

How did this happen?

An analysis of the pervasive abuse in the National Women’s Soccer League and the solutions and limitations offered by the law.

By Kendall Schreur

I. Introduction

The National Women’s Soccer League (“NWSL” or “The League”) is the preeminent professional women’s soccer league in the United States and was founded in 2013 following the collapse of multiple previous iterations of such a league.¹ Between 2020 and 2022, ten teams active in the NWSL fired or forced the resignation of a coach or general manager for misconduct against players. From 2020 to 2022, there were between nine and twelve teams active across those three seasons.² An investigation and subsequent report conducted on behalf of the US Soccer Federation (USSF), the national governing body for soccer in the United States, by former US Attorney General Sally Yates and her team at King and Spalding (the “Yates Report”) as well as an investigation and report conducted at the joint request of the NWSL Players Association and NWSL (the “Joint Report”) have revealed details about the allegations at issue in this paper. These reports show the pervasive nature of abuse in the NWSL, ranging from verbal to physical abuse and from sexual innuendo to sexual coercion.

This paper will examine the sports institutions in power in women’s soccer and the structures (or lack thereof) that allow abusers continued access to female athletes even after they have been alleged or proven to have abused or harassed players. Finally, this paper will examine what the law, as it currently stands, can and cannot do to fix this problem. This analysis will

¹ Steven Goff, *National Women’s Soccer League aims to succeed where previous U.S. women’s soccer leagues have failed*, WASHINGTON POST, Apr. 13, 2013.

² See Kim McCauley, *Inside NWSL’s Plans to Expand and Pay Players More after Its World Cup Bump*, SB NATION.

ultimately show that the design of the institutions in charge of player safety and regulation of coaching have allowed abusers to operate with virtually no oversight or punishment. Currently, the law falls short of what is necessary to remedy these abuse-enabling systems but may offer some solutions toward a better future for female athletes in soccer and elsewhere.

II. Failure of Institutional Structures to Stop Abuse

Institutional structures have enabled abuse in the NWSL and women's and girls' soccer. Two programs are at the heart of this failure: the KidSafe Program, implemented by the United States Soccer Federation (USSF) to improve the safety of youth soccer players, and the US Center for SafeSport, an independent nonprofit organization that has been congressionally authorized to work to prevent, investigate and punish allegations of abuse in sports.³ USSF can fine, suspend and terminate members of the League.⁴ The Yates investigation did not find a single instance where the Federation exercised these powers.⁵ Instead, they outsourced these responsibilities to KidSafe and the Youth Association for issues related to youth soccer and to SafeSport for issues pertaining to professional soccer.

A. KidSafe Program

The Kidsafe program was established in the mid 1990s. Essentially, it was meant to work as a screening program that filtered out those adults who pose a threat to youth athletes from participating in USSF programs. Functionally, it asked these adults to check a box indicating that they have not been convicted of a crime. The USYSA does not formally require its affiliates to

³ 36 U.S.C. § 220541

⁴ Sally Q. Yates, *Report of the Independent Investigation to the U.S. Soccer Federation Concerning Allegations of Abusive Behavior and Sexual Misconduct in Women's Professional Soccer*, (2022).

⁵ *Id.* at 31.

conduct criminal background checks which could reveal important information relevant to the protection of youth athletes.⁶

The KidSafe Program was at issue recently in the Court of Appeals of California in *Doe v. U.S. Youth Soccer Assn., Inc.* Plaintiff Jane Doe was a minor who had been abused by her youth soccer coach. The coach was subsequently convicted of continuous sexual abuse of a child under age 14.⁷ The plaintiff brought an action alleging negligence by USYSA for their failure to conduct a criminal background check of the coach and their failure to protect the player from the coach's criminal conduct.⁸ The plaintiff additionally alleged that the Association's failure to warn or educate her about the risk of sexual abuse constituted a breach of duty and was a proximate cause of her injuries at the hands of this coach.⁹ She argued that the USYSA clearly knew what that sexual abuse of a player by an adult coach was a threat to children playing in their programs as evidenced by their original distribution of the KidSafe pamphlets and subsequent actions to encourage affiliates to perform background checks on their coaches and administrators.¹⁰

Though the plaintiff was unsuccessful in her negligence claim, her case demonstrates a fundamental institutional failing of USYSA and the KidSafe Program. The coach at issue in *Doe* had been previously convicted of battery against his spouse but checked "no" on the disclosure form he was required to fill out by the Association.¹¹ By failing to hold their affiliates to policies that require background checks of adults in positions of power over vulnerable youth players, USYSA continues to put their young athletes at risk of abuse by predators who need only check "no" on a box to gain access to them.

⁶ Doe V. U.S. Soccer Assn., Inc. 8 CAL. APP. 5TH 1118 at 562

⁷ See *Id.*

⁸ *Id.* at 2.

⁹ *Id.* at 4.

¹⁰ *Id.*

¹¹ *Id.* at 10.

B. SafeSport

The institution put in place to protect professional and collegiate athletes from abusive coaches, trainers, and administrators is the US Center for SafeSport (SafeSport).¹² SafeSport was created in 2017 after Congress passed the Safe Sport Act (the Act) in response to revelations about the abuse of female gymnasts by Larry Nassar.¹³ The Act created two changes which forced USSF into a role in which they were responsible for reporting sexual misconduct allegations but not responsible for any actions beyond that. First, the Act required USSF, including its coaches and employees, to report sexual misconduct or abuse to SafeSport and law enforcement.¹⁴ Second, the Act empowered SafeSport to assert exclusive jurisdiction over six categories of cases. This encompasses anything involving sexual misconduct or other inappropriate conduct including intimate relationships where a power imbalance exists.¹⁵ This essentially lets USSF off the hook for investigating or resolving any allegations and places the sole authority to do so with SafeSport.

According to the Safe Sport Act and the governance structure of the NWSL, SafeSport would have been the natural body through which reporting of abuse should have happened. The NWSL leadership was viewed by players as biased toward coaches, and therefore was itself not a reliable mechanism for reports of misconduct.¹⁶ USSF does not itself hold the power to investigate or meaningfully punish coaches or administrators who perpetrate sexual misconduct against their players. Unfortunately, the Joint Report notes that the players who spoke with investigators were not even aware that they could report misconduct to SafeSport, and NWSL staff did not know that

¹² Nicole Johnson et al., *U.S. center for safesport: Preventing abuse in sports*, 28 *Women Sport Phys. Act. J.* 66 (2020).

¹³ Sally Q. Yates, *supra* note 4.

¹⁴ 36 U.S.C. § 220541, (The Act defines sexual misconduct as nonconsensual intercourse, sexual harassment, sexual exploitation, voyeurism, bully and hazing of a sexual nature, and gender/sexual identity).

¹⁵ *Id.*

¹⁶ Sally Q. Yates, *supra* note 4.

SafeSport dealt with professional athletes at all.¹⁷ This is a failure on the part of USSF, the NWSL leadership, and SafeSport itself.

However, even had a clear reporting structure been in place, it is possible that SafeSport would not have adequately responded to the allegations. SafeSport is not a financially independent body.¹⁸ In 2020, a nonprofit organization donated \$284,000 to SafeSport in response to the US Olympic Committee’s solicitation for funding for programs to remedy abuse of athletes in amateur sports.¹⁹ The nonprofit later filed suit against the Olympic Committee for breaching their grant agreement. They alleged that SafeSport was created as “a public relations move to deflect criticism of the USOC for its failure to effectively handle the abuse problem” and that, “SafeSport was never intended to actually address and/or remedy the abuse problem.”²⁰

VI. (Limits of) Legal Remedies

Moving beyond the failures of the structures that were supposed to protect athletes, this paper will turn to the law for possible solutions and reveal the limits of those solutions. After a thorough review of publicly available information, it does not appear that there has been a single civil or criminal suit filed related to the abuse in the NWSL. After reviewing the arbitration clause in the standard player agreement set forth in the CBA enacted in 2022, it is likely that arbitration clauses and waiver of litigation have always prevented players from filing civil lawsuits against their employer-team.²¹ Additionally, NWSL players do not generally possess excessive wealth and

¹⁷ *Id.*

¹⁸ Amanda J. Peters, *When Coaching Becomes Criminal When Coaching Becomes Criminal When Coaching Becomes Criminal*, 20 Number 1 Article 12, 30.

¹⁹ FOUND. FOR GLOBAL SPORTS DEV. V. UNITED STATES OLYMPIC COMM., (2020), 2021 U.S. Dist. (C.D. Cal. Dec. 7, 2020).

²⁰ *Id.*

²¹ COLLECTIVE BARGAINING AGREEMENT BETWEEN THE NATIONAL WOMEN’S SOCCER LEAGUE PLAYERS ASSOCIATION AND NATIONAL WOMEN’S SOCCER LEAGUE, https://www.nwslplayers.com/files/ugd/84dade_f54a9ed0c1fa4bd48f5275563a3f9e04.pdf.

often work a second job to make ends meet.²² If a player is working two jobs, one might guess that they do not have the financial resources nor the impetus to sue their primary employer, the NWSL. However, the fact that there have not been any public suits related to these incidents of abuse does not mean that the law does not offer remedies for players who experience abuse at the hands of their coaches. Title IX and Title VII offer limited paths to relief for athletes at the college and professional level.

Title IX of the Education Act of 1972²³ (Title IX) and Title VII of the Civil Rights Act of 1964²⁴ (Title VII) have been the main avenues through which women can sue for relief from gender-based sexual harassment. *Jennings v. Univ. of North Carolina* provides a roadmap for successful Title IX cases against coaches who sexually harass players.²⁵ Additionally, although there are no public examples of professional athletes filing Title VII claims, likely because such claims would have been arbitrated had they been filed and therefore not part of the public record, players should still know that this option is viable for them. This paper will explore both options below.

A. Title IX

Players at the collegiate level can bring Title IX claims when faced with sexual harassment by their coach at their educational institution if they can meet the standards of such a claim.²⁶ To prove a Title IX claim based on sexual harassment, a plaintiff must show that,

“(1) she was a student at an educational institution receiving federal funds, (2) she was subjected to harassment based on her sex, (3) the harassment was sufficiently severe or pervasive to create a hostile

²² ²² See Anonymous, *NWSL Confidential: When ‘professional soccer player’ is not your only job*, THE ATHLETIC.

²³ 20 U.S.C. § 1681(a).

²⁴ 42 U.S.C. § 2000(e)(2).

²⁵ 482 F.3d 686.

²⁶ *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60 (1992).

(or abusive) environment in an educational program or activity, and
(4) there is a basis for imputing liability to the institution.”²⁷

The sticking point in many claims seems to be proving that the harassment experienced by the player was based on her sex and that it was sufficiently severe. In *Jennings*, the plaintiff, an athlete on the University of North Carolina women’s soccer team brought a Title IX claim against her coach, Anson Dorrance, who is unquestioningly the most successful coach in women’s collegiate soccer history.²⁸ Jennings was able to convince the Fourth Circuit Court of Appeals to vacate the trial court’s grant of summary judgment for UNC by showing that constant sexual comments by Dorrance constituted actionable discrimination by creating a concrete, negative effect on her ability to participate in the school-affiliated soccer program.²⁹ Additionally, she showed that Dorrance’s near-constant sexual comments and questions to and about players constituted harassment based on sex.³⁰ Though the case was eventually settled out of court, this should give hope to college athletes that, should they face sexually degrading abuse by their coach, courts may take their claims seriously and recognize them as the gender-based sexual harassment that they are.

B. Title VII

Turning to professional athletes next, Title VII may provide relief for women experiencing sexual harassment in their workplace, in this context while working as a professional athlete at their employer-team. Title VII prohibits employment discrimination based on race, color, religion, sex, or national origin.³¹ *Harris v. Forklift*³² outlines the standard under which a woman experiencing sexual harassment in the workplace may successfully bring a claim under Title VII.

²⁷ *Jennings*, 482 F.3d.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Griggs v. Duke Power*, 401 U.S. 424, 429 S. Ct. (1971)

³² *Harris v. Forklift Sys.*, 510 U.S. 17, 114 S. Ct. 367 (1993)

To bring such a claim, the plaintiff must show that she has either been subject to a quid pro quo arrangement or a hostile work environment.³³ When considering the facts of the abuse happening in the NWSL, it seems that the more likely scenario facing female professional athletes is the latter. According to *Harris*, a workplace is hostile and actionable when there is “discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.”³⁴ Justice O’Connor noted that there need not be psychological injuries in order for the environment to be considered abusive.³⁵ This is especially important because, as previously noted, many athletes are so used to abuse that they may not even recognize it as such and may operate as though they are not experiencing an abusive environment. Athletes may not show psychological effects of abuse because of their conditioning to those environments. *Harris* shows that Title VII still provides recourse for players who behave this way.

C. Limitations of Legal Remedies

While both statutes provide avenues of relief for female athletes, it is important to also note their limitations. Both statutes require the sexual conduct or harassment to be “unwelcome.”³⁶ This can be difficult to prove, but beyond that, the power dynamics inherent in a relationship between a coach and a player may make even a seemingly consensual relationship turn nefarious.³⁷ Rhonda Reaves, Professor of Law at Florida A&M University, writes that,

“The “unwelcomeness” requirement is troublesome when applied to harassment cases under Title IX. The presumption that most sexual relationships are consensual should not necessarily apply in

³³ 29 C.F.R. §§ 1604.11(a)(2) and (3).

³⁴ *Harris*, 510 U.S. at 21.

³⁵ *Id.*

³⁶ Guidelines On Discrimination Because Of Sex, 29 C.F.R. § 1604.11; Revised Sexual Harassment Guidance,; Harassment of Students by School Employees, Other Students, or Third Parties, 62 Fed. Reg. 12,034.

³⁷ See Peter Rurter, *Sex In The Forbidden Zone: When Men In Power therapists, Doctors, Clergy, Teachers And Others-Betray Women's Trust* 25 (1986).

educational athletic situations. The "unwelcomeness" concept presumes that when an advance is made, the recipient is fully empowered to turn it down, and so therefore, there is no harm in the asking. Factors of power, trust, and control that characterize the coach/athlete relationship may remove the possibility of a female athlete freely giving consent to sexual contact."³⁸

A useful example of this is the abuse suffered by Sinead Farrelly while playing under Paul Riley at the Portland Thorns and the Philadelphia Independence. Riley exerted considerable control over Farrelly throughout the course of their relationship.³⁹ He manipulated her, telling her that she was good but only he could make her great, giving her special attention and then ignoring or berating her, and inappropriately touching her.⁴⁰ Riley's control over her was so absolute that he was able to convince her to turn down a spot on the 2011 World Cup roster – the pinnacle of the sport and a huge financial boon to a player.⁴¹ This was all a precursor to coercing Farrelly into having sex with him.⁴² Farrelly suffered emotional breakdowns and panic attacks as a result of her relationship with Riley.⁴³ However, whether a court would find that this sex was nonconsensual is an open question. Coercion would be very difficult to prove. Under the circumstances, a reasonable jury may decide that by entering his hotel room and proceeding to have sex with Riley three more times over the course of their relationship, the sexual contact was not in fact "unwelcome" and therefore not actionable under Title VII. Under the current standard of unwelcomeness, players such as Farrelly would be left behind by Titles IX and VII.

³⁸ Rhonda Reaves, "*There's No Crying in Baseball*": *Sports and the Legal and Social Construction of Gender*, 4 J. GENDER RACE & JUST. 283 (2001).

³⁹ See Meg Linehan, "'This Guy Has a Pattern' Amid Institutional Failure, Former NWSL Players Accuse Prominent Coach of Sexual Coercion.", THE ATHLETIC.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

VIII. Conclusion

The NWSL scandal encapsulates an issue that is pervasive across women's sports: abuse of players by their coaches and a lack of institutional structures to end that abuse. The psychological effects of participation in sports and the athlete-coach relationship lay the groundwork for an abusive environment. When a coach then exploits that environment and abuses a player, there are limited legal remedies available to make that player whole again. Looking at the inadequate legal remedies, it is clear that the legal system has not sufficiently grappled with the issue of abuse in professional women's sports. Without a push from the legal system, the institutions in charge of professional women's sports have not been forced to truly grapple with the issue of rampant sexual and emotional abuse of players. Changes must additionally happen at the youth level to both vet coaches and ensure that tactics of fear and manipulation are not continued. Without this psychosocial conditioning to endure abuse that is currently the norm, players will become more likely to recognize and report abuse when it occurs.