

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LONDON DIVISION**

Case Number: _____

Electronically Filed

J.S., a minor, by and through his next
friend and father, JACKIE STEELE

PLAINTIFF

vs.

VERIFIED COMPLAINT AND JURY DEMAND

LAUREL COUNTY BOARD OF EDUCATION (LCBE)

Serve: Dr. Doug Bennett, Superintendent
Laurel County Board of Education
718 North Main St.
London, KY 40741

-AND-

DR. DOUG BENNETT, Individually, and in his
Official Capacity as Superintendent of the
Laurel County Public Schools employed by LCBE;

Serve: Dr. Doug Bennett
Laurel County Board of Education
718 North Main St.
London, KY 40741

-AND-

RANDY LEGER, Individually, and in his
Official Capacity as Director of Athletics
for Laurel County Public Schools employed by LCBE;

DEFENDANTS

Serve: Randy Leger
Laurel County Board of Education
718 North Main St.
London, KY 40741

Comes now the Plaintiff J.S., a minor, by and through his next friend and father, Jackie Steele, and for his Complaint and causes of action against the Defendants, alleges as follows:

INTRODUCTION

1. This lawsuit is brought on behalf of and for the benefit of J.S., a male sixth grade student, who is currently attending a middle school in the Laurel County public school system. J.S. is a student-athlete who participates in school-sponsored sports, including basketball. Recently, J.S. tried out for the 6th grade basketball team. On October 5, 2018, J.S. learned that he had made the 6th grade team. J.S. wants the opportunity to try out for and, if selected, to play basketball at more than one grade level. As will be explained below, this is an opportunity that the Laurel County school system grants to its middle school girls for the 2018-2019 basketball season and school year but denies to its middle school boys.

2. As a student-athlete, J.S. is subject to certain rules promulgated by the school district's governing body, Defendant Laurel County Board of Education (hereinafter referred to as "LCBE"). One such rule is the so-called "Play Up, Stay Up Rule." This rule — **on its face** — draws a distinction on the basis of sex. Specifically, this rule unfairly subjects male basketball players to a harsh restriction on the number of grade levels at which they may play, but expressly exempts female basketball players from the restriction. Moreover, LCBE agents and employees have implemented and (selectively) enforced the "Play Up, Stay Up Rule" within the school district in a manner that results in additional gender-based discrimination against middle school male student-athletes.

3. Plaintiffs allege that the Defendants' conduct violated J.S.'s clearly established rights secured by: the Equal Protection Clause of the Fourteenth Amendment; Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681-1688; Sections 1, 2, and 3 of the Constitution of Kentucky; and KRS Chapter 344. With the middle school boys basketball season fast approaching, unless immediate relief is granted, J.S. will be denied the educational rights, benefits, and protections afforded to him under the federal and state laws referenced above. To remedy the Defendants' deliberate and egregious violations of federal and state law, Plaintiffs seek temporary, preliminary, and permanent injunctive relief to compel Defendants to comply with federal and state law and to permit J.S. the opportunity to play basketball at multiple grade levels – the same as is afforded to the female middle school basketball players within the Laurel County Public Schools. The Plaintiffs have reason to believe that similarly-situated male students may have also been precluded from participating in school-sponsored basketball in violation of federal and state law, and the Plaintiffs seek a change to existing policies to end that unlawful practice for current and future aggrieved parties. Additionally, Plaintiffs seek compensatory damages, an award of their attorney fees and costs in bringing this action, and any further relief, including, but not limited to punitive damages, as deemed appropriate by the Court.

JURISDICTION AND VENUE

4. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331, which provides for original jurisdiction over cases presenting federal questions.

5. This case is a civil action arising under 28 U.S.C. § 1343(a)(3) as it involves an action to redress the deprivation of rights and privileges secured the Constitution of the

United States and Acts of Congress providing for equal rights of citizens within the jurisdiction of the United States.

6. J.S. has been deprived of federal statutory rights and thus Plaintiffs bring this action on behalf of J.S. pursuant to 42 U.S.C. § 1983.

7. Jurisdiction over the state law claims is conferred upon this Court by 28 U.S.C. § 1367, which provides for supplemental jurisdiction over state law claims that are so related to the federal law claims that they form one case or controversy for Article III purposes.

8. This Court has personal jurisdiction over Defendants as Defendants are residents of and/or located in Laurel County, Kentucky.

9. Venue in this District is proper pursuant to 28 U.S.C. § 1391, in that the Plaintiff resides therein, and all acts resulting in a violation of Plaintiff J.S.'s rights occurred therein.

PARTIES

10. Plaintiff J.S. is, and at all times relevant hereto, was a minor citizen and resident of Laurel County, Kentucky, with a mailing address of 19 Skyview Drive, Corbin, KY 40701. Plaintiff J.S. is 12 years of age and resides with his parents, Jackie and Jennifer Steele, at 19 Skyview Drive, Corbin, KY 40701.

11. Jackie Steele is, and at all times relevant hereto, was an adult citizen and resident of Laurel County, Kentucky, with a mailing address of 19 Skyview Drive, Corbin, KY 40701. He is the father of J.S., and he brings this action as next friend of and on behalf of his minor son J.S.

12. Defendant Laurel County Board of Education (hereinafter referred to as “LCBE”) is a Kentucky state agency charged with the general control and management of Kentucky public schools within the Laurel County school district. Defendant LCBE is “a body politic and corporate” which may sue and be sued. See KRS 160.160; 160.290. Defendant LCBE is, and at all times relevant hereto, was a constitutionally or statutorily created political subdivision of the Commonwealth of Kentucky, which is situated in Laurel County, Eastern District of Kentucky. LCBE is a public school district governing body, organized and operating under, and subject to Kentucky law. LCBE, its agents, servants, and assigns own, operate, and have the ability and authority to regulate and set policy for Laurel County’s public schools. LCBE, its agents, servants, and assigns have an address of 718 North Main St., London, KY 40741.

13. Defendant Dr. Doug Bennett is, and at all times relevant hereto, was employed by LCBE as the Superintendent of Laurel County Public Schools. Upon information and belief, Dr. Bennett resides in Laurel County, Kentucky.

14. Defendant Randy Leger is, and at all times relevant hereto, was employed by LCBE as the Director of Athletics for Laurel County Public Schools. Upon information and belief, Mr. Leger resides in Laurel County, Kentucky.

FACTUAL ALLEGATIONS

15. At all times relevant hereto, each of the Defendants acted under color of state law and continue to act under color of state law.

16. J.S. is a minor enrolled in the Laurel County public school system. He is currently in the 6th grade at South Laurel Middle School.

17. Throughout J.S.'s enrollment and attendance in the Laurel County public school system, the LCBE, its agents, servants and assigns have received federal funds for its schools, specifically including North Laurel Middle School (hereinafter referred to as "NLMS") and South Laurel Middle School (hereinafter referred to as "SLMS").

18. At all times relevant hereto, J.S. had a student-teacher relationship with LCBE, its agents, servants, and assigns, including but not limited to each of the Individually-named and Officially-named Defendants.

19. J.S. learned on October 5, 2018, that he had made the 6th grade basketball team. As a student-athlete enrolled within the Laurel County public school system, J.S. is subject to certain rules promulgated by the LCBE.

20. The current version of the LCBE's rules on school athletics and student-athletes is contained in a collection of documents entitled "Laurel County Public Schools, Athletic Handbook, 2018-2019 School Year" (hereinafter referred to as the "Athletic Handbook"). On page 31, under the heading "Student Participation", the Athletic Handbook contains the following provision:

Student can only play at one grade level while participating in athletics at the middle school level. If a coach chooses to allow a student to play at a higher level, the student must remain at that level. This rule does apply to baseball and softball in regards to junior varsity and varsity play at the middle school. "If they play up, they stay up".[sic] This rule does not apply to the sports of soccer, volleyball and girls basketball due to play being in different seasons.

(A copy of Page 31 of the Athletic Handbook is attached hereto as Exhibit A and incorporated herein by reference.)

21. Within the Laurel County school system, this rule is commonly referred to as the “Play Up, Stay Up Rule”, or simply as “Play Up, Stay Up.” Under this rule, a middle school male basketball — irregardless of ability or potential — is restricted to one team and one team only. Under this rule, if J.S chooses/is chosen to play with the 7th grade team, he can never return to play with the 6th grade team; if he chooses/is chosen to play with the 8th grade team, he can never return to play with either the 6th grade team or the 7th grade team.

22. By contrast, 6th or 7th grade female basketball players at NLMS have recently been permitted to play up and then play down on multiple teams as they and their coach(es) see fit, all with the approval and acquiescence of the Defendants.

23. On multiple occasions, J.S.’s parents pointed out to the Defendants the inequity of LCBE’s rule and its application. J.S.’s parents demanded that the Defendants modify or abolish the rule and provide its male middle school students with the same opportunity they provide to their female middle school students — namely, the opportunity to play basketball at multiple grade levels. The Defendants refused.

24. The undersigned attorney also sent a letter, dated August 16, 2018, to the Superintendent, Defendant Bennett, pointing out the obvious gender discrimination and again demanding that the “Play Up, Stay Up Rule” either be abolished or modified so as to give equal treatment to both male and female middle school student-athletes. A copy of said letter is attached hereto as Exhibit B and incorporated herein by reference.

25. On or about August 30, 2018, Attorney Larry G. Bryson, on behalf of the Defendant LCBE, sent a letter to the undersigned attorney. Attorney Bryson’s letter made

specific reference to Jackie Steele and “young Steele.” Attorney Bryson, on behalf of the Defendants, whom, after engaging in a full discussion, involving all school board members and superintendent Bennett, in a closed school board session, took the position that courts will not afford Title IX protection to “young Steele” because he is a male. Mr. Bryson’s letter states in relevant part:

Since you threatened litigation, I discussed your letter with the Laurel County Board and Superintendent Bennett in closed session. We are surprised that anyone today would try to “game” a federal law in this manner, although you are not the first to try to do so. In fact, there has been no shortage of advocates who seek to have the same Title IX rules applied to boys’ teams as girls’ teams, but the courts have steadfastly failed to buy into this argument citing the long history of inequity for girls’ teams as the reason for the Courts’ approach.

[See Letter from Bryson to Meader, dated August 30, 2018, attached hereto as Exhibit C and incorporated herein by reference.]

26. On September 6, 2018, the undersigned attorney for the Plaintiffs sent another letter to Attorney Bryson that: (a) addressed Attorney Bryson’s misstatements in regards to Title IX and its availability to male students; (b) provided the Defendants with formal notice that their policies and conduct violated the Equal Protection Clause of the Fourteenth Amendment; and (c) once again demanded that the Defendants change the discriminatory rule. [See Letter from Meader to Bryson, dated September 6, 2018, attached hereto as Exhibit D and incorporated herein by reference.]

27. On September 6, 2018, Jackie Steele also sent a reply letter to Attorney Bryson with specific citations to some of the most relevant case law. Mr. Steele cited Fitzgerald v. Barnstable School Committee, et al., as authority that “Title IX does not

preclude a § 1983 action alleging unconstitutional gender discrimination in schools.” Mr. Steele cited Mississippi University for Women v. Hogan, 102 S.Ct. 3331 (1982) as conclusive proof that the U.S. Supreme Court has held that the rights and benefits provided by Title IX protect and extend to both females *and males*. Finally, Mr. Steele cited Wengler v. Druggists Mutual Ins. Co., 446 U.S. 142 (1980) and outlined for Attorney Bryson and the Defendants the correct standard for analyzing gender classifications under the Equal Protection Clause. [See Letter from Steele to Bryson, dated September 6, 2018, attached hereto as Exhibit E and incorporated herein by reference.]

28. In spite of having been made aware of their legal obligations not to discriminate against their students on the basis of sex, in said closed session school board meeting referenced above, the Defendants continue to intentionally, deliberately, and blatantly deprive J.S. of the opportunity to fully participate in school activities, including the opportunity to play basketball at more than one grade level — an opportunity the Defendants openly provide to their middle school female students.

CLAIMS FOR RELIEF

COUNT 1: Violations of the Equal Protection Clause of the Fourteenth Amendment

29. Plaintiffs incorporate all of the allegation as set forth in paragraphs 1-28 above.

30. By authorizing, promulgating, implementing and enforcing the rules, policies, and practices pursuant to which J.S. is denied full access to public education and is subjected to discrimination on the basis of his gender in the Laurel County Public Schools, Defendants have deprived, and will continue to deprive J.S. of rights, remedies,

privileges and immunities guaranteed to every citizen of the United States in violation of 42 U.S.C. § 1983 and of rights guaranteed by the Fourteenth Amendment to the United States Constitution and all other applicable federal law.

31. All Defendants have acted under pretense and color of state law and in their Individual and Official capacities and within the scope of their employment. Defendants' acts described herein were beyond the scope of their jurisdiction, without authority of law, and in abuse of their powers, and said Defendants acted willfully, knowingly, and with the specific intent to deprive Plaintiffs and J.S. of their constitutional and federal statutory rights secured by 42 U.S.C. § 1983. Defendants have conspired among themselves to do so and failed to prevent one another from doing so.

32. Defendants' conduct is causing, and will continue to cause, irreparable harm to J.S. unless it is enjoined by this Court. Plaintiffs are entitled to temporary, preliminary, and permanent injunctive relief compelling Defendants (a) to immediately permit J.S. to fully participate in all school activities including extracurricular sports activities on multiple grade levels, and (b) to comply with all requirements of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

33. The Court should further find that this is an egregious case and award Plaintiffs their attorney fees, costs, and punitive damages.

COUNT 2: Violations of Title IX

34. Plaintiffs incorporate all of the allegation as set forth in paragraphs 1-33 above.

35. Title IX of the Education Amendments of 1972 states in 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 assistance....” 20 U.S.C. § 1681(a).

36. Defendant LCBE is an “education program or activity receiving federal assistance” within the meaning of Title IX.

37. The conduct of Defendant LCBE, by and through its agents, servants and assigns, and on the basis of sex, has excluded J.S. from participation in an education program or activity within the meaning of Title IX.

38. The conduct of Defendant LCBE, by and through its agents, servants and assigns, and on the basis of sex, has denied J.S. the benefits of an education program or activity within the meaning of Title IX.

39. The conduct of Defendant LCBE, by and through its agents, servants and assigns, and on the basis of sex, has subjected J.S. to discrimination under an education program or activity within the meaning of Title IX.

40. Title IX contains an implied private right of action, and damages are available as a remedy.

41. Defendants' conduct is causing, and will continue to cause, irreparable harm to J.S. unless it is enjoined by this Court. Plaintiffs are entitled to temporary, preliminary, and permanent injunctive relief compelling Defendants (a) to immediately permit J.S. to fully participate in all school activities including extracurricular sports activities on multiple grade levels, and (b) to comply with all requirements of Title IX.

COUNT 3: Violations of the Kentucky Constitution

42. Plaintiffs incorporate all of the allegation as set forth in paragraphs 1-41 above.

43. The Defendants' conduct of authorizing and promulgating a rule that — on its face — discriminates against J.S. on the basis of gender and then implementing and enforcing said rule in a manner that results in further discrimination against J.S. on the basis of his gender caused a deprivation of J.S.'s rights secured by Sections 2 and 3 of the Kentucky Constitution.

44. The Defendants' actions and failures to act constituted an exercise of absolute and arbitrary power in violation of J.S.'s rights secured by Sections 1, 2, and 3 of the Kentucky Constitution.

45. Defendants' conduct is causing, and will continue to cause, irreparable harm to J.S. unless it is enjoined by this Court. Plaintiffs are entitled to temporary, preliminary, and permanent injunctive relief compelling Defendants (a) to immediately permit J.S. to fully participate in all school activities including extracurricular sports activities on multiple grade levels, and (b) to comply with all requirements of Sections 1, 2, and 3 of the Kentucky Constitution.

COUNT 4: Violations of KRS Chapter 344

46. Plaintiffs incorporate all of the allegation as set forth in paragraphs 1-45 above.

- A. Plaintiffs seek temporary, preliminary and permanent injunctive relief compelling Defendants (i) to immediately permit J.S. to fully participate in all school activities including extracurricular sports activities on multiple grade levels, and (ii) to comply with all requirements of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; Title IX; Sections 1, 2, and 3 of the Kentucky Constitution; and KRS 344.555.
- B. Plaintiffs seek an award of compensatory and general damages in an amount to be determined at trial;
- C. Plaintiffs seek an award of punitive damages in an amount to be determined at trial sufficient to punish Defendants and deter others similarly situated because Defendants have acted towards Plaintiffs with willful misconduct, malice, fraud and oppression;
- D. Plaintiffs seek the costs and attorney's fees incurred in this action;
- E. Plaintiffs seek prejudgement and post-judgement interest at the maximum rate permitted by law;
- F. Plaintiffs seek a trial by jury on all issues so triable; and
- G. Plaintiffs seek any other relief the Court deems just and equitable.

Respectfully submitted,

/s/ Bill Meader

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