

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

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DISTRICT COURT
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BY *[Signature]*
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SUSIE HALBERT, as next friend of her daughter §
Plaintiff §

Civil Action No.

v. §

KILGORE INDEPENDENT SCHOOL §
DISTRICT §

Defendant §

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT

Plaintiff Susie Halbert, parent of a minor daughter, respectfully files this Complaint on her behalf, and would show:

STATEMENT OF CLAIM

1. Plaintiff complains that Kilgore Independent School District (hereinafter referred to as "KISD") has denied her daughter an equal opportunity to participate in athletic programs and activities in violation of Title IX of the Education Amendments Act of 1972, 20 U.S.C. § 1681 ("Title IX"), and the regulations adopted pursuant thereto.

2. This civil action seeks to redress the deprivation of Plaintiff's daughter's rights to the equal opportunity to participate in school-sponsored activities afforded by Title IX. This action seeks a declaratory judgment that Defendant has violated her daughter's rights under Title IX, an injunction requiring Defendant to cease its sexually discriminatory practices and to remedy the effects of its discriminatory conduct, and money damages.

JURISDICTION AND VENUE

3. This claim arises under 20 U.S.C. § 1681. Jurisdiction is therefore conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343.

4. Jurisdiction for declaratory and other relief is invoked pursuant to 28 U.S.C. §§ 2201 and

2202.

5. The events complained of herein all occurred within this judicial district. As such, venue is proper in this Court under 28 U.S.C. § 1391(b).

PARTIES

6. Plaintiff and her daughter are citizens of the United States and the State of Texas. They are residents of Rusk County, Texas.

7. Defendant KISD, located within the jurisdiction of this Court and organized under the laws of Texas, may be served process by serving its Superintendent, Jerry B. Roberts, at the administrative offices of the KISD, 301 N. Kilgore St., Kilgore, TX 75662.

FACTUAL ALLEGATIONS

8. The Halbert daughter is a female student at Kilgore High School ("Kilgore"). She is an honor student now in her senior year. She was a cheerleader for Kilgore from her freshman year through the spring semester of her junior year. Miss Halbert was also a cheerleader in her eighth grade year. On February 5, 2000 (Miss Halbert's junior year), she along with another cheerleader and two male varsity athletes were caught on campus in possession and under the influence of alcohol. All four students were immediately suspended and later placed in an Alternative Education Program ("AEP").

9. As a further part of their punishment under the KISD school board's local policy, the FOAB (Local), the students were barred from participating in any extracurricular and/or athletic activities for the duration of that semester. As a result of this punishment, the Halbert daughter along with the other young woman involved in the incident were precluded from participating in cheerleader tryouts during the spring semester of 2000. As a returning member and assuming she met all other requirements, Miss Halbert would have been assured a position as a member of the

2000-2001 Kilgore cheerleading squad had she been allowed to tryout. This is supported by the fact that only sixteen (16) women were signed up to try out for twelve (12) spots on the squad and some of the women trying out had never cheered before.

10. In contrast, both of the young men involved in the incident and subject to the same punishment have been allowed to play sports (soccer and baseball) during the 2000-2001 school year.

11. In the KISD, cheerleading is an athletic program and/or activity because cheerleaders receive athletic credit for participating on the squad and are considered integral parts of the overall school athletic program. The enforcement of a disciplinary policy that bars attendance at cheerleader tryouts, and, consequently, any chance at becoming a member of the upcoming year's squad, but not future participation in boys' sports practice and competition, has a disparate and, therefore, discriminatory impact on a young woman's ability and opportunity to participate in KISD's athletic programs and activities. Although able to do so, Kilgore made no attempt to accommodate for this impact by changing cheerleader tryouts to the summer, holding the tryouts during school hours, or permitting the girls to tryout by video: all of which would have been within the parameters allowed by the school board's local policy.

12. Kilgore is a Division AAAA school. Its current total enrollment is 1050 students. KISD receives Federal financial assistance and, therefore, all of its schools' programs, including athletic programs, are subject to the requirements of Title IX. KISD is responsible for monitoring compliance with Title IX in schools within its district.

13. As shown by providing certain opportunities for its students to participate in athletic programs and activities, Defendant has determined that certain educational opportunities and benefits can be derived from participating in these programs and activities. Defendant determines the

application and scope of the disciplinary measures used by Kilgore, as well as the ramifications of that application to the athletic opportunities for male students and for female students.

14. Defendant has violated, and continues to violate, Title IX and its implementing regulations by adhering to a local policy and engaging in an arbitrarily enforced disciplinary practice that excludes young women from participation in an athletic program and/or activity, but does not have the same or an equivalent effect on young men. Kilgore's disciplinary policies discriminate against women on the basis of sex by failing to provide equal and reasonable opportunities for both boys and girls to participate in its athletic programs and/or activities. Kilgore has not, and does not currently provide any alternate means to accommodate Miss Halbert's participation in cheerleading within the parameters of its disciplinary policy, while the young men who received the very same punishment in this instance have, in fact, been accommodated under the school's current practices. Accordingly, Plaintiff alleges that Kilgore has denied her daughter equal opportunity to participate in an athletic program and/or activity.

15. Because young women do not have an equal opportunity to participate in an athletic program and/or activity after the application of the same disciplinary measure as their male counterparts, Plaintiff alleges that the disciplinary practices of Kilgore are unlawfully skewed in favor of giving opportunities to males for participation in athletic activities. Kilgore accordingly denies young women the equivalent access to educational activities and opportunities that it provides to its male students.

16. Kilgore's disproportionate emphasis on opportunities for men is not isolated in the disparate residual affects of its disciplinary policy, but is also reflected in its funding of programs and/or activities. All of the uniforms and equipment needed by the school's football players, for instance, are provided to the young men by the school free of charge. The cheerleaders, on the other

hand, are only provided one uniform by the school and must purchase all other necessary equipment themselves.

17. Plaintiff Susie Halbert had to purchase much of her daughter's cheerleading equipment herself, although every male member of the football team was provided with all of their necessary equipment, free of charge, by the school.

18. Due to their small budget, the cheerleaders are also forced to hold fundraisers to facilitate the purchasing of markers, paper, and other supplies necessary to create the signs that are a well-known part of student pep-rallies and other cheerleader-led school spirit-raising functions. This funding disparity is also true for the drill team, another all female group that can be considered an athletic activity. By forcing girls to pay for much of their own uniforms, equipment, and supplies, Kilgore is excluding many girls who cannot afford to participate. Kilgore's male athletes do not shoulder the same financial burden.

19. There is no exception in Title IX or its regulations for football or other "revenue-producing" sports. In enacting Title IX, Congress specifically rejected amendments to exempt football or other "revenue-producing" sports. Kilgore could eliminate the disparity in participation opportunities without detracting from male opportunities by increasing funding for women's activities, such as cheerleading, for example.

20. To summarize, Defendant's denial of equal educational opportunities for young women has caused the following inequities in the opportunities and benefits received, as well as resources distributed to the Halbert daughter:

- a. Inequitable participation opportunities brought about by the lack of equivalent ramifications of the application of KISD's local policy and resulting disciplinary actions; and,
- b. Lack of equal uniforms, equipment, and supplies.

21. Kilgore Principal Robert Wheeley, KISD School Board members, and the KISD Superintendent Jerry B. Roberts have all been put on notice regarding the inequitable opportunities and benefits afforded to the Halbert daughter through Plaintiff's verbal communications and written correspondence, as well as a hearing held by the school board itself to determine whether the Halbert daughter would be allowed to participate in cheerleader tryouts.

CAUSE OF ACTION

22. Title IX 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). In the Civil Rights Restoration Act of 1987 (1988 Amendments), Congress made plain its intent that "program or activity," as used in Title IX, applies institution-wide to a public school system, "any part of which is extended Federal financial assistance" 20 U.S.C. § 1687.

23. The United States Department of Education and its predecessor agency have adopted regulations interpreting Title IX. These regulations are codified in 34 C.F.R. Part 106 (1991).

24. The regulations provide that a recipient of Federal financial assistance may not, on the basis of sex, exclude any person from participation in, deny any person the benefits of, or subject any person to discrimination, under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives or benefits from Federal financial assistance. 34 C.F.R. § 106.31.

25. Defendant, as described above, has intentionally violated Title IX by willfully, knowingly, and deliberately discriminating against women students, including the Halbert daughter, in not providing an equal opportunity for women to participate in athletic activities. Notwithstanding

their ability to accommodate Miss Halbert through any number of reasonable alternatives, Kilgore failed to make such changes as would have caused their disciplinary policy to equally affect men and women's access to an educational opportunity.

26. The imbalance in the opportunities available and funds and other benefits provided for males students in athletic programs and/or activities, in relation to female students, when there exists clearly demonstrated inequities, shows Defendant's refusal to comply with Title IX.

27. Defendant's conduct also violates 34 C.F.R. §§ 106.31, 106.37, and 106.41.

INJUNCTIVE RELIEF

28. Plaintiff is entitled to injunctive relief to end Defendant's unequal, discriminatory, and unlawful treatment of their daughter.

29. Plaintiff's daughter continues to be deprived of her rights as guaranteed to her by the laws of the United States because of Defendant's acts and omissions. Failure to grant the injunctive relief requested will result in a substantial threat of irreparable harm to Plaintiff's daughter for which there is no remedy at law. This threatened harm far outweighs any possible harm the granting of injunctive relief might cause to Defendant.

30. Finally, the injunctive relief sought would serve the public interest. It would prevent discrimination based on sex and promote the worthy goal of full equality before the law.

DECLARATORY RELIEF

31. This suit involves an actual controversy within the Court's jurisdiction, and the Court may declare the rights of Plaintiff on behalf of her minor daughter under the Constitution and laws of the United States and grant such necessary and proper relief.

ATTORNEY'S FEES

32. Plaintiff is entitled to recover attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

JURY DEMAND

33. Plaintiff demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

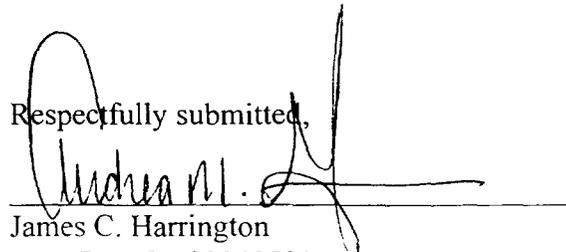
THEREFORE, Plaintiff respectfully prays that this Court grant the following relief:

- A. Enter declaratory judgment that Defendant has deliberately and consciously discriminated against Plaintiff's daughter on the basis of her sex in violation of Title IX and the regulations promulgated thereunder;
- B. Permanently enjoin Defendant, its officers, agents, employees, successors in office, and those persons in active concert with them from further discriminating against the Halbert daughter, and require Defendant, immediately upon issuance of the Order, to provide equal opportunity for participation in athletic programs and/or activities for other girls free from sex discrimination, as required by Title IX, including, but not limited to:
 - (1) The provision of equal access to educational opportunities and benefits at Kilgore High School, including, but not limited to: the opportunity to participate in athletic programs or activities that similarly situated boys are given access to and equitable provisions of uniforms, equipment, and supplies; and
 - (2) Remedial action to overcome the effects of Defendant's sex-discriminatory practices and policies at Kilgore High School.
- C. Enter judgment on behalf of the Plaintiff for damages sufficient to compensate her daughter for her injuries in the cause of action alleged against Defendant;
- D. Order Defendant to pay Plaintiff's reasonable attorneys' fees and costs; and,
- E. Grant all other and additional relief to which Plaintiff may be entitled, at law or in equity.

JURY DEMANDED

Dated: December 8, 2000

Respectfully submitted,


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