA announced that it would partner with the organization, ADVANCE, to educate member schools on NIL. Additionally, the attorneys at WBK are available to advise on issues that may arise under this new rule. ♦

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This issue of In Brief: School Law Update is meant to be informational and does not constitute legal advice. Should districts wish legal advice on any matter, they should contact their legal counsel or request a legal opinion from Weiss Burkardt Kramer LLC.

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