

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

REBECCA NELLE, as mother and next friend of
B.N., a minor

PLAINTIFF

vs.

NO. 5:21-CV-05158-TLB

HUNTSVILLE SCHOOL DISTRICT

DEFENDANT

COMPLAINT

Comes now the Plaintiff, Rebecca Nelle, as mother and next friend of B.N., a minor under the age of 18 years, and for her cause of action against the Huntsville School District, states as follows:

1. This cause of action arises from: (i) the Defendant's deliberate indifference to, and actual knowledge of sexual harassment (including sexual assault) of multiple students; (ii) Defendant's failure to promptly and properly investigate reports of sexual harassment; and (iii) the existence of a hostile educational environment which effectively denied B.N., a minor, from access to educational opportunities. In fact, the Defendant forced B.N. and other children who were sexually assaulted to go back to class without any punishment on their abusers causing those that were sexually assaulted to be fearful of retaliation and retribution.

2. Plaintiff Rebecca Nelle is the mother and next friend of B.N., a minor who is under the age of 18 years of age, and is a student at Huntsville School District who is the victim in this cause of action. The name of B.N. can be filed in another pleading or document to be filed under seal with the Court or as directed by the Court. To disclose the name of B.N. would potentially subject B.N. to ridicule, retaliation, and even harm.

3. Defendant Huntsville School District is an Arkansas Public School District located in Madison County, Arkansas. It can be served with process by serving its superintendent, Audra Kimball.

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 which provides jurisdiction in the United States District Court in all civil actions arising under the Constitution, laws, and treaties of the United States.

5. Plaintiff brings this action to redress sexual harassment, a hostile educational environment, and being denied the benefits of, or being subject to discrimination under an educational activity receiving federal financial assistance, all pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a) (which may be referred to as only “Title IX” in this Complaint). Huntsville School District and particularly the Huntsville Middle School is an educational institution as defined in 20 U.S.C. § 1681(c).

6. The actions and inactions set forth herein occurred in Madison County, Arkansas which is in the Fayetteville Division of the United States District Court for the Western District of Arkansas. Venue is proper pursuant to 28 USC § 1391(a) and 28 USC § 1391(b) because the Defendant resides or is located in in this judicial district and because all of the events giving rise to this claim occurred in this judicial district in Madison County, Arkansas.

7. This case is being timely filed. Claims under Title IX are subject to the statute of limitations for personal injury in the state where the claim accrued. *Egerdahl v. Hibbing Cmty. Coll.*, 72 F.3d 615, 617-18 (8th Cir. 1995). In Arkansas, the statute of limitations for personal injury is three years. Ark. Code Ann. § 16-56-105.

8. The Huntsville School District is an Arkansas Public School District located exclusively in Madison County, Arkansas. It had a Middle School, with students from the sixth to

eighth grade attending it, at the time of the events set forth herein. The principal of the Huntsville Middle School was Matt Ferguson, who is now Principal of the Huntsville Middle School. The Huntsville Middle Schools also had a school boys' basketball team at all times material hereto (which may be referred to as simply "boys' basketball team" or a similar term).

9. In the 2020-2021 school season at Huntsville Middle School, B.N. was an eighth-grade student and member of, and player on, the Huntsville Middle School boys' basketball team.

10. It became obvious to B.N. in January 2020 that the boys' basketball team created a hostile educational environment. In this regard, B.N. learned that ninth grade members of the boys' basketball team would engage in forcible sexual assault against multiple boys' Middle School players by having one or more students holding an eighth-grade team member down while one or more Middle School basketball players would engage in what was called "baptism" and "bean-dipping," as those terms are defined below.

11. "Baptism", as the term is used in this Complaint, refers to the placing of one's genitals on the face and/or in the mouth of another student. "Bean-dipping", as the term is used in this Complaint, refers to placing a student's rectum and anus on the face and particularly the nose of another student. All of the baptism (which includes the term baptizing as used in this Complaint), bean-dipping, and forcible holding down of students includes such conduct so that either baptism or bean-dipping could occur, that is described herein, was unwelcome conduct and constituted sexual harassment as defined in 34 CFR § 106.30. Sexual harassment includes within its definition "sexual assault" as defined in 20 USC § 1092(f)(6)(A)(v).

12. The baptism and bean-dipping described herein were so severe, pervasive, and objectively offensive that they would effectively deny a student equal access to the Middle School's education program or activity. Thus, it was unwelcome conduct, as a matter of law. 34

CFR § 106.30 [definition of “unwelcome conduct”]. Furthermore, these actions constitute sexual assault as defined in 20 USC § 1092(f)(6)(A)(v).

13. The Huntsville School District is a recipient of federal educational funds.

14. Title IX creates a private right of action when one student sexually harasses another student. *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999).

15. A student, who is not identified even by initials for fear of immediate retaliation, but who can be identified under seal or as directed by the Court but preferably with a Protective Order, told Huntsville Middle School Basketball Coach Kaleb Houston (herein “Coach Houston”) about the baptism by older basketball players at Huntsville Public Schools Middle School against younger students immediately before or after basketball games in the same school occurring in or around October 2020 school year and before the events occurring herein that occurred and caused harm to Plaintiff. Coach Houston had the authority and obligation to institute corrective measures on behalf of the Defendant once he learned that sexual harassment of middle school basketball players by other and older basketball players was occurring, immediately before or immediately after basketball games. All such conduct constituting sexual harassment occurred in the Defendant’s locker room or other Middle School locker rooms where students would dress into their basketball uniforms before games and undress and perhaps shower after games before dressing in clothing normally worn by the student.

16. Coach Houston resigned from his employment with the Defendant, on or about August 2, 2021, after the baptism and bean-dipping actions were formally reported to the Defendant by a parent of a Huntsville Middle School student and an investigation had started. However, Coach Houston took no action to report these actions, identified above, constituting sexual harassment to his superiors, including Principal Matt Ferguson and Superintendent Audra

Kimball and the Defendant's Title IX Coordinator or to take corrective measures on behalf of the Defendant—which he had the authority to do. Furthermore, he was a mandated reporter that is required to report to the Arkansas Child Abuse Hotline if he has reasonable cause to suspect that a child has been subjected to child maltreatment. Ark. Code Ann. § 12-18-402. Baptism and bean-dipping constitute child maltreatment. Coach Houston failed to report what he had been told to the Arkansas Child Abuse Hotline.

17. In late October 2020, a parent of a student who was a basketball player at Huntsville Middle School sent a text message to Coach Houston notifying him of the improper sexual activities that were going on (*i.e.* the baptism and bean-dipping) and that he needed to take remedial action. Coach Houston failed to take any corrective action or report the matter to his Principal or to the School Superintendent or to the Defendant's Title IX Coordinator. He also again failed to notify the Arkansas Child Abuse Hotline even though he was required by Arkansas law (as set forth above) to do so. The individual making the report can be identified to the Court in a subsequent filing with the Court under seal (to prevent retaliation against her child) or pursuant to a Protective Order or as otherwise directed by the Court.

18. The Huntsville School District was deliberately indifferent to the sexual harassment that was occurring and had actual knowledge of the acts of baptism and bean-dipping prior to the events set forth below, which ultimately and proximately caused harm to B.N. The inactions of Coach Houston, who was responsible for implementing corrective measures on the Defendant's Middle School Boys' Basketball Team, show deliberate indifference to sexual harassment of students and he had actual knowledge of sexual harassment of students as defined by 34 CFR § 106.30(a).

19. On or about November 7, 2020 before the Huntsville Middle School Boys' Basketball Team's Maroon and White game, B.N. was subjected to sexual assault, which constitutes sexual harassment, during a Huntsville Middle School Boys' Basketball team event (immediately before a basketball game) when an older boys' basketball team member bean-dipped him while B.N. was being held down by one or more other students and B.N. was subjected at the same time to being baptized while being held down by a student who was an older basketball player at the Huntsville Middle School.

20. Between November 7, 2020 and early February 2021, B.N. was subjected to being baptized and/or bean-dipped by older teammate(s) while involved in athletic activity within the Huntsville Middle School Boys' Basketball team a total of fourteen times while being held down against his will by other older basketball players at the school. The bean-dipping occurred several times at the same time as the baptizing. This generally happened immediately after a junior high basketball game but the first instance identified in the paragraph immediately above occurred before the Maroon and White Game. It all occurred in the locker room of the school where the particular basketball games were held.

21. A minor (being a minor because of age and not intended to impugn his abilities) middle school basketball player, who will be identified only by initials because they are minors, was involved in baptizing and bean-dipping B.N., threatened B.N. that the conduct of those who baptized and bean-dipped, would be much worse if B.N. told authorities about the baptizing and bean-dipping which injured him. These students involved in the baptizing and bean-dipping include minor students E.W., K.S., J.J., C.S., D.W., and D.R., who were at least some of the perpetrators of baptizing and/or bean-dipping B.N. and/or holding B.N. down so that he could be baptized or bean-dipped before or after middle school basketball events. This caused B.N. to be

fearful of tell school authorities or his parents about the sexual assault (which legally includes sexual harassment) committed on him. The names of these students can be filed under seal with the Court or as directed by the Court.

22. A formal complaint was made about the baptizing and bean-dipping in February 2021. After the formal complaint was made, D.W. utilized a service at Snapchat.com, which allows internet posts to be made and which are then automatically removed at some point, and D.W. apologized to B.N. for being involved in the sexual assault and harassment of B.N. A copy of that posting can be filed under seal with the Court or as the Court directs. Because it identifies both B.N. and D.W., it is not being attached to this Complaint.

23. The conduct which victimized B.N. and which constituted sexual harassment (which includes sexual assault) was prevalent at both the Huntsville School District Middle School and Huntsville School District Senior High School boys' basketball teams. A report from the Defendant appears to identify, by initials only, at least 17 students that were victimized by this sexual harassment during participation in before or after basketball games on the Defendant's premises or other school premises after basketball games and for which Defendant is responsible. (See Exhibit "A" attached hereto and incorporated herein by reference). It happened in the Huntsville Middle School to at least four other middle school basketball players during the 2020-2021 school calendar. One junior high basketball player at the Huntsville School District Middle School even paid another student not to do it to him. The student, C.S. paid student K.O. to protect him from sexual assault by older basketball players at Huntsville Middle School. Again, these names are not disclosed in this Complaint because the individuals are minors but their names can be filed under seal with the Court or as directed by the Court. It is also known that younger basketball players would run and hide in the locker room showers (the sexual assault occurred in

the locker room) and turn the lights off trying to hide so that they were not sexually assaulted and sexually harassed.

24. Not only did the Huntsville School District have actual knowledge and was deliberately indifferent to the bean-dipping and baptizing, its investigation and handling of the Title IX matter was a sham, with decisions about punishment of the perpetrators being made in many instances by one or more persons with a conflict of interest. Also, the interviews of the students involved was conducted, at least in part, by a person having actual knowledge of the sexual assaults before the formal report was made to the Defendant in February 2021.

25. In this regard, student D.W. and student C.S., who were involved in holding students down so that they could be baptized or bean-dipped received no punishment. In total, two students who had been given one-year suspensions (expulsions) over the events set forth herein had those punishments reduced to simply an expulsion for one semester (which was the only punishment given to any students who sexually assaulted other students for the events described herein). Furthermore, the Defendant did not give notice to the media of a meeting at which the appeals of discipline given to the some of the perpetrators of the events set forth above were heard. Such notice is required by the Arkansas Freedom of Information Act. Ark. Code Ann. § 25-19-106. It also did not make and/or keep a recording of the meetings as required by the same statute.

26. The Huntsville School District also did not promptly investigate high school players alleged to have baptized other younger basketball players during the 2019-2020 season although it had an obligation to do so under Title IX.

27. The Huntsville School District has even taken down the internet webpage which purportedly contained its “licensed policy on sexual harassment” which would be posted pursuant to Title IX. While its internet website does contain provisions against sexual harassment of

employees, no policy is shown on its website to exist with respect to sexual harassment of students where another student is the harasser. See https://doc-04-50-apps-viewer.googleusercontent.com/viewer/secure/pdf/3kk10ot1dpocr2kpcqeim5o6pfo9j722/7gif52c5q01hd7muavtqd00hihp0jfvn/1630779675000/lantern/17778659998532056342/ACFrOgCZuqan_u3OezS5ztLmVMPGYq79kbT7NzLLkAiUynvevUb14tQL4uhzfWcFSOwJn_ThbM4zmZKw89tdq1TEMbE_JmmdzrUSFX2wwBQ1ZbxlNWrfOfudZBT4VrbWa83QY8VgCzKxBQ3MH2i-5?print=true&nonce=jpcsb102kvn10&user=17778659998532056342&hash=i6ib207ccam5ndrb4ne2js4e0puumbr,

28. The conduct occurring to B.N. occurred with the Huntsville School District having actual knowledge of prior and continuing sexual assault and sexual harassment by basketball players against younger basketball players, in advance of the first time that B.N. was sexually harassed. This shows that acted with deliberate indifference to such actions, to the extent as to make it liable for the harm caused to B.N.

29. As the proximate and actual cause and result of the sexual harassment set forth herein and other misconduct set forth herein, B.N. has been subjected to physical harm, to grief and emotional harm (which is permanent in nature) and to other damages, in an amount to be determined by the fact-finder in this matter, all for which the Defendant is responsible.

30. Plaintiff demands trial by jury.

WHEREFORE, the Plaintiff Rebecca Nelle, as guardian and next friend of B.N., a minor, prays judgment against the Defendant, Huntsville School District, in the sum and amount that the proof presented at the trial of this matter warrants; for costs; for attorney's fees to the extent permitted by law; and for such other relief as is just and proper.



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Please note that any electronic mail delivered to counsel for the Plaintiff must be directed to all three attorneys set forth above.



Huntsville High School

Home of the Eagles

Roxanne Enix, Principal

Zach Vest, Assistant Principal

594 South Harris St., P. O. Box 1377, Huntsville, AR 72740

Phone: (479) 738-2500 Fax: (479) 738-2849



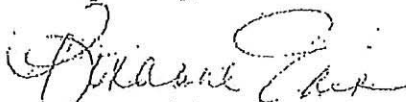
29 April 2021

Dear Parent/Guardian:

Enclosed you will find the Determination of Responsibility in the Title IX Sexual Harassment/Assault Investigation that your son was recently questioned and/or named in.

If you have any questions, please see the Title IX regulations posted on the district website. If you have further concerns or need more assistance, please contact Title IX Coordinator, Tonja McCone at 479-738-2100 or tmccone@lhsd.org

Respectfully,


Roxanne Enix

#belikeHuntsville

EXHIBIT

A

tabbies

Title IX Sexual Harassment Determination of Responsibility Template

of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination on the basis of sex in educational institutions that receive federal financial assistance. This decision must be issued equitably to the Complainant and Respondent.

DETERMINATION OF RESPONSIBILITY

COMPLAINANT PERSONAL INFORMATION:

Complainant: Anonymous on behalf of the victims of the junior high boys' basketball team
Work Location: Huntsville High School

Respondent: Athletes on the junior high boys' basketball team School/Work Location: Huntsville High School

DESCRIPTION OF COMPLAINT AND NATURE OF ALLEGATIONS:

The complaint is based on discrimination due to: (Check all that apply)

- Sexual Harassment Gender-Based Harassment
- Sexual Assault Dating or Domestic Violence Stalking
- Cyberbullying Retaliation
- Other unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education programs or activities

DETAILED ALLEGATIONS:

The allegations in the formal complaint is as follows: Some junior high boys basketball players would hold down other junior high boys basketball players while another junior high boys' basketball player would "baptize" or held down.

EDUCATIONAL STEPS TAKEN:

- A report of alleged Title IX sexual harassment was received by the campus/Title IX Coordinator's office on 2/25/2021
- The alleged victim was contacted by the Title IX Coordinator's office and provided with information about the grievance process and offered supportive measures
- A Formal Complaint was filed on 2/25/2021

- o The Title IX Coordinator sent notices of the Formal Complaint to all parties on 3/2/2021 and provided the Complainant and Respondent with written notice of their rights in the grievance process.
- o Timeline of the procedural steps November 2020 to February 2021.

- a Decision makers received the investigative report on April 19, 2021.
- b Decision makers are listed: Roxanne Enix--Huntsville High School Principal; Matt Ferguson--Huntsville Middle School Principal, and Tom McCollough--Huntsville School District Athletic Director
- c Determination of findings, disciplinary sanctions, future preventative measures (remedies): April 28, 2021.

CONCLUSION REGARDING THE CODE OF CONDUCT AND RATIONALE:

Based on a preponderance of the evidence, it is determined that:

Allegation 1. Allegedly "baptized" male junior high basketball players in the locker room after games placing genitalia in the faces of several male players in ninth and eighth grade.

- a. The Respondent has been determined to have been responsible for the alleged Title IX sexual harassment. The conduct is prohibited in 4.19 and 4.27 of the district's policy and/or student code of conduct for student and/or athlete conduct.

b. The reasoning for the finding: Multiple ninth and tenth graders accused athlete 9o and 9i of "baptizing" them or witnessing it happen to other athletes after games with the emphasis on a win and/or at home. After questioning 9o and 9i, both admitted to the accusations as well as and 9j stated that another athlete 10c, now on the senior high team, did it to him as an eighth grader. Other ninth grade student athletes stated that an additional tenth grader, 10m, now on the senior high team, did it to them as well as 10c last school year. The determination of their liability is still under investigation. Preponderance of evidence concludes that 9i and 9o administered "baptizing" and/or "bean dipping" to several ninth and eighth grade basketball players several times over the course of the season. In addition to this, the preponderance of evidence shows that athletes, 9i, 9m, and 9h restrained other athletes multiple times so that 9i and 9o could administer "baptizing" and/or "bean dipping" over the course of the basketball season. It was also determined that athlete 9k was found at fault in a minor way of restraining athletes for the purpose of "baptizing" and/or "bean dipping."

ACTIONS TO BE TAKEN

Disciplinary Sanctions

The following disciplinary sanctions are to be imposed upon the Respondents:

- o 9o and 9i-- Expulsion hearing by the Huntsville School Board in the amount of 365 calendar days effective June 1, 2021-May 30, 2022 with schooling provided by Huntsville High School through the online APex program effective August 17, 2021-May 30, 2022 pending Huntsville School Board Approval. Tutoring will be available at student or parent request. Requests should be made by contacting the counseling office: pparker@lhsd.org or 479-738-2500.
- o Student Athlete will participate in Arkansas Activities Association Conduct training provided by the Huntsville High School Principal or her designee before the end of the calendar year December 2021. She will provide the date, time, and location to where this compliance piece will be given.

- o Student Athletes 9i and 9o will participate in Title IX Sexual Harassment Training provided by Huntsville High School Principal or her designee before the end of the calendar year December 2021; She will provide the date, time, and location to where this compliance piece will be given.
- o Student Athletes 9i and 9o will be provided with counseling at his or parents' request based on the belief by the decision makers that of "baptizing" as an eighth grader. Requests should be sent to Tonja McCone at 479-738-2011 or tmccone@lhsd.org
- o Student Athletes 9l, 9m, and 9h, will receive Out of School Suspension for five (5) school days for their role in the offense(s) to start on May 3, 2021. During the OSS time, students should complete all necessary classwork via Google Classroom.
- o Student Athletes 9l, 9m, and 9h will be required to attend AAA Conduct Training and Title IX Bullying and Sexual Harassment training administered by the Huntsville High School Principal or her designee on Thursday, May 20, 2021 from noon-3:30pm at the high school.
- o Student Athlete 9k will receive five days In School Suspension for his role in the offense(s) starting on May 3, 2021. The student will be placed on probation for the fall semester of the school year 2021-2022.
- o Student Athletes 9k will be required to attend AAA Conduct Training and Title IX Bullying and Sexual Harassment training administered by the Huntsville High School Principal or her designee on Thursday, May 20, 2021 from noon-3:30pm at the high school.
- o Student Athlete 9k will be provided with counseling at their or their parent's request. This request should be sent to Tonja McCone via 479-738-2011 or tmccone@lhsd.org

Remedies will be provided to Complainant(s):

- o All seventeen student athletes, 9p, 9k, 8d, 8l, 8n, 8k, 8f, 8j, 8i, 9o, 9f, 9m, 9n, 9l, 10g, 10n, and 8h will be provided with counseling at their or their parents' requests. These requests should be sent to Tonja McCone via 479-738-2011 or tmccone@lhsd.org
- o All athletes regardless of sport and gender, will be required to be trained in the Arkansas Activities Association Athlete Conduct guidelines provided by the Athletic Director or his designee prior to the start of the sport's practice season.
- o All athletes regardless of sport and gender, will be required to be take part in Title IX's Sexual Harassment training provided by the District Athletic Director, District Title IX Coordinator, or his/her designee prior to the start of the sport's practice season.
- o A Huntsville School District coach or faculty member will monitor all locker rooms regardless of sport or gender prior to practice and/or competitions. Locker rooms will be locked during times when they are not in use.

The remedies and measures listed above are designed to restore or preserve equal access to the district's educational programs.

APPEAL:

Either party may appeal this determination of responsibility on a form provided by the District within 10 calendar days of issuance of this decision. The only allowable bases for appeal are:

- 1: Procedural irregularity that affected the outcome of the matter;

1. New evidence that was not reasonably available at the time of the decision that could affect the outcome;
and

1. The Title IX Coordinator, Investigator, or Decision-Maker has a conflict of interest or bias for or against for or against complainants or respondents in general or for or against the specific complainant and respondent that affected the outcome of the matter.

Signed: Roxanne Enix
Title IX Decision-Maker

Date: 4/29/2021

Printed Name: Roxanne Enix-Huntsville High School Principal, Matt Ferguson-Huntsville Middle School, and Tom McCollough-Huntsville School District Athletic Director

cc: Title IX Coordinator