

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA**

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION

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**LOGAN YOUNG, by her parents and natural
guardians MARIE-ELISABETH and
RUSSELL YOUNG
Bloomington, Indiana,**

Cause No.

SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

Plaintiff,

v.

**INDIANA HIGH SCHOOL ATHLETIC
ASSOCIATION, INC.
9150 North Meridian Street
Indianapolis, Indiana 46240,**

1:08-cv-1586 WTL-DML

and

**MONROE COUNTY COMMUNITY
SCHOOL CORP.
315 East North Drive
Bloomington, Indiana 47401,**

Defendants.

COMPLAINT

Plaintiff Logan Young, by her parents and natural guardians Marie-Elisabeth and Russell Young, states as follows:

INTRODUCTION

1. The Indiana High School Athletic Association ("IHSAA") prohibits girls like Logan Young from trying out for their high school baseball programs for one, unlawful reason: they are girls. Logan, who has played on coed baseball teams in community youth leagues for nine years, from the age of five, is eager to try out for the baseball program offered by the high school that she entered as a freshman this fall, Bloomington High School South. IHSAA Rule 9-

10, however, bans girls from playing baseball when their school offers a different sport – softball – to girls, as Logan’s school does. Although this rule violates the Equal Protection Clause of the U.S. Constitution, Title IX of the Education Amendments of 1972, the Indiana Civil Rights Law and public policy, the IHSAA refuses to change the rule or allow girls to try out for baseball unless each girl who wants to try out establishes through a quasi-administrative process that barring her from the sport would work an “extreme hardship,” a procedural hurdle and standard that no boy in Logan’s position is required to meet. Bloomington High School South, a member of the IHSAA, intends to comply with IHSAA Rule 9-10. Consequently, absent declaratory and injunctive relief from this Court, Logan will be irreparably harmed by enforcement of the discriminatory IHSAA rule that unlawfully requires her high school to judge her by her gender, not by her abilities.

JURISDICTION AND VENUE

2. This is an action for declaratory and injunctive relief authorized by 42 U.S.C. § 1983 and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, as well as by the Indiana Civil Rights Act, I.C. § 22-9-1-1, and the Uniform Declaratory Judgment Act, I.C. § 34-14-1-1.

3. This Court has jurisdiction over Plaintiff’s federal claims under 28 U.S.C. §§ 1331, 1343, 2201, 2202 and 42 U.S.C. § 2000d-7.

4. The Court has supplemental jurisdiction over the Plaintiff’s state law claims under 28 U.S.C. § 1367.

5. Venue is proper in the U.S. District Court for the Southern District of Indiana, pursuant to 28 U.S.C. § 1391(b)(1) and (2) because Defendants reside in this judicial district and because a substantial part of the events giving rise to Plaintiff’s claims are occurring here.

PARTIES

6. Marie-Elisabeth and Russell Young are the parents and natural guardians of Logan Young, a minor. The Youngs reside at 8009 Zikes Road in Bloomington, Indiana. Logan is enrolled as a freshman at Bloomington High School South.

7. Indiana High School Athletic Association, Inc. (the "IHSAA") is a non-profit corporation organized under the laws of Indiana with its principal place of business at 9150 North Meridian Street in Indianapolis, Indiana 46240. Bloomington High School South is a member of the IHSAA.

8. The Monroe County Community School Corporation ("MCCSC") is a school corporation organized under the laws of Indiana with a principal place of business at 315 East North Drive, Bloomington, Indiana 47401. MCCSC administers Bloomington High School South.

STATEMENT OF FACTS

I. The IHSAA Rules

9. The IHSAA administers a program of interscholastic athletics for 410 public and private secondary schools in Indiana. Upon information and belief, over 85 percent of the IHSAA's membership consists of public schools, such as Bloomington High School South. These public schools have delegated, transferred and assigned their statutory authority to administer interscholastic athletics to the IHSAA. By joining the IHSAA, member schools agree to abide by IHSAA rules, which are adopted and amended by the member schools through their representatives on the IHSAA Board of Directors. "The IHSAA's 'very existence is entirely dependent upon the absolute cooperation and support of the public school systems of the State of Indiana.'" Indiana High Sch. Athletic Ass'n v. Carlberg, 694 N.E.2d 222, 231 n.8 (Ind. 1996) (quoting Haas v. South Bend Cmty. Sch. Corp., 289 N.E.2d 495, 498 (Ind. 1972)).

10. Declaring baseball and softball to be “comparable sports,” IHSAA rules prohibit girls from trying out for their high school baseball team – or, if qualified, playing for the team – when the high school offers softball. Specifically, IHSAA Rule 9-10 states in pertinent part:

Girls may only participate in the girls sports programs offered by their schools and boys may only participate in the boys sports programs offered by their schools, however:

(a) During the regular season:

- i. if a school has a boys program in **baseball, basketball, football, soccer or wrestling** but not a comparable girls program in that sport (for the purposes of this rule, baseball and softball are comparable sports), a girl may participate in the boys program in that sport provided she follows the boys contest season rules, but
- ii. in **cross country, golf, swimming and diving, tennis, and track and field**, a girl may not attempt to qualify for or participate in the boys program in that sport; and

(b) During the tournament series: . . .

- iii. if a school has a boys program in **baseball**, but not a **softball** program, a girl may attempt to qualify for and participate in a school’s baseball program during the tournament series,
- iv. in **cross country, golf, swimming and diving, tennis, and track and field**, a girl may only attempt to qualify for and participate in the girls program in that sport during the tournament series.

11. To be exempted from IHSAA Rule 9-10, girls must seek a “hardship waiver” from the IHSAA under a quasi-administrative procedure. Under IHSAA Rule 17-8.1, the effect of a rule such as Rule 9-10 may be set aside only if the student seeking the waiver establishes all of the following elements by clear and convincing evidence: (1) strict enforcement of the rule will not serve to accomplish the purpose of the rule; (2) the spirit of the rule has not been

violated; and (3) there exist circumstances showing an undue hardship that would result from enforcement of the rule.

12. Similarly situated boys are not required to establish their eligibility for a hardship waiver to participate in baseball.

13. Baseball and softball are not the same sport or substantially equal sports. Baseball and softball have different rules, competition fields and playing equipment and require different skills and strategies. The two sports are governed by separate bodies in the United States and internationally, and both the U.S. and International Olympic Committees recognize baseball and softball as different sports. Little League, Inc., does so as well, sponsoring both baseball, which is open to boys and girls, and softball leagues for boys and girls. Similarly, the Babe Ruth League, in which Logan has played, offers both baseball, which is open to boys and girls, and softball.

14. Deprived of an opportunity to participate in high school baseball that is given to similarly situated boys, Logan will be irreparably harmed by losing the chance to play baseball with her peers and to develop skills to enable her to progress to the next level of baseball; Logan will be irreparably harmed by being denied other tangible and intangible benefits of baseball participation made available to similarly situated boys. Having an opportunity to play softball will not adequately compensate Logan for losing the opportunity to play baseball, and will place her at a substantial disadvantage compared to her peers who played baseball.

15. IHSAA gender-based discrimination is not limited to baseball. Rule 9-10 absolutely prohibits girls from participating in a boys program in cross-country, golf, swimming and diving, tennis and track and field regardless of whether the school offers a program in those sports for girls.

II. Logan Young

16. Logan Young loves the game of baseball, which she has played since the age of five, mostly with and against boys.

17. In August 2008, Logan enrolled as a freshman at Bloomington High School South, which offers a variety of IHSAA-sanctioned interscholastic sports, including baseball and softball.

18. Logan is eligible to participate in IHSAA-sanctioned interscholastic sports sponsored by Bloomington High School South.

19. Logan wishes to try out for the Bloomington High School South baseball program this school year and in the years to come, just as boys who she has competed with and against in community youth baseball leagues will be allowed to do.

20. On May 5, 2008, Logan's mother, Marie-Elisabeth Young, contacted the IHSAA to see whether Logan could participate in baseball during the 2008-09 school year. On May 9, 2008, IHSAA Commissioner Blake Ress responded to Mrs. Young that Logan may not because Bloomington High School South offers softball. Commissioner Ress is authorized by IHSAA Bylaws, Articles of Incorporation and Rules to make decisions concerning student eligibility to participate in interscholastic athletics on behalf of the IHSAA and its member schools, including Bloomington High School South.

21. The IHSAA did not advise Logan's parents that they could appeal Commissioner Ress' decision.

22. Although Mrs. Young and counsel for another affected student, Heather Bauduin, have asked the IHSAA to amend Rule 9-10 to remove its discriminatory aspects, the IHSAA has refused.

23. Logan will be irreparably harmed if she is not permitted to try out for interscholastic baseball and, if qualified, participate in her high school baseball program.

COUNT I – 28 U.S.C. § 1681
TITLE IX

24. The averments of the foregoing Paragraphs of the Complaint are incorporated herein.

25. Title IX, 28 U.S.C. § 1681(a), provides in relevant part that:

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

26. MCCSC and the schools that it administers, including Bloomington High School South, are education programs or activities receiving federal financial assistance within the meaning of Title IX, and are therefore required to comply with Title IX.

27. Bloomington High School South offers a baseball program for qualified and eligible students.

28. Under IHSAA Rule 9-10, Bloomington High School South may allow only boys to participate in its baseball program because Bloomington High School South also offers a softball program.

29. Regulations effectuating Title IX require, however, that where, as here, “a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport.” 34 C.F.R. § 106.41(b).

30. Baseball and softball are not the same sport for purposes of Title IX and 34 C.F.R. § 106.41(b).

31. Baseball is not a contact sport for purposes of Title IX and 34 C.F.R. § 106.41(b).
32. The IHSAA has waived any contact-sport exception by adopting Rule 9-10, which expressly permits girls to participate in sports designated as contact sports under 34 C.F.R. § 106.41(b), *i.e.*, basketball, football and wrestling.
33. MCCSC and Bloomington High School South have waived any contract-sport exception by allowing girls to participate in sports designated as contact sports under 34 C.F.R. § 106.41(b), such as football.
34. Athletic opportunities for girls in Indiana and at Bloomington High School South have been and continue to be limited. Although girls make up approximately 50 percent of students in Indiana and at Bloomington High School South, they receive only approximately 42 percent of the interscholastic participation opportunities.
35. Accordingly, under 34 C.F.R. § 106.41(b), the IHSAA and MCCSC must allow Logan Young to try out for the Bloomington High School South baseball program.
36. Citing Rule 9-10, the IHSAA has told Logan's mother that Logan may not try out for or participate in the Bloomington High School South baseball program because Logan is a girl and Bloomington High School South offers softball.
37. On information and belief, MCCSC and Bloomington High School South intend to comply with IHSAA Rule 9-10 and will not allow Logan to participate in the Bloomington High School South baseball program unless Logan receives a waiver from the IHSAA or is otherwise permitted to participate by the IHSAA.
38. Under Title IX and applicable regulation 34 C.F.R. § 106.6(c), however, entities subject to Title IX, including MCCSC and Bloomington High School South, are not exempted from complying with Title IX on the ground that the statute or its implementing regulations

conflict with IHSAA rules, including Rule 9-10. Consequently, MCCSC and Bloomington High School South must allow Logan to try out for the school's baseball program notwithstanding Rule 9-10 and may not compel Logan to seek a waiver first.

39. The IHSAA is subject to Title IX. Member school corporations receiving federal financial assistance, including MCCSC, have delegated, transferred and assigned controlling authority to administer their interscholastic athletics programs to the IHSAA. The IHSAA, at all times relevant hereto, has continued to accept responsibility for administering the interscholastic athletic programs for its member schools knowing that the interscholastic athletic programs must comply with Title IX. Furthermore, by adopting its Gender Equity Position Statement, the IHSAA has expressly agreed to administer the programs in compliance with Title IX.

40. Rule 9-10 violates Title IX because it precludes girls from trying out for and participating in a member school's baseball program when the member school offers a softball program, and because it precludes girls from trying out for and participating in a member school's program for boys in cross-country, golf, swimming and diving, tennis and track and field when the member school does not offer a program for girls in these sports.

41. The IHSAA has intentionally discriminated against Logan Young, and will continue to intentionally discriminate against Logan Young, on the basis of her gender in violation of Title IX.

42. Plaintiff is entitled to recover her attorneys' fees and costs pursuant to 42 U.S.C. § 1988, 28 U.S.C. § 1821 and Federal Rule of Civil Procedure 54.

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Enter a preliminary and final order pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure declaring that ISHAA Rule 9-10 violates Title IX of the Education Amendments of 1972;

B. Issue a preliminary and permanent injunction barring the IHSAA and MCCSC from enforcing ISHAA Rule 9-10;

C. Issue a preliminary and permanent injunction ordering the IHSAA and MCCSC to allow Logan Young to try out for the Bloomington High School South baseball program and be considered for participation in the program under the same criteria as male students; and

D. Award Plaintiff her attorneys' fees and other costs as well as such further relief as may be deemed just and equitable.

COUNT II – 42 U.S.C. § 1983
EQUAL PROTECTION

43. The averments of the foregoing Paragraphs of the Complaint are incorporated herein.

44. IHSAA rules and decisions are "state action" for purposes of federal and state constitutional review. At all times relevant to the Complaint, the IHSAA has acted under color of state law.

45. MCCSC and Bloomington High School South state actors.

46. Baseball and softball are not substantially equal sports.

47. IHSAA Rule 9-10 excludes otherwise qualified and eligible girls from participation in baseball when a member school offers softball, and excludes otherwise qualified and eligible girls from participation in cross-country, golf, swimming and diving, tennis and track and field when the member school does not offer a program for girls in these sports. Similarly situated boys are allowed to participate in these programs.

48. Girls who wish to participate in boys' programs, notwithstanding Rule 9-10, must receive a waiver from the IHSAA under Rule 17-8, and to do so must demonstrate by clear and convincing evidence that: (1) strict enforcement of Rule 9-10 will not serve to accomplish the purpose of the rule; (2) the spirit of the Rule 9-10 has not been violated; and (3) there exist circumstances showing an undue hardship that would result from enforcement of Rule 9-10. Boys who wish to participate in boys' programs are not required to surmount this procedural hurdle or make this showing.

49. Defendants have intentionally excluded, and intend to continue to exclude, Logan Young from the Bloomington High School South baseball program on the basis of Logan's gender.

50. The differential treatment that Logan Young receives on the basis of her gender does not serve an important governmental objective.

51. Rule 9-10 is not substantially related to the achievement of an important government objective.

52. Defendants are denying Logan the right to equal protection of the laws of the United States, in violation of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983.

53. Plaintiff is entitled to her attorneys' fees and costs pursuant to 42 U.S.C. § 1988, 28 U.S.C. § 1821 and Federal Rule of Civil Procedure 54.

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Enter a preliminary and final order pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure declaring that ISHAA Rule 9-10 violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution;

B. Issue a preliminary and permanent injunction barring the IHSAA and MCCSC from enforcing IHSAA Rule 9-10;

C. Issue a preliminary and permanent injunction ordering the IHSAA and MCCSC to allow Logan Young to try out for the Bloomington High School South baseball program and be considered for participation in the program under the same criteria as male students; and

D. Award Plaintiff her attorneys' fees and other costs as well as such further relief as may be deemed just and equitable.

COUNT III – I.C. § 22-9-1-1
INDIANA CIVIL RIGHTS LAW

54. The averments of the foregoing Paragraphs of the Complaint are incorporated herein.

55. The Indiana Civil Rights Law, codified at Indiana Code § 22-9-1-1 *et seq.*, guarantees all citizens of this State, including Logan Young, equal education opportunities and equal access to public accommodations without regard to gender.

56. In the manner described in the foregoing Paragraphs of the Complaint, Defendants are intentionally denying Logan equal education opportunities and equal access to public accommodations on the basis of her gender.

57. Strict compliance with the administrative remedies provided by the Indiana Civil Rights Law would result in irreparable harm to Logan as she will lose the opportunity to participate in baseball this spring before the administrative process can be completed.

WHEREFORE, Logan Young, by her parents and natural guardians Marie-Elisabeth and Russell Young, respectfully request that the Court:

A. Enter a preliminary and final order pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure declaring that IHSAA Rule 9-10 violates the Indiana Civil Rights Law, Ind. Code § 22-9-1-1 *et seq.*;

B. Issue a preliminary and permanent injunction barring the IHSAA and MCCSC from enforcing IHSAA Rule 9-10;

C. Issue a preliminary and permanent injunction ordering the IHSAA and MCCSC to allow Logan Young to try out for the Bloomington High School South baseball program and be considered for participation in the program under the same criteria as male students; and

D. Award Plaintiff compensatory damages, attorneys' fees and other costs together with such further relief as may be deemed just and equitable.

COUNT IV – I.C. § 34-14-1-1
DECLARATORY JUDGMENT

58. The averments of the foregoing Paragraphs of the Complaint are incorporated herein.

59. The Articles of Incorporation, Bylaws and Rules of the IHSAA form a contract among the IHSAA and its member schools. Rule 9-10 is a term of this contract.

60. Rule 9-10 is contrary to public policy because it excludes girls from interscholastic athletic programs offered by Indiana public schools solely on the basis of gender.

61. Logan Young will suffer a direct, substantial and irreparable harm if the IHSAA and MCCSC enforce Rule 9-10 because she will be excluded from interscholastic baseball due solely to her gender.

62. A real and immediate controversy exists because Logan wishes to try out for the Bloomington High School South baseball team while she is enrolled at the school, including this

spring, but she will be prevented from doing so because, upon information and belief, the IHSAA and MCCSC intend to enforce Rule 9-10 and bar her from participating in baseball.

63. According, Rule 9-10 should be declared null, void and unenforceable.

WHEREFORE, Logan Young, by her parents and natural guardians Marie-Elisabeth and Russell Young, respectfully request that the Court:

A. Enter a preliminary and final order pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure declaring that IHSAA Rule 9-10 is contrary to public policy and is therefore null and void; and

B. Issue a preliminary and permanent injunction barring the IHSAA and MCCSC from enforcing IHSAA Rule 9-10.

Dated: November 21, 2008

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