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U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION

RUSSELL and MARY JOHNSON, as parents)
and next friend of their minor daughter,)
Tabatha Johnson; RUSSELL and MARY)
JOHNSON, as parents and next friend of)
their minor daughter, Tanya Johnson;)
and RUSSELL and MARY JOHNSON, as)
parents and next friend of their minor)
daughter, Leighanna Johnson,)

Plaintiffs,)

Case No

CV-03-PT-2159-M

v.)

GADSDEN CITY SCHOOL DISTRICT)
a/k/a GADSDEN CITY SCHOOLS;)
BOB RUSSELL, in his official capacity as)
Superintendent; and DOES 1 through 50,)

Defendants.)

COMPLAINT

The above-captioned Plaintiffs, as parents and next friend of their minor daughters, respectfully file this Complaint against Defendants, GADSDEN CITY SCHOOL DISTRICT a/k/a GADSDEN CITY SCHOOLS; BOB RUSSELL, in his official capacity as Superintendent; and Does 1 through 50; (“Defendants”) and allege 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 Amendment 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 denying the Plaintiffs’ daughters (1) an equal opportunity to participate in interscholastic and other school-sponsored athletics and (2) the equal treatment and benefits that must necessarily accompany an equal opportunity to participate.

2. Defendants’ denial of equal participation and equal treatment and benefits constitutes illegal discrimination against the plaintiffs’ daughters based solely on their gender. Specifically, as to unequal participation opportunities, Defendants have discriminated against the Plaintiffs’ daughters in the accommodation of student interests and abilities in athletics by knowingly and illegally selecting and offering sports and levels of competition in a manner which discriminates against female students. For example, notwithstanding the Plaintiffs’ daughters and the significant number of other female students at Plaintiffs’ daughters’ schools at Gadsden City Schools who have the interest and abilities necessary to participate in soccer, Defendants have refused to provide them with an opportunity to participate in soccer. Furthermore, as to unequal treatment and benefits, Defendants have discriminated against Plaintiffs’ daughters in the following areas: (1) funding of athletics; (2) equipment and supplies; (3) scheduling of games and practice times; (4) travel; (5) assignment and compensation of coaches; (6) provision of locker rooms and facilities for both practice and competition; and (7) provision of training facilities.

3. This action seeks to redress the deprivation of the Plaintiffs’ daughters’ rights to an equal opportunity to participate in interscholastic and other school-sponsored athletics

and to receive the equal treatment and benefits which must necessarily accompany an equal opportunity to participate. This action seeks a declaratory judgment that Defendants have violated Plaintiffs' daughters' rights under federal law and the United States Constitution. 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. Plaintiffs seek injunctive relief which, among other things, requires that Defendants sponsor and fund soccer for female students, to obtain meaningful participation opportunities which are comparable to those offered to male students enrolled at Plaintiffs' daughters' schools at Gadsden City Schools.

5. Plaintiffs further seek injunctive relief which requires that Defendants provide the girls' athletic teams at their daughters' schools at Gadsden City Schools with equal treatment and benefits as Gadsden City Schools already provides to its boys' athletic teams.

JURISDICTION AND VENUE

6. The 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).

7. The second claim also 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).

8. The third 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).

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

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

THE PARTIES

11. Plaintiffs Russell and Mary Johnson are the parents of Tabatha Johnson. Tabatha is a 16-year-old eleventh grade student at Emma Sansom High School at Gadsden City Schools. She is a talented athlete who participates in fastpitch softball. She would like to participate in soccer. Thus, her opportunities to participate in interscholastic and other school-sponsored athletics are not comparable to the opportunities afforded to boys who are similarly situated. In addition, she has endured the unequal treatment and benefits directed by Gadsden City Schools toward their female athletes. The Johnsons are residents of Gadsden, Alabama, which is within the jurisdiction of this Court.

12. Plaintiffs Russell and Mary Johnson are the parents of Tanya Johnson. Tanya is a 14-year-old ninth grade student at Emma Sansom High School at Gadsden City Schools. She is a talented athlete who participates in fastpitch softball. She would like to participate in soccer. Thus, her opportunities to participate in interscholastic and other school-sponsored

athletics are not comparable to the opportunities afforded to boys who are similarly situated. In addition, she has endured the unequal treatment and benefits directed by Gadsden City Schools toward their female athletes. The Johnsons are residents of Gadsden, Alabama, which is within the jurisdiction of this Court.

13. Plaintiffs Russell and Mary Johnson are the parents of Leighanna Johnson. Leighanna is a 12-year-old seventh grade student at General Forrest Middle School at Gadsden City Schools. She is a talented athlete who would like to participate in soccer. Thus, her opportunities to participate in interscholastic and other school-sponsored athletics are not comparable to the opportunities afforded to boys who are similarly situated. The Johnsons are residents of Gadsden, Alabama, which is within the jurisdiction of this Court.

14. Defendant Gadsden City School District, a/k/a Gadsden City Schools, is a public school district authorized by Alabama law to operate and control Gadsden City Schools, including Emma Sansom High School and General Forrest Middle School, where Plaintiffs' daughters are students. Therefore, Gadsden City Schools' conduct is considered state action under 42 U.S.C. § 1983. Defendant Gadsden City Schools is located in Gadsden, Alabama, which is within the jurisdiction of this Court. Since the passage of Title IX, Gadsden City Schools has received and continues to receive federal financial assistance and the benefits therefrom. Therefore, all programs at Gadsden City Schools, including athletics, are subject to the requirements of Title IX.

15. Defendant Bob Russell is the Superintendent of Schools at Gadsden City Schools. Mr. Russell is a resident of the State of Alabama and thus is subject to the jurisdiction of this Court.

16. The Plaintiffs are ignorant of the true names and capacities of Does 1-50, but believe them to be employees of Gadsden City Schools, or members of the Gadsden City Schools School Board. Plaintiffs will seek to amend this Complaint to set forth their true names and capacities when they are ascertained. Plaintiffs are informed and believe, and on that basis allege, 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

17. 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, Gadsden 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.

18. 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”).

19. 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...

20. 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.*

21. 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").

22. 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. Although the scholarship regulations are not at issue in this Complaint, equal participation opportunities and equal treatment and benefits are.

23. According to the Policy Interpretation, compliance in the area of equivalent participation¹ opportunities is to be determined by the following three-part test:

¹Although the Policy Interpretation refers to "intercollegiate" sports, it is applicable to all recipients of federal education funds, including secondary schools, and is, thus, applicable to interscholastic secondary school sports as well as intercollegiate sports. 34 C.F.R. § 106.11. *See also*, 44 Fed. Reg. at 71413 which provides that the Policy Interpretation's "general principles will often apply to ... interscholastic athletic programs which are also covered by the Regulations."

(1) whether interscholastic and other school-sponsored athletic participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or

(2) where the members of one sex have been and are underrepresented among interscholastic and other school-sponsored athletics, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or

(3) where the members of one sex are underrepresented among interscholastic and other school-sponsored athletics and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program. *See* 44 Fed. Reg. At 71418.

24. 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.

25. The Regulations require that sponsors of interscholastic and other school-sponsored athletics (such as Gadsden City Schools) take such remedial actions as are

necessary to overcome the effects of gender discrimination in violation of Title IX. *See* C.F.R. § 106.3(a). On information and belief, Gadsden City Schools has not taken such appropriate and legally required remedial actions. Any remedial actions which Gadsden City Schools has taken in the past twenty-eight (28) years have been insufficient to satisfy Gadsden City Schools' obligation under Title IX.

26. 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 twenty-eight (28) years later, Gadsden City Schools has still not fully complied with Title IX.

THE U.S. CONSTITUTION

27. 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."

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

INJUNCTIVE RELIEF

29. Plaintiffs are entitled to injunctive relief to end Defendants' unequal, discriminatory, and unlawful treatment of their daughters. Because of Defendants' acts and omissions, Plaintiffs' 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 Plaintiffs' daughters in that Plaintiffs' daughters' Fourteenth Amendment rights will be violated and that Plaintiffs' daughters will never be able to participate in interscholastic and other school-sponsored athletics on an equal basis with their male classmates, if at all. Accordingly, Plaintiffs do 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 not 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

30. Plaintiffs have been required to retain the undersigned attorneys to prosecute this action. Plaintiffs are entitled to recover reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

FIRST CLAIM FOR RELIEF: TITLE IX

(Unequal Participation Opportunities)

31. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 30 inclusive of this Complaint.

32. By offering certain opportunities to male students to participate in interscholastic and other school-sponsored athletics, Gadsden City Schools has demonstrated its determination that athletic opportunities provide educational benefits that should be

supported by the school system. Plaintiffs agree with this determination that athletic opportunities provide valuable educational benefits. For this very reason, Plaintiffs contend that their daughters - and all of the female students at their daughters' schools at Gadsden City Schools - should have equal access and opportunity to receive these same benefits that male students at these schools at Gadsden City Schools already have. Gadsden City Schools historically has not provided and currently does not provide these female students with such equal access and opportunity.

33. Gadsden City Schools has violated Title IX by discriminating against female students at Gadsden City Schools, including Plaintiffs' daughters, by, among other things, failing to provide equal opportunities for females to participate in soccer at Plaintiffs' daughters' schools.

34. Plaintiffs have informed Gadsden City Schools that its actions discriminate against their daughters and against all of Gadsden City Schools' female students at Plaintiffs' daughters' schools, and that these actions constitute violations of the Title IX rights of these students. Despite the fact that Plaintiffs have drawn these inequities to the attention of Gadsden City Schools, Gadsden City Schools has continued to fail and refuse to take the necessary actions to remediate existing violations, even though the Regulations mandate that it do so.

35. On information and belief, Plaintiffs allege that Gadsden City Schools has failed to comply with each of the three (3) parts of the test for determining the equal

opportunity to participate in athletics under Title IX described in Paragraph 23 above. In particular, on information and belief, Plaintiffs allege that:

- (1) The ratio of female to male athletes at Gadsden City Schools, and the schools in which Plaintiffs' daughters are students, is not substantially proportionate to the overall ratio of female to male students.
- (2) Gadsden City Schools does not have a history or continuing practice of program expansion.
- (3) Gadsden City Schools has failed to effectively accommodate the interests of the Plaintiffs' daughters.

36. Female students have historically been and continue to be underrepresented in Gadsden City Schools' interscholastic and other school-sponsored athletic programs. Despite this underrepresentation and despite the interest and abilities of Plaintiffs' daughters and other female students to participate in soccer at their schools, Gadsden City Schools has failed to accommodate this interest.

37. Defendants' conduct has persisted despite the information provided and the requests made by Plaintiffs and despite the mandates of the Regulations, particularly 34 C.F.R. §§ 106.3(a) and 106.41(d).

38. Gadsden 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: TITLE IX

(Unequal Treatment and Benefits)

39. Plaintiffs reallege and incorporate herein by this reference paragraphs through 38 inclusive of this Complaint.

40. Gadsden City Schools, by its conduct, has violated Title IX by discriminating against female students, including the daughters of Plaintiffs, by, among other things, failing to provide female athletes at Emma Sansom High School with the same treatment and benefits which are comparable overall to the treatment and benefits provided to male athletes.

41. Plaintiffs have informed Gadsden City Schools that its actions constitute violations of Plaintiffs' daughters' Title IX rights, as do their failure and refusal to take actions to remediate existing violations. Despite being provided this information, Gadsden City Schools continues to refuse to remediate its violations of Title IX.

42. On information and belief, Plaintiffs allege that Gadsden City Schools has failed to comply with Title IX by failing to provide female athletes at Emma Sansom High School with comparable treatment and benefits including, but not limited to, the following areas:

- (1) Gadsden City Schools funds interscholastic and other school-sponsored athletics in a manner that discriminates against female athletes.
- (2) Gadsden City Schools provides male athletes with newer equipment and supplies that are of better quality than those provided to female athletes. For example, the baseball team is supplied a pitching

machine, while the softball team is not. Gadsden City Schools also provides male athletes with more complete uniforms of better quality on a more frequent basis than those provided to female athletes.

- (3) Gadsden City Schools unfairly discriminates against female athletes in the scheduling of their game times. While the baseball team has exclusive use of its field, the softball team does not.
- (4) Gadsden City Schools compensates coaches for the girls' and boys' teams in a manner which discriminates against female athletes.
- (5) Gadsden City Schools selects coaches for female athletic teams with less care and attention than for male athletic teams. As a result, the coaches of the female athletic teams often have less expertise than the coaches of the male athletic teams.
- (6) Gadsden City Schools supplies superior locker rooms, practice facilities, and competition facilities to boys as compared to girls.
- (7) The provision of medical and training facilities and services are inequitable in that male athletes have superior access to these facilities and services, while the female athletes have very limited access to these facilities and services. This is true, for example, of the weight training facilities.

(8) Female students are discriminated against in regard to travel to games.

For example, softball players' parents provide transportation to away games while baseball players' parents do not.

43. The imbalance in the treatment of female and male athletes at Emma Sansom High School, as detailed above, demonstrates Gadsden City Schools' failure to comply with Title IX.

44. Gadsden City Schools' conduct has persisted despite the information provided and the requests made by Plaintiffs and despite the mandates of the Regulations, particularly 34 C.F.R. §§ 106.3(a) and 106.41(d), and the Policy Interpretation.

45. Gadsden 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.

THIRD CLAIM FOR RELIEF: EQUAL PROTECTION

46. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 45 inclusive of this Complaint.

47. Defendants, by their (1) failure to provide equal athletic opportunities for female students and (2) failure to provide female athletes with the same treatment and benefits as the male athletes (as detailed above), have purposely discriminated against female students, including the daughters of the named Plaintiffs, on the basis of gender, and have intentionally deprived them of their rights to equal protection secured by the Fourteenth Amendment to the United States Constitution.

49. Defendant Bob Russell, as Superintendent of Schools at Gadsden City Schools, has consistently refused to sponsor additional participation opportunities for female athletes as detailed above. Mr. Russell has failed and refused to remedy the unequal treatment and benefits received by Gadsden City Schools' female athletes as detailed above – despite the numerous complaints of the Plaintiffs. Therefore, Mr. Russell's actions constitute a knowing disregard for Plaintiffs' daughters' constitutional rights.

50. 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, or 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...

51. 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, each of the individual Defendants is liable on an individual basis for his violation of the Plaintiffs' daughters constitutional rights under the Fourteenth Amendment.

RELIEF REQUESTED

WHEREFORE, on each of their claims, Plaintiffs respectfully pray that this Court:

- A. Enter an order declaring that Defendants have engaged in a past and continuing pattern and practice of discrimination against Plaintiffs' daughters

and other female students on the basis of gender in violation of Title IX and the regulations promulgated thereunder (including both unequal participation opportunities and 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 Plaintiffs' daughters and other female students 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, (1) allowing female students the equal opportunity to participate in interscholastic and other school-sponsored athletics, and specifically soccer, and (2) providing 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 B above.
- D. Award Plaintiffs their 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 Gadsden, Alabama.

Dated: 8-4-03

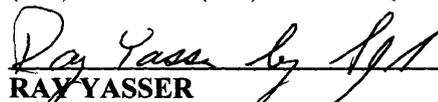
Respectfully submitted,

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