

WILLIAM H. BURKHALTER, JR.
GENERAL COUNSEL, AIKEN COUNTY BOARD OF EDUCATION
1000 BROOKHAVEN DRIVE
AIKEN, SOUTH CAROLINA 29803

TELEPHONE:
(803) 641-2572

FACSIMILE:
(803) 641-2536

LETTER MEMORANDUM
Privileged Attorney-Client Communication

TO: Principals (middle and high), Coaches, and Athletic Directors
FROM: Bill Burkhalter
RE: *New state law concerning concussions (brain injuries)*
DATE: July 25, 2013

Dear Friends:

As most of you probably know, the Legislature this year passed an awareness, protocol, and immunity statute late this spring (Act H3061) which does the following:

- requires certain guidelines to be established by DHEC and followed (by us);
- requires certain awareness disclosures to be made to all parents before any athletes can participate;
- guidelines under the statute will **require** that a student be immediately removed from practice or competition if the “*coach, athletic trainer, official, or physician*” suspects that the student “*has sustained a concussion or brain injury in a practice or competition. . .*”
- guidelines under the statute **allow** a student to be returned to play if “*as a result of evaluating the student athlete on site the athletic trainer, physician, physician’s assistant [pursuant to their scope of knowledge and practice guidelines] or nurse practitioner [pursuant to a written protocol] determines in his best professional judgment that the student athlete does not have any symptoms of a concussion or brain injury. . .*” [see notes and caveat later in this memo.]
- guidelines under the statute will **not allow** a student “*who is suspected of having a concussion or brain injury*” to return to play “*until the student athlete has received written medical clearance from a physician.*” [This means after clinical evaluation by a physician and after a required **graduated return to play protocol** has been followed.]
- the statute grants limited immunity against civil liability to the [trained practitioner] who allows a student to return to play during the practice or game in which an on-site evaluation was conducted and the practitioner, in his best professional judgment believed that there was no sign or symptom of injury.

Referring to bullet point one, above, DHEC has done nothing at this point and there is nothing on their website as of yesterday that offers any guidance or even reference to this new law!

Accordingly, even though I know that most of you are already familiar with these concerns, we should take such affirmative steps as we can to make good faith compliance with the statutory directives. (The larger District High Schools who are fortunate to have trainers and/or physicians attending their games should have protocols in place already through those qualified staff members or volunteers). Therefore, I have brought together a packet of information that can be utilized to meet our responsibility to the extent that we have guidance relative thereto.

You will find attached to this email Memo the following and in this order;

- 1) A copy of the Act itself just for reference. (Please ignore my scribbled margin notes.)
- 2) Guidelines and Procedures document regarding concussions. Until DHEC posts anything, this is the best effort to comply with the law. In particular, the first point is the parent awareness requirement. That is new this year and all parents must receive the Acknowledgment form and the information sheet attached. (They should get two copies of the Acknowledgment Form itself and return one to you for your athletic file.)
- 3) The Acknowledgment of Concussion Procedures and attached Information Sheet [mentioned in paragraph (2), above] which each parent must receive, retain, and also return one signed copy of the Acknowledgment page itself
- 4) The S.C. High School League "Return to Play" form. **[As alluded to in the fourth bullet point on the prior page, for schools not having certified trainers or physicians at games, this IS the best available guidance. It should be adhered to in all steps.]**

Unfortunately the High School League form (Item 4, above) does not deal with the answer to the thorny question of who makes the "on-site evaluation and return to play decisions – same day or same game – as anticipated in point four of our Guidelines. **[I am referencing the caveat on point four of the first page of this Memo.]** The best guidance is that if a coach who is very familiar with the symptoms of concussion takes a player out after a big hit but sees no signs or symptoms after a few minutes of observation, he/she could put the player back in. This is likely the present practice. But the certified trainers and/or physicians will tell you "When there is doubt, keep them out!" One other possibility for smaller schools or middle schools is that if a nurse practitioner were trained in this and following a written protocol, he/she could make these on-site calls according to the law.

We hope this information will be of help to you. Please feel free to call if you have any questions.

Very truly yours,



William H. Burkhalter, Jr.

WHB Jr.

Attachments

ATTACHMENT 1

6/14/2013
6/14/2013

Effective date 06/07/13
Act No. 33

View the latest legislative information at the LPITS web site

VERSIONS OF THIS BILL

12/11/2012
3/11/2013
3/12/2013
3/12/2013-A
3/20/2013
5/13/2013
5/23/2013

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

NOTE: THIS COPY IS A TEMPORARY VERSION. THIS DOCUMENT WILL REMAIN IN THIS VERSION UNTIL PUBLISHED IN THE ADVANCE SHEETS TO THE ACTS AND JOINT RESOLUTIONS. WHEN THIS DOCUMENT IS PUBLISHED IN THE ADVANCE SHEET, THIS NOTE WILL BE REMOVED.

(A33, R65, H3061)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 59-63-75 SO AS TO REQUIRE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, IN CONSULTATION WITH THE DEPARTMENT OF EDUCATION, TO POST ON ITS WEBSITE NATIONALLY RECOGNIZED GUIDELINES AND PROCEDURES CONCERNING THE MANAGEMENT OF CONCUSSIONS SUSTAINED BY STUDENT ATHLETES, TO REQUIRE EACH LOCAL SCHOOL DISTRICT TO DEVELOP ITS OWN GUIDELINES AND PROCEDURES BASED ON THE MODEL GUIDELINES AND PROCEDURES, TO REQUIRE AN INFORMATION SHEET ON CONCUSSIONS AND BRAIN INJURY BE PROVIDED TO CERTAIN PERSONS EACH YEAR WHO PARTICIPATE IN ATHLETICS, TO REQUIRE THE REMOVAL FROM PLAY AND EVALUATION OF A STUDENT ATHLETE BELIEVED TO HAVE SUSTAINED A CONCUSSION DURING PLAY, TO ALLOW FOR THE EVALUATION TO BE UNDERTAKEN BY CERTAIN TRAINED PERSONS, TO PROVIDE LIMITED LIABILITY FOR CERTAIN TRAINED PERSONS WHO EVALUATE STUDENT ATHLETES, TO PROVIDE A STUDENT ATHLETE REMOVED FROM PLAY AND EVALUATED MAY NOT RETURN TO PLAY UNTIL HE HAS RECEIVED WRITTEN MEDICAL CLEARANCE BY A PHYSICIAN, AND TO DEFINE NECESSARY TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

Student athlete concussions, guidelines, management

SECTION 1. Article 1, Chapter 63, Title 59 of the 1976 Code is amended by adding:

"Section 59-63-75. (A) The South Carolina Department of Health and Environmental Control, in consultation with the State Department of Education, shall post on its website nationally recognized

guidelines and procedures regarding the identification and management of suspected concussions in student athletes. The Department of Health and Environmental Control also shall post on its website model policies that incorporate best practices guidelines for the identification, management, and return to play decisions for concussions reflective of current scientific and medical literature developed by resources from or members of sports medicine community organizations including, but not limited to, the Brain Injury Association of South Carolina, the South Carolina Medical Association, the South Carolina Athletic Trainer's Association, the National Federation of High Schools, the Centers for Disease Control and Prevention, and the American Academy of Pediatrics. Guidelines developed pursuant to this section apply to South Carolina High School League-sanctioned events.

(B) A local school district shall develop guidelines and procedures based on the model guidelines and procedures referenced in subsection (A).

we can do now

(C) Each year prior to participation in athletics, each school district shall provide to all coaches, volunteers, student athletes, and their parents or legal guardian, an information sheet on concussions which informs of the nature and risk of concussion and brain injury, including the risks associated with continuing to play after a concussion or brain injury. The parent or legal guardian's receipt of the information sheet must be documented in writing or by electronic means before the student athlete is permitted to participate in an athletic competition or practice.

(D)(1) If a coach, athletic trainer, official, or physician suspects that a student athlete, under the control of the coach, athletic trainer, official, or physician, has sustained a concussion or brain injury in a practice or in an athletic competition, the student athlete shall be removed from practice or competition at that time.

*immedi-
ate
removal*

(2) A student athlete who has been removed from play may return to play if, as a result of evaluating the student athlete on site, the athletic trainer, physician, physician assistant pursuant to scope of practice guidelines, or nurse practitioner pursuant to a written protocol determines in his best professional judgment that the student athlete does not have any signs or symptoms of a concussion or brain injury.

*triage -
type
return -
to play*

(3) A student athlete who has been removed from play and evaluated and who is suspected of having a concussion or brain injury may not return to play until the student athlete has received written medical clearance by a physician.

*medical
clearance
where
suspected
concussion*

*inf. g
Ed'n*

(4) In addition to posting information regarding the recognition and management of concussions in student athletes, the Department of Health and Environmental Control, in consultation with health care provider organizations, shall post on its website continuing education opportunities in concussion evaluation and management available to providers making such medical determinations. Such information must be posted by the department upon receipt from a participating health care organization.

(5) The athletic trainer, physician, physician assistant, or nurse practitioner who evaluates the student athlete during practice or an athletic competition and authorizes the student athlete to return to play is not liable for civil damages resulting from an act or omission in rendering this decision, other than acts or omissions constituting gross negligence or wilful, wanton misconduct. This immunity applies to an athletic trainer, physician, physician assistant, or nurse practitioner serving as a volunteer.

immunity

(E) For purposes of this section:

(1) 'Physician' is defined in the same manner as provided in Section 40-47-20(35).

(2) 'Student athlete' includes cheerleaders."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

This web page was last updated on July 2, 2013 at 1:16 PM

ATTACHMENT 2

GUIDELINES AND PROCEDURES
Aiken County Public Schools
Identification, Management, and Return to Play Decisions for
Concussions

Purpose: The purpose of this document is to provide guidance to coaches, assistants, and school officials and consultants in order to provide the basic structure for safety and protection of student athletes, including return to play protocols, if possible, in accordance with the best practices for student safety when dealing with possible mild brain injuries (also known as concussions). In particular, these procedures are intended to guard against the possibility of second impact brain injuries.

Personnel: All coaches and staff members involved with student athletic practice, training, and competition, are to be generally familiar with, and recognize the signs of, brain injury, including, but not limited to dizziness, headache, blurred vision, disorientation, memory and cognitive impairment, and loss or alteration of physical abilities.

Definition: A brain injury is one caused by traumatic forces that are delivered to the head, neck, or both. The severity of such an injury does not necessarily result in loss of consciousness but nevertheless results in any or all of the above mentioned symptoms.

Procedures: *[According to recently amended Section 59-63-75 of the Code of Laws for S.C., 1976 as amended, the S. C. Department of Health and Environmental Control is to post nationally recognized guidelines and procedures. Until that is done, the following local procedures will be utilized.]*

1. Each year, prior to participation in athletics, each school shall provide to coaches, volunteers, student athletes, and their parents or legal guardians an information sheet about concussions which informs of the nature of the risks of a concussion and brain injury, particularly including the risks associated with continuing to play after a concussion or brain injury. Parents or legal guardians must acknowledge receipt in writing of receiving this information before the student athlete either in practice or competition.
2. If available through any provider working with, or contracted by the school, base line testing will be completed prior to participation in high risk sports.
3. If a coach, trainer, athletic trainer, official, or physician suspects that a student athlete has sustained a concussion or brain injury in a practice or an athletic competition, the student will be removed from the practice or competition at that point in time.

4. A student athlete who has been removed from play may be returned to play if, as a result of evaluating the student athlete on site, the athletic trainer, physician, or physician assistant – pursuant to scope of practice guidelines, or a nurse practitioner – pursuant to a written protocol, determines in his or her best professional judgment that the student does not demonstrate any signs or symptoms of a concussion or brain injury.
5. A student who has been removed from play and evaluated on site and who is suspected of having a concussion or brain injury may not return to play until the student has received written medical clearance by a physician.

Definitions:

- 1) “Physician” means a doctor of medicine or doctor of osteopathic medicine licensed by the South Carolina Board of Medical Examiners.
- 2) “Student Athlete” includes cheerleaders.

ATTACHMENT 3

AIKEN COUNTY PUBLIC SCHOOLS

**ACKNOWLEDGEMENT OF CONCUSSION PROCEDURES &
CONCUSSION INFORMATION SHEET**

Dear Parent or Guardian:

By signing below, you affirm that you have read and understood the Concussion Information Sheet, and the Procedures & Guidelines for Athletes Incurring Brain Injury (concussion and otherwise) given to you by the coach, trainer, or other athletic department representative of your student's school, all as required by S.C. law. You are also acknowledging your understanding that athletic participation, in any sport, places your son/daughter at some risk for sustaining a concussion. Concussions (and traumatic brain injury) can lead to life-altering or life-threatening circumstances.

You are acknowledging your understanding that under the Procedures and Guidelines of this School District, in compliance with state law, any student athlete (including cheerleaders) with suspected concussion symptoms will be removed from practice or competition immediately for evaluation in accordance with accepted protocol(s) and may thereafter be required to be evaluated by a medical professional of your choice who has been trained in concussion evaluation. In such cases the athlete will not be able to return to play until he/she has written clearance from a physician so qualified and is able to pass all reasonable physical and cognitive testing including, but not limited to, a return to play protocol set forth and approved in recognized medical procedures for athletes.

You also acknowledge being informed that concussions affect people differently and recovery time is not always predictable. Accordingly, any athlete who sustains a concussion will not be allowed to participate until he or she has fully recovered from the concussion and presents with no physical or cognitive symptoms.

Please keep the attached Concussion Information Sheet as a reference. Please sign and submit the original of this form to your above mentioned coach, trainer, or other school representative and keep the copy for your records.

Any athletic trainer, physician, physician's assistant, or nurse practitioner, whether paid or volunteering, who evaluates an athlete on-site during practice or competition and, in his or her best professional judgment and in accordance with accepted protocols does not find signs of concussion or brain injury and authorizes return to play is generally immune from liability under the law.

Student – Athlete Name PRINTED

Student-Athlete SIGNATURE

Date

Parent or Legal Guardian Name PRINTED

Parent or Legal Guardian SIGNATURE

Date

HEADS UP: Concussions in Sports

- (1) If a youth athlete participating in a youth athletic activity exhibits symptoms of having a concussion, that athlete shall be removed from the game, competition, tryout, or practice and be evaluated by a health care provider
- (2) If a youth athlete is deemed by a health care provider to have sustained a concussion, the coach or other designated personnel shall not permit the youth athlete to return to play until the youth athlete receives clearance from a health care provider for a full or graduated return to play.

(3) Key definitions:

“Licensed health care provider” means a physician or another licensed individual under the supervision of a licensed physician, such as a nurse practitioner, physician assistant, or certified athletic trainer who has received training in concussion evaluation and management.

What is a concussion?

A concussion is a brain injury. Concussions are caused by a bump, blow, or jolt to the head or body. Even a “ding,” “getting your bell rung,” or what seems to be a mild bump or blow to the head can be serious.

What parents/guardians should do if they think their child has a concussion?

1. OBEY THE NEW LAW.

- a. Keep your child out of participation until s/he is cleared to return by a licensed healthcare provider.
- b. Seek medical attention right away.

2. Teach your child that it’s not smart to play with a concussion.

3. Tell all of your child’s coaches, their athletic trainer, and the student’s school nurse about ANY concussion.

What are the signs and symptoms of a concussion?

You cannot see a concussion. Signs and symptoms of concussion can show up right after the injury or may not appear or be noticed until days after the injury. If your teen reports one or more symptoms of concussion listed below, or if you notice the symptoms yourself, keep your teen out of play and seek medical attention right away.

STUDENTS:

If you think you have a concussion:

- **Tell your coaches & parents** – Never ignore a bump or blow to the head, even if you feel fine. Also, tell your coach if you think one of your teammates might have a concussion.
- **Get a medical check-up** – A physician or other licensed health care provider can tell you if you have a concussion, and when it is OK to return to play.
- **Give yourself time to heal** – If you have a concussion, your brain needs time to heal. While your brain is healing, you are much more likely to have another concussion. It is important to rest and not return to play until you get the OK from your health care professional.

IT’S BETTER TO MISS ONE CONTEST THAN THE WHOLE SEASON.

Signs Reported by Students:

- Headache or “pressure” in head
- Nausea or vomiting
- Balance problems or dizziness
- Double or blurry vision
- Sensitivity to light or noise
- Feeling sluggish, hazy, foggy, or groggy
- Concentration or memory problems
- Confusion
- Just not “feeling right” or is “feeling down”

PARENTS:

How can you help your child prevent a concussion?

Every sport is different, but there are steps your children can take to protect themselves from concussion and other injuries.

- Make sure they wear the right protective equipment for their activity. It should fit properly, be well maintained, and be worn consistently and correctly.
- Ensure that they follow their coaches’ rules for safety and the rules of the sport.
- Encourage them to practice good sportsmanship at all times.

Signs Observed by Parents or Guardians:

- Appears dazed or stunned
- Is confused about assignment or position
- Forgets an instruction
- Is unsure of game, score, or opponent
- Moves clumsily
- Answers questions slowly
- Loses consciousness (even briefly)
- Shows mood, behavior, or personality changes
- Can’t recall events prior to hit or fall
- Can’t recall events after hit or fall

Information on concussions provided by the Centers for Disease Control and Prevention.

For more information visit: www.cdc.gov/Concussion

ATTACHMENT 4

SCHSL Concussion Return to Play Form

This form is adapted from the Acute Concussion Evaluation (ACE) care plan on the CDC web site. www.cdc.gov/injury. All medical providers are encouraged to review this site if they have questions regarding the latest information on the evaluation and care of the scholastic athlete following a concussion injury. **Please initial any recommendations that you select.**

Athlete's Name _____ Date of Birth _____

Date of Injury _____

This return to play plan is based on today's evaluation _____ Date of Evaluation _____

Return to this office Date/Time _____

Care plan completed by _____ Return to school on (date) _____

RETURN TO SPORTS

Please Note →

1. Athletes should not return to practice or play the same day that their head injury occurred.
2. Athletes should never return to play or practice if they still have **ANY** symptoms.
3. Athletes, be sure that your coach and /or athletic trainer are aware of your injury, symptoms, and has the contact information for the treating physician. The following are the return to sports recommendations at the present time:

The following are the return to sports recommendations at the present time:

PHYSICAL EDUCATION: Do Not Return to PE class at this time. May Return to PE class.

SPORTS: Do not return to sports practice or competition at this time.

May gradually return to sports practices under the supervision of the health care provider for your school or team.

May be advanced back to competition after phone conversation with attending physician.

- OR -

Must return to Physician for final clearance to return to competition.

Cleared for full participation in all activities without restriction.

Medical Office Information (Please Print/Stamp)

Physician' Name _____ Physician's Office phone _____

Physician's Signature _____ Office Address _____

Gradual Return to Play Plan

Return to play should occur in gradual steps beginning with light aerobic exercise only to increase your heart rate (e.g. stationary cycle); moving to increasing your heart rate with movement (e.g. running); then adding controlled contact if appropriate; and finally return to sports competition.

Pay careful attention to your symptoms and your thinking and concentration skills at each stage or activity. After completion of each step without recurrence of symptoms, you can move to the next level of activity the next day. Move to the next level of activity only if you do not experience any symptoms at the present level. If your symptoms return, let your health care provider know, return to the first level and restart the program gradually.

Day 1: Low levels of physical activity (i.e. symptoms do not come back during or after the activity). This includes walking, light jogging, light stationary biking, and light weightlifting (low weight – moderate reps, no bench, no squats).

Day 2: Moderate levels of physical activity with body/head movement. This includes moderate jogging, brief running, moderate intensity on the stationary cycle, moderate intensity weightlifting (reduce time and or reduced weight from your typical routine).

Day 3: Heavy non-contact physical activity. This includes sprinting/running, high intensity stationary cycling, completing the regular lifting routine, non-contact sport specific drills (agility – with 3 planes of movement).

Day 4: Sports Specific practice

Day 5: Full contact in a controlled drill or practice.

Day 6: Return to competition

