



Iowa General Assembly

2014 Legal Updates

Legislative Services Agency – Legal Services Division

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SEXUAL EXPLOITATION BY SCHOOL EMPLOYEE

Filed by the Iowa Supreme Court

April 11, 2014

State v. Nicoletto

No. 12-1862

845 N.W.2d 421 (Iowa 2014)

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Background Facts and Prior Proceedings. The defendant, Patrick Nicoletto, was under contract with the Davis County Community School District to be an assistant high school girls' basketball coach. As a condition of payment for his coaching services, the terms of his contracts for school years 2007-2008 and 2008-2009 required Nicoletto to obtain a teaching certificate with a coaching endorsement or a coaching authorization. The defendant, who was not a licensed teacher, obtained a coaching authorization (for which an applicant must successfully complete four semester credit hours or 40 contact hours in courses relating to knowledge and understanding of the human body, children and youth, and medical and safety problems in relation to physical activity; and relating to the techniques and theory of coaching interscholastic athletics).

During Nicoletto's first season as an assistant basketball coach, a 16-year-old junior on the varsity team began exchanging text messages with Nicoletto. Initially basketball-related, the messages became "flirty and sexual" in nature. Sometime during 2008, the two began engaging in sexual intercourse every week or two at Nicoletto's home. The relationship continued during the summer and fall of 2008. During the fall semester, the school principal, concerned about the possible relationship, contacted both Nicoletto and the student. The student denied that she was in a relationship with Nicoletto, and Nicoletto ended the relationship in mid-September. However, by January or February 2009, the two engaged in intimacy once again.

Nicoletto was prosecuted for and found guilty of the crime of sexual exploitation by a school employee in violation of Iowa Code §709.15(3)(a) and (5)(a). He was sentenced by the district court to five years imprisonment plus a 10-year special sentence under Iowa Code §903B.2. Nicoletto timely filed an appeal.

Issue. Whether a person holding a coaching authorization is a school employee and therefore subject to prosecution under Iowa Code §709.15.

Arguments and Analysis. The state claimed Nicoletto was an "other licensed professional;" that his coaching authorization functioned as a license, giving him the exclusive authority to act as a coach; and that coaching activities are within the scope of "educational assistance to students" required in the definition of "practitioner." Nicoletto argued that he was not a licensed professional employed by a school district and pointed to other provisions in the Iowa Code that separately list licensed school employees and coaches or holders of coaching authorizations; that a coaching authorization is not an exclusive authorization to coach, as a person may coach on a volunteer basis without meeting the requirements of Iowa Code chapter 272; and that unlike practitioners, coaches do not generally provide educational

assistance to students.

The Court noted that in interpreting a criminal statute, the statutory provisions are to be strictly construed, with doubts resolved in favor of the accused. The Court stated that a person who holds a coaching authorization does not fall within the ordinary meaning of the term “licensed professional.” The Court considered the relevant definitions provided in the Iowa Code as well as the ordinary dictionary meaning of words in concluding that these definitions do not support the argument that a person holding a coaching authorization should be considered a licensed professional under Iowa Code §272.1(7).

Iowa Code §709.15 prohibits sexual exploitation by a “school employee,” a term defined in that provision to mean a “practitioner” as defined in Iowa Code §272.1. Iowa Code §272.1(7) defines “practitioner” to mean “an administrator, teacher, or other licensed professional, including an individual who holds a statement of professional recognition, who provides educational assistance to students.” Iowa Code §272.1(5) defines “license” to mean “the authority that is given to allow a person to legally serve as a practitioner, a school, an institution, or a course of study to legally offer professional development programs, other than those programs offered by practitioner preparation schools, institutions, courses of study, or area education agencies. A license is the exclusive authority to perform these functions.”

The Court also noted that the Iowa Administrative Code (281 IAC 36.1) defines “coach” to include individuals who act on a voluntary basis on behalf of a school or school district, and therefore a coaching authorization cannot be regarded the exclusive authority to coach, or to meet the definition of “license” under Iowa Code chapter 272. The Court supported this conclusion by referring to Iowa Code provisions that distinguish between licenses and authorizations, and those that distinguish between license holders and authorization holders as mandatory reporters of child and sexual abuse.

The Court also noted that the General Assembly has not established a licensing regime for coaches, but has done so for other persons involved in athletics such as athletic trainers. The Court noted that when Iowa Code §709.15 was enacted in 1991, it applied only to counselors and therapists; in 2003, the provision was expanded to include school employees. Bills introduced during the 2003 Legislative Session that would have included coaches or those holding coaching authorizations in the definition of “school employee” for purposes of Iowa Code §709.15 failed to pass. The Court stated that it cannot add to the statute what the General Assembly refused to pass and asserted that if changes to the law are desirable, it is up to the Legislature to enact such changes.

Holding. The Court held that, although a coach who holds a teaching or other professional license is clearly subject to the sexual exploitation statute, a person who holds merely a coaching authorization without a professional license within the meaning of Iowa Code §272.1(7) does not fall under the sexual exploitation statute. The Court reversed the jury’s verdict and remanded the case to the district court to dismiss the charges against Nicoletto.

Dissenting Opinion by Justice Waterman joined by Justice Mansfield. Justice Waterman stated that he would have affirmed Nicoletto’s conviction. He invited the General Assembly to amend Iowa Code §709.15 to close what he describes as a new loophole in a law the General Assembly enacted in order to criminalize the exploitation of students by school employees in a power relationship over their victims. Justice Waterman’s dissent noted that Nicoletto at the time of his conduct was 30 years old, had a college degree, and a decade of coaching experience. The dissent further argued that “professional” is used to distinguish between paid employees and volunteers or amateurs, and found unpersuasive the majority’s effort to distinguish between “coaching authorization” and “license.”

Legislative Action. 2014 Iowa Acts, chapter 1114, HF 2474, effective May 23, 2014, amended the definition of “school employee” in Iowa Code §709.15 to include persons issued a coaching authorization under Iowa Code §272.31(1).

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