

# Minors In Pro Esports Bring 3 Critical Legal Considerations

By **Ben Gipson and Ben Mulcahy** (July 23, 2020)

With no live sports, more and more people are turning to esports for their fix. This includes sports networks concluding the season online, pro teams maintaining engagement by leveraging their esports franchises for charity, and traditional esports leagues receiving increased coverage in mainstream media outlets.

Even athletes are getting into this, with the recent National Basketball Association's NBA 2K players tournament as just one prominent example.

But one unexpected consequence of this explosion is the fact that younger players are the stars of esports. A 2017 ESPN study illustrated that esports players are younger than other professional sports, averaging just over 21 years of age in the League of Legends league.

And it's not just adults — recent analysis of the top 100 esports players under 18 showed earnings of almost \$43 million, which does not take into account sponsorship revenue. So what issues arise when the stars are children?

## Education

In many instances, youth are recruited onto esports teams, and a team may step into the role of parent. Even if youth are professional athletes or entertainers, there are still education requirements. This can be accomplished through online schools or home-schooling options. Home-schooling standards are regulated by individual states, each of which are different. If the esports team is taking care of the youth athlete, it will be taking on those education obligations as well.

Given its role in the entertainment industry, California has the most experience regulating the education of professional children. Minors age six through 15 must attend school full-time. California youth are required to be taught by someone with a California teaching credential for that grade level — i.e. he or she must have a high school teaching credential to teach high schoolers — in order to be considered exempt from public school attendance.

The child must be taught for at least three hours per day between 8 a.m. and 4 p.m., for 175 days each school year, in the subject branches required by public schools. The instruction must occur in the English language. This must occur through the age of 16, when students can leave school if (1) they have their parent's permission and (2) they pass the California high school proficiency exam.

Other states have similar requirements — for example, Georgia requires that everyone must be educated through the age of 16. The student must be taught by a tutor who has a bachelor's degree and teach reading, language arts, math, social studies and science. A declaration of intent to the Georgia Department of Education within 30 days after a home-schooling program is established.



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The school year must include 180 days of instruction for at least 4.5 hours per day. Students in home study programs shall be subject to an appropriate nationally standardized testing program administered in consultation with a person trained in the administration and interpretation of norm referenced tests.

While parents generally have these obligations, when esports teams are bringing in youth — sometimes from abroad — this can create obligations on behalf of the organization to ensure that youth are adequately educated. Teams can do this by creating structures, much like films do when they are shooting, but this does take some planning by teams before youth players arrive, to ensure these structures are in place.

### Working Hours

Again, California has the most experience when it comes to children working nontraditional jobs. All minors must have a permit to work, which is issued by the local school district. This includes minors who are coming in from another state or country, who must have the standard permit to employ and work. Once they have a permit to work, there are limits to how much minors can work. These vary depending on whether school is in session or not and the age of the minors:

	<b>Ages 16 &amp; 17</b> Must have completed 7th grade to work while school in session	<b>Ages 14 &amp; 15</b> Must have completed 7th grade to work while school in session
<b>School In Session</b>	4 hours per day on any school day 8 hours on any non-school day or on any day preceding a non-school day. 48 hours per week	3 hours per schoolday outside of school hours 8 hours on any non-schoolday 18 hours per week
<b>School Not In Session</b>	8 hours per day 48 hours per week	8 hours per day 40 hours per week
<b>Spread of Hours</b>	5 a.m. to 10 p.m. However, until 12:30 a.m. on any evening preceding a non-schoolday.	7 a.m. to 7 p.m., except that from June 1 through Labor Day, until 9 p.m.

These rules are slightly different for the entertainment industry, with separate permitting requirements. These youth may not work more than eight hours in a day or more than 48 hours in a week. They may only work between the hours of 5 a.m. to 10 p.m., or to 12:30 a.m. on days preceding a nonschool day.

However, upon the labor commissioner's approval following a written request submitted 48 hours in advance; a minor aged eight to 18 may continue his or her part past 10 p.m. up to 12 a.m. preceding a school day in a presentation, play or drama that begins before 10 p.m. This exception may never be construed to allow the minor to be at the place of employment more than the maximum number of hours permitted in law or regulation.

So what does all this mean for esports players? It can be challenging here, given the amount of practice these players put in. Top players can put in 12-14 hours of practice per day, six days a week. While this may track what youth are doing in their free time, it does create potential issues from a working time perspective and duties on esports employers to monitor what their youth players are doing.

This is especially true given the spread of hours requirements, given the nocturnal nature of many teenagers. California and other states do provide avenues to address these issues, but teams must, for the most part, ask permission rather than forgiveness.

### **Capacity to Contract**

Another wrinkle to consider is whether a contract with a minor is enforceable. It is generally understood that persons who are under the age of 18, or, in some states, 19, are minors who are legally entitled to disaffirm their contractual commitments, with certain exceptions tied to basic needs like food, clothing and shelter.

This means that many contracts, including services contracts with minors in the esports industry, are voidable at the unilateral election of the minor. As a result, a minor esports team or organization that engages a minor player could in many instances lose that player with little recourse if the player were to simply disaffirm his or her player agreement.

In the entertainment industry, two strategies are commonly used to mitigate the risk that a child or minor actor would simply disaffirm his or her commitments to the party engaging the child. These two strategies could also be used by an esports team or organization to mitigate the risk that a child or minor esports player would simply disaffirm their player agreements.

The first strategy to mitigate the risk of disaffirmance is common in California, whose law is deemed to govern many minor contracts in the entertainment industry, and it involves filing a petition with a state court to confirm the contract. Indeed, California courts have adopted a confirmation process pursuant to California Family Code, Section 6751, along with detailed local rules in Los Angeles County Superior Court, that is tailor-made for this particular situation.

The California court confirmation process allows the employer to petition to the court with the cooperation of the minor player and his or her parents, legal guardian or another guardian ad litem. If the court issues an order confirming the contract, then the contract is no longer subject to disaffirmance on the grounds that the minor player was a minor at the time they signed it.

As a part of the court confirmation process, a percentage of the gross amounts that would otherwise be paid to the minor are instead redirected to a so-called Coogan account, which is a trust account that must be established for the benefit of the minor as part of the confirmation process to protect a percentage of the minor's earnings until he or she reaches the age of 18.

Court confirmation, however, is not always feasible. First, the nature of the services contemplated in the esports player agreement may not include the type of entertainment or artistic services that are needed to make the contract confirmable under California Law.

Second, the California courts or the courts of another state that has a similar court confirmation proceeding, like New York, might not have jurisdiction over the contract in question because neither party is located in the state and no services will be performed in the state. Third, the parties might be unwilling to spend the time or incur the expense associated with pursuing a court confirmation.

In those instances, the party engaging the services of the minor player will often pursue the second strategy to mitigate the risk of disaffirmance, which involves securing a parental indemnity and consent from the minor's parent or legal guardian. Under the parental indemnity and consent, the parent or legal guardian promises to indemnify the entity engaging the minor against any damages that are caused by the minor's disaffirmance.

The rationale behind this type of agreement is to align the interests of the parent or legal guardian with the interests of the party engaging the minor player, which helps make sure that the parent or legal guardian will not use their influence over the minor player to the counter party's detriment. A parental indemnity, however, is not foolproof, and in many instances, the parental indemnity itself could require court confirmation if it purports to waive, compromise or release a minor child's claims or otherwise affects the minor child's rights or in various other circumstances.

## **Conclusion**

So what does all this mean? Simply put, the nature of esports, and specifically esports players, creates additional hurdles for this burgeoning industry to account for. These are not insurmountable concerns, but issues that should be part of the planning process before minor players arrive.

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