

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEENASHVILLE DIVISION

L.E., by his next friend and parents,)
SHELLEY ESQUIVEL and)
MARIO ESQUIVEL,)
)
Plaintiffs,)
)
v.)
)
BILL LEE, in his official capacity as)
Governor of Tennessee, et al.)
)
Defendants.)

No. 3:21-CV-00835

DECLARATION OF JESSICA JERNIGAN-JOHNSON

Pursuant to 28 U.S.C. § 1746, I, Jessica Jernigan-Johnson, hereby declare under penalty of perjury that the following is true and correct:

1. I am over 18 years of age and have direct knowledge of the matters stated herein.
2. Defendants Knox County Board of Education and Superintended Jon Rysewyk, in his official capacity, rely on the attached exhibits in support of their Motion for Summary Judgment filed in this matter.
3. Exhibit 1 is a copy of Knox County Board of Education’s Policy 1-171 regarding interscholastic sports.
4. Exhibit 2 is a true and correct copy of excerpts of the deposition of L.E. dated August 1, 2022.
5. Exhibit 3 is a true and correct copy of excerpts of the deposition of Jennifer Hemmelgarn, KCBOE’s 30(b)(6) witness, dated July 29, 2022.
6. Exhibit 4 is a true and correct copy of excerpts of the deposition of Penny Schwinn dated August 3, 2022.

7. Exhibit 5 is a true and correct copy of excerpts of the deposition of Sara Morrison dated August 22, 2022.

8. I have personal knowledge of the facts in this declaration and, if called to testify, could completely do that.

Dated this 10th day of October, 2022.

s/Jessica Jernigan-Johnson
DAVID M. SANDERS (BPR # 016885)
Senior Deputy Law Director
JESSICA JERNIGAN-JOHNSON (BPR #
032192)
Deputy Law Director
Suite 612, City-County Building
400 Main Street
Knoxville, TN 37902
(865) 215-2327

*Counsel for Defendants, Knox County
Board of Education, Knox County Schools
and Dr. Jon Rysewyk*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically on the date recorded by the Court's electronic filing system. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties who have filed an appearance in the case, by and through the following counsel:

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s/Jessica Jernigan-Johnson
JESSICA JERNIGAN-JOHNSON

<u>Section I:</u> Instructional Goals and Objectives	Knox County Board of Education Policy		
	Descriptor Term: Interscholastic Athletics	Descriptor Code:	Issued:
		I-171	7/95
		Reviewed:	Revised:
	<u>5/17/21</u>	<u>8/17</u>	

1
2 Interscholastic athletics shall be administered as a part of the regular school program and shall be the
3 principal's responsibility. The principal or his designee must accompany an athletic team on trips.
4
5 The Bylaws of the Tennessee Secondary School Athletic Association (TSSAA) shall regulate the
6 operation and control of secondary athletics.
7
8 School athletics shall be coached only by persons on contract to the Board of Education and approved by
9 the Tennessee Secondary School Athletic Association.
10
11 There shall be an annual physical examination of every student prior to his participation in interscholastic
12 athletic practice.¹ Cost of the examination shall be borne by the parent or guardian of the student. These
13 records shall be on file in the principal's office.
14
15 A student's gender for purposes of participation in middle or high school athletics is determined by the
16 student's sex at the time of the student's birth. A valid original birth certificate must be provided for this
17 purpose. At the principal's discretion, if there are any issues regarding the birth certificate, the student
18 and the student's parent/guardian must provide other satisfactory evidence of the student's sex at birth.²
19
20 Every participant in athletics shall participate in the Knox County Schools Athletic Insurance Program.
21
22 There shall be no practice of organized school athletics schedules within the school day without approval
23 of the Superintendent.²³
24
25 Each school may play two home athletic events during the school day without requesting permission from
26 the Board of Education.
27
28 The conduct of players, spectators, or school personnel reflects directly upon the school system as a
29 whole. Therefore, conduct of players, spectators, or school personnel that does not exemplify the best
30 sportsmanship may result in that school's program, players, spectators, or school personnel being
31 suspended from attendance or participation in the sport concerned with the infraction. The Board of
32 Education will determine the duration of the suspension.
33
34 Maximum admission prices to all athletic events shall be approved by the Board of Education, upon the
35 recommendation of the Superintendent.
36
37 **SCHEDULING OF ATHLETIC CONTESTS**
38
39 A. District/regional games shall be scheduled first.
40
41 B. **No contract shall be signed until the following process is complete:**
42

- 1 (1) Complete the schedule and submit to the principal for approval.
 2 (2) Upon approval by the principal, submit to the Superintendent's office for final approval.

3
 4 C. If an adequate schedule is not obtained by each school, a rescheduling meeting shall be designated
 5 by the Superintendent's office to resolve existing problems.

6
 7 D. No contracts are to be signed prior to the Superintendent's approval of the schedule.
 8

9 Middle School basketball and track are sanctioned sports of the Knox County Schools and will be
 10 regulated by administrative procedures.

11
 12 **ELIGIBILITY OF HOME SCHOOLED STUDENTS FOR PUBLIC SCHOOL**
 13 **INTERSCHOLASTIC ATHLETICS⁴³**

14
 15 As a member of the Tennessee Secondary Schools Athletic Association, the Knox County Schools shall
 16 honor the bylaws of the TSSAA with respect to home school students' participation in TSSAA sanctioned
 17 public school interscholastic athletic activities. The following conditions shall also apply to home school
 18 students seeking to participate in the Knox County Schools Interscholastic athletics program:
 19

- 20 1. Home school students who meet the requirements established by the TSSAA and who meet all
 21 other eligibility and selection criteria set forth by the school and the coach will be allowed to
 22 participate on an interscholastic athletic team of their zoned school. With regard to sports that
 23 do not require tryouts for eligible Knox County Schools students, participation will be allowed
 24 pursuant to the compliance with the requirements listed in this policy. With regard to sports
 25 requiring tryouts, compliance with the requirements listed in this policy will only ensure the
 26 opportunity to tryout and will not ensure a position on the respective team.
 27
 28 2. If selected for membership on the zoned school athletic team, home school students will be
 29 subject to all rules, requirements and restrictions that are applicable as members of the team and
 30 the school community.
 31
 32 3. Home school students shall pay all fees associated with each sport in which they may participate
 33 and these fees shall be paid in full prior to the first contest of the regular season.
 34
 35 4. In the event that the Knox County School's insurance provider does not extend coverage to an
 36 athlete, that athlete must provide proof of independently secured catastrophic coverage, and
 37 liability coverage, with the school system as a named insured, of not less than the limits set forth
 38 in Tennessee Code Annotated § 29-20-403.
 39

40
 41 Legal References:

42 1. TRR/MS 0520-1-3-.08(2)(b).

43 1-2. T.C.A. § 49-6-310.

44 2-3. T.C.A. § 49-6-1002(a).

45 3-4. T.C.A. § 49-6-3050(c); By Laws, Tennessee Secondary School Athletic Association, Article II, Section 25.

46
 47 Approved as to Legal Form

48 By Knox County Law Director 6/19/2017/21/2021

49 /Gary T Dupler/Deputy Law Director

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16 student's sex at the time of the student's birth. A valid original birth certificate must be provided for this
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18 and the student's parent/guardian must provide other satisfactory evidence of the student's sex at birth.²
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26 the Board of Education.
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28 The conduct of players, spectators, or school personnel reflects directly upon the school system as a
29 whole. Therefore, conduct of players, spectators, or school personnel that does not exemplify the best
30 sportsmanship may result in that school's program, players, spectators, or school personnel being
31 suspended from attendance or participation in the sport concerned with the infraction. The Board of
32 Education will determine the duration of the suspension.
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D. No contracts are to be signed prior to the Superintendent's approval of the schedule.

Middle School basketball and track are sanctioned sports of the Knox County Schools and will be regulated by administrative procedures.

ELIGIBILITY OF HOME SCHOOLED STUDENTS FOR PUBLIC SCHOOL INTERSCHOLASTIC ATHLETICS⁴³

As a member of the Tennessee Secondary Schools Athletic Association, the Knox County Schools shall honor the bylaws of the TSSAA with respect to home school students' participation in TSSAA sanctioned public school interscholastic athletic activities. The following conditions shall also apply to home school students seeking to participate in the Knox County Schools Interscholastic athletics program:

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2. If selected for membership on the zoned school athletic team, home school students will be subject to all rules, requirements and restrictions that are applicable as members of the team and the school community.
3. Home school students shall pay all fees associated with each sport in which they may participate and these fees shall be paid in full prior to the first contest of the regular season.
4. In the event that the Knox County School's insurance provider does not extend coverage to an athlete, that athlete must provide proof of independently secured catastrophic coverage, and liability coverage, with the school system as a named insured, of not less than the limits set forth in Tennessee Code Annotated § 29-20-403.

Legal References:

- ~~1.~~ TRR/MS 0520-1-3-.08(2)(b).
- ~~1-2.~~ T.C.A. § 49-6-310.
- ~~2-3.~~ T.C.A. § 49-6-1002(a).
- ~~3-4.~~ T.C.A. § 49-6-3050(c); By Laws, Tennessee Secondary School Athletic Association, Article II, Section 25.

Approved as to Legal Form
 By Knox County Law Director 6/19/2017/21/2021
 /Gary T Dupler/Deputy Law Director

IN THE UNITED STATES DISTRICT COURT
THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

L.E., by his next friends)
and parents, SHELLEY)
ESQUIVEL and MARIO ESQUIVEL)

Plaintiff)

vs.)

No. 3:21-cv-00835

BILL LEE, in his official)
capacity as Governor of the)
Tennessee, et al.)

Defendants)

VIDEOTAPED

DEPOSITION

OF

L.E.

August 1, 2022

DONNA D. TOUSEULL, LCR
HOOD & McMASTERS
P. O. Box 894, Seymour, TN 37865-0894
Telephone: 865-577-5181

VIDEOGRAPHER: Ernie Tracy, Tracy Imaging

1 Q Did you talk to anyone about wanting to
2 play golf for the high-school boys' team?

3 A Yes.

4 Q Okay. Who did you speak with?

5 A My mom, dad, friends, lawyer, lawyers.

6 Q Sure.

7 A Yeah.

8 Q Do you know who the boys' golf coach is
9 for Farragut High School?

10 A No.

11 Q Do you know when the boys' golf team have
12 tryouts at your school?

13 A No, though I think my mom does.

14 Q Do you follow the players on the Farragut
15 boys' golf team or keep track of how they're doing on the
16 team?

17 A Not exactly keep track, though I do know
18 they are good.

19 Q What do you know about them being good?

20 A They got second place in a tournament, I
21 think it was a tournament.

22 Q Are you friends with anyone on the boys'
23 golf team?

24 A No.

25 Q Why did you not go to tryouts for the

1 golf team before or for your freshman year of high school?

2 A Because even if I did have the chance to
3 try out, if I can't even be able to play on the guy's golf
4 team, there -- I just wouldn't try out. There's no point.

5 Q Do you know if the boys and girls try out
6 at the same time for the golf team?

7 A I do not know.

8 Q Do you know what tryout what -- do you
9 know what someone has to do at the tryouts to see whether
10 they can make the team?

11 A I do not. I would expect you just to be
12 able to play well.

13 Q Have you -- do you know what a handicap
14 is for golf?

15 A Yes.

16 Q What is your understanding of a handicap?

17 A My understanding of it is where you get
18 to be closer to the hole or something that helps you.

19 Q Do you know how golfers keep score?

20 A Depending on how many hits it takes you
21 until you get to the hole. It could be birdie, par,
22 bogey, double bogey max, and if you're really, really
23 lucky, eagle, and I never got that. I wish I got an
24 eagle.

25 Q Do you know what par is?

1 even saying the whole list here. Just little things just
2 to work on. I think the biggest one right now I'm working
3 on is speed.

4 Q Okay. And what type of speed?

5 A What do you mean by type?

6 Q Well, so are we talking about your swing
7 speed?

8 A Yes.

9 Q Okay, perfect. All right. So I played
10 golf in high school and college, so it's always exciting
11 to meet somebody that loves golf also.

12 When I -- sometimes my coaches would ask
13 me if I was working on putting, for example, to count how
14 many putts I took in a certain period of -- in a certain
15 number of holes and then report back to them about that.
16 Has your golf coach ever asked you to do something like
17 that?

18 A No, he just -- I usually take -- okay.
19 At the end of it, we usually take notes on things I should
20 do better. Then I'll take a picture, and then I'll just
21 go home and then go somewhere else, look at the notes
22 again and work on some of that.

23 Q Okay.

24 A Yeah.

25 Q Do you know who Coach Higgins is at

1 Farragut High School?

2 A I've heard of that coach, but I don't
3 actually know them.

4 Q So you've never spoken to Coach Higgins.

5 A Yes.

6 Q Have you ever spoken to Dr. Bartlett
7 about wanting to play golf?

8 A Not directly.

9 Q Okay. Have you spoken to Coach Dodgen
10 about wanting to play golf?

11 A I don't think so either. I honestly am
12 kind of getting confused with the names. I don't actually
13 remember certain names, so I'm just going to say no.

14 Q Okay. I'll try to make this easy. Have
15 you ever spoken to anyone on staff at Farragut High School
16 about wanting to play golf?

17 A No.

18 Q Okay.

19 A I think.

20 Q Have you ever spoken to anyone who works
21 for Knox County Schools about wanting to play golf?

22 A I'm going to say no.

23 Q Okay. And then we talked briefly earlier
24 about a handicap in golf, and you talked briefly about
25 what your understanding about that is. Have you ever

1 IN THE UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF TENNESSEE
3 NASHVILLE DIVISION

4
5 _____
6 L.E., by his next friends and
7 parents, SHELLEY ESQUIVEL and
8 MARIO ESQUIVEL,
9 Plaintiff,

10 v.
11 BILL LEE, et al.,
12 Defendants.

Case No.
3:21-cv-00835

13 _____
14 VIDEOCONFERENCE DEPOSITION OF
15 JENNIFER HEMMELGARN

16 DATE: Friday, July 29, 2022
17 TIME: 9:33 a.m. CDT/10:33 a.m. EDT
18 LOCATION: Remote Proceeding
19 Washington, DC 20005
20 REPORTED BY: Janel Folsom, Notary Public
21 JOB NO.: 5335467
22

1 Q Great, thank you. So now I would like to
2 ask some questions about the overall structure of the
3 public school system in Knox County.

4 So first, would you please tell me what role
5 Knox County Schools plays in overseeing the education
6 system in Knox County?

7 A The Board of -- the Knox County Board of
8 Education is charged with -- I guess a way to say it
9 is implementing the state's education system at a
10 local level. The Knox County Board of Education
11 develops policies that apply to the School District,
12 and Knox County Schools employees are charged with
13 following and implementing those policies.

14 Q And who composes the Knox County Board?

15 A It's a nine-member board composed of one
16 representative from each of the nine districts and is
17 led by a chair and a vice chair. That would be one of
18 those nine members is a chair and one of those nine
19 members is a vice chair.

20 Q When you say nine districts, does that mean
21 Knox County is geographically split into nine
22 subcomponents?

1 interscholastic athletic team?

2 MS. JERNIGAN-JOHNSON: Same objection.

3 MS. BERGMAYER: Same objection.

4 A I'm -- I'm not aware of a girl participating
5 on a sports team that -- being able to participate on
6 a sports team that was designated as gender-specific.
7 Like we discussed earlier, there are some sports teams
8 that are not designated as gender-specific.

9 Q Okay. Thank you. And prior to the
10 enactment of SB 228, did Knox County Schools as an
11 institution or any Knox County Schools personnel play
12 any role in drafting SB 228?

13 MS. JERNIGAN-JOHNSON: Object to the
14 form.

15 A To my knowledge, Knox County Schools did not
16 participate in drafting SB 228.

17 Q And prior to its enactment, did Knox County
18 Schools or any Knox County Schools personnel advocate
19 for the enactment into law of SB 228?

20 MS. JERNIGAN-JOHNSON: Object to the
21 form.

22 MS. BERGMAYER: Same objection.

1 A Not to my knowledge.

2 Q And prior to its enactment, did Knox County
3 Schools or any Knox County Schools personnel advocate
4 against SB 228?

5 MS. JERNIGAN-JOHNSON: Object to the
6 form.

7 MS. BERGMAYER: Same objection.

8 A Not to my knowledge on behalf of Knox County
9 Schools. I will clarify that the District employs
10 nearly 10,000 people, so I'm sure that some employees
11 have feelings one way or the other about the enactment
12 of the law. So I don't want to speak on behalf of
13 every employee, because likely some -- some people did
14 have conversations for or against. But Knox
15 County -- on behalf of Knox County Schools, to my
16 knowledge, no.

17 MR. STRONGIN: Great. Thank you. And
18 now, Lucas, if you could introduce tab 8 as Exhibit 7,
19 please.

20 (Exhibit 7 was marked for
21 identification.)

22 //

1 Q Okay. And what basis was given for enacting
2 that policy?

3 MS. JERNIGAN-JOHNSON: Object to the
4 form.

5 MS. BERGMAYER: Same objection.

6 A To comply with state law.

7 Q Okay. And if section 49-6-310(a) had never
8 become operative law in Tennessee, would the Knox
9 County Board of Education have enacted the changes to
10 I-171 we just discussed?

11 MS. JERNIGAN-JOHNSON: Object to the
12 form.

13 MS. BERGMAYER: Same objection.

14 A I do not know.

15 Q Okay. And if section 49-6-310(a) were to no
16 longer be operative law in Tennessee, would Knox
17 County Schools continue to enforce the policy changes
18 to I-171 that it enacted in response to SB 228?

19 MS. JERNIGAN-JOHNSON: Object to the
20 form.

21 MS. BERGMAYER: Same objection.

22 A I -- I do not know. It -- state law would

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

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L.E., by his next friends,
And parents *

Plaintiff *

V. *

BILL LEE, in his official *
Capacity as Governor of *
Tennessee; PENNY SCHWINN, *
In her official capacity as *
The Tennessee Education *
Commissioner; TENNESSEE *
STATE BOARD OF EDUCATION; *
SARA HEYBURN MORRISON in *
Her official capacity as *
The executive Director of *
The Tennessee State Board *
Of Education; NICK DARNELL *
MIKE EDWARDS ROBERT EBY *
GORDON FERGUSON, ELISSA, *
KIM LILLIAN HARTGROVE, *
NATE MORROW, LARRY JENSEN *
DARRELL COBBINS, and EMILY *
HOUSE, the individual *
Members of the Tennessee *
State Board of Education, *
In their official *
Capacities; KNOX COUNTY *
BOARD OF EDUCATION a/k/a *
KNOX COUNTY SCHOOLS a/k/a *
KNOX COUNTY SCHOOL *
DISTRICT; ROBERT M. "BOB" *
THOMAS, in his Official *
Capacity as Director of *
Knox County Schools, *

Defendants. *

-----x

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DEPOSITION OF PENNY SCHWINN, COMMISSIONER
APPEARING REMOTELY FROM
KNOXVILLE, TENNESSEE

August 3, 2022
10:30 a.m.

REPORTED BY:

Dawn L. Halcisak, CLR

APPEARING REMOTELY FROM CRISFIELD, MARYLAND

1 BY MR. SANDERS:

2 Q. Commissioner Schwinn, good afternoon.
3 I'm David Sanders, representing Knox County
4 Board of Education and their superintendent Jon
5 Rysewyk.

6 Do you know Dr. Rysewyk?

7 A. Yes, I do.

8 Q. Great. We're going to just start with,
9 sort of, a very basic question: Would you agree
10 with me that this law we're taking about today,
11 TCA496310, is mandatory upon LEAs in Knoxville,
12 Tennessee?

13 A. Yes.

14 MR. SANDERS: Okay. That's all I have.

15 MS. BERGMEYER: I have just a few
16 questions. We will continue to sit, as we are,
17 and talk to the computer.

18 Because I am a bit back, can you y'all
19 hear me?

20 THE WITNESS: Yes, I can hear you.

21 MS. BERGMEYER: Okay. Ms. Court
22 reporter, can you hear me?

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

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-----X
L.E., by his next friends
And parents, *
Plaintiff, *
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BILL LEE, in his official *
Capacity as Governor of
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In her official capacity as
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THOMAS, in his Official *
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Defendants. *
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1 DEPOSITION OF SARA MORRISON
2 APPEARING REMOTELY FROM
3 NASHVILLE, TENNESSEE
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5

6 August 22, 2022

7 11:00 a.m.
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19 REPORTED BY:

20 Dawn L. Halcisak, CLR

21 APPEARING REMOTELY FROM CRISFIELD, MARYLAND

1 withhold funds from LEA who did not comply with
2 the law.

3 Q. I see. So your view is that the
4 delegation to the Board relates exclusively to
5 the enforcement of the statute and not the
6 actual substantive requirements of the statute?

7 MS. BERGMEYER: Object to form.

8 THE WITNESS: I understand our
9 responsibility related to this law to be about
10 promulgating rules related to the commissioner's
11 ability to withhold funds for non-compliance
12 with this law. That really is the role of the
13 Board, under that legislation.

14 Q. The first reading of the bill includes
15 a provision requiring each local board of
16 education and each governing body of a public
17 charter school to adopt and enforce a policy in
18 compliance with the statute and adopt written
19 procedures to ensure proper implementation of
20 the statute; is that right?

21 A. Correct.

1 Q. And would those policies go to the
2 Board for any kind of review?

3 A. No, not LEA policies.

4 Q. Who would review those for compliance
5 with the statute?

6 A. The department of education.

7 Q. And if the department of education
8 found that there was something deficient in the
9 policy or procedure that the LEA adopted, would
10 that information, then, come to the state board
11 to reach a determination as to whether funding
12 should be withdrawn from the LEA, or is that
13 something that the department does to implement
14 the policy that the state board has devised?

15 A. Yes. The department would be purely
16 the property of the state department of
17 education, in terms of monitoring and enforcing
18 those LEA policies and then the ability to
19 withhold funds for non-compliance. That's not
20 something that comes to the Board.

21 MR. SCHOENFELD: John, can you put up