

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Civil File No. 03-6462 (PAM/RLE)

Elinor Mason, as minor daughter to her parents and next friends Stuart and Martha Mason; Brigitte Bartholdi, as minor daughter to her parent and next friend Richard Bartholdi; Betsy Schneider, as minor daughter to her parents and next friends Terry and Kate Schneider; Whitney Roe; Liz Palkie, as minor daughter to her parents and next friends Thomas and Laurinda Palkie; Kirsti Hakala, as minor daughter to her parent and next friend Joan Hakala; Alia Barkos, as minor daughter to her parent and next friend Diane Barkos; Heather Horgen, as minor daughter to her parents and next friends Judy Lemieux and Rodney Horgen; A.B., as minor daughter to her parents and next friends; C.D., as minor daughter to her parents and next friends; E.F., as minor daughter to her parents and next friends;

Plaintiffs,

v.

MEMORANDUM AND ORDER

Minnesota State High School League, a
Minnesota Association,

Defendant.

This matter is before the Court on Plaintiffs' Motion for a Preliminary Injunction. For the reasons stated at the hearing and for the reasons that follow, the Motion is denied.

BACKGROUND

Plaintiffs are a group of high school girls' ice hockey players and their parents. They contend that Defendant Minnesota State High School League (the "League") is violating Title IX, 20 U.S.C. § 1681(a), and the Minnesota equivalent of Title IX, Minn. Stat. § 121A.04. Plaintiffs also claim that Defendants are acting under color of state law to infringe Plaintiffs' equal protection rights, in violation of 42 U.S.C. § 1983. According to Plaintiffs, the League is violating Title IX, § 1983, and Minnesota law by refusing to schedule the high school girls' hockey state tournament (the "tournament") at the Xcel Energy Center ("Xcel") in St. Paul. The tournament is now held at Ridder Arena, the University of Minnesota's new women's ice hockey arena, on the University's Minneapolis campus.

When high school girls' ice hockey was first sanctioned as a varsity sport in the mid-1990s, the tournament was held at Aldrich Arena in Maplewood. At that time, the boys' tournament was held at the St. Paul Civic Center. In 1996, in part because of concerns that Aldrich Arena was not big enough to handle the number of people attending the tournament, the League moved the tournament to the State Fair Coliseum. The Coliseum seats 5,200 people. When the St. Paul Civic Center was torn down in 1998, the boys' tournament moved to Target Center in Minneapolis, and in 2001, after Xcel was built, the boys' tournament was relocated there. Both Target Center and Xcel have seating capacities far above that of the Coliseum. In 2001, the League solicited proposals for host sites for both the boys' and girls' tournaments. In the request for proposals, the League sought a venue with a seating capacity of 4,000 for the girls' tournament. The University of Minnesota submitted a bid for the girls'

tournament to use Ridder Arena. Xcel did not submit a bid for the girls' tournament, because the dates of the tournament were in conflict with dates of the dance team and girls' volleyball tournaments that were already scheduled at Xcel. The League chose Ridder Arena as the site for the girls' tournament. According to Plaintiffs, Ridder Arena seats 2,742. Defendants contend that Ridder Arena's capacity is 3,200. In any event, Ridder's seating capacity is below the 4,000-seat capacity mentioned in the request for proposals.

Plaintiffs contend that the differences between a tournament held at Ridder and one held at Xcel violate Title IX and Minnesota law in three ways. First, Plaintiffs argue that Ridder lacks adequate seating capacity. Second, Plaintiffs assert that the locker rooms, concessions, seats, and other amenities at Ridder are inferior to those available at Xcel. Finally, Plaintiffs contend that there is less publicity available to a tournament held at Ridder, while a tournament held at Xcel receives greater publicity, including advertising on a large outdoor video screen and in private mailings sent to season ticket holders of the Minnesota Wild, the professional hockey team that plays its home games in Xcel.

DISCUSSION

A. Standard of Review

A preliminary injunction may be granted only if the moving party can demonstrate: (1) a likelihood of success on the merits; (2) that the balance of harms favors the movant; (3) that the public interest favors the movant; and (4) that the movant will suffer irreparable harm absent the restraining order. Dataphase Sys., Inc. v. C L Sys., Inc., 640 F.2d 109, 113 (8th Cir. 1981). Injunctive relief is considered to be a "drastic and extraordinary remedy that is not to

be routinely granted.” Intel Corp. v. ULSI Sys. Tech., Inc., 995 F.2d 1566, 1568 (Fed. Cir. 1993).

B. Likelihood of Success on the Merits

The regulations implementing Title IX provide that

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 [of federal funds], and no recipient shall provide any such athletics separately on such basis.

34 C.F.R. § 106.41(a). The regulations specify certain areas to consider when determining whether athletics programs meet Title IX’s requirements. Those areas include the provision of locker rooms, practice and competitive facilities, and publicity. Id. § 106.41(c)(7) and (10). Minnesota law similarly prohibits discrimination on the basis of gender in athletics. Minn. Stat. § 121A.04. There is no dispute that the League is required to comply with Title IX and its Minnesota counterpart.

Neither Title IX nor Minnesota law require that boys’ and girls’ athletics be treated identically. Rather, the laws require equivalent treatment and equal accommodation. (Pls.’ Supp. Mem. at 12.) The instant dispute centers on whether Ridder Arena and Xcel are “substantially equal,” Minn. Stat. § 121A.04, subd. 3(c), or “comparable facilities,” 34 C.F.R. § 106.33. If they are not substantially equal or comparable, Plaintiffs have made out a violation of Title IX and Minnesota law.

The parties disagree about whether the two arenas are equivalent. Plaintiffs describe Ridder Arena as only slightly more desirable than playing in an outdoor ice rink, contending

that the locker rooms, scoreboards, parking, and publicity available at Ridder Arena are substandard. The League describes Ridder as a state-of-the-art women's hockey facility, newly built for one of the most competitive collegiate women's ice hockey teams in the country. In fact, Ridder was designed in part for the girls' tournament. The League asserts that it received hundreds of complimentary messages and e-mails from fans, coaches, and participants after the tournament was first held at Ridder in February 2003. Indeed, Plaintiffs' affidavits recognize that the Ridder tournament was a success.

Plaintiffs' most persuasive argument is that Ridder's seating capacity is inadequate. According to Plaintiffs, there is the very real possibility that a number of fans wishing to see a tournament game at Ridder may be unable to do so. Indeed, the League acknowledges that if the championship game featured teams from two of the large metro-area high schools, it is possible that Ridder would be unable to accommodate all those fans who wish to see the game. However, there is sparse evidence in the record as to attendance figures for previous tournaments, to enable the Court to compare the highest attendance totals with the seating capacity of Ridder. More relevant to the seating capacity issue, neither party produced any evidence as to the number of fans who remain for both games of a two-game session, either at the girls' or boys' tournament. Plaintiffs contend, without proof, that fewer fans will remain at Ridder because the concession stands at Ridder offer fewer dining options than Xcel's concessions and the seats at Ridder are less comfortable than those at Xcel. Without a comparison of the numbers of fans who either stay after their game to see the following game or who come to a game earlier than their own team's game, Plaintiffs' allegations regarding

insufficient seating capacity are not evidence but are merely allegations. An injunction cannot issue based on allegations. Plaintiffs have not established that they are likely to succeed on the merits of their claims.

However, the Court encourages the parties to do more specific research during the 2004 tournaments to discern whether Plaintiffs are correct about fan retention and seating capacity. Indeed, the Court's determination in this matter is limited to the 2004 tournament. Although the Court finds that the differences between Ridder and Xcel do not at this time amount to a violation of Title IX or its Minnesota counterpart, as girls' ice hockey gains in popularity in Minnesota, there will come a time when the differences in seating capacities may amount to illegal discrimination. That day may come sooner rather than later.

Alternatively, Plaintiffs have not established that they are likely to succeed in this litigation because an entity necessary to the relief they seek, Xcel, is not a party to this action. While the Court may order the League to move the tournament to Xcel, the Court cannot order Xcel to host the tournament. Because of prior commitments, it is likely that Xcel would refuse to host the tournament in 2004 in any event. Thus, any such Order would be merely an advisory opinion and would have no effect.

C. Balance of Harms

Because Plaintiffs have failed to show that the League is violating Minnesota or federal law, the balance of the harms in this case favors the League. Clearly, an injunction forcing the League to move the 2004 girls' tournament to Xcel would have far-reaching implications and would injure not only the League but also the numerous competitors whose events are

currently scheduled for Xcel during the dates of the girls' tournament. By contrast, the only harm Plaintiffs will suffer is playing their tournament in a new facility designed and constructed for women's ice hockey. Plaintiffs have not established that the balance of harms weighs in favor of the issuance of an injunction.

D. Public Interest

It is the rare preliminary injunction motion where the public interest plays any role in the outcome. This is just such a rare case, however, and in this case the public interest undeniably lies in upholding the League's decision with respect to the 2004 girls' tournament. Because there is not a clear violation of Title IX or state law, the public interest rests with allowing an entity which is in the business of making decisions with regard to the scheduling and hosting of tournaments make those decisions. The League is in a better position than this Court to know where the public interest lies. The League has made its determination that the public interest is best served by Ridder hosting the 2004 girls' tournament, and absent evidence that this determination violates Title IX or Minnesota law, the Court will not disturb the League's decision.

E. Irreparable Harm

Plaintiffs' failure to prove a likelihood of success on the merits of their claims is fatal to their claim of irreparable harm. As noted above, the harm to the League and to other competitors if an injunction issues is substantial. The harm to Plaintiffs, on the other hand, is not. Plaintiffs are undoubtedly sincere in their belief that they will be harmed if they are not allowed to play at Xcel. That harm, however, is in the eye of the beholder. There are many

other female hockey players who welcome the opportunity to play at a premier facility such as Ridder. Absent a violation of Title IX or Minnesota law, Plaintiffs have not established that they will suffer irreparable harm if the injunction they seek does not issue.

CONCLUSION

Plaintiffs have not established that any of the Dataphase factors favor the issuance of a preliminary injunction in this matter. Accordingly, for the foregoing reasons and for the reasons stated at the hearing, and based on all of the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that Plaintiffs' Motion for Preliminary Injunction (Clerk Doc. No. 3) is **DENIED**.

Dated: December 30, 2003

S/ Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge