

**2013 NSLNC**

**FINAL ROUND:**

***Feeling the Hornets' Sting***

**GENERAL FACTS FOR BOTH TEAMS**

Until recently, North Reading, Massachusetts, has just been a quiet old colonial town just north of Boston. Settled in 1651, North Reading is now home to nearly 15,000, and its open-meeting style of government oversees its five public schools, including a high school, middle school, and three elementary schools.

Like most high schools, North Reading High School has a number of interscholastic sports teams, all of which play in the Massachusetts Interscholastic Athletic Association. The North Reading Hornets have both a boys' baseball team and a girls' softball team. Both the baseball and softball teams have varsity, junior varsity, and freshman squads. Each squad has its own coaching staff overseen by the varsity head coach. North Reading High School is known to have competitive teams in many sports, but its varsity softball team has been notably strong, winning over 400 games and making appearances in two state softball championships in the past 28 years under the direction of current head coach, Walter "Rusty" Russell.

Despite its strong record, for the past 12 years, the North Reading High School Girls Softball team has had to practice and play 2.5 miles from campus at the E. Ethel Little Elementary School (The Little School). While the Little School has three fields outfitted for softball, players are required to provide their own transportation to and from home games and practices. In contrast, the baseball team plays in a field next to the high school and has access to dugouts, locker rooms, and bathrooms, amenities that the softball team does not generally have access to at either the Little School or at North Reading High School.

The school board was poised to remedy these discrepancies as part of the construction of a new \$122.7 million middle-high school complex that originally included plans for a softball field. The funds for this project include a grant from the Massachusetts School Building Authority (MSBA) for \$47,112,775 towards the building of a new, integrated Middle-High School that will serve the needs of the grades 6-12 population of North Reading.

The Secondary Schools Building Committee (SSBC) is a 21-member panel of community members, school officials and other interested parties. SSBC was established to plan and oversee this specific program to construct the new facilities, in addition to fundraise the

money needed beyond the MSBA grant. The SSBC keeps the town and the School Committee up to date on the progress of the project and any new developments that arise.

Half-way into construction, the project faced significant budget overruns, so the SSBC was forced to request additional money from the community and make severe cuts to the existing plan. Around the time the SSBC was making revisions to accommodate the new budgetary constraints, it was discovered that the construction of a new parking lot on the high school property was going to require that the boys practice field be paved over. In light of the budgetary shortfalls, one of the SSBC recommendations was to turn the proposed softball field into a small baseball field to replace the lost field. The site of the proposed softball field is large enough to accommodate both softball and baseball and the SSBC felt the change was necessary for budgetary reasons and to ensure that the baseball team would have enough fields to practice and play. This recommendation was presented to the school board and approved unanimously.

The North Reading Citizens for Equality (NRCE) is a community group committed to promoting the equal treatment of all North Reading students. When the NRCE heard of the revision to the building plan, it voiced its concerns to the school board. Upon learning of the discrepancies between the facilities for the girls' and boys' teams, the school board upgraded the care and maintenance of the field used by the softball team, ensured that the girls' team had access to the restrooms at the elementary school, and rescheduled access to the batting cages to ensure the softball team has equal access. Despite these improvements, the NRCE believes that the only way to bring the school in compliance with Title IX is to revise the plans for the new school to, once again, include a softball field.

The SSBC agrees that the softball team should have access to facilities equal to that of the boys' baseball team; however they feel that Title IX compliance can be achieved effectively by upgrading the existing facilities the girls are currently using. There have already been upgrades to the maintenance of the elementary school fields, and it would be more cost effective to upgrade the existing structures rather than construct an entirely new field.

Although both the NRCE and the SSBC are in agreement that action needs to be taken to bring the girls' facilities up to par, they differ greatly on the type of action that needs to be taken. If a proper solution is not found, the NRCE is threatening to report the school to the Office of Civil Rights (OCR), which would generate negative publicity for the community, subject the school district to potential litigation, and possibly jeopardize the project altogether. The budget for this project is already stretched thin. The SSBC had to request additional funds, and if a compromise cannot be reached, it could result in no fields being built on campus. The North Reading Citizens for Equality and the Secondary Schools Building Committee have been tasked with generating a plan on how to remedy the situation.

The president of the NRCE, the chairperson of the SSBC and their respective legal advisors has agreed to meet today in the spirit of compromise in an effort to find an equitable solution. Both sides hope to find a plan that can make sure the softball team is treated fairly without creating a situation that would hurt the remainder of the project and bankrupt the school district. (*Note: Please consider the facts of this negotiation as controlling*).

### **APPLICABLE LAW**

#### **Statutory**

- Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681–1688)

#### **Also see:**

- *Daniels v. School Bd. Of Brevard County, Fla.*, 995 F.Supp. 1394 (M.D. Fla. 1997)
- *Ollier v. Sweetwater Union High Sch. Dist.*, 604 F. Supp. 2d 1264 (S.D. Cal. 2009)

**CONFIDENTIAL FACTS FOR NORTH READING CITIZENS FOR EQUALITY**  
**(NRCE)**

The NRCE is a group of concerned students, parents and community members that have united against the North Reading School District's current plan. As North Reading community members, they are excited about what the North Reading Public School District and SSBC is doing to upgrade North Reading's already excellent school system. However, when the NRCE found out that the proposed softball field was being scrapped for a second baseball field, all members were furious. How could the school district change from what the NRCE feels had been an excellent plan of action, to a plan that was so egregiously biased against the girls of North Reading's softball team?

The main goal of the NRCE is to ensure that the SSBC's plans are compliant with Title IX. While the group does not represent the North Reading softball team, it is furious with the way the school district and SSBC have, to this point, walked all over the softball team, and girls' sports in general. After consulting counsel, the NRCE feels justified in bringing their complaints to the school district. As it suspected, the change in plans was blatantly against both the spirit and the letter of Title IX, and it feels that at this moment, it has an easy case both in front of the OCR and, if need be, in court. As the project is still in its early stages, the group does not feel any urgency in bringing a claim, but if the SSBC votes to keep the plan in place as it is, the NRCE has indicated that it will contact the OCR.

Prior to this meeting with the SSBC, the NRCE board met and voted to authorize the president to make a deal to resolve these issues. However, any potential deal must meet the parameters discussed below and must commit the district to be compliant with Title IX in a binding and enforceable manner.

**High School Facilities**

The NRCE's community members have a core concern with the hypocrisy the SSBC has shown regarding the construction of the two fields. There was certainly a need for a new baseball field, but there was no good reason why the second field became a practice field for the baseball team. The softball team had been deprived of equal treatment for years, and the new field was going to be a much-needed step in the right direction. The NCRE understands the baseball team has their own needs, but the members of the community wonder where the SSBC's priorities lie.

The NRCE wants to see the softball team get its own field on the North Reading campus as soon as possible. The NCRE Board has expressed the view that it should be easy to just switch the plan for the second field back to its original arrangement, and give both the baseball

team and the softball team their own fields. This is their preferred solution to have softball on campus according to the original schedule, which would ensure its completion by the 2015 season. As they see it, it is unfair that the softball team has to take on the entire burden of transportation to the Little School fields and its inferior facilities, while the baseball team has two new fields built directly on campus. Therefore, the group will be far less amenable to drop their claim without a firm and binding plan of action from the SSBC to make things equal for the girls, which they feel should include, at the very least if they cannot agree to build a field on the high school campus immediately, a plan to build a softball-only field on the North Reading High School campus within the next five years and to upgrade the Little School Facilities in the interim.

### **Little School Facilities**

The softball team and Coach Russell have actually shown a willingness to continue playing at the Little School, which complicates matters for the NRCE. In fact, Coach Russell has publically stated that he likes playing at the Little School facilities since they have three fields, allowing the varsity, junior varsity, and freshman teams to play at the same time. Coach Russell has stated that he feels the Little School fields are fine, especially given the recent efforts the school district has taken to improve them. While he and the rest of the softball team want equality, they have stated a deep uneasiness in supporting the NRCE in litigation because if the NRCE take matters too far, it could force the team into a facility that is actually worse, even if it is on the North Reading High School campus. They really just want to make sure that they are being put in the best possible situation given the circumstances, and they feel the Little School fields have worked rather well for them.

Regardless, if the softball team is to stay at the Little School in any capacity, the NRCE is insistent that concrete measures must be taken by the SSBC to improve the facilities immediately. In particular, the NRCE board is firm that the fields at the Little School are subpar due to lack of locker rooms, dugouts and bathroom facilities. While the school district has made at least an effort to curb these issues by providing the team a key to the Little School bathrooms, and increasing care and maintenance of the Little School fields, this is clearly inadequate.

The NRCE sees the locker room facilities as a major inequity. While the baseball team will be able to use brand new locker rooms on the new campus, the Little School does not have locker room facilities suitable for the softball team's use. If the softball team continues to use the Little School fields either until a new on-campus facility is built, or into the foreseeable future, this issue must be addressed.

Adding to this inequity is the fact that the softball team has to travel 2.5 miles from North Reading High School on their own dime in order to get to practice and home games at the Little School. This issue is one that the NRCE felt the strongest about; it seems completely

unreasonable to force students to make their own travel arrangements off-campus, especially while the baseball team is being built not one, but two fields at the high school. The NRCE feels that this should not even be an issue; it sees no reason why the SSBC cannot, at least, provide a bus to transport the girls over to the other school.

Finally, it is difficult for the softball team to have access to the state-of-the-art indoor batting cage used by the baseball team. While the school district has done a lot to equalize time allotted to each team, the NRCE sees the sheer fact that the cages are at North Reading High School, while the softball team practices and plays at the Little School as a major inequity. The NRCE wants to see batting cages of equal quality constructed at the Little School. While the NRCE sees other issues as far more important, it feels that the batting cages are just an example of how the SSBC has lost sight of equality.

Regardless, the NRCE board feels that all of these issues would be easily solved if the SSBC would promise to build an equitable new facility for the softball team on the North Reading High School campus, as soon as possible.

### **Overall Goals**

Through fundraising among its membership, the NRCE has already raised \$15,000 for possible legal fees if negotiations fail, and it decides to take the case to court. The group is confident that it can continue raising more, especially if the situation gets out of hand, and the community becomes more enraged at the way the softball team is treated by the school district. The NRCE is willing to commit this litigation fund to help supplement the SSBC's available funds, but only if that money is used to establish equal facilities for the girls.

Since the NRCE is composed of community members who have already given a lot of money to this project through taxes and other fundraising endeavors, it is wary of giving any more to the school district. But, if it sees that the SSBC and the school district are truly prioritizing fixing the inequities, as evidenced by the quality of solutions the SSBC offers and the amount of funding it is willing to commit, the NRCE might be willing to assist the SSBC in paying for these upgrades.

Beyond any tangible goals, the community is upset with what it has seen with the school district's apparent lack of desire for equality between the girls and boys of North Reading High School. The members of the NRCE all feel that the school district wants to do the right thing, but it demands to hear a reasonable explanation of why it is acting seemingly in an effort to spite the softball team and reward the baseball team.

When it comes down to it, the community members that make up the NRCE really just want to make sure that the girls on the softball are being treated fairly and equitably. While the

NRCE has been approached by various Title IX advocacy groups to fund litigation, the group is in full agreement that it would much rather work with the SSBC to resolve their issues at this negotiation. After all, the two groups are all citizens of the same community, and the NRCE does not want to do anything to jeopardize the great improvements that are happening outside the scope of this dispute.

**CONFIDENTIAL FACTS FOR THE SECONDARY SCHOOLS BUILDING COMMITTEE**  
**(SSBC)**

The Secondary Schools Building Committee (SSBC) has been authorized to act on behalf of the School Board for all decisions relating to the Middle-High School renovation project. The underlying mission of the SSBC is that whatever is built, it must be cost effective, have as minimal of an environmental impact possible, and serve the community for the next 40 years. In the course of performing its duties, the SSBC has proposed various alterations to the building plan consistent with its mission and emerging budgetary constraints.

When the SSBC realized that a field was going to be lost in building the new campus, the SSBC saw a cost-effective, environmentally sustainable fix in converting the second field that had already been proposed and budgeted into a practice field for the baseball team. This second field would be used primarily by the freshman and junior varsity baseball teams. The SSBC values the needs of the girls' softball team and in no way intended to deprive them of equal facilities.

The School Board and the SSBC had not heard any complaints about the girls' facilities from the softball teams until the NRCE brought the discrepancies to the attention of the Board. The SSBC is facing severe budget overruns, and the switch from a softball stadium to a baseball practice field has allowed the SSBC to cut \$60,000, curing a portion of the overrun.

While high school sports are important to the North Reading community, the SSBC must prioritize the integrity of the school's core facilities over athletics. The budget is so tight that prior to this decision, there was question as to whether it would even have the money to provide basic features, such as rubberizing the stairs in the new complex.

Moreover, under the old plan, with the elimination of the boys' practice field, the boys would be left with only one field, while the girls would gain a field in addition to the three softball-ready fields at the Little School. In light of this, the SSBC felt the better solution was to keep the girls on the Little School fields and give the new field to the boys. In fact, when the SSBC proposed the alterations to the school board, the girls' softball coach both approved of and voted for the change.

The SSBC knows that the Little School facilities are not perfect as they stand. To remedy this situation, the School Board immediately increased the maintenance and upkeep of the girl's facilities, and adjusted the schedule for the batting cages to ensure the girls equal access. The Board believes that what the NRCE has proposed to date exceeds reasonable efforts towards achieving equality taking an almost punitive position against the boys' teams.



The SSBC firmly believes that a fair solution is possible as long as the NRCE is willing to compromise. It is eager to come to an agreement on a plan that would eliminate the discrepancies and spare the town and the project the scrutiny and delays that litigation would inevitably bring.

### **High School Facilities**

The SSBC wants to rectify this situation, but is faced with the immediate issue of funding. The SSBC has already had to request an additional \$15.5 million in funds from the community, in addition to the initial estimate of \$107 million for the entire Middle-High School renovation project. This figure includes the MSBA funds. No additional funds can be secured from the MSBA.

Any extra funds, on top of the increase that was already approved, would have to be raised directly from the town. Due to its tight budget and the threat of litigation, the SSBC has already had to significantly scale back the entire school project, including the baseball complex. As the project currently stands, \$50,000 is budgeted for the baseball practice field. There are no additional funds in the project budget to put towards this issue, but the school board has also budgeted an additional \$50,000 for the SSBC to use either for litigation or a possible settlement.

On the plus side, the current plan has the fields set to be completed by 2015, so there is some time to fundraise if a new softball field is the only thing that will keep the NRCE from going to court. The problem is that this does not solve the need for additional fields that will allow the varsity, junior varsity, and freshman teams enough room to practice.

There is still a possibility that even with the building of a new softball field in addition to the baseball fields, some teams would have to practice at the Little Fields. Because of the size of the boys' and girls' teams, each group needs access to at least two fields.

A new softball field and facilities on the High School premises are priorities, but the SSBC believes that if the new softball field could be installed in a subsequent round of improvements, it would allow for more time to plan and fundraise for facilities that would be truly impressive. The SSBC understands that the decision to switch the planned softball field to another baseball field does not look good in light of the discrepancies raised by the NRCE.

If it has to, the SSBC is willing to revert back to the original plan to have the softball field on campus, but that still leaves the issue of needing additional fields for both the baseball and softball teams. Building a game-ready softball field on the high school campus with all of the necessary amenities (dugouts, locker rooms, etc.), which the baseball field will have, would

cost a total of \$110,000. This equals the cost of the baseball field being constructed on the high school campus.

By contrast, the main field at the Little School is already outfitted for games, though some improvements are necessary. This difference in cost is what led to the SSBC's decision in the first place, and the SSBC still feels that the NRCE does not fully understand the budget constraints this project is facing. Sharing fields is not an option. Out of the five total fields between the high school and Little School campuses, there could be no "shared" fields – the fields must be built as either baseball-only fields, or softball-only fields.

### **Little School Facilities**

The SSBC believes that if the NRCE wants an immediate response to the facilities issue, the best course of action to take is for the softball team to stay at the Little School's existing facilities where it is already established.

However, immediate upgrades to the extent the NRCE is asking for would be incredibly difficult. The School Committee has already upgraded the maintenance and upkeep performed on the Little School field, and the softball team has access to the restrooms at the school.

The SSBC can make more permanent upgrades to the Little School facilities faster than it can guarantee a new field on the new campus right now. If the NRCE can agree to the continued use of the Little School facilities, the SSBC can commit to completing the upgrades by 2014 – one year ahead of the timeline for the construction of the new fields at the new school campus. Such upgrades would include dugouts and a locker room near the field.

If the NRCE accepts upgrades to the Little School facilities, a brand new softball field and facilities on the high school campus would be priorities in the building upgrades that are scheduled to take place within the next 10 years.

The SSBC simply does not have the money to both upgrade the Little School facilities and build a game-ready field on the high school campus right now, and it cannot ask the community or state for any more money for this project. If the NRCE could assist with raising the funds, it is possible that a new softball field and facilities could be built within five years independent of the current project.

No matter when the upgrades occur, these upgrades will be very expensive. The SSBC would have to build a locker room with enough space for both the home and away teams. A permanent structure that would house both teams would cost \$40,000. A batting cage similar to the one already in place at the high school would cost \$6,000. Dugouts similar to those planned for the baseball field would cost \$7,500.

While it does not have all the details, the SSBC has been made aware of a small group of Little School parents who are upset that the softball team keeps the elementary school children from playing on the fields for a considerable period of time while the softball team practices. Although the Little School has a playground for the elementary school kids, there is concern that the continued use of the softball fields takes away from the elementary school kids' ability to play organized sports after school.

There have not been any significant concerns voiced in any official forum yet, but given the needs of softball and baseball teams and the limited space at the new high school campus, there will be a continued need to use the Little School Facilities. For this reason, the school district is in the process of forming a new planning group to oversee the funding and building of a fourth field on the Little School campus for the sole use of the elementary school children.

The plan for the Little School is set to be finalized within the next five years. The school district has indicated to the SSBC that due to the funding issues with the SSBC's project, the school district would prefer to work more upgrades for the rest of the fields into this plan. However, funding is always an issue, and preliminary estimates show a \$15,000 gap between the current funds available, and projected funds to be coming in from other sources. If the NRCE could commit to help fundraise the \$15,000, it would help this project go forward.

The school district agrees that the softball team should not have to pay for their own transportation to and from practices and home games, and has informed the SSBC that it is already working on a plan to provide transportation for the team. The SSBC is authorized to let the NCRE know that a plan is in the works and will be finalized within the month.

### **Overall Goals**

The SSBC is committed to complying with the spirit and letter of Title IX, and it is eager to brainstorm ideas that would enable it to balance the need for better softball facilities with the need to have adequate time to fund and plan those facilities. It realizes upgrading the Little School facilities is a Band-Aid solution, but the SSBC sees it as merely a first step in a larger plan to fully bring the school into compliance with Title IX. If the NRCE can understand the need to plan for the long term while providing a short-term solution, the SSBC is confident that it can come to a successful agreement and avoid litigation. It has given its Chairperson the authority to negotiate the best deal he can to achieve these goals and, if push comes to shove to do what it takes to avoid counterproductive and costly litigation.