

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO. 97-1463-CV-ORL-22A

DANIEL DANIELS, as next
friend of JESSICA DANIELS and
JENNIFER DANIELS, as
representatives of a class of
similarly situated persons,

Plaintiffs,

vs.

SCHOOL BOARD OF BREVARD COUNTY,
FLORIDA,

Defendant.

_____ /

**FIRST AMENDED CLASS ACTION COMPLAINT;
INJUNCTIVE RELIEF SOUGHT**

I. PRELIMINARY STATEMENT

1. This is an action by Plaintiffs, by and through their next friend, as representatives of a class of similarly situated persons, for relief under the Education Amendments of 1972, § 901, 20 U.S.C.A. § 1681 (Title IX). Plaintiffs allege that the Defendant, in violation of federal law, has failed to provide equal athletic facilities to the class of Plaintiffs because of Plaintiffs' gender.

II. JURISDICTION & VENUE

2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343. The rights, privileges, and immunities sought herein to be redressed are those

secured by Title IX and the Constitution of the United States of America, in particular, the Fourteenth Amendment thereto. This action can be maintained as a class action under Rule 23, Federal Rules of Civil Procedure. This Court further has supplemental jurisdiction of the subject matter of this claim by virtue of 28 U.S.C. § 1367, as to all claims arising under the laws and Constitution of the State of Florida that are so related to the claims of which this Court has original jurisdiction and which form part of the same case or controversy.

3. This claim arises out of acts undertaken and injuries suffered in the Middle District of Florida and venue is proper pursuant to 28 U.S.C. § 1391.

III. PARTIES

4. The Plaintiff Class consists of all girls who are currently playing, or will play in the future, on any Brevard County public high school's girls' softball team.

5. Class representatives, JESSICA and JENNIFER DANIELS, are twin sisters who are United States citizens and reside with their parents in Merritt Island, Brevard County, Florida. They are seventeen years of age and in the twelfth grade at Merritt Island High School (MIHS), a public school owned and operated by Defendant. Both JESSICA and JENNIFER are members of the MIHS girls' softball team. As members of the MIHS girls' softball team, JESSICA and JENNIFER, compete against other high schools' girls' softball teams in Brevard County, Florida. Sometimes their games are at MIHS, and sometimes their games are at other Brevard County High Schools. Daniel DANIELS is JESSICA and JENNIFER's father.

6. Defendant, School Board of Brevard County, Florida, is the corporate name of the governing body of the school district of Brevard County, Florida, by which it is empowered, among other things, to sue and be sued pursuant to Florida law.

IV. STATEMENT OF FACTS

7. The premiere varsity athletic activity in the Spring semester in Brevard County Public Schools is softball for girls and baseball for boys.

8. Tryouts for girls' varsity softball teams in Brevard County Public Schools begin in or about the last week of January, 1998.

9. Separate playing fields exist in some Brevard County Public Schools for softball and baseball, and use of the baseball field for softball play is impossible because the sizes of the fields and elevations of the pitchers' mounds are different for baseball and softball.

10. Throughout Brevard County's public high schools, boys' high school baseball teams have far superior facilities, coaching, and services than girls' high school softball teams. Examples of inequalities that Plaintiffs believe to exist throughout the public school system include unequal bleachers, score boards, batting cages, publicity, uniforms, and travel-related services. The ultimate example of unequal facilities is that three out of the ten Brevard County public high schools have a boys' baseball field on their campus, while those same three schools have no girls' softball field on their campus. These schools are as follows.

A. Astronaut High School has a boys' baseball field on campus, while it does not have a girls' softball field on campus. The girls' softball teams playing

at Astronaut High School are forced to travel to a field off campus to play games and practice.

B. Cocoa High School has a boys' baseball field on campus, while it does not have a girls' softball field on campus. The girls' softball teams playing at Cocoa High School are forced to travel to a field off campus to play games and practice.

C. Titusville High School has a boys' baseball field on campus, while it does not have a girls' softball field on campus. The girls' softball teams playing at Titusville High School are forced to travel to a field off campus to play games and practice.

11. Equal facilities, coaching, and services between the girls' softball teams and the boys' baseball teams in Brevard County public high schools are necessary to impart equality, parity, importance, worth, morale, team spirit, dignity, and obvious utility to the fans and players.

12. Unequal facilities between the girls' softball and boys' baseball teams at any one public high school impacts the entire class of Plaintiffs because each school's team travels to and plays on fields at other public high schools.

13. Defendant allows, supports, and otherwise facilitates a system of providing unequal support to boys athletics, including the baseball program, from booster clubs, private and commercial donations, commercial agreements, and other sources that result in unlawful disparities in girls' athletics, including the softball program.

14. Defendant should begin design, acquisition, installation and implementation of equal facilities, coaches, and services for girls' softball teams and boys' baseball teams in Brevard County public high schools as soon as possible in order to achieve gender equity in softball and baseball facilities throughout Brevard County's public high schools in time for the Spring 1998 softball season.

15. Unless Defendant is ordered to provide equal facilities, coaching, and services for the girls' high school softball teams and the boys' high school baseball teams in Brevard County's public high schools, Plaintiff Class will suffer injuries for which they have no adequate legal remedy. Specific performance in the form of equal facilities and coaches for Brevard County's public high schools' softball teams is required; monetary damages are inadequate.

16. The hardship on Plaintiff Class if relief is denied is disproportionately onerous as opposed to the hardship to Defendant if it is granted.

V. CLASS ACTION ALLEGATIONS

17. The Class is so numerous that joinder of all members is impracticable, as the Class consists of all of the more than 180 girls who are now, and the many more who will be, members of the varsity and junior varsity softball teams in Brevard County's ten public high schools who are subject to the discriminatory policies and practices of the Defendant School Board of Brevard County, and as said policies and practices will uniformly affect the Class members.

18. There are questions of law and fact common to the Class, particularly insomuch as the policies and practices of the School Board have a discriminatory and

disparate impact on the treatment of girls throughout each school, throughout the district, and throughout the community. Furthermore, commonality of fact exists because named plaintiffs are female high school students, are participants in Defendant's softball programs, attend a school with glaring disparities, and have been adversely affected by the School Board's policies and practices solely or substantially because of their gender

19. The claims of the representative parties are typical of and coextensive with the claims of the Class, as JENNIFER and JESSICA DANIELS request broad injunctive relief for violations of rights that similarly affect all girls, now and in future, impacted by the softball program.

20. The representative parties will fairly and adequately protect the interests of the Class, as the interests of the named parties are coextensive with the members of the Class; and, named parties and their Attorneys who have already achieved favorable results in the related individual action, have shown that they have the ability, experience, vigor, tenacity, financial commitment, and other qualifications necessary to pursue the interests of all Class members.

21. The School Board has acted in providing or allowing better funding, facilities, and services to the boys' baseball programs and has refused to act to eliminate disparities regarding the girls' softball teams on grounds generally applicable to the Class, as each Class member is subjected to disparities at home and/or away games and is subject to the same funding sources and formulae; thereby making appropriate final injunctive relief with respect to the Class as a whole.

VI. COUNTS

**COUNT I. Violation of Title IX, Education Amendments
of 1972, § 901, 20 U.S.C. § 1681.**

22. Plaintiffs reallege Paragraphs 1 through 21.

23. Because of Defendant's failure to provide equal facilities, coaching, and services for the girls' public high school softball teams and boys' public high school baseball teams, Plaintiffs are being denied the benefits of and are being subjected to discrimination on the basis of their gender under Defendant's education program or activity which receives Federal financial assistance.

24. Because of their gender, Plaintiffs are being wilfully denied equal athletic opportunities by Defendant.

25. The lack of equal facilities, coaching, and services for the girls' public high school softball teams and boys' public high school baseball teams does not effectively accommodate the interests and abilities of members of both sexes, including the interests and abilities of Plaintiffs.

26. As a result of Defendant's illegal actions, Plaintiffs have incurred costs and attorney fees.

**COUNT II. Violation of Florida Educational Equity Act,
Fla. Stat. § 228.2001.**

27. Plaintiffs reallege Paragraphs 1 through 21.

28. Because of Defendant's failure to provide equal facilities, coaching, and services for the girls' public high school softball teams and boys' public high school baseball teams, Plaintiffs are, on the basis of sex, being denied the benefits of and being

subjected to discrimination under Defendant's education program or activity which receives or benefits from federal or state financial assistance.

29. Plaintiffs, on the basis of sex, are being denied the benefits of and being treated differently from boys in interscholastic athletics offered by Defendant.

30. Because of their gender, Plaintiffs are being denied an equal athletic opportunity by Defendant.

31. The lack of equal facilities, coaching, and services for the girls' public high school softball teams and boys' public high school baseball teams does not effectively accommodate the interests and abilities of members of both sexes, including the interests and abilities of Plaintiffs.

32. As a result of Defendant's illegal actions, Plaintiffs have incurred costs and attorney fees.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs have been damaged by Defendant as a result of each violation alleged in each count above, and request preliminary and permanent injunctive relief and all other relief that is just and equitable, including costs and attorney fees.

I HEREBY CERTIFY that a true copy hereof was mailed on this 8th day of

December, 1997 to the following named persons:

DR. DAVID SAWYER
Superintendent
SCHOOL BOARD OF BREVARD COUNTY
2700 Judge Fran Jamieson Way
Melbourne, FL 32940-6699

JEFFREY G. SLATER
Eubanks, Hilyard & Rumbley, P.A.
P. O. Box 4973,
Orlando, FL 32802-4973
Attorney for Defendant

LISA KUHLMAN TIETIG
Trial Counsel
Florida Bar No. 0978027
TIETIG & TIETIG
6065 South Tropical Trail
Merritt Island, FL 32952
(407) 452-9944; Fax 452-8942
Attorneys for Plaintiff Class

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