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Memorandum: HB No. 2038 Relating to the Prevention, Treatment, and Oversight of Concussions in Interscholastic Athletics

Background

This past legislative session the Texas Legislature passed House Bill Number 2038. Except for the training requirement discussed below, this bill is effective for the 2011-2012 school year. HB 2038 amends Chapter 38 of the Education Code and relates to “prevention, treatment and oversight of concussions affecting public school students participating in interscholastic athletics,” including all open-enrollment charter schools.

The bill describes participation in interscholastic activities to be any time your school participates in a school-sponsored or sanctioned athletic activity, including practice and competition.

Compliance with House Bill No. 2038 is as easy as 1, 2, 3, 4, 5, 6...

STEP 1. Have your board approve the University Interscholastic League (UIL) Concussion Oversight Team (“COT”) as its own, or approve another COT that meets the requirements of the new law.

- a. TCSAAL has spoken with UIL and confirmed that schools may approve the UIL concussion oversight team as their own; if this ever changes, TCSAAL will establish its own oversight team to serve member schools. Also, UIL has posted on their website in their Implementation Guide that, “There is nothing that would prohibit the governing body of any school district and open enrollment charter school from adopting the UIL Medical advisory committee as the Concussion Oversight Team for purposes of satisfying TEC Section 38.153.”
- b. To adopt the UIL Concussion Oversight Team, schools need to have their boards approve the UIL Advisory committee as their concussion oversight team. Below is some suggested language that you might use to adopt the UIL COT. This language is not intended as legal advice. We recommend you consult with your school attorney regarding this suggested resolution.

Resolution to Approve Concussion Oversight Team

“The language provided below is for the purposes of adopting the UIL COT. If you are adopting a different oversight team you would need to adjust the language.”

Whereas, the Texas Legislature amended Chapter 38 of the Education Code by adding Subchapter D relating to the prevention, treatment and oversight of concussions affecting student athletes; and

Whereas, Subchapter D requires that the governing body of each school district and open-enrollment charter school with students enrolled who participate in an interscholastic athletic activity shall appoint or approve a concussion oversight team; and

Whereas, the UIL has stated, “there is nothing that would prohibit the governing body of any school district and open-enrollment charter school from adopting the UIL Medical Advisory Committee as the Concussion Oversight Team for purposes of satisfying TEC section 38.153.”(quoted from UIL Implementation Guide, <http://www.uiltexas.org/files/health/UIL-CMP-Implementation.pdf>)

Therefore, Be It Resolved that the governing body of the _____ Charter School approves the UIL Medical Advisory Committee as their Concussion oversight team.

Approved this date: _____

Signed: _____

Title: _____

STEP 2. Determine who will be responsible (an athletic trainer or other person) for compliance with the “Return to Play Protocol” established by the Concussion Oversight Team and other guidelines established by the new law. (“Responsible Party”)

a. The person who serves in the function of superintendent or that person’s designee must **supervise** the Responsible Party. The person who has supervisory responsibilities may not be a coach of an interscholastic athletics team.

b. Duties of the Responsible Party include ensuring that:

a. All students and parents have filled out and returned to the designee the Annual Concussion Awareness Form.

b. All coaches have taken at least the minimum 2 hour concussion safety course.

All students pulled from a game because of concussion symptoms follow all of the return to play protocol, including securing the **Concussion Management Protocol Return to Play Form** described below.

STEP 3. Have all coaches and trainers, among others, complete the 2 hour bi-annual training. The initial training must be completed no later than September 1, 2012.

- a. TCSAAL is working to become a provider for the training. The UIL has designated lists of providers on its website as well.
- b. A free concussion training (that probably does not count for credit hours) can be found at the NFHS website at the following link: <http://www.nfhslearn.com>.
 - a. Although it is not required until next year, TCSAAL encourages all coaches to take some training immediately.

STEP 4. Have all participating students and their guardians read and sign the Concussion Awareness Form and provide the written information described in the Form to the guardians and student.

Relevant statutory language reads as follows:

Sec. 38.155. REQUIRED ANNUAL FORM ACKNOWLEDGING CONCUSSION INFORMATION. A student may not participate in an interscholastic athletic activity for a school year until both the student and the student's parent or guardian or another person with legal authority to make medical decisions for the student have signed a form for that school year that acknowledges receiving and reading written information that explains concussion prevention, symptoms, treatment, and oversight and that includes guidelines for safely resuming participation in an athletic activity following a concussion. **The form must be approved by the University Interscholastic League.**

- a. The UIL did not approve a stand-alone form, but included the required approved language in its complete acknowledgment of rules form. Clearly not every rule in that form applies to TCSAAL activities. However, it is the form approved by the UIL. ("UIL Approved Form") We recommend you consult your school's legal counsel should you want to modify the form.
 - a. The UIL Approved Form is found at <http://www.uil texas.org/files/athletics/forms/rules-acknowledgement.pdf>.

The Health and Safety information referenced in the UIL Approved Form, including concussion information, can be found in the University Interscholastic League Parent Information Manual 2011 • 2012 located at www.uil texas.org/files/athletics/manuals/parent-information-manual.pdf. The Health and Safety section begins at page 20.

STEP 5. Remove a student from an interscholastic athletics practice or competition immediately if one of the following persons believes the student might have sustained a concussion:

1. Coach
2. Physician
3. Licensed health care profession; or
4. Student's parent, guardian or another person with legal authority to make medical decisions for the student.

STEP 6. Before return to play in practice or competitions, ensure that:

- a. The student has been evaluated by a treating physician chose by the student's parent, guardian or another person with legal authority to make medical decisions for the student
- b. The student has completed the return-to-play protocol requirements.
- c. The treating physician has provided a written statement that it is safe for the student to return to play
- d. The Student's parent, guardian or another person with legal authority to make medical decisions for the student has:
 - a. acknowledged that the student has completed return to play protocol
 - b. provided physician's written statement to the Responsible Party
 - c. Signed consent form regarding: students return to play; risk associated with that play; approval to disclose certain health information with appropriate persons, and that he or she understands the immunity provision of this legislation.
 - i. Those immunity provisions are contained in [Section 38.159 of the Texas Education Code](#).
 - ii. Note: A coach of an interscholastic athletics team may not authorize a student's return to play.

AND

Use the UIL approved **Concussion Management Protocol Return to Play Form** for any athlete removed from practice or competition because of concussion symptoms. Note: This form satisfies and documents many of the items listed above.

- a. This form can be downloaded from the following link.
http://www.uiltexas.org/files/health/UIL_Return_to_Play_Form.pdf

To learn more about how to comply with HB No. 2038 and how to follow the 6 easy steps described above, please visit our new Concussion Prevention page on our website.

To see the bill as approved by the legislature and signed by the governor please visit the following link:
<http://www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=82R&Bill=HB2038>

This memorandum is designed to help schools understand the requirements of HB 2038. This memorandum does not provide legal advice. Schools should seek out the advice of their own legal counsel as they work to comply with HB 2038.