

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
HUNTSVILLE DIVISION**

Martella Tyler, as parent and next friend of)
her minor daughters, K.H. and S.T.,)

) Case No. _____
)

Plaintiff,)

v.)

Huntsville City Schools Board of)
Education, a/k/a Huntsville City Schools;)
and Does 1 through 50,)

Defendants.)

COMPLAINT

The above-captioned Plaintiff, Martella Tyler, as parent and next friend of her minor daughters, K.H. and S.T., (“Plaintiff”), respectfully files this Complaint against Defendants, Huntsville City Schools Board of Education, a/k/a Huntsville City Schools and Does 1 through 50, (“Defendants”), and alleges as follows:

STATEMENT OF THE CASE

1. This action is posed for declaratory and injunctive relief. Defendants have violated (1) Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 *et seq.*

("Title IX") and the regulations adopted thereto, and (2) the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983, by illegally and intentionally denying Plaintiff's daughters the equal treatment and benefits that must necessarily accompany an equal opportunity to participate in athletics.

2. Defendants' denial of equal treatment and benefits constitutes intentional discrimination against the Plaintiff's daughters based solely on their gender. Specifically, Defendants have discriminated against Plaintiff's daughters in the following areas: (1) funding of athletics; (2) provision of equipment and supplies; (3) scheduling of games and practice times; (4) travel and/or per diem; (5) opportunities to receive coaching; (6) provision of locker rooms and facilities for both practice and competition; (7) provision of training and/or medical facilities and services; and (8) provision of publicity.

3. This action seeks to redress the deprivation of the Plaintiff's daughters' rights to receive the equal treatment and benefits which must necessarily accompany an equal opportunity to participate in interscholastic and other school-sponsored athletics. This action seeks a Declaratory Judgment that Defendants have violated the Plaintiff's daughters' rights under federal law. This action further seeks an injunction

requiring Defendants to immediately cease their discriminatory practices and to remedy the effects of their discriminatory practices and to remedy the effects of their discriminatory conduct.

4. Plaintiff seeks injunctive relief which, among other things, requires that Defendants provide Plaintiff's daughters with treatment and benefits equivalent to that provided to the boys' athletic teams at Huntsville City Schools.

JURISDICTION AND VENUE

5. The Plaintiff's first claim arises under 20 U.S.C. §1681, *et seq.* and its interpreting regulations. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4).

6. The Plaintiff's second claim arises under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and 42 U.S.C. §1983. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4).

7. Jurisdiction for declaratory and other relief is invoked pursuant to 28 U.S.C. §§ 2201(a) and 2202.

8. Venue is proper pursuant to 28 U.S.C. § 1391(b). These claims arose in Huntsville, Madison County, Alabama which is within the jurisdiction of this Court.

THE PARTIES

9. Plaintiff Martella Tyler is the parent of K.H., a 17-year-old rising 12th grade student at Lee High School. K.H. is a talented athlete who participates in softball at Lee High School. She has endured the unequal treatment and benefits directed by Huntsville City Schools toward its female athletes. Martella Tyler and K.H. are residents of Huntsville, Alabama, which is within the jurisdiction of this Court.

10. Plaintiff Martella Tyler is the parents of S.T., a 14-year-old rising 9th grade student at Lee High School. S.T. is a talented athlete who participates in softball, volleyball and basketball at Lee High School. She has endured the unequal treatment and benefits directed by Huntsville City Schools toward its female athletes. Martella Tyler and S.T. are residents of Huntsville, Alabama, which is within the jurisdiction of this Court.

11. Defendant Huntsville City Schools is a public school district authorized by Alabama law to operate and control Lee High School, where the Plaintiff's daughters play softball. Therefore, Defendants' conduct is considered state action under 42 U.S.C. §1983. Huntsville City Schools is located in Huntsville, Madison County, Alabama, and a substantial part of the events or omissions giving rise to this lawsuit occurred in Madison County, which is within the jurisdiction of this Court.

Since the passage of Title IX, Huntsville City Schools has received and continues to receive federal financial assistance and the benefits therefrom. Therefore, all programs at Huntsville City Schools, including athletics, are subject to the requirements of Title IX.

12. The named Plaintiff is ignorant of the true names and capacities of Does 1-50, but believe them to be employees of Huntsville City Schools or members of the Huntsville City Schools Board of Education. Plaintiff will seek to amend this Complaint to set forth their true names and capacities when they are ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of these fictitiously named defendants is responsible in some manner for the discriminatory actions alleged herein and that each is a resident of the State of Alabama and thus is subject to the jurisdiction of this Court.

GENERAL ALLEGATIONS
THE REQUIREMENTS OF TITLE IX

13. Title IX, enacted in 1972, provides in relevant part:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

20 U.S.C. § 1681(a). The Civil Rights Restoration Act of 1987 made Congress' intent plain that "program or activity," as used in Title IX, applies to any program or activity so long as any part of the public institution receives federal financial assistance. 20 U.S.C. § 1687. Thus, Huntsville City Schools is subject to Title IX even if none of the funding for either its girls' or boys' athletic programs comes specifically from federal sources.

14. In 1975, the Department of Health, Education and Welfare (the predecessor of the United States Department of Education ("DOE")) adopted regulations interpreting Title IX. These regulations are codified at 34 C.F.R. Part 106. (the "Regulations").

15. With regard to athletic programs, § 106.41(a) of 34 C.F.R. provides that interscholastic athletics are included within the "program or activity" requirements of Title IX:

No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient ...

16. 34 C.F.R. § 106.41 (c) specifies ten (10) factors that are to be considered in the determination of equal athletic opportunity:

1. Whether the selection of sports and levels of competition effectively accommodate the interest and abilities of members of both sexes;
2. The provision of equipment and supplies;
3. Scheduling of games and practice time;
4. Travel and per diem allowance;
5. Opportunity to receive coaching and academic tutoring;
6. Assignment and compensation of coaches and tutors;
7. Provision of locker rooms, practice and competitive facilities;
8. Provision of medical and training facilities and services;
9. Provision of housing and dining facilities and services; and
10. Publicity.

Another factor to be considered is a school's "failure to provide necessary funds for teams for one sex." *Id.*

17. In 1979, the office of Civil Rights of the Department of Education ("OCR") issued a policy interpretation of Title IX and the Regulations. This policy interpretation is found at 44 Fed. Reg. 71413 (1979) (the "Policy Interpretation").

18. The Policy Interpretation provides that, in order to comply with Title IX and 34 C.F.R. § 106.41(c), schools must provide equal athletic opportunities in three general areas: (1) awarding of scholarships (aimed primarily at problems at the intercollegiate level); (2) participation opportunities (including both the number of opportunities and whether the selection of sports and the level of competition effectively accommodate the interests and abilities of members of both sexes); and (3) treatment and benefits. 44 Fed. Reg. at 71414.

19. Under both the Regulations and the Policy Interpretation, compliance in the area of equal treatment and benefits is assessed based on an overall comparison of the male and female athletic programs, including an analysis of factors (2) through (10) of 34 C.F.R. § 106.41 (c) listed above and an analysis of whether the necessary funds are provided for teams of both sexes.

20. The Regulations require that sponsors of interscholastic and other school-sponsored athletics (such as Huntsville City Schools) take such remedial actions as are necessary to overcome the effects of gender discrimination in violation of Title IX. *See* 34 C.F.R. § 106.3(c). On information and belief, any remedial actions which Defendants have taken in the past have been insufficient to satisfy Defendants' obligations under Title IX.

21. The Regulations further require that sponsors of interscholastic and other school-sponsored athletics comply with the Regulations within three years of their effective date (which was July 21, 1975). Now, more than forty-two (42) years later, Defendants have still not fully complied with Title IX.

THE U.S. CONSTITUTION

22. The Fourteenth Amendment to the United States Constitution requires that a state shall not "deny to any person within its jurisdiction the equal protection of the laws."

23. Under 42 U.S.C. § 1983, Defendants may be held liable for their actions in violating Plaintiff's daughters' rights under the Fourteenth Amendment.

INJUNCTIVE RELIEF

24. Plaintiff is entitled to injunctive relief to end Defendants' unequal, discriminatory, and unlawful treatment of female student athletes. Because of Defendants' acts and omissions, Plaintiff's daughters continue to be deprived of the rights guaranteed to them by the United States Constitution and the laws of the United States. Failure to grant the injunctive relief requested will result in irreparable harm to Plaintiff's daughters in that Plaintiff's daughters' rights will be violated and that Plaintiff's daughters will never be able to participate in interscholastic and/or other

school-sponsored athletics on an equal basis with their male classmates. Accordingly, Plaintiff does not have an adequate remedy at law for this harm. This threatened harm far outweighs any possible harm that granting injunctive relief might cause Defendants. Finally, the injunctive relief sought would in no way disserve the public interest but, on the contrary, would prevent discrimination based on gender and would promote the goal of full equality before the law.

ATTORNEYS' FEES

25. Plaintiff has been required to retain the undersigned attorneys to prosecute this action. Plaintiff is entitled to recover reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

FIRST CLAIM FOR RELIEF: TITLE IX
(Unequal Treatment and Benefits)
(Against Huntsville City Schools Board of Education,
a/k/a/ Huntsville City Schools only)

26. Plaintiff realleges and incorporates herein by this reference paragraphs 1 through 25 inclusive of this Complaint.

27. Huntsville City Schools, by its conduct, has intentionally violated Title IX by knowingly and deliberately discriminating against female students, including

the Plaintiff's daughters, by failing to provide them with treatment and benefits which are comparable overall to the treatment and benefits provided to male athletes.

28. On information and belief, Plaintiff alleges that Huntsville City Schools has failed to comply with Title IX by failing to provide her daughters with comparable treatment and benefits including, but not limited to, the following areas:

- (1) Huntsville City Schools funds athletics in a manner that discriminates against Plaintiff's daughters and other female athletes. For example, Huntsville City Schools provides and/or allows the infusion of more funding for boys' sports as compared to girls' sports, including more money for the baseball program as compared to the softball program at Lee High School.
- (2) Huntsville City Schools provides male athletes with equipment and supplies in a manner that discriminates against female athletes. For example, the softball program is required to pay for some of their essential equipment and supplies, such as balls, bats and pitching machines. As a further example, the baseball program is provided a better pitching machine as compared to what is provided to the softball program. Additionally, the baseball program is provided a mobile

batting practice cage. The softball program is not provided with a mobile batting practice cage. Also, the baseball program is provided an infield tarp. The softball program is not provided an infield tarp.

- (3) Huntsville City Schools discriminates against Plaintiff's daughters and other female athletes in the scheduling of games and practice times. For example, Huntsville City Schools provides opportunities for practice during the Fourth Block of the school day to the football and baseball programs, but not to the softball program at Lee High School.
- (4) Huntsville City Schools discriminates against Plaintiff's daughters and other female athletes in the provision of per diem, in the form of pre-game meals, and travel. For example, football players are provided pre-game or post-game meals. The softball players are not provided pre-game or post-game meals, and on information and belief no female athletes are provided pre-game or post-game meals. As a further example, softball parents are responsible for providing for the players' travel to and from games.
- (5) Huntsville City Schools discriminates against Plaintiff's daughters and other female athletes in the opportunities to receive coaching. For

example, as stated above, baseball players at Lee High School are provided the opportunity to receive coaching during the Fourth Block of the school day, while the softball players are not provided this opportunity to receive coaching.

- (6) Huntsville City Schools supplies superior locker rooms, practice facilities and competition facilities to boys as compared to girls. For example, at Lee High School the baseball program has been provided with a new brick facade field house complete with locker room at its field, for its exclusive use. The softball players are required to dress in the field house that the football, wrestling, soccer and track programs use. The baseball program has a coaches' office at the field. The softball program has no coaches' office at the field. The baseball facility has a new, large nine inning scoreboard. The softball facility has an old, smaller scoreboard that is not nine inning. The baseball dugouts are new and larger than the older softball dugouts. The baseball dugouts have electricity. The softball dugouts do not have electricity. The baseball dugouts have electric lights. The softball dugouts do not have electric lights. The baseball backstop is new. The softball backstop is

old and rundown. The baseball backstop consists of superior netting. The softball backstop is chainlink. The baseball backstop has a brick foundation. The softball backstop has no foundation. The baseball dugout benches are two-tier, major league-style benches. The softball dugout benches are inferior benches set on cinder blocks. The baseball dugout fronts are superior to the softball dugout fronts. The baseball facility is completely enclosed with fencing, with brick columns and an archway at the entrance with a "Lee Baseball" sign. The softball facility essentially has no designated entrance and is not fully enclosed with fencing. The baseball facility has a superior, concrete surface in the spectator areas. Part of the spectator area surface at the softball facility is grass and dirt. The baseball facilities field lights are superior to the softball facilities field lights. The football facilities field lights are also superior to the softball field lights. The baseball facility has two bullpens. The softball facility has one inferior bullpen as compared to the baseball bullpens. The spectator seating at the baseball facility is superior to that at the softball facility, both as to quality and quantity. The baseball facility spectator seating includes aluminum stadium-type

seating with backs, hand rails and protective screens on the perimeter of the seating. The spectator seating at the softball field consists of wooden bench seating set on cinder blocks with no backs. The softball spectator seating has neither hand rails nor protective screening on the perimeter of the seating. The baseball program has a new indoor hitting facility. The softball program hitting facility is in an old dilapidated building. The baseball facility has superior signage as compared to the softball facility. The concession stand at the baseball facility is new and superior to the concession stand at the softball facility. The concession stand at the baseball field is located behind home plate in the press box building, in the spectator area. The softball concession stand is housed in an older building beyond the outfield fence. The baseball field outfield fence has a windscreen. The softball outfield fence has no windscreen. The baseball outfield fence has distance signs. The softball outfield fence has no distance signs. The warning tracks at the baseball field consist of crushed brick. The softball field does not have warning tracks. The baseball facility has superior secure storage facilities as compared to the softball facility. The baseball facility has an irrigation

system. The softball facility has no irrigation system. Maintenance at the baseball facility is superior to maintenance at the softball facility. The baseball field has superior drainage as compared to the softball field. The baseball field infield material is superior to the softball field infield material.

- (7) Huntsville City Schools discriminates against Plaintiff's daughters and other female athletes in the provision of training facilities and services. For example, the male athletes at Lee High School are provided superior access to superior, appropriate weight training facilities and weight training equipment as compared to female athletes, including Plaintiff's daughters.
- (8) Huntsville City Schools discriminates against Plaintiff's daughters and other female athletes as compared to male athletes in the provision of publicity. For example, Huntsville City Schools consistently provides less publicity for its softball program as compared to its baseball and football programs at Lee High School.

29. The imbalance in the treatment of female and male athletes at Huntsville City Schools, as detailed above, demonstrates Huntsville City Schools' intentional and conscious failure to comply with Title IX.

30. Huntsville City Schools' conduct has persisted despite the mandates of the Regulations, particularly 34 C.F.R. §§ 106.3(c) and 106.41(d), and the Policy Interpretation.

31. Huntsville City Schools' conduct violates 20 U.S.C. § 1681 *et seq.*, as interpreted by 34 C.F.R. §§ 106.31 and 106.41 and the Policy Interpretation thereof.

SECOND CLAIM FOR RELIEF: EQUAL PROTECTION
(Against all Defendants)

32. Plaintiff realleges and incorporates herein by this reference paragraphs 1 through 31 inclusive of this Complaint.

33. Defendants, by their failure to provide Plaintiff's daughters with equivalent treatment and benefits as the male athletes (as detailed above), have purposefully and illegally discriminated against Plaintiff's daughters and other female students on the basis of gender, and have intentionally and illegally deprived them of their rights to equal protection secured by the Fourteenth Amendment to the United States Constitution.

34. Defendants have illegally failed and refused to remedy the unequal treatment and benefits received by Plaintiff's daughters and other female athletes as compared to male athletes at Huntsville City Schools. Therefore, Defendants' actions constitute a knowing and illegal disregard for Plaintiff's daughters' constitutional rights.

35. Section 1983 of Title 42 of the United States Code provides, in part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

36. When Defendants engaged in the improper actions described above, they were acting under color of law for purposes of the Equal Protection Clause of the United States Constitution and 42 U.S.C. § 1983. Under this section, the Defendants are liable for their violations of the Plaintiff's daughters' constitutional rights under the Fourteenth Amendment.

RELIEF REQUESTED

WHEREFORE, on each of their claims, Plaintiff respectfully prays that this Court:

A. Enter an order declaring that Defendants have engaged in a past and continuing pattern and practice of discrimination against female students, including Plaintiff's daughters, on the basis of gender in violation of Title IX and the regulations promulgated thereunder (including unequal treatment and benefits), and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

B. Issue a permanent injunction (a) restraining Defendants and their officers, agents, employees, successors and any other persons acting in concert with them, from continuing to maintain practices and policies of discrimination against Plaintiff's daughters on the basis of gender, and (b) requiring Defendants, immediately upon issuance of the injunctive order, to adopt and implement a budget and plan which corrects and remediates Defendants' violation of Title IX and the Fourteenth Amendment. Such a plan should include, among other things, providing Plaintiff's daughters and other female athletes with treatment and benefits comparable to those provided to male athletes.

C. Grant an expedited hearing and ruling on the permanent injunction request in paragraph B above.

- D. Award Plaintiff her reasonable attorneys' fees and costs pursuant to U.S.C. § 1988.
- E. Order such other and further relief as the Court deems appropriate.
- F. Designate that the trial take place before the U. S. District Court in Huntsville, Alabama.

Dated: June 20, 2018

Respectfully submitted,

s/ Samuel J. Schiller

Tennessee Attorney Registration #021810

Oklahoma Bar Association #016067

Attorney for Plaintiff

Schiller Law Firm

Suite 200, 4113 Cumby Road

Cookeville, TN 38501

Telephone: (931) 528-5050

Email: sjs@schillerlawfirm.com

s/Rosalind G. Cylar

Rosalind G. Cylar

ASB-0993-O78G

Attorney for Plaintiff

109 Ivyridge Road

Madison, AL 35757

(256) 426-0423 (ph)

(256) 430-6850 (f)

Email: Roscyar@bellsouth.net

Attorneys for Plaintiff

SJS:ees

C:\Users\Secretary\Desktop\Title IX\Lee High School, Huntsville AL\Complaint.wpd