

JOINT APPENDIX

(EXCERPTS FROM THE RECORD ON APPEAL)

PATTERSON V. NEWTON COUNTY SCHOOL BOARD

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

Sarah and Steven Patterson, on behalf of their	:	
minor daughter, Kathryn Patterson,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 11-664
	:	
Newton County School Board,	:	
	:	
Defendant.	:	

COMPLAINT AND DEMAND FOR JURY TRIAL

The Plaintiffs, Sarah and Steven Patterson, by their attorney, allege the following:

PARTIES AND JURISDICTION

1. Plaintiffs, Sarah and Steven Patterson, reside at 44 Louise Street, Covington, Georgia.
2. Defendant, Newton County School Board (the School Board), is a public entity operating in the town of Covington in Newton County, Georgia.
3. Plaintiffs file this action for injunctive relief and compensatory and punitive damages under Title IX of the Education Amendments of 1972 [U.S. Code sections omitted].
4. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 (2000).

FACTS

5. Plaintiffs are the parents of Kathryn Patterson, who is currently in the ninth grade at Eastside High School (the School).
6. Each July for the past ten years, the School has offered a two-week “summer camp” and invited all students wishing to try out for the School’s football team to attend. The School’s football coaches run the summer camp program.
7. The summer camp is divided into “conditioning week,” during which participating students engage in supervised endurance and strength training, and “tryout week,” during which the same students engage in football drills and scrimmages. At the end of tryout week, the coaches announce which students will play first and second string on the team, and which position each student will play.

J.A. 1

8. The coaches rarely cut students entirely from the team at the end of tryout week, but a number of students quit each year upon learning that they did not make the first or second string.

9. In July 2010, a girl named Ruth Walton attended the School's summer camp. She was the first female student in the history of the School to do so.

10. Football coaches Stan Harrell and Frank Parr told Ruth that she was welcome to participate in the summer camp. They also told her that they would "have to check" on whether School Board policy allowed females on high school football teams.

11. On the last day of summer camp in 2010, Harrell and Parr told Ruth that the School Board had informed them that they could not allow her to participate on the School's football team.

12. At that time, the School Board had no explicit policy regarding the participation of female students on high school football teams.

13. Coaches Harrell and Parr told Ruth that School Board representatives had told them that the School Board needed time to establish a policy, and that in the meantime, females should not participate in the football programs of Newton County high schools.

14. Kathryn Patterson moved to Georgia from Wisconsin in early June 2011, and she was preparing to enter the School as a freshman in the fall of 2011 at the age of fourteen.

15. Before her family moved to Georgia, Kathryn had been a record-breaking placekicker on her middle school football team in Wisconsin, and she had spent much of the 2010-11 school year practicing her kicking with her father, a former high school football coach.

16. The School Board still had not established a policy regarding females playing on high school football teams by the summer of 2011. A few weeks before the School's 2011 summer camp program began, Plaintiffs contacted coaches Harrell and Parr to ask whether Kathryn could participate in the two-week program. Plaintiffs explained that, as a placekicker, Kathryn would not be exposed to the same risk of injury as would other players. The coaches told Plaintiffs that they would check with the School Board.

17. A few days later, Harrell informed Plaintiffs that the School Board would allow Kathryn to participate in the summer camp as a placekicker and, if she showed sufficient talent, to participate on the School's 2011-12 football team in that position.

18. Kathryn participated in both conditioning week and tryout week. A reporter for a local newspaper attended one afternoon of tryout week and later wrote an article entitled "Girl Impresses Eastside Football Coaches."

19. Kathryn outperformed all other summer camp students in placekicking. At the end of the camp, the coaches told her that she had made the team as its "first string placekicker."

J.A. 2

20. A successful last-minute kick by Kathryn won the School's first football game of the season on September 9, 2011. Footage of the game-winning kick was aired on several local news stations, and a story entitled "Girls in H.S. Football? Believe It!" ran in the local newspaper the next day.

21. One week after that game, in early September, Kathryn received several letters from alumni of the School and other citizens of Newton and surrounding counties asking that she quit

the team. Most of these letters simply expressed the view that she should honor the tradition of football as a male sport, and some expressed concern for the safety of other girls who might try out for more dangerous positions on high school football teams in the future.

22. A few of the letters contained “cc’s” indicating that copies had been sent to the School’s coaches and principal, and to the Superintendent of Newton County Schools and members of the School Board. One of these letters stated that Kathryn’s membership on the team was “ruining an American tradition,” and another stated that the School Board was “mocking all of the fine young men who had played on past teams.”

23. On September 24, 2011, Harrell and Parr told Kathryn that the School Board had established an official policy that no females could participate in any high school football summer camps, try out for any high school football teams, or play on any high school football teams. Because the policy went into effect immediately, Harrell and Parr told Kathryn that she would have to quit the team on that day, which she reluctantly did.

24. Kathryn would not have quit the team had her coaches not ordered her to do so.

25. The School does not currently have, nor has it ever had, a girls’ football team.

26. Compared to opportunities for male athletes, opportunities for girl athletes in Newton County public high schools have been limited, in terms of both the number of teams offered and the number of individual spaces offered on each team.

TITLE IX VIOLATION

27. Defendant receives federal financial assistance and is therefore covered by Title IX of the Education Amendments of 1972 [U.S. Code sections omitted].

28. Defendant intentionally discriminated against Kathryn Patterson because of her sex in September 2011 when it ordered her to quit the School’s football team in mid-season.

29. Defendant’s acts of intentional sex discrimination against Plaintiffs’ minor daughter, Kathryn Patterson, violated Title IX.

30. As a result of Defendant’s intentional discrimination, Kathryn suffered lost opportunities to compete in a sport that she loved and in which she excelled.

J.A. 3

31. Defendant’s current policy with respect to high school football effectively prevents Kathryn, and all other girls in Newton County high schools, from participating in high school football because of their sex and regardless of their abilities.

PRAYER FOR RELIEF

THEREFORE, Plaintiffs demand judgment granting the following relief:

- (i) an order requiring Defendant to allow Kathryn and all female high school students to participate in its future pre-season football camps and enjoining Defendant from discriminating against females during future pre-season camps and future football seasons;
- (ii) an award of compensatory damages in an amount to be set at trial;

- (iii) an award of punitive damages in an amount to be set at trial;
- (iv) an award of attorney's fees; and
- (v) such other relief as the Court deems appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, Plaintiffs demand a jury trial of all issues triable of right by a jury.

Sarah and Steven Patterson
by their attorney,

/s/ _____
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Dated: November 3, 2011

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

Sarah and Steven Patterson, on behalf of their	:	
minor daughter, Kathryn Patterson,	:	
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Plaintiffs,	:	
	:	
v.	:	Civil Action No. 11-664
	:	
Newton County School Board,	:	
	:	
Defendant.	:	

DEFENDANT’S MOTION TO DISMISS

Defendant Newton County School Board respectfully requests that this Court dismiss Plaintiffs’ Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) because Plaintiffs have failed to state a claim for which relief can be granted, as explained below.

1. The Department of Education, which administers Title IX of the Education Amendments of 1972 [U.S. Code sections omitted], allows covered schools the discretion to decide whether to allow members of the opposite sex to try out for and play on single-sex teams in contact sports, including football. [citation to federal regulation omitted].
2. Even if opportunities for girl athletes in Newton County high schools had been limited, as Plaintiffs allege, Defendant still maintained the discretion to decide whether, when, and how to permit girls to try out for and play in its high school football program.
3. Defendant legally exercised this discretion when it requested that Kathryn Patterson cease participating as a member of Eastside High School’s football team, out of a concern for her safety, in September 2011.
4. Because the Department of Education’s contact sport exception regulation [citation to federal regulation omitted] applies to this case, none of Defendant’s actions toward Kathryn Patterson violated Title IX, regardless of whether those actions were motivated by Kathryn’s sex.

J.A. 5

For these reasons, this Court should dismiss this action for failure to state a claim upon which relief can be granted.

Respectfully submitted,

Newton County School Board
by its attorney,

/s/
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Dated: November 21, 2011

CERTIFICATE OF SERVICE

I, Joseph Gaffer, hereby certify that on this 21st day of November, 2011, I served the foregoing Defendant's Motion to Dismiss by hand on Casey O'Donnell, attorney for Plaintiffs Sarah and Steven Patterson, at the offices of O'Donnell and Piper, 2100 Lee Street, Covington, Georgia.

/s/
Joseph Gaffer

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

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OPINION AND ORDER

For the reasons set forth below, this Court hereby dismisses Plaintiffs' Complaint with prejudice.

Procedural Standard

When deciding whether to dismiss a complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure, this Court must accept the plaintiff's allegations as true and must draw all inferences in favor of the plaintiff. *Agricredit Acceptance v. Hendrix*, 32 F. Supp. 2d 1361, 1364 (S.D. Ga. 1998). If the allegations are definitely insufficient under the applicable substantive law to entitle the plaintiff to relief, then a court must dismiss the complaint. *Id.*

Plaintiffs' Allegations

Plaintiffs, Sarah and Steven Patterson, have apparently raised an outgoing and athletic teenager, Kathryn Patterson. According to their allegations, Kathryn attended Eastside High School's pre-season football camp in July 2011. Defendant allegedly allowed Kathryn Patterson to participate in its two-week summer camp program so that she could try out as a placekicker, and Plaintiffs allege that her formidable talents indeed won her the starting spot on the Eastside High School football team. When Kathryn joined the team, Defendant still had no explicit policy regarding girls playing high school football, even though it had faced a similar situation the prior school year. Despite Kathryn's game-winning kick in Eastside's opener, Defendant, according to Plaintiffs, ordered that Kathryn cease her participation in its football program, which she did in September 2011. Plaintiffs allege that Defendant's action was motivated by Kathryn's sex.

Legal Analysis

Title IX of the Education Amendments of 1972 [U.S. Code sections omitted] prohibits sex discrimination in educational programs that receive federal funding. [citation to specific Code section omitted] Defendant, like all public school boards, receives federal funding and is thus covered by Title IX. According to regulations that accompany the statute, covered entities may not discriminate on the basis of sex in interscholastic athletic programs. [citation omitted]

Nevertheless, the regulations contain an exception to that rule where contact sports are concerned. Specifically, when a school board, such as Defendant, “sponsors a team in a particular sport for members of one sex but . . . sponsors no such team for members of the other sex,” and where the board has offered only limited athletic opportunities to the excluded sex, the board must allow the excluded sex to try out for that team “unless the sport involved is a contact sport.” [citation omitted] Thus, in the case of football, which is explicitly listed as a contact sport, *see id.*, the regulations specifically allow entities like Defendant to make their own decisions regarding male-female integration. Such an arrangement makes eminent sense, given that females are generally smaller and weaker than males of the same age and could therefore suffer severe injuries from males in contact sports.

These regulatory rules are consistent with Title IX’s legislative history; the statute was never intended to require schools and colleges to allow girls and women to try out for or play on football teams. Indeed, the legislation’s sponsor called football a “unique” case and expressed his belief, before the bill’s passage, that Title IX would not “mandate[] the desegregation of football fields.” 117 Cong. Rec. 30,407 (1971) (statement of Senator Bayh). Given that Title IX applies to colleges and universities as well as to high schools, the sponsor’s words were probably necessary to assure Congressmen and Senators in 1971 that the statute would not require their alma maters to welcome female students to football tryouts.

Thus, while the statutory language of Title IX includes a sweeping ban on sex-based discrimination in educational programs, its implementing regulations wisely allow individual entities to exclude females from participating in certain contact sports, whenever and however those entities wish to do so. Other federal courts have recognized this blanket contact sport exception. [citations omitted]

Admittedly, the Fourth Circuit has rejected the idea of an absolute exception for contact sports and held that “[o]nce an institution has allowed a member of one sex to try out for a team operated by the institution for the other sex in a contact sport, . . . the institution is subject to the general anti-discrimination provision of [Title IX].” [citation omitted] According to the Fourth Circuit, a school must treat girls in a football program just like boys, once the school allows girls to try out. But this decision robs schools of the ability to act in the girls’ best interest. For example, if a school allows a girl to try out for football and she makes the team, the school cannot later protect her by ordering her off the team, even if the school observes that females on other teams are suffering disproportionately frequent and severe injuries. For this reason, the Fourth Circuit’s interpretation of the Title IX regulations is unpersuasive.

In the instant case, Defendant allegedly discriminated against Kathryn Patterson because of her sex when it forced her to leave the Eastside football team before the end of the season, but, again, the contact sport exception gave Defendant the legal right to do so.

J.A. 8

Therefore, applying Rule 12(b)(6), this Court must dismiss Plaintiffs’ Complaint because the allegations, even if true, do not entitle Plaintiffs to relief.

Defendant’s motion to dismiss is, therefore, hereby GRANTED.

/s/

Karen Beaumont

December 30, 2011

