

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

- |  |   |
|--|---|
| 1. John J. Amon, as parent and next    | ) |
| friend of his minor daughter, C.A.;    | ) |
|  | ) |
| 2. August and Michele Pearson as       | ) |
| parents and next friend of their minor | ) |
| daughter, M.P.;                        | ) |
|  | ) |
| 3. Carrie Zocchi as parent and next    | ) |
| friend of her minor daughter, A.Z.,    | ) |
|  | ) |
| Plaintiffs,                            | ) |
|  | ) |
| v.                                     | ) |
|  | ) |
| 1. Mooresville Graded School District  | ) |
| Board of Education, a/k/a/             | ) |
| Mooresville Graded School District;    | ) |
| and;                                   | ) |
|  | ) |
| 2. Does 1 through 50,                  | ) |
|  | ) |
| Defendants.                            | ) |

**COMPLAINT**

The above-captioned Plaintiffs, John J. Amon, as parent and next friend of his minor daughter, C.A.; August and Michele Pearson as parents and next friend of their minor daughter, M.P.; and Carrie Zocchi as parent and next friend of her minor daughter, A.Z.; (“Plaintiffs”), respectfully file this Complaint against Defendants, Mooresville Graded

School District Board of Education, a/k/a/ Mooresville Graded School District and Does 1 through 50, (“Defendants”), and allege as follows:

**STATEMENT OF THE CASE**

1. This action is posed for declaratory and injunctive relief. Plaintiffs are also seeking compensatory damages. Defendants have violated (1) Title IX of the Education Amendments 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 and intentionally denying Plaintiffs’ daughters the equal treatment and benefits that must necessarily accompany an equal opportunity to participate in athletics.

2. Defendants’ denial of equal treatment and benefits constitutes intentional discrimination against the Plaintiffs’ daughters based solely on their gender. Specifically, Defendants have discriminated against Plaintiffs’ daughters in the following areas: (1) funding of athletics; (2) provision of equipment and supplies; (3) scheduling of games and/or practice times; (4) travel and/or per diem; (5) opportunities to receive coaching and academic tutoring; (6) provision of locker rooms and facilities for both practice and competition; (7) provision of training and/or medical facilities and services; and (8) provision of publicity.

3. This action seeks to redress the deprivation of the Plaintiffs’ daughters’ rights to receive the equal treatment and benefits which must necessarily accompany an equal opportunity to participate in interscholastic and other school-sponsored athletics. This action

seeks a declaratory judgment that Defendants have violated the Plaintiffs' daughters' rights under federal law. 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 provide Plaintiffs' daughters with treatment and benefits equivalent to that provided to the boys' athletic teams at Mooresville Graded School District.

5. The Plaintiffs, in their capacity as the parents and next friend of their daughters, seek monetary relief in order to compensate for damages resulting from Defendants' discrimination in the Mooresville Graded School District athletics program, including, among other things, (1) the actual out-of-pocket costs incurred, including paying for equipment and supplies, for their daughters to participate in interscholastic and other school-sponsored athletics which would not be incurred by parents of boys similarly situated, (2) the damages associated with their daughters' reduced opportunities to obtain college athletic scholarships, and (3) the emotional distress and other damages resulting from their daughters' being subjected to discrimination in athletics on the basis of gender.

#### **JURISDICTION AND VENUE**

6. The Plaintiffs' 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 Plaintiffs' second 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).

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

9. Venue is proper pursuant to 28 U.S.C. § 1391(b). These claims arose in Iredell County, North Carolina, which is within the jurisdiction of this Court.

### **THE PARTIES**

10. Plaintiff John J. Amon is the parent of C.A., a 15-year-old incoming 10<sup>th</sup> grade student at Mooresville Senior High School. C.A. is a talented athlete who participates in softball at Mooresville Senior High School. She has endured the unequal treatment and benefits directed by Mooresville Graded School District toward its female athletes. John J. Amon and C.A. are residents of Mooresville, North Carolina, which is within the jurisdiction of this Court.

11. Plaintiffs August and Michele Pearson are the parents of M.P., a 15-year-old incoming 10<sup>th</sup> grade student at Mooresville Senior High School. M.P. is a talented athlete who participates in softball and basketball at Mooresville Senior High School. She has endured the unequal treatment and benefits directed by Mooresville Graded School District toward its female athletes. August and Michele Pearson and M.P. are residents of Mooresville, North Carolina, which is within the jurisdiction of this Court.

12. Plaintiff Carrie Zocchi is the parent of A.Z., a 15-year-old incoming 10<sup>th</sup> grade student at Mooresville Senior High School. A.Z. is a talented athlete who participates in softball at Mooresville Senior High School. She has endured the unequal treatment and benefits directed by Mooresville Graded School District toward its female athletes. Carrie Zocchi and A.Z. are residents of Mooresville, North Carolina, which is within the jurisdiction of this Court.

13. Defendant Mooresville Graded School District is a public school district authorized by North Carolina law to operate and control Mooresville Senior High School, where the Plaintiffs' daughters play softball. Therefore, Defendants' conduct is considered state action under 42 U.S.C. §1983. Mooresville Graded School District is located in Iredell County, North Carolina, and a substantial part of the events or omissions giving rise to this lawsuit occurred in Iredell County, which is within the jurisdiction of this Court. Since the passage of Title IX, Mooresville Graded School District has received and continues to receive federal financial assistance and the benefits therefrom. Therefore, all programs at Mooresville Graded School District, including athletics, are subject to the requirements of Title IX.

14. The named Plaintiffs are ignorant of the true names and capacities of Does 1-50, but believe them to be employees of Mooresville Graded School District or members of the Mooresville Graded School District Board of Education. 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 North Carolina and thus is subject to the jurisdiction of this Court.

**GENERAL ALLEGATIONS**  
**THE REQUIREMENTS OF TITLE IX**

15. 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, Mooresville Graded School District is subject to Title IX even if none of the funding for either its girls' or boys' athletic programs comes specifically from federal sources.

16. 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").

17. 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 ...

18. 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.*

19. 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”).

20. 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.

21. 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.

22. The Regulations require that sponsors of interscholastic and other school-sponsored athletics (such as Mooresville Graded School District) 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(c). On information and belief, any remedial actions which Defendants have taken in the past have been insufficient to satisfy Defendants’ obligations under Title IX.

23. 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 forty-one (41) years later, Defendants have still not fully complied with Title IX.

### **THE U.S. CONSTITUTION**

24. 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."

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

### **INJUNCTIVE RELIEF**

26. 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' rights will be violated and that Plaintiffs' daughters will never be able to participate in interscholastic and/or other school-sponsored athletics on an equal basis with their male classmates. 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**

27. 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 Treatment and Benefits)**  
**(Against Mooresville Graded School District Board of Education, a/k/a/ Mooresville Graded School District only)**

28. Plaintiffs reallege and incorporate herein by this reference paragraphs 1 through 27 inclusive of this Complaint.

29. Mooresville Graded School District, by its conduct, has intentionally violated Title IX by knowingly and deliberately discriminating against female students, including the Plaintiffs' daughters, by failing to provide them with treatment and benefits which are comparable overall to the treatment and benefits provided to male athletes.

30. On information and belief, Plaintiffs allege that Mooresville Graded School District has failed to comply with Title IX by failing to provide their daughters with comparable treatment and benefits including, but not limited to, the following areas:

- (1) Mooresville Graded School District funds athletics in a manner that discriminates against Plaintiffs' daughters and other female athletes. For

example, Mooresville Graded School District requires the softball program to pay for some of their essential equipment and supplies, including uniforms.

- (2) Mooresville Graded School District provides male athletes with equipment and supplies in a manner that discriminates against female athletes. For example, the softball program has been required to make its own arrangements for essential practice and competition equipment, including uniforms.
- (3) Mooresville Graded School District discriminates against Plaintiffs' daughters and other female athletes in the scheduling of practices and/or games. For example, the high school softball program's use of its off-campus softball field is more limited than the high school baseball program's use of its on-campus baseball field because the high school softball program is required to share its field with the middle school team, town teams and travel teams. Each of the high school and middle school baseball teams has its own field.
- (4) Mooresville Graded School District discriminates against Plaintiffs' daughters and other female athletes in the provision of travel and/or per diem. For example, the baseball varsity and junior varsity teams take separate busses to away games. The softball varsity and junior varsity teams are required to use the same bus for away games. In addition, the softball players are required to find their own way back to the high school campus after practice at their off-campus field. Both the baseball and football players have their fields on

campus and thus do not need to find transportation after practice to get back to the campus.

- (5) Mooresville Graded School District discriminates against Plaintiffs' daughters and other female athletes in the provision of opportunities to receive coaching and academic tutoring. For example, since the softball field is off campus, when school is out the softball players are required to catch a bus to the field, so they are not able to receive tutoring. In addition, the softball head coach, because of school related duties, does not arrive to practice until 5 minutes before practice starts. This is not true of the baseball and football head coaches. Also, a softball player is required to ask a coach if she needs to use the bathroom for any purpose. The coach must then leave practice and accompany her to the bathroom. As a result, the rest of the team does not receive the full benefit of coaching during practice. Neither the football players nor the baseball players have to ask a coach to use the bathroom, nor do any football coaches or baseball coaches have to leave practice to accompany their players to the bathroom.
- (6) Mooresville Graded School District supplies superior locker rooms, practice facilities and competition facilities to boys as compared to girls. For example, the high school and middle school baseball programs each have their own competition and practice fields. The high school softball program must share

a field with the middle school softball program, boys and girls town teams, and boys and girls travel teams. Baseball has an elevated press box behind home plate with glass windows. The softball “press box” is a ground level room that doubles as a storage room and a concession stand, with a plywood window. The football press box is also far superior to the softball press box. Both the football and baseball facilities have state-of-the-art sound systems, while the softball facility does not. The baseball facility has bullpens that are lighted. The softball facility has bullpens that are not in lighted areas. The baseball program has a mobile batting practice cage. The softball program has no mobile batting practice cage. The baseball facility has a ten-inning scoreboard. The scoreboard at the softball facility is an inferior one that is not ten-inning. The football facility also has a scoreboard that is superior to the softball scoreboard. The baseball facility has distance signs on the outfield fence. The softball facility does not. The surfaces around the baseball and football facilities, including around the concession stand and bleachers, are concrete. Much of the surface around the softball facility is dirt and gravel. Both the baseball and football facilities are fully enclosed and secured, allowing both programs to take a gate. The softball facility is not fully enclosed, which makes taking a gate difficult. The baseball dugouts have lights. The softball dugouts do not have lights. The baseball dugouts have drinking fountains. The

softball dugouts do not have drinking fountains. The baseball dugouts have superior screens as compared to the softball dugouts. The baseball program has superior, secure storage facilities, attached to the baseball dugouts. The softball program has unsecured storage in a small room that is also used for a concession stand and press box. The foundation of the baseball backstop stretches from dugout to dugout and is fully padded from dugout to dugout. The softball backstop has no foundation, and the padding attached to the chain link backstop is inferior to the padding over the foundation of the baseball backstop. The backstop netting at the baseball field is superior to the chain link softball backstop. The backstop netting at the baseball facility stretches from dugout to dugout. The chain link screen at the softball facility does not. The concession stands at the baseball and football facilities are superior to the one at the softball facility. The concession stand at the softball field is an unsanitary small room that doubles as a storage room and press box. It has no refrigerator, cooking appliances or running water. The baseball and football facilities have superior logos and signage as compared to the softball facility. The public restrooms at the baseball and football facilities are superior to those at the softball facility. The baseball facility has more bleachers than the softball facility. The infield material at the baseball field is superior to the infield material at the softball field. The baseball and football facilities have

artificial turf. The softball facility does not. The baseball field has good drainage. The softball facility has poor drainage. The baseball program is provided superior maintenance as compared to the softball program. The football program has assigned locker rooms. The baseball program has access to locker rooms on campus near the baseball facility. The softball program has no access to a locker room near the softball facility, assigned or unassigned. As a result the girls often end up changing in cars at their off-campus field.

- (7) Mooresville Graded School District discriminates against Plaintiffs' daughters and other female athletes as compared to male athletes in the provision of training and/or medical facilities and services. For example, the male athletes are provided superior access to trainers, appropriate weight-training facilities and weight training equipment as compared to female athletes, including the Plaintiffs' daughters.
- (8) Mooresville Graded School District discriminates against Plaintiffs' daughters and other female athletes as compared to male athletes in the provision of publicity. For example, Mooresville Graded School District consistently provides less publicity for its softball team as compared to its baseball and football teams.

31. The imbalance in the treatment of female and male athletes at Mooresville Graded School District, as detailed above, demonstrates Mooresville Graded School District's intentional and conscious failure to comply with Title IX.

32. Mooresville Graded School District's conduct has persisted despite the mandates of the Regulations, particularly 34 C.F.R. §§ 106.3(a) and 106.41(d), and the Policy Interpretation.

33. Mooresville Graded School District's 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.

34. As a result of the conduct of Mooresville Graded School District, the Plaintiffs have incurred damages, including, among other things, (1) the actual out-of-pocket costs incurred, including paying for equipment and supplies, for their daughters to participate in interscholastic and other school-sponsored athletics which would not be incurred by parents of boys similarly situated, (2) the damages associated with their daughters' reduced opportunities to obtain college scholarships, and (3) the emotional distress and other damages resulting from their daughters' being subjected to discrimination in athletics on the basis of gender.

**SECOND CLAIM FOR RELIEF: EQUAL PROTECTION**  
**(Against all Defendants)**

35. Plaintiffs reallege and incorporate herein by this reference paragraphs 1 through 34 inclusive of this Complaint.

36. Defendants, by their failure to provide Plaintiffs' daughters with equivalent treatment and benefits as the male athletes (as detailed above), have purposefully and illegally discriminated against Plaintiffs' daughters and other female students on the basis of gender, and have intentionally and illegally deprived them of their rights to equal protection secured by the Fourteenth Amendment to the United States Constitution.

37. Defendants have illegally failed and refused to remedy the unequal treatment and benefits received by Plaintiffs' daughters and other female athletes as compared to male athletes at Mooresville Graded School District. Therefore, Defendants' actions constitute a knowing and illegal disregard for Plaintiffs' daughters' constitutional rights.

38. 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, of 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 . . .

39. 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, the Defendants are liable for their violations 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 female students, including Plaintiffs' daughters, on the basis of gender in violation of Title IX and the regulations promulgated thereunder (including 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 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, providing Plaintiffs' daughters and other 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 paragraph B above.

D. Award the Plaintiffs monetary relief as permitted by Title IX, 42 U.S.C. § 1983, and other applicable law, including but not limited to (1) the actual out-of-pocket costs incurred, including paying for equipment and supplies, for their daughters to participate in interscholastic and other school-sponsored athletics which would not be incurred by parents of boys similarly situated, (2) the damages associated with their daughters' reduced opportunities to obtain college athletic scholarships, and (3) the emotional distress and other damages resulting from their daughters' being subjected to discrimination in athletics on the basis of gender.

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.

G. Designate that the trial take place before the U. S. District Court in Statesville, North Carolina.

Dated: September 8, 2016

Respectfully submitted,

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