



AMERICAN CIVIL LIBERTIES UNION OF UTAH FOUNDATION, INC
355 NORTH 300 WEST, SALT LAKE CITY, UT 84103
(801) 521-9862 PHONE • (801) 532-2850 FAX
ACLU@ACLUUTAH.ORG • WWW.ACLUUTAH.ORG

November 8, 2004

S. Junior Baker
Spanish Fork City
Legal Department
40 South Main
Spanish Fork, Utah 84660

Via facsimile and U.S. Postal Service

Re: Spanish Fork Wrestling Tournament

Dear Mr. Baker,

I write to express my concerns with the rules governing the upcoming Spanish Fork wrestling tournament, scheduled for December 4, 2004. Specifically, the rule prohibiting females from wrestling males in the tournament violates the Equal Protection Clause of the United States Constitution. Further, the rule raises Title IX concerns in so far as the tournament includes public junior high and high school teams that are subject to Title IX's regulations.

The rule prohibiting females from wrestling males works to deny females the opportunity to participate in the tournament on the basis of gender. As you are aware, classifications on the basis of gender are subject to scrutiny under the equal protection clause of the Fourteenth Amendment. Such classifications will only be upheld where there is an "exceedingly persuasive justification." *United States v. Virginia*, 518 U.S. 515, 524 (1996) (citing *Mississippi University for Women v. Hogan*, 458 U.S. 718, 724 (1982)). The classification must be shown to serve "important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives." *Id.* While the rationale behind the rule for the Spanish Fork tournament is unclear, courts have addressed and rejected a variety of reasons for prohibiting females from wrestling males.

For example, in *Saint v. Nebraska School Activities Ass'n*, 684 F.Supp. 626 (D. Nebraska 1988), the defendant school activities association argued that a female high school sophomore could be prohibited from wrestling on the boys' team because of concerns for the safety of the athlete, concerns about weight loss, and concerns about the female's lack of previous competitive wrestling experience. While the court acknowledged that there is an important governmental objective in protecting the health and safety of female athletes, the evidence offered was based on generalized statements about school-age females. The court held that the classification was not substantially related to the rule, and a temporary restraining order was granted.

In *Adams v. Baker*, 919 F.Supp. 1469 (D. Kansas 1996), a fifteen-year-old female was prohibited from trying out for the high school wrestling team on the basis of gender. The court focused on the plaintiff's equal protection argument, ultimately granting the request for a preliminary injunction. The defendants argued that the classification was necessary based on, *inter alia*, concerns for the female student's safety, student and parent objections based on moral beliefs, and a variety of inconveniences to the school. First, the court stated that student and parent objections to mixed-gender wrestling and inconveniences, such as the lack of girls'

locker room, did not constitute "important governmental objectives." Second, when the court considered the defendant's other reasons for the classification, it held that the claims were not substantially related to achieving the stated objectives. For instance, the court held that the concern about the safety of females was based on generalized assumptions about the differences in physical strength between males and females.

Courts have consistently held that where no alternative competitive sports programs for females are available, and where females could compete effectively on the males' teams, females could not be prohibited from doing so on the basis of sex. See e.g., *Brendan v. Independent School Dist.* 742, 477 F.2d 1292 (8th Cir. 1973), *Bednar v. Nebraska School Activities Ass'n*, 531 F.2d 922 (8th Cir. 1976), *Hoover v. Meiklejohn*, 430 F. Supp. 164 (D. Colo. 1977). While Title IX regulations do not apply to contact sports, case law demonstrates that once females are given the opportunity to participate on a same-sex contact sports team, they then must be treated equally and given the same types of opportunities that other members of the team are given. See *Mercer v. Duke University*, 181 F. Supp. 2d 525 (M.D. N.C. 2001). Because females were permitted to participate in the tournament in previous years, the Title IX regulation excluding contact sports has effectively been waived.

Based on the foregoing, I respectfully request that the rule prohibiting females from wrestling males in the upcoming Spanish Fork tournament be rescinded so that any female athletes are given an opportunity to participate on an equal basis. I would appreciate your written assurance by 5 p.m. on Wednesday, November 10, 2004, that this issue has been resolved. As you acknowledged in our conversation today, the tournament is rapidly approaching and resolution must be forthcoming. Short of resolution, we will seriously consider filing an action under § 1983 and Title IX and requesting a temporary restraining order.

Yours,

Margaret Plane
Staff Attorney