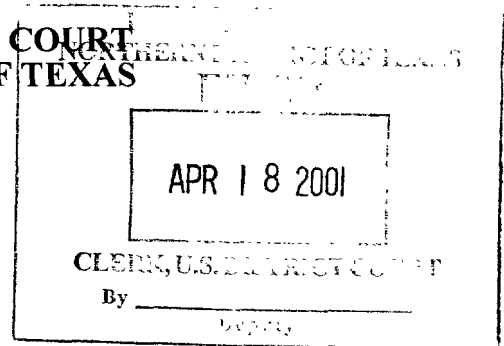


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ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



SHEILA BEAL, as parent and next friend
of her minor daughter, AMBER NEELY;
RICK and LYNN MALONEY, as parents
and next friend of their minor daughter,
ALLISON MALONEY; RICK and LYNN
MALONEY as parents and next friend of
their minor daughter, KATIE MALONEY;
CHARLES V. EMMETT, as parent and
next friend of his minor daughter, VALERIE
KAY EMMETT; and on behalf of all others
similarly situated,

Plaintiffs,

v.

MIDLOTHIAN INDEPENDENT SCHOOL
DISTRICT # 070908 OF ELLIS COUNTY,
TEXAS; MOLLY HELMLINGER, in her
official capacity as Superintendent; and
Does 1 through 50,

Defendants.

CASE NO.:

3-01CV0746-L

**COMPLAINT -
CLASS ACTION**

COMPLAINT - CLASS ACTION

The above-captioned Plaintiffs, as parents and next friend of their minor daughters, and on behalf of all others similarly situated ("Plaintiffs"), respectfully file this Complaint against Defendants, Midlothian Independent School District #070908 of Ellis County, Texas (hereinafter "Midlothian Public Schools"); Molly Helmlinger, in her official capacity as Superintendent; and Does 1 through 50, and allege as follows:

STATEMENT OF THE CASE

1. This action is posed as a class action for declaratory and injunctive relief brought on behalf of female students at Midlothian Public Schools in Midlothian, Texas. 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 female students at Midlothian Public Schools (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 discrimination against the named plaintiffs and all members of the class based solely on their gender. Specifically, as to unequal participation opportunities, Defendants have discriminated against female students at Midlothian Public Schools in the accommodation of student interests and abilities in athletics by selecting and offering sports and/or levels of competition in a manner which discriminates against female students. Notwithstanding the significant number of female students at Midlothian Public Schools who have the interest and abilities necessary to participate in athletics, Defendants have refused to provide them with an equal opportunity to do so. Furthermore, as to unequal treatment and benefits, Defendants have discriminated against Midlothian Public Schools' female students in the following areas: (1) funding of athletics (2) equipment and supplies; (3) travel and/or meals; (4) opportunity to receive qualified coaching; (5) assignment and/or compensation of coaches; (6) provision of locker rooms and facilities for both practice and competition; and (7) provision of training facilities and services.

3. This action seeks to redress the deprivation of the named Plaintiffs' daughters' rights and the rights of the class 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 the rights of Midlothian Public Schools' female students 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 a sufficient number of additional athletic teams and/or levels of teams for female students to obtain meaningful participation opportunities which are comparable to those offered to male students enrolled at Midlothian Public Schools.

5. Plaintiffs further seek injunctive relief which requires that Defendants provide the girls' athletic teams at Midlothian Public Schools with equal treatment and benefits as Midlothian Public 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 Midlothian, Texas, which is within the jurisdiction of this Court.

THE PARTIES

11. Plaintiff Sheila Beal is the parent of Amber Neely, a 15-year-old 10th grade student at Midlothian Public Schools. Amber is a talented athlete who participates in softball. 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 Midlothian Public Schools toward their female athletes. The Beals are residents of Midlothian, Texas, which is within the jurisdiction of this Court.

12. Plaintiffs Rick and Lynn Maloney are the parents of Allison Maloney, a 16-year-old 11th grade student at Midlothian Public Schools. Allison is a talented athlete who participates in volleyball. 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 Midlothian Public Schools toward their female athletes. The Maloneys are residents of Midlothian, Texas, which is within the jurisdiction of this Court.

13. Plaintiffs Rick and Lynn Maloney are the parents of Katie Maloney, a 15-year-old 9th grade student at Midlothian Public Schools. Katie is a talented athlete who participates in volleyball, basketball, softball and track. 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 Midlothian Public Schools toward their female athletes. The Maloneys are residents of Midlothian, Texas, which is within the jurisdiction of this Court.

14. Plaintiff Charles V. Emmett is the parent of Valerie Kay Emmett, a 16-year-old 10th grade student at Midlothian Public Schools. Valerie is a talented athlete who participates in softball and tennis. 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 Midlothian Public Schools toward their female athletes. The Emmetts are residents of Midlothian, Texas, which is within the jurisdiction of this Court.

15. Defendant Midlothian Independent School District # 070908 of Ellis County, Texas is a public school district authorized by Texas law to operate and control Midlothian Public Schools, where the Plaintiffs' daughters are students. Therefore, Midlothian Public Schools' conduct is considered state action under 42 U.S.C. §1983. Defendant Midlothian Independent School District is located in Midlothian, Texas, which is within the jurisdiction of this Court. Since the passage of Title IX, Midlothian Public Schools has received and continues to receive federal financial assistance and the benefits therefrom. Therefore, all programs at Midlothian Public Schools, including athletics, are subject to the requirements of Title IX.

16. Defendant Molly Helmlinger is the Superintendent of Schools at Midlothian Public Schools. Ms. Helmlinger is a resident of the state of Texas and thus is subject to the jurisdiction of this Court.

17. The named Plaintiffs are ignorant of the true names and capacities of Does 1-50, but believe them to be employees of Midlothian Public Schools or members of the Midlothian Public 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 Texas and thus is subject to the jurisdiction of this Court.

CLASS ACTION ALLEGATIONS

18. The named Plaintiffs bring these claims on behalf of their minor daughters, and, pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, for declaratory and injunctive relief, on behalf of all present and future female students enrolled at Midlothian Public Schools who participate, seek to participate, or are deterred from participating in interscholastic and/or other school-sponsored athletics at Midlothian Public Schools.

19. Each of the named Plaintiffs' daughters is a student at Midlothian Public Schools and is an athlete who is subjected to Midlothian Public Schools' unequal treatment and benefits.

20. In bringing this lawsuit, Plaintiffs seek to require Defendants to comply with Title IX and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by ending their discriminatory policies toward the girls' athletics programs in

Midlothian Public Schools. Accordingly, Plaintiffs seek injunctive relief requiring Midlothian Public Schools to fund and sponsor girls' sports so that the interests and abilities of all female students at Midlothian Public Schools are accommodated in a non-discriminatory manner. Plaintiffs propose to represent all female students at Midlothian Public Schools who wish to participate in any interscholastic and other school-sponsored athletics that are not funded and sponsored by Midlothian Public Schools. In addition, Plaintiffs seek declaratory and injunctive relief to remedy discrimination against current and future female athletes at Midlothian Public Schools regarding their receipt of treatment and benefits which are not comparable to those received by the male athletes.

21. The class is so numerous that joinder of all members is impractical. It is unknown how many of the current Midlothian Public Schools female students or how many future Midlothian Public Schools female students would seek to participate in interscholastic or other school-sponsored athletics if additional opportunities were available. Moreover, joinder of all members is impractical because members of the class who may suffer future injury are not capable of being identified at this time.

22. There are many questions of law and fact common to the class, including: (a) whether female students at Midlothian Public Schools are being deprived of equal opportunities to participate in interscholastic and other school-sponsored athletics, (b) whether female students at Midlothian Public Schools are receiving unequal treatment and benefits in comparison to the male students at Midlothian Public Schools, and (c) whether Defendants have been and are discriminating against girls in Midlothian Public Schools' interscholastic and other school-sponsored athletic programs in violation of Title IX and the United States Constitution.

23. The claims of the named Plaintiffs are typical of the claims of the class. The types of gender discrimination which Plaintiffs' daughters have suffered as a result of their gender include: (1) exclusion from opportunities to participate in the interscholastic and other school-sponsored athletic programs at Midlothian Public Schools and (2) receipt of unequal treatment and benefits in Midlothian Public Schools' interscholastic or other school-sponsored athletic programs. These are typical of the types of gender discrimination which members of the class have suffered, are suffering, and, unless this Court grants relief, will continue to suffer.

24. The named Plaintiffs will fairly and adequately represent and protect the interests of the class. Plaintiffs intend to prosecute this action rigorously in order to secure remedies for the entire class.

25. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole.

GENERAL ALLEGATIONS

THE REQUIREMENTS OF TITLE IX

26. 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, Midlothian Public 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.

27. 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").

28. 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....

29. 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.*

30. 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").

31. 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.

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

- (1) whether interscholastic and other school-sponsored athletic participation¹ opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or

¹Although the Policy Interpretation refers to "intercollegiate" sports, it is applicable to all recipients of federal education funds, including high schools, and is, thus, applicable to interscholastic high 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."

(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.

33. 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.

34. The Regulations require that sponsors of interscholastic and other school-sponsored athletics (such as Midlothian Public 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(a). On information and belief, any remedial actions which Midlothian Public Schools has taken in the past have been insufficient to satisfy Midlothian Public Schools' obligations under Title IX.

35. 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-five (25) years later, Midlothian Public Schools has still not fully complied with Title IX.

THE U.S. CONSTITUTION

36. 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."

37. 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

38. Plaintiffs are entitled to injunctive relief to end Defendants' unequal, discriminatory, and unlawful treatment of female student athletes. 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 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

39. 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)

(Class action against Midlothian Public Schools only)

40. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 39 inclusive of this Complaint.

41. By offering certain opportunities to male students to participate in interscholastic and other school-sponsored athletics, Midlothian Public 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 Midlothian Public Schools - should have equal access and opportunity to receive these same benefits that the male students at Midlothian Public Schools already have. Midlothian Public Schools historically has not provided and currently does not provide its female students with such equal access and opportunity.

42. Midlothian Public Schools has violated Title IX by discriminating against female students at Midlothian Public Schools, including the Plaintiffs' daughters, by among other things, failing to provide equal opportunities for females to participate in interscholastic and other school-sponsored athletics.

43. On information and belief, Plaintiffs allege that Midlothian Public 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 32 above. In particular, on information and belief, Plaintiffs allege that:

- (1) The ratio of female to male athletes at Midlothian Public Schools is not substantially proportionate to the overall ratio of female to male students at Midlothian Public Schools.
- (2) Midlothian Public Schools does not have a sufficient history or continuing practice of program expansion.
- (3) Midlothian Public Schools has failed to effectively accommodate the interests of the female students.

44. Female students have historically been and continue to be underrepresented in Midlothian Public Schools' interscholastic and other school-sponsored athletic programs. Despite this underrepresentation and despite the interest and abilities of the female students to participate on additional athletic teams, Midlothian Public Schools has failed to accommodate this and other interests.

45. Midlothian Public Schools' conduct has persisted despite the mandates of the Regulations, particularly 34 C.F.R. §§ 106.3(a) and 106.41(d).

46. Midlothian Public 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)

(Class action against Midlothian Public Schools only)

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

48. Midlothian Public Schools, by its conduct, has violated Title IX by discriminating against female students, including the Plaintiffs' daughters, by, among other things, failing to provide female athletes at Midlothian Public Schools with the same treatment and benefits which are comparable overall to the treatment and benefits provided to male athletes.

49. On information and belief, Plaintiffs allege that Midlothian Public Schools has failed to comply with Title IX by failing to provide female athletes with comparable treatment and benefits including, but not limited to, the following areas:

- (1) Midlothian Public Schools funds interscholastic and other school-sponsored athletics in a manner that discriminates against female athletes.
- (2) Midlothian Public Schools provides male athletes with newer equipment and supplies that are of better quality than those provided to female athletes.
- (3) Female athletes are discriminated against in regard to meals and/or travel to games and/or practice sites.
- (4) Female athletes have fewer opportunities to receive coaching because at least one of Midlothian Public Schools' female teams have more players per coach than some male teams.

interscholastic and/or other school-sponsored athletics at Midlothian Public Schools.

- B. Enter an order declaring that Defendants have engaged in a past and continuing pattern and practice of discrimination against 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.
- C. 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 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 (2) providing female athletes with treatment and benefits comparable to those provided to male athletes.
- D. Grant an expedited hearing and ruling on the permanent injunction request in C above.
- E. Award Plaintiffs their reasonable attorneys' fees and costs pursuant to U.S.C. § 1988.
- F. Order such other and further relief as the Court deems appropriate.