



high school Competitive Dance to girls, F.L.'s constitutional right to equal protection of the laws is violated. Therefore, F.L. brings this lawsuit to vindicate his right to equal protection of the laws.

### **JURISDICTION AND VENUE**

3. This action arises under the Fourteenth Amendment to the United States Constitution, pursuant to 42 U.S.C. § 1983. This Court has jurisdiction over this federal claim under 28 U.S.C. §§ 1331 (federal question) and 1343(a) (redress for deprivation of civil rights). Declaratory relief is authorized by the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

4. Venue is proper in this Court under 28 U.S.C. §1391(b)(2) on the grounds that all or a substantial part of the acts giving rise to F.L.'s claims occurred in Union County, South Dakota, which is located in the Southern Division of the District of South Dakota (*see* 28 U.S.C. § 122(2)).

### **PARTIES**

#### **Plaintiffs**

5. F.L. is a 15-year-old boy who lives with his mother in the unincorporated community of Dakota Dunes in Union County, South Dakota. F.L.'s residence is in the Dakota Valley School District where he is a ninth grade student at Dakota Valley High School. F.L. is a talented and experienced dancer. If the challenged rules are declared unconstitutional and enjoined, F.L. will try out for his school's Competitive Dance team.

6. Stephanie Linden is F.L.'s mother, legal guardian, and next friend. She resides with F.L. in the unincorporated community of Dakota Dunes in Union County, South Dakota, which is in the Dakota Valley School District.

#### **Defendants**

7. Defendant South Dakota High School Activities Association is responsible for the control, supervision, and regulation of public high school athletics and activities in South Dakota. See S.D. Codified Laws §§ 13-36-4 through 13-36-14. The Association is being sued pursuant to *Ex parte Young*, 209 U.S. 123 (1908), for acting under color of state law in setting eligibility rules for student participation in public high school athletics and activities in South Dakota. See *Baltic Indep. Sch. Dist. No. 115 of Minnehaha Cnty., S.D. v. South Dakota High School Activities Ass'n*, 362 F. Supp. 780, 783 (D. S.D. 1973).

8. Defendant Bud Postma is being sued, pursuant to *Ex parte Young*, in his official capacity as Chairperson of the Association's Board of Directors. The Board of Directors is responsible for administering the affairs of the Association and for adopting rules, policies, and regulations for high school activities in South Dakota in line with the Association's Constitution and Bylaws.

9. Defendant Daniel Swartos is being sued, pursuant to *Ex parte Young*, in his official capacity as the Executive Director of the Association. As the official executive of the Association, Mr. Swartos is responsible for the general administration of all Association activities, including eligibility interpretations.

## **FACTUAL ALLEGATIONS**

### **I**

#### **F.L. IS A TALENTED DANCER**

10. F.L. incorporates and re-alleges each and every allegation contained in the preceding paragraphs of this Complaint.

11. F.L. began dancing nine years ago when he was seven years old. Seeing that F.L. had natural talent for dancing, Stephanie Linden temporarily rented an apartment in Los Angeles,

California, so that F.L. could continue to develop his dancing talent. In California, F.L. trained extensively in dance, often in groups full of adults and older youths, and auditioned for many dancing roles.

12. During his time in Los Angeles, F.L. landed leading roles in multiple television spots, as well as a music video and web series. However, after two years, a family matter required Stephanie to return the family to South Dakota.

13. F.L. has continued dancing at a private studio in McCook Lake, South Dakota. Currently, F.L. dances after school for approximately 14 hours each week. He is also an assistant dance teacher at the private dance studio.

14. F.L. has participated in numerous private dance competitions individually and as part of a team. F.L. is an individual two-time National Champion, and was named 2016 National Performer of the Year in a competition that included top talent from the United States, Canada, and Mexico. F.L.'s studio dance teams have also performed well, winning numerous first place awards in competitions across the country.

## II

### THE CHALLENGED RULES

15. F.L. incorporates and re-alleges each and every allegation contained in the preceding paragraphs of this Complaint.

16. The Constitution, bylaws, rules, and other policies and procedures of the Association are published annually in handbooks for athletics and fine arts. The 2017-18 Athletic Handbook (Handbook) covers Competitive Dance.<sup>1</sup> A true and correct copy of the Handbook is attached to this Complaint as Exhibit 1.

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<sup>1</sup> <http://www.sdhsaa.com/Athletics/AthleticHandbook.aspx>. (Exhibit 1).

17. Section 6 of the Handbook contains “General Sports Information.” Within that section are policies concerning “Gender Equity” and “Gender Mixed Teams.”

18. The Association’s “Gender Equity” policy states that gender equity “means creating an atmosphere and an environment where no person experiences discrimination on the basis of gender.” Ex. 1, Handbook, § 6 at 8.

19. The “Gender Mixed Teams” policy states that schools that have a sports team for boys but lack a comparable team for girls in that sport, “shall [give girls] the opportunity to qualify [for] and participate” on the boys’ team. In contrast, the policy states that boys are not eligible to participate on girls’ teams if the student’s school does not field a team for boys. Ex. 1, Handbook, § 6 at 7-8.

20. The Handbook states that Competitive Dance is a sport recognized by the Association for girls only. Ex. 1, Handbook, § 6 at 12.

21. The Handbook also contains sport-specific sections. A true and correct copy of the Competitive Dance section of the Handbook is attached to this Complaint as Exhibit 2. In the section on eligibility for Competitive Dance, the Handbook states that “[a]ll members of the [Competitive Dance] competition team must be female.”<sup>2</sup> Ex. 2, Handbook, Competitive Dance at 11.

### III

#### **THE ASSOCIATION’S RULES PREVENT F.L. FROM DANCING FOR HIS SCHOOL TEAM**

22. F.L. incorporates and re-alleges each and every allegation contained in the preceding paragraphs of this Complaint.

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<sup>2</sup> <http://www.sdhsaa.com/Portals/0/PDFs/Handbook/Athletics/23-CompetitiveDance.pdf>. (Exhibit 2).

23. Upon graduating from junior high school last year, F.L. sought to join the Dakota Valley High School Competitive Dance team. After inquiring about auditioning or trying out for the team, F.L. was informed that the Association's rules prevent him from joining the team because he is a boy.

24. In support of his school's dance team and dancers—many of whom F.L. dances with at the private studio—F.L. volunteered to become the manager for the Dakota Valley High School Competitive Dance team. As manager, F.L. traveled with the team for competitions and voluntarily attended early morning practices.

25. Because of the Association's policy prohibiting boys from competing in Competitive Dance, F.L. is not permitted to participate on his school's Competitive Dance team as a dancer.

26. F.L.'s ineligibility to dance for the school team causes irreparable and ongoing harm to him each school year.

27. At such time as the Association's challenged rules and policies are declared unconstitutional and enjoined, F.L. has concrete and specific plans to try out for his school's Competitive Dance team.

### **LEGAL CLAIM**

28. F.L. incorporates and re-alleges each and every allegation contained in the preceding paragraphs of this Complaint.

29. Pursuant to S.D. Codified Laws §§ 13-36-4 through 13-36-14 and the 2017-18 Athletic Handbook published by the Association, acting under color of state law, the Association forbids boys from participating as dancers on high school Competitive Dance teams in South Dakota.

30. Thus, the rules and policies set forth in the Association's Handbook discriminate against F.L. based on his sex.

31. Because the Association's rule limiting Competitive Dance to girls constitutes express sex discrimination, the rule is subject to "intermediate scrutiny." *See Craig v. Boren*, 429 U.S. 190, 197 (1976).

32. Under intermediate scrutiny, the Equal Protection Clause of the Fourteenth Amendment prohibits government from discriminating based on sex unless the reasons for doing so are substantially related to important government objectives.

33. The Association's decision to restrict Competitive Dance to girls does not further an important government objective.

34. The Association's decision to restrict Competitive Dance to girls is not substantially related to an important government objective.

35. The Association impermissibly relies on outmoded stereotypes for boys and girls in its decision to prohibit boys from competing in Competitive Dance.

36. Therefore, F.L. has been denied his right to equal protection of the law in violation of the Fourteenth Amendment to the U.S. Constitution.

37. F.L. suffers substantial and ongoing harm because the Association treats F.L. differently from female students without adequate justification.

38. F.L. will continue to suffer substantial and irreparable harm unless the discrimination enshrined in the Association's rules and policies is declared unlawful and enjoined by this Court.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests the following relief:

1. A declaratory judgment that the Association's rules and policy of limiting high school Competitive Dance teams to female dancers is unconstitutional to the extent that it deprives F.L. of equal protection of the laws in violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution;
2. A permanent injunction against enforcement of the Association's discriminatory rules and policy by the Association, its agents, representatives, employees, and members;
3. An award of attorney fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988; and
4. An award of any further legal and equitable relief as the Court may deem just and proper.

DATED: April 12, 2018.

Respectfully submitted,

/s/ Mark V. Meierhenry

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