Coach Contract Sexual Misconduct Clauses Are Concerning

By **Scott Bernstein and Justin Dillon**
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Scott Bernstein

Justin Dillon

The scandal embroiling head football coach Urban Meyer at The Ohio State University took on a concerning new dimension recently, when media coverage revealed that last April, Ohio State added language to Meyer's contract requiring him to report any known violations of the school's sexual misconduct policy. The clause may seem noncontroversial — why shouldn't coaches be required to report those things? But because colleges and universities' sexual misconduct policies often defy common sense, clauses like the one in Meyer's contract could cause lasting harm to innocent student-athletes.

The clause Ohio State inserted into Urban Meyer's contract when it gave him an extension and $1.2 million raise in April required him to "promptly report to Ohio State's Title IX coordinator for athletics any known violations of Ohio State's sexual misconduct policy." That now appears prescient — the school is currently investigating Meyer's failure to report domestic abuse allegations against one of his assistant coaches. If Meyer breached that clause, the university may not have to pay the $38.1 million it would owe him if it fired him without cause.

Ohio State isn't the only school that has added this sort of clause to coaching contracts. So has Texas A&M. Indeed, according to media reports, Texas A&M football team's new offensive coordinator, tight ends coach, defensive ends coach and director of football operations all signed contracts containing a clause that goes even further than Ohio State's — requiring these assistants to report any "alleged or suspected" misconduct.

This trend is seemingly a reaction to the sexual assault scandal at Baylor University, which involved (among many other things) football coaches steering complainants away from reporting sexual assaults by football players, and ultimately led to the dismissal of head coach Art Briles and the resignation of the school's chancellor, Ken Starr.

No school wants to be the next Baylor. And some schools apparently believe that these new clauses are a way to avoid that fate.

As attorneys who have represented scores of students nationwide in sexual misconduct investigations, however, we are concerned that these clauses will do a lot more harm than good, by turning innocent college students into alleged perpetrators of sexual misconduct.

That's because there's a wide gap between how schools define "sexual misconduct" and what people typically consider "sexual misconduct." Schools, to the surprise of no one except people who work at schools, sometimes don't have a lot of common sense.

Imagine the following situation: A football coach overhears his players talking about one of

their teammates and his girlfriend drunkenly kissing the night before. Is that something the coach should report to the school? Most people wouldn't think so — drunken make-outs aren't exactly man bites dog, and they certainly aren't what most people would consider "sexual assault." But under almost any school policy, a drunk make-out session would qualify as sexual assault — kissing is considered no less a "sexual" activity than intercourse, and "drunk" is too often mistaken for "incapacitated."

Or take a female volleyball coach who witnesses one of her players showing off a picture of her shirtless boyfriend. Is that something the coach should report? Common sense would, of course, say no. But unless that player obtained her boyfriend's consent to show the picture, she has probably committed "sexual exploitation" under almost any college or university sexual misconduct policy. And again, the coach would be required to report that, for fear of being fired if she didn't.

And these student-athletes likely wouldn't have faced a sexual misconduct investigation if their coaches hadn't reported them — not because their actions didn't violate the school's policy, but because the students involved wouldn't have thought to bring a complaint.

But when schools deputize coaches to report on their players — or face termination without severance — there will be a lot more of these sorts of cases: technical violations of an overly broad policy that ordinarily wouldn't turn into a full-fledged sexual misconduct investigation.

To be sure, if a coach hears that one of his players committed sexual assault — as most regular people would define that term — he should absolutely report it. Regardless of whether it's in his contract, it's simply the right thing to do. The problem isn't the noble motivation of these new clauses — it's that schools define "sexual assault" and other forms of "sexual misconduct" too broadly.

An investigation alone could cost a student-athlete their spot on a team and any related financial aid, to say nothing of how this would fundamentally change players from viewing their coaches as people they can trust to viewing them as commandeered spies for the Title IX office. That's too high a cost for a contractual clause that seems focused more on protecting the school's reputation than it is student welfare.

Scott Bernstein is counsel at KaiserDillon PLLC.

Justin Dillon is a partner at KaiserDillon and a former assistant United States attorney.