



August 15, 2013

*Sent via U.S. Mail and Facsimile*

Paul Mathews, Superintendent  
Liberty Union-Thurston Local Schools  
1108 S. Main St  
Baltimore, OH 43105

Re: Policy Prohibiting Females from Participating in Football

Dear Superintendent Mathews:

It has been brought to the attention of the American Civil Liberties Union of Ohio that the Liberty Union-Thurston Local Schools Board of Education ("the District") has denied a female student the right to participate on the Liberty Union-Thurston Middle School football team. In fact, we were informed that it is the District's policy to prohibit all female students from participating in certain athletic activities, including football, solely on the basis of gender. We are deeply concerned about this policy and the denial of this student's participation in the football program.

Denying a student the equal opportunity to play football with her peers based on gender is unacceptable and unlawful, under both Title IX and the Fourteenth Amendment to the U.S. Constitution. Title IX specifically states that, "[n]o 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. Notably, if a court finds that a school district is violating Title IX, the school district could lose its federal government funding.

In order to determine if there has been a Title IX violation, a court needs only to find that the school board's policy prohibiting female students from playing on the school's football team is a result of disparate treatment based on gender. *Communities for Equity v. Michigan High Sch. Athletic Ass'n*, 459 F.3d 676, 694-695 (6th Cir. 2006). It appears that the District is refusing to permit female students the same recreational opportunities that the District otherwise affords to male counterparts. This type of disparate treatment constitutes a violation of Title IX.

Furthermore, the District is in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The Fourteenth Amendment specifically prohibits the state from denying "to any person within its jurisdiction the equal protections of its laws." U.S. Const. amend. XIV. The Supreme Court of the United States has declared that, "a party seeking to uphold

AMERICAN CIVIL  
LIBERTIES UNION  
OF OHIO FOUNDATION  
4506 CHESTER AVENUE  
CLEVELAND, OH 44103-3621  
T/216.472.2220  
F/216.472.2210  
WWW.ACLUOHIO.ORG  
contact@acluohio.org

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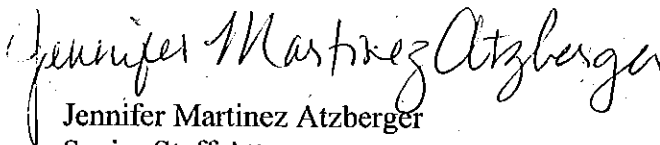
government action based on sex must establish an *exceedingly persuasive justification*." *United States v. Virginia*, 518 U.S. 515, 531 (1996) (emphasis added.) Moreover, its justification must be "genuine . . . [and] not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females." *Id.* at 533.

The District cannot claim that it has a legitimate basis, let alone an exceedingly persuasive justification, for denying female students a position on the football team. In a very similar case, *Clinton v. Nagy*, 411 F.Supp. 1396 (N.D. Ohio 1974), a twelve year old female brought a federal lawsuit against officials running a youth football league in Cleveland. The officials denied her the opportunity to participate on a community football team because she was a female. The city argued that "the exclusion of females from contact sports was necessary for their safety and welfare." *Id.* at 1398. However, in ruling against the city, the court found this argument lacked credibility. In taking into account the dangerous nature of the game of football, it noted that safeguards, including helmets and pads, deemed adequate for male players would also be adequate for female players. *Id.* at 1399. Moreover, the court noted the potential rewards that playing football affords students, such as assisting in their character development, which had been summarily denied to one class of youths. *Id.* at 1400. The court, in granting a temporary restraining order, held that the government actor's decision to prohibit the young student from participating lacked a rational relationship to a valid purpose.

In the present situation, the District has provided no rational justification for its blanket policy prohibiting females from participating in football. It is clear that this policy disparately impacts female students, and it is highly questionable whether the District can show "an exceedingly persuasive justification" for this exclusionary and gender-based policy. In addition, we assume that, as a member of the Ohio High School Athletic Association, the District is committed to the OHSAA's mission of administering interscholastic athletic competition in a fair and equitable manner. Therefore, we strongly urge you to reconsider your decision in this matter and to allow female students to participate in the football program. Failure to do so could result in unnecessary and costly legal action.

Given the fact that the first football game of the season is on August 26, 2013, time is of the essence, therefore, we ask that you contact us immediately upon receipt of this letter to let us know of your decision.

Sincerely,

  
Jennifer Martinez Atzberger  
Senior Staff Attorney