**IN THE UNITED STATES DISTRICT COURT**
**FOR THE MIDDLE DISTRICT OF FLORIDA**
**JACKSONVILLE DIVISION**



**SILVANA COOK, on behalf of her minor daughter; SHARI ROBINSON, on behalf of her minor daughter; ERNESTINE BREWER, on behalf of her minor daughter; SCOTT PIRIE, on behalf of his minor daughter; GRETCHEN GOODLET, on behalf of her minor daughters; OMAR PASOLODOS, on behalf of his minor daughter;**

**Plaintiffs.**

v.

**FLORIDA HIGH SCHOOL ATHLETIC ASSOCIATION,**

**Defendant.**



**COMPLAINT; INJUNCTIVE RELIEF SOUGHT; AND DEMAND FOR JURY TRIAL**

Plaintiffs SILVANA COOK, SHARI ROBINSON, ERNESTINE BREWER, GRETCHEN GOODLET, and OMAR PASOLODOS, on behalf of their minor daughters (collectively, "Plaintiffs"), hereby file this action against the defendant Florida High School Athletic Association ("FHSAA" or "Defendant").

**STATEMENT OF THE CASE**

1. Plaintiffs bring this action to challenge the legality of Policy 6 of the Florida High School Athletic Association Handbook. The newly amended policy reduces the athletic schedules of all high school sports except boys' football (and ostensibly competitive cheerleading) (hereinafter "Policy 6").

2. Plaintiffs contend that the new Policy 6 inequitably burdens girls and constitutes sex discrimination in violation of (1) Title IX of the Education Amendments of 1972 (20 U.S.C. §1681 et seq.), (2) the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution (as enforced through 42 U.S.C. §1983), and (3) the Florida Educational Equity Act (§1000.05, F.S.).

3. Plaintiffs bring these claims on behalf of their minor daughters, female student-athletes at FHSAA member schools whose athletic schedules have been or will be cut by Policy 6. Plaintiffs in this action also indirectly represent the interests of the vast majority of Florida High School females, whose right to participate in interscholastic athletic competitions as part of their education has been discriminated against as a result of the aforesaid regulation, which intentionally denies female High School students equal treatment and benefits that must necessarily accompany an equal opportunity to participate. As more specifically set out hereinafter, each Plaintiff is affected by Policy 6 and has standing to bring this action.

4. Plaintiffs seek to obtain the following relief: (1) a declaratory judgment stating that FHSAA's Policy 6 constitutes illegal sex discrimination in violation of the above-referenced laws, (2) preliminary and permanent injunctions to prevent implementation of the new Policy 6 and any other scheduling cuts that inequitably burden one sex over another, (3) monetary damages to be proven at trial, (4) attorneys' fees and costs, and (5) any other remedies available at law.

## JURISDICTION AND VENUE

5. 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(3), and 1343(4).

6. The second claim also arises under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, as enforced through 42 U.S.C. §1983. Jurisdiction is conferred on this court by 28 U.S.C. §§1331, 1343(3), and 1343(4).

7. The third claim arises under the Florida Educational Equity Act of Florida state law (§1000.05, F.S.). Supplemental jurisdiction is conferred on this Court by 28 U.S.C. §1367(a).

8. The fourth claim arises under the Florida Sunshine Law of Florida state law (§286.011, F.S.). Supplemental jurisdiction is conferred on this Court by 28 U.S.C. §1367(a).

9. Jurisdiction for declaratory and other relief is invoked pursuant to 28 U.S.C. §§2201 and 2202.

10. Venue is proper pursuant to 28 U.S.C. §1391(b). These claims arose in the State of Florida, including the area within the jurisdiction of this Court.

## THE PARTIES

11. Plaintiff SILVANA COOK is the parent of a female student-athlete who attends Andrew Jackson High School, a FHSAA member school, located in Jacksonville, Florida, which is with in the jurisdiction of this Court. Her daughter participates in

interscholastic athletics and thus is subject to and will be harmed by the reduction in her athletic schedules mandated by Policy 6. Both SILVANA COOK and her daughter are residents of Jacksonville, Florida, which is within the jurisdiction of this Court.

12. Plaintiff SHARI ROBINSON is the parent of a female student-athlete who attends Jean Ribault High School, a FHSAA member school, located in Jacksonville, Florida, which is with in the jurisdiction of this Court. Her daughter participates in interscholastic athletics and thus is subject to and will be harmed by the reduction in her athletic schedules mandated by Policy 6. Both SHARI ROBINSON and her daughter are residents of Jacksonville, Florida, which is within the jurisdiction of this Court.

13. Plaintiff ERNESTINE BREWER is the parent of a female student-athlete who attends Jean Ribault High School, a FHSAA member school, located in Jacksonville, Florida, which is with in the jurisdiction of this Court. Her daughter participates in interscholastic athletics and thus is subject to and will be harmed by the reduction in her athletic schedules mandated by Policy 6. Both ERNESTINE BREWER and her daughter are residents of Jacksonville, Florida, which is within the jurisdiction of this Court.

14. Plaintiff SCOTT PIRIE is the parent of a female student-athlete who attends Clay High School, a FHSAA member school, located in Green Cove Springs, Florida, which is with in the jurisdiction of this Court. His daughter participates in interscholastic athletics and thus is subject to and will be harmed by the reduction in her athletic schedules mandated by Policy 6. Both SCOTT PIRIE and his daughter are residents of Green Cove Springs, Florida, which is within the jurisdiction of this Court.

15. Plaintiff GRETCHEN GOODLET is the parent of three (3) female student-athletes, two (2) of whom attend Gaither High School, and one (1) of whom attends Ben Hill Middle School, all FHSAA member schools, located in Tampa, Florida, which is within the jurisdiction of the Middle District of Florida court. Her daughters have participated in and/or intend to participate in interscholastic athletics and thus are subject to and will be harmed by the reduction in their athletic schedules mandated by Policy 6. Both GRETCHEN GOODLET and her daughters are residents of Tampa, Florida, which is within the jurisdiction of Middle District of Florida court.

16. Plaintiff OMAR PASOLODOS is the parent of a female student-athlete who attends Gulliver Prep, a FHSAA member school, located in Miami, Florida. His daughter participates in interscholastic athletics and has thus will be subject to and will be harmed by the reduction in her athletic schedules mandated by Policy 6. Both OMAR PASOLODOS and his daughter are residents of Miami, Florida.

17. Defendant FHSAA holds itself out to the public as a Florida not-for-profit corporation with its principal place of business located at 1801 NW 80th Blvd.; Gainesville, Alachua County, Florida 32606.

18. Defendant FHSAA conducts business within the jurisdiction of this court in that among other things, (1) it holds annual Board of Directors' meetings in Jacksonville, Florida, (2) it governs and is governed by member schools located in Jacksonville and the Middle District, and (3) it receives payment from Jacksonville and Middle District member schools consisting of membership dues and expenses, gate receipts, and advertising monies.

19. Defendant FHSAA was created by §10006.20, F.S., to function "as the official governing body for interscholastic athletics in Florida." www.fhsaa.org. The statute states:

> The Florida High School Athletic Association is designated as the governing nonprofit organization of athletics in Florida public schools. If the Florida High School Athletic Association fails to meet the provisions of this section, the commissioner shall designate a nonprofit organization to govern athletics with the approval of the State Board of Education. The organization is not to be a state agency as defined in S. 120.52. The organization shall be subject to the provisions of S. 1006.19. A private school that wishes to engage in high school athletic competition with a public high school may become a member of the organization. The bylaws of the organization are to be the rules by which high school athletic programs in its member schools, and the students who participate in them, are governed, unless otherwise specifically provided by statute. For purposes of this section, ""high school" includes grades 6 through 12.

§10006.20, F.S.

20. All public middle (junior high) and high schools in the state of Florida who engage in interscholastic athletic competition are by law members of FHSAA and are subject to its rules as if those rules were state statutes. Certain private schools in the state of Florida who engage in interscholastic athletic competition are members of FHSAA and are subject to its rules as if those rules were state statutes.

21. FHSAA is a state actor for purposes of 42 U.S.C. §1983 and thus must comply with and is subject to liability for violating the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

22. FHSAA is governed by a ruling council, the Board of Directors, elected by the member schools. All members of the ruling council are and must be employees of FHSAA member schools. The member schools thus delegate and assign authority to the

FHSAA to govern, regulate, operate, and control interscholastic athletics in the state of Florida. Defendant FHSAA is an amalgamation of all school districts' athletic interests in the State of Florida. Member schools have combined to create an entity to represent the interests of its members in the operation of athletic programming, thereby delegating their authority to the FHSAA. The FHSAA, through this ruling council, voted to enact the scheduling reductions of Policy 6 which are the subject of this action.

23. On information and belief, FHSAA governs, regulates, operates, and controls interscholastic athletics for all public schools in the state of Florida under the authority and approval of, and as the agent of, the Florida Department of Education ("FDOE").

24. On information and belief, the FHSAA and all of its member schools receive federal and state financial assistance either directly or indirectly.

25. Because FDE, FHSAA, and member schools receive federal financial assistance (directly or indirectly); because FHSAA governs, regulates, operates, and controls an educational activity that receives federal financial assistance (i.e., interscholastic athletics); and because the member schools delegate and assign the authority to do so to FHSAA, FHSAA and its member schools are subject to and must comply with Title IX.

26. On information and belief, FHSAA and its member schools receive financial assistance and benefits from the State of Florida. Therefore, all programs and activities of FHSAA and its member schools, including athletics, are subject to the requirements of the Florida Educational Equity Act (§1000.05, F. S.).

## GENERAL ALLEGATIONS

## THE REQUIREMENTS OF TITLE IX

27. 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).

28. The Civil Rights Restoration Act of 1987 (20 U.S.C. §1687) 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 institution receives federal financial assistance. It extends Title IX beyond schools to all entities that operate covered educational programs. It also extends coverage to all entities created by or delegated/assigned the authority of covered entities to operate covered programs. In particular, it states:

> For purposes of this chapter, the term "program or activity" and "program" mean all of the operations of (1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or
>
> (B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
>
> (2)(A) a college, university, or other post-secondary institution, or a public system of higher education; or
>
> (B) a local educational agency (as defined in Section 7801 of this title), system of vocational education, or other school system;

> (3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship --
>
> (i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
>
> (ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
>
> (B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
>
> (4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3); any part of which is extended Federal financial assistance, except that such term does not include any operation of an entity which is controlled by a religious organization if the application of section 1681 of this title to such operation would not be consistent with the religious tenets of such organization.

Thus, Title IX applies to the Defendant's programs and activities when it operates Florida's interscholastic athletic programs, and each of its member schools, even if the Defendant or the athletic programs themselves do not directly receive federal financial assistance.

29. The United States Department of Health, Education and Welfare ("HEW"), the predecessor of the United States Department of Education ("DOE"), adopted regulations interpreting Title IX in 1975. These regulations are codified at 34 C.F.R. Part 106 (the "1975 Regulations").

30. The 1975 Regulations make clear that Title IX applies to both direct and indirect recipients of federal funds and to the agents and assignees of such recipients:

> Recipient means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person,

> to whom Federal financial assistance is *extended directly or through another recipient* and which operates an education program or activity which *receives or benefits from such assistance*, including any subunit, success, assignee, or transferee thereof.

34 C.F.R. §106.2(h).

31. Under the 1975 Regulations, federal financial assistance includes more than just money. Among other things, the Regulations define such assistance as:

> (1) A grant or loan of Federal financial assistance...
>
> (2) A grant of Federal real or personal property or any interest therein....
>
> (3) Provision of the services of Federal personnel.
>
> (4) Sale or lease of Federal property or any interest therein at nominal consideration...
>
> (5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

34 C.F.R. §106.2(g).

32. The 1975 Regulations also provide that interscholastic athletics are included within the 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, and the recipient shall provide any such athletics separately on such basis.

34 C.F.R. §106.41(a).

33. Regulation 34 C.F.R. §106.41(c) specifies ten (10) factors considered in the determination of equal athletic opportunity:

1. Whether the selection of sports and levels of competition effectively accommodate the interests 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 services;

9. Provision of housing and dining facilities and services; and

10. Publicity.

(Emphasis Added). Another factor considered is a school's "failure to provide necessary funds for teams for one sex." Id.

34. In 1979, the Office of Civil Rights of HEW ("OCR") issued a policy interpretation of Title IX and the Regulations. This policy interpretation is found at 44 Federal Register 71,413 (1979) (the "1979 Policy Interpretation").

35. The principles set forth in the 1979 Policy Interpretation, as set forth herein, are applicable to the interscholastic sports governed by Defendant FHSAA:

> This Policy Interpretation is designed specifically for intercollegiate athletics. However, its general principles will often apply to club, intramural, and interscholastic programs, which are also covered by the regulation.

44 Fed. Reg. at 41413. See also 44 Fed. Reg. at 41415 (B)(1).

36. The 1979 Policy Interpretation provides additional clarification on the requirements of Title IX and 34 C.F.R. §106.41(c) and the mandate that recipients must provide equal athletic opportunities in three general areas: (1) scholarships, (2) participation opportunities, and (3) treatment and benefits. 44 Fed. Reg. at 71415-71419.

37. This case involves equal treatment and benefits, specifically, the scheduling of games and practice times. 34 C.F.R. §106.41(c)(3).

38. The 1979 Policy Interpretation provides guidance regarding the meaning of equity in the scheduling of games and practice times. It states:

> **Scheduling of Games and Practice Times;** Compliance will be assessed by examining, among other factors, the equivalence for men and women of:
>
> (1) **the number of competitive events per sport;**
> (2) the number and length of practice opportunities;
> (3) the time of day competitive events are scheduled;
> (4) the time of day practice opportunities are scheduled; and
> (5) **the opportunities to engage in available pre-season and post-season competition.**

44 F.R. at 71,116. (Emphasis Added).

39. The 1975 Regulations require that sponsors of interscholastic athletics (such as FHSAA and its members) take such remedial actions as are necessary to overcome the effects of sex discrimination in violation of Title IX. See 34 C.F.R. §106.3(a). Instead of taking actions to remediate sex discrimination, FHSAA's changes to Policy 6 cause additional discrimination by inequitably reducing the number of girls' competitions.

## THE U.S. CONSTITUTION

40. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution mandates that "No State ... shall deny to any person within its jurisdiction the equal protection of the law."

41. The Fourteenth Amendment is enforceable against those who act under color of law (i.e. state actors) under 42 U.S.C. §1983.

42. As detailed herein, on information and belief, FHSAA and its member schools are "state actors" for purposes of enforcing the Fourteenth Amendment.

43. Under 42 U.S.C. §1983, Defendant may be held liable for its action in violating Plaintiffs' rights under the Fourteenth Amendment.

## FLORIDA STATE LAW

44. The Florida Educational Equity Act, §1000.05, F.S., states in relevant part:

> (1) This section may be cited as the Florida Educational Equity Act.
>
> (2)(a) Discrimination on the basis of race, ethnicity, national origin, gender, disability, or marital status against a student or an employee in the state system of public K-2 education is prohibited. No person in this state shall, on the basis of race, ethnicity, national origin, gender, disability, or marital status, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any public K-20 education program or activity, or in any employment conditions or practices, conducted by a public educational institution that receives or benefits from federal or state financial assistance.
>
> * * * *
>
> 3)(a) No person shall, on the basis of gender, be excluded from participating in, be denied the benefits of, or be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club, or intramural athletics offered by a public K-20 educational institution; and no public K-20 educational institution shall provide athletics separately on such basis.

...

(3)(d) A public K-20 educational institution which operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both genders.

1. The Board of Governors shall determine whether equal opportunities are available at state universities.

2. The Commissioner of Education shall determine whether equal opportunities are available in school districts and community colleges. In determining whether equal opportunities are available in school districts and community colleges, the Commissioner of Education shall consider, among other factors:

a. Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both genders.

b. The provision of equipment and supplies.

c. **Scheduling of games and practice times.**

d. Travel and per diem allowances.

e. Opportunities to receive coaching and academic tutoring.

f. Assignment and compensation of coaches and tutors.

g. Provision of locker room, practice, and competitive facilities;

h. Provision of medical and training facilities and services.

i. Provision of housing and dining facilities and services.

j. Publicity.

Unequal aggregate expenditures for members of each gender or unequal expenditures for male and female teams if a public school or community college operates or sponsors separate teams do not constitute non-implementation of this subsection, but the Commissioner of Education shall consider the failure to provide necessary funds for teams for one gender in assessing equality of opportunity for members of each gender.

* * * *

> (7) A person aggrieved by a violation of this section or a violation of a rule adopted under this section has a right of action for such equitable relief as the court may determine. The court may also award reasonable attorney's fees and court costs to a prevailing party.

(Emphasis Added).

## INJUNCTIVE RELIEF

45. Plaintiffs are entitled to injunctive relief to prevent Defendant from implementing its discriminatory scheduling scheme under new Policy 6. Failure to grant the injunctive relief requested will result in irreparable harm in that it will forever deny Plaintiffs equal treatment and an equal opportunity to compete in interscholastic athletics. 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 Defendant or its member schools. The injunctive relief sought would promote the public interest because it would prevent discrimination based on gender and would promote full equality before the law.

## ATTORNEYS' FEES

46. Plaintiffs have been required to retain the undersigned attorneys to prosecute this action. Plaintiffs are entitled to recover reasonable attorneys' fees pursuant to 42 U.S.C. §1988 and. §1000.05, F.S.

## FACTS

47. Policy 6 defines the length of interscholastic athletic seasons and limits the number of competitions that a school can schedule for each sport. In particular, it states in part, "The following guidelines shall govern season limitations, contest limitations, and

individual student limitations for all member schools participating in FHSAA-sponsored sports."

48. On or about April 27, 2009, FHSAA promulgated an amendment to Policy 6 that reduces the maximum number of competitions that a school can schedule by 20% for varsity teams and 40% for sub-varsity teams. However, the new Policy 6 expressly excludes boys' football, the sport in which the most boys participate, from the reductions. A copy of the new Policy 6 is attached hereto as Exhibit A.

49. Although the new Policy 6 ostensibly exempts competitive cheerleading, the OCR has refused to certify cheerleading as a sport for purposes of Title IX in the state of Florida. Moreover, on information and belief, neither FHSAA nor its member schools operate competitive cheerleading in a manner that would qualify it as a varsity, competitive sport under established DOE guidelines. The FDOE has not conducted an independent investigation or analysis to examine whether competitive cheerleading qualifies as a sport as currently operated by Defendant FHSAA, and instead has merely accepted Defendant's assertions that it does comply.

50. According to FHSAA participation records, 131,247 boys and 95,741 girls participated in interscholastic athletics in Florida during the 2007-2008 school year. Of these, 36,101 boys participated on 534 varsity football teams. The FHSAA also reported that 4,310 girls and 201 boys participated in competitive cheerleading. Thus, even if competitive cheerleading were a sport for purposes of Title IX, FHSAA's new Policy 6 exempts nearly 32,000 more boys than girls from its new competition reductions.

51. New Policy 6 discriminates against girls by subjecting almost all of them but only some boys to its reductions. It expressly exempts the male sport with the most participants, football. Even if competitive cheerleading were recognized as a sport for purposes of Title IX, and even if FHSAA and its member schools actually conducted it as a sport, new Policy 6 exempts nearly nine times as many boys than girls, nearly 32,000 male athletes from reductions in their competition schedule.

52. On information and belief, this is the second time in less than ten (10) years that FMSAA has discriminated against female athletes in this way. In 2002, FHSAA also cut the number of interscholastic competition opportunities by 20% in all sports except boys' football, reducing the number of games from 28 to 25.

53. Further, Defendant FHSAA sanctions football for 19 weeks during the fall season, and an additional 4 weeks during the spring season, for a total of 23 weeks of coaching, practices and competitions for football players. Meanwhile the majority of girls' sports operate just 15 weeks during one season, with no additional off-seasons to receive coaching, practice times or competitions allowed, for a total of just 15 weeks.

## FIRST CLAIM FOR RELIEF: TITLE IX

### (Inequitable scheduling of games)

54. Plaintiffs re-allege and incorporate herein by this reference paragraphs 1 through 53 inclusive of this Complaint.

55. Title IX prohibits sex discrimination in the scheduling of athletic competitions, including the number of athletic contests.

56. Defendant's new Policy 6 reduces the maximum number of scheduled contests by 20% for varsity teams and 40% for sub-varsity teams. However, by exempting boys' football from this reduction, FHSAA discriminates on the basis of sex in violation of Title IX.

57 Defendant's failure to apply its new Policy 6 to all male and female sports uniformly or to exempt an equitable number of female athletes from its restrictions constitutes sex discrimination in violation of Title IX. Defendant's new Policy 6 essentially separates out boys' football players as a special, privileged class of athletes.

58. Plaintiffs' daughters will be harmed by Defendant's conduct because they will forever lose the opportunity to compete in the up to 40% of their expected contests. In other words, their already-shortened interscholastic athletic opportunities additionally will be cut by up to 40%.

59. Plaintiffs seek to enjoin Defendant from implementing this new Policy 6 or to require that it be implemented in an equitable manner.

60. Plaintiffs notified Defendant that its new Policy 6 inequitably harms girls and constitutes sex discrimination in violation of Title IX. Plaintiffs asked Defendant not to go forward with the new Policy 6, but Defendant refused.

61. The unequal, disparate treatment of female athletes, as detailed above, demonstrates Defendant's intentional and conscious decision to discriminate on the basis of sex and to not comply with its Title IX obligations.

## SECOND CLAIM FOR RELIEF: EQUAL PROTECTION

62. Plaintiffs re-allege and incorporate herein by this reference paragraphs 1 through 61 inclusive of this Complaint.

63. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution mandates that "No state shall... deny to any person within its jurisdiction the equal protection of the law."

64. The Amendment is enforceable through 42 U.S.C. §1983 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.

65. Defendant, by choosing to treat male and female athletes differently and by inequitably reducing the number of competition for females by up to 40%, intentionally discriminates on the basis of sex and deprives female student-athletes of their rights to equal protection secured by the Fourteenth Amendment to the United States Constitution, as enforced through 42 U.S.C. §1983.

66. As detailed herein, when Defendant engaged in the improper actions described above, it acted under color of law for purposes of the Equal Protection Clause and 42 U.S.C. §1983.

67. Plaintiffs' daughters will be harmed by Defendant's conduct because they will forever lose the opportunity to compete in the up to 40% of their expected contests.

In other words, their already-shortened interscholastic athletic opportunities additionally will be cut by up to 40%.

68. Plaintiffs notified Defendant that its new Policy 6 inequitably harms girls and constitutes sex discrimination in violation of the Fourteenth Amendment. Plaintiffs asked Defendant not to go forward with the new Policy 6, but Defendant refused.

69. The unequal, disparate treatment of female athletes, as detailed above, demonstrates Defendant's intentional and conscious decision to discriminate on the basis of sex and to not comply with its constitutional obligations.

**THIRD CLAIM FOR RELIEF: FLORIDA STATE LAW**

70. Plaintiffs re-allege and incorporate herein by this reference paragraphs 1 through 69 inclusive of this Complaint.

71. As set forth above, the Florida Educational Equity Act, §1000.05, F.S., bars sex discrimination in interscholastic athletics.

72. Through the conduct described above, Defendant FHSAA has intentionally discriminated against Plaintiffs in the provision of interscholastic athletic programs in Florida schools, in violation of state law.

73. Plaintiffs' daughters will be harmed by Defendant's conduct because they will forever lose the opportunity to compete in the up to 40% of their expected contests. In other words, their already-shortened interscholastic athletic opportunities additionally will be cut by up to 40%.

74. Plaintiffs notified Defendant that its new Policy 6 inequitably harms girls and constitutes sex discrimination in violation of the Fourteenth Amendment. Plaintiffs asked Defendant not to go forward with the new Policy 6, but Defendant refused.

75. The unequal, disparate treatment of female athletes, as detailed above, demonstrates Defendant's intentional and conscious decision to discriminate on the basis of sex and to not comply with its state law obligations.

## FOURTH CLAIM FOR RELIEF: FLORIDA STATE LAW

**(Violation of Sunshine Law)**

76. Plaintiffs re-allege and incorporate herein by this reference paragraphs 1 through 75 inclusive of this Complaint.

77. Defendant FHSAA is required to comply with the requirements of Florida's Sunshine Law, §286.011, F.S.

78. On June 3, 2009, FHSAA received a letter from Plaintiffs' counsel advising that new Policy 6 violates Tile IX and the Florida Educational Equity Act.

79. On June 5, 2009, the FHSAA Board of Directions was scheduled to discuss rescission or modification of the new Policy 6. The discussion was scheduled on the agenda as action items requested by Board members.

80. In fact, just prior to the start of the meeting, Plaintiffs' counsel was advised by Defendant's counsel when the consideration of new Policy 6 would occur and that it was at this point that Plaintiffs' counsel would be provided an opportunity to address the FHSAA Board regarding new Policy 6.

81. On June 5, 2005 at approximately 11:45 a.m., the FHSAA Board meeting was suspended by FHSAA Executive Director Roger Dearing purportedly to allow the Board members to check out of their hotel room.

82. However, on information and belief, during this break a secret, non-open meeting occurred with Roger Dearing and more than one Board member, a meeting in violation of §286.011, F.S., in which it was decided that a motion would be made, seconded, and voted on tabling the agendaed reconsideration of new Policy 6 until the next meeting of the FHSAA Board in September 2009.

83. When the FHSAA Board reconvened after this break, it was moved, seconded and passed that the reconsideration of Policy 6, including the rescission of new Policy 6, would be tabled until the September 2009 meeting of the FHSAA Board.

84. Pursuant to §286.011(1), F.S., Defendant's action in tabling the rescission of new Policy 6 is not binding as it is was decided in violation of Florida's Sunshine Law.

## RELIEF REQUESTED

**WHEREFORE**, on all claims stated herein, Plaintiffs respectfully pray that this Court:

A. Enter a declaratory judgment stating that FHSAA's new Policy 6 constitutes illegal sex discrimination in violation of the above-referenced laws;

B. Enter preliminary and permanent injunctions restraining Defendant from implementing its new Policy 6 and any other scheduling cuts that inequitably burden one sex over another;

C Grant an expedited hearing and ruling on the preliminary injunction requested in B above;

D. Enter an Order declaring that Defendant violated Florida's Sunshine Law, §286.011, F.S., on June 5, 2009;

E. Award the named Plaintiffs monetary relief as permitted by Title IX, 42 U.S.C. §1983, Florida state law, and other applicable law;

F. Award Plaintiffs their reasonable attorneys' fees and costs;

G. Order such other and further relief as the Court deems appropriate; and

H. Trial by jury.

Dated: June 16, 2009

Respectfully submitted by:

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