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Coaching more than X's, O's in #MeToo times

Urban Meyer, the embattled head coach of the No. 4 ranked Ohio State football team, returned to the sidelines this weekend after serving a three-game suspension related to his mishandling of multiple allegations of his wide receivers coach, Zach Smith's domestic abuse.

Meyer admitted that "I followed my heart, not my head and fell short in pursuing full information because at each juncture I gave Zach Smith the benefit of the doubt ... I should have demanded more from him and recognized red flags."

Smith had played for Meyer at Bowling Green and served as an assistant under Meyer at both Florida and Ohio State.

Ohio State's investigation found Meyer "failed to act appropriately regarding alleged abuse by Zach Smith of his former wife and related allegations that he misrepresented his knowledge of the alleged events at the Big Ten Media Days."

At Big Ten Media Days in July, Meyer said that he was not aware of the situation until recently. Immediately thereafter, reports emerged regarding Meyer's knowledge of allegations of abuse in 2015.

Many opinions have been proffered regarding the suspension levied against Meyer. Many in Columbus, Ohio, believed that Meyer should not have been suspended since he adequately complied with his contractual and legal obligations in reporting allegations of domestic violence at the hands of his assistant coach.

Others believe that Meyer should have been relieved of his duties for retaining a suspected spousal abuser on his staff for years.

Meyer's contract, executed in April of this year, specifically addresses his reporting requirements. New Paragraph 4.1 (e) of Meyer's recently inked contract extension reads:

Coach shall promptly report to Ohio State's Title IX Athletics any known violations of Ohio State's Sexual Misconduct Policy (includ-

ing, but not limited to, sexual harassment, sexual assault, sexual exploitation, intimate violence and stalking) that involve any student, faculty or staff or that is in connection with a university sponsored activity or event. ... For purposes of this Section 4.1 (e), a "known violation" shall mean a violation or allegation of a violation of Title IX that Coach is aware of or has reasonable cause is taking place or may have taken place."

These contractual provisions are now the "new norm" in coaches' contracts in the wake of the Larry Nassar scandal at Michigan State and the Jerry Sandusky scandal at Penn State. Meyer's contract, like Illinois coach Lovie Smith's contract and others around the country, specify that coaches must report allegations of sexual misconduct.

Sometimes the contractual terms simply reiterate obligations already laid out in school policy, federal Title IX law or NCAA rules that deem coaches responsible for actions of their staff. But, these provisions are now explicitly stated in coaches' contracts. The omission of such a provision can make parting with a highly compensated head coach problematic, even when a coach admits to his failures.

In 2016, Baylor University came under fire when it was revealed that university officials had failed to take action regarding alleged rapes and other assaults committed by members of the football team.

The scandal led to the ouster of head football coach Art Briles, the demotion and eventual resignation of Baylor University president Ken Starr; the resignation of the athletic director and the firing of two others connected with the football program along with the resignation of the Title IX coordinator.

A school-commissioned investigation produced "findings of fact" that football staff conducted inquiries into sexual assaults by players and did not report them to administration. School administrators also encouraged victims to not report complaints, the report indicated.

SPORTS TORTS

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In the joint settlement statement issued by Briles and Baylor in June 2016, both sides acknowledged "serious shortcomings in the response to reports of sexual violence by some student-athletes, including deficiencies in university processes and the delegation of disciplinary responsibilities with the football program."

Following his dismissal, Briles filed a wrongful termination lawsuit against the school, demanding the \$39 million remaining on a 10-year contract he signed in 2013. That case was settled for \$15.1 million.

In addition to employment litigation, the failures of the Baylor staff and administration subjected the school to a Title IX lawsuit filed by an alleged victim of abuse at the hands of members of the football team, that was settled in July of this year for an undisclosed amount.

This was the fifth settlement in a string of cases involving the university's football team. The lawsuit alleged that coaches had established a program in which "football players became increasingly emboldened, knowing that they could break the law, code of conduct and general standards of human decency with no repercussions," thus putting female students at a heightened risk of assault.

In Colorado, a federal judge recently dismissed a lawsuit that accused Colorado head coach Mike MacIntyre, athletic director Rick

George, Chancellor Phil DiStefano and President Bruce Benson of failing to properly handle accusations of domestic violence against former assistant coach Joe Tumpkin.

U.S. District Judge William J. Martinez issued a ruling stating that the university did not have a legal obligation to Pamela Fine as she was not affiliated with the school. *Fine v. Tumpkin*, Civil Action No. 17-cv-2140, 2018 U.S. Dist. LEXIS 119904 (D. Colo. July 18, 2018).

In the ruling, Martinez wrote, "defendants' alleged failure to follow the university's rules and policies did not increase the risk of harm to (Fine) given that, as someone with no affiliation with or connection to the university, she was not within the group of individuals that the policies were designed to protect." Id.

The order continues, "The [c]ourt is concerned, however, about the apparent reluctance of the [u]niversity and its senior athletic staff to take substantial steps to address [p]laintiff's allegations until they were publicly reported. The [c]ourt's concerns are redoubled given the context of the emerging national conversation exposing wrongdoers (usually, but not always, male) who use positions of power to dominate and control subordinate individuals (usually, but not always, female). Nonetheless, the reality is that courts of law intentionally move more slowly than the court of public opinion." *Fine v. Tumpkin*, Civil Action No. 17-cv-2140, 2018 U.S. Dist. LEXIS 119904, at *23 (D. Colo. July 18, 2018).

Undoubtedly, "courts of law" will soon catch up to the court of public opinion. Coaches and administrators have moral, legal and, often, contractual obligations to report allegations of misconduct.

Whether mandated by Title IX (a federal law that applies to all educational institutions that receive federal funds, including private schools) or a provision in the employment contract, the failure to report any instances of sexual misconduct may subject colleges to significant liabilities.