

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA
CIVIL DIVISION

Case No.: 03-2009 CA-000000-00
SEC. 7
Division: _____

TOUCH DOWN CLUB, an Athletic Club and Class
Name of Masha Paul, as Father and Natural
Guardian of Gioni Paul, a minor, Valerie Jackson,
as Mother and Natural Guardian of Andrew
Jackson, a minor, Simona Day, as Mother and
Natural Guardian of Jacques Mackeroy, a minor,
Robert Newman, as grandfather and Natural
Guardian of Austin Hancock, a minor, Gerald
Poleon, as Father and Natural Guardian of Akem
Poleon, a minor,

Plaintiffs,

vs.

FLORIDA HIGH SCHOOL ATHLETIC
ASSOCIATION, a Corporation

Defendant

FILED - GENERAL
POLK COUNTY CLERK
CIRCUIT COURT CIVIL
2009 NOV -3 AM 10:55

VERIFIED EMERGENCY PETITION FOR INJUNCTIVE RELIEF

COMES NOW, Plaintiffs, TOUCH DOWN CLUB, by and through their undersigned attorney, Joseph W. Brown, II, Esquire and files this Emergency Petition for Injunctive Relief, and states as follows:

1. Plaintiffs, TOUCH DOWN CLUB, is an Athletic Club recently organized by certain parents of football players for the Kathleen High School football team for the purpose of ensuring a proper scholastic environment in which their children can thrive and ensuring that their children are treated fair, equitably and justly as it relates to other high school students who reside in the Polk County School District.
2. The Plaintiffs, as individual members of the TOUCH DOWN CLUB, are the natural guardians of the minor children (Masha Paul is the father and natural guardian of the minor

child, Gioni Paul, Valerie Jackson, as Mother and Natural Guardian of Andrew Jackson, a minor, Simona Day, as Mother and Natural Guardian of Jacques Mackeroy, a minor, Robert Newman, as Grandfather and Natural Guardian of Austin Hancock, a minor, Gerald Poleon, as Father and Natural Guardian of Akem Poleon, a minor.

3. The Defendant, the Florida High School Athletic Association, a Florida Corporation, headquartered in Gainesville, Florida, is the organization or association that governs the activities of a majority of high school athletic programs throughout the State of Florida to include determining which students are eligible to compete in varsity sports programs offered by the respective schools that are members of the Florida High School Athletic Association (FHSAA).

4. The minor children, at all times relevant, are and have been students at Kathleen High School, in Polk County, Florida, and participated as players on Kathleen High School's football team.

5. On September 26, 2009, Kathleen High School played one of its district rivals, Bartow High School, and won.

6. On or around September 27, 2009, upon information and belief, the football coach of Bartow High School, Sean Reed Killets, the athletic director of Bartow High School, Glenn Rutenbar, and one of Bartow High School's guidance counselors **illegally** either assisted and/or went through every Kathleen High School football player's personal student record on the district's computer system.

7. This system is called Genesis, and dates of access can be tracked by login times and/or passcodes.

8. The information contained in the Genesis files is covered under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99). FERPA is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

9. Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows

schools to disclose those records, without consent, to the following parties or under the following conditions (34 CFR § 99.31): School officials with legitimate educational interest; Other schools to which a student is transferring; Specified officials for audit or evaluation purposes; Appropriate parties in connection with financial aid to a student; Organizations conducting certain studies for or on behalf of the school; Accrediting organizations; To comply with a judicial order or lawfully issued subpoena; Appropriate officials in cases of health and safety emergencies; and State and local authorities, within a juvenile justice system, pursuant to specific State law.

10. Alleged FERPA violations are actionable by filing a direct complaint to the U.S. Department of Education. Violations of FERPA may result in a debilitating loss of federal funding for the offending institution and/or possible criminal sanctions for the offending individual(s). To underline the severity of the infraction, upon information and belief, the guidance counselor who committed this infraction has, or soon will be, **losing her license to teach** in the State of Florida.

11. Upon information and belief, after **illegally** accessing and reviewing Kathleen High School's students' records via Genesis, Coach Killeets found a student who he thought was ineligible based on his GPA. This **illegal** review and access of students' records did not meet any statutory purpose and was simply done to hurt a competitor school, injuring not only that school, but injuring a whole community as well.

12. In order to play football in Polk County, a student must maintain an overall GPA of 2.0.

13. State statute permits a student to retake a course they previously failed and replace that grade with a **C or higher**.

14. The student in question, who is a senior at Kathleen High School, previously made a grade of F in Algebra, retook the class, and made a D.

15. That F in the student's record was replaced by Kathleen High School using the D, pursuant to long standing Polk County School Board Procedure.

16. For purposes of graduating, the Polk County School Board procedure for all high schools in Polk County is and has been that a D is sufficient to replace an F (all high schools in Polk County do this and have done this for a least the past 6 years, upon information and belief). For graduation purposes each year, the procedure in Polk County has been for the guidance

counselors of all high schools to review all students with GPAs that are close to a 2.0 in the summer going into their senior year. This is done without respect to whether or not they participate in athletics, but because a 2.0 is needed for a student to graduate. By doing this, the student's GPA is increased, thereby helping the student to meet the graduation criteria. This is done pursuant to Fl. Stat. Sec. 1003.43(5)(e)(1) which states in part: "Each district school board shall adopt policies designed to assist students in meeting these (graduation) requirements. These policies may include but are not limited to: forgiveness policies."

17. Upon information and belief, a cursory review of student athlete's records among every other district school **for this school year of 2009/2010** would reveal that possibly one or more of their students are only eligible to play under this unique, Polk County School Board procedure. As a matter of fact, many student athletes over many years in Polk County would fall under these same provisions.

18. Based on this **county-wide procedure**, Kathleen High School inadvertently allowed the student in question to play on the football team by function of his F being replaced by a D for graduation purposes.

19. The dates of the football games he was inadvertently allowed to play in are as follows: September 4, 2009 against Tampa Jesuit High School, September 11, 2009 against Lake Region High School, September 18, 2009 against Auburndale High School, September 25, 2009 against Bartow High School, October 02, 2009 against George Jenkins High School, and October 09, 2009 against Haines City High School.

20. Upon obtaining the information of potential ineligibility of a member of a competitor's football team, Coach Killets held the information.

21. Coach Killets held this information for two weeks, after it was clear that Kathleen High School would make the playoffs and Bartow High School would not, ultimately reporting the perceived infraction to the district office on or around October 14, 2009.

22. Coach Killets held this information to increase his competitive advantage over a rival school, and as of this date, upon information and belief, Coach Killets **is still being allowed to coach his football team** at Bartow High School, and the only disciplinary action that has been taken against him by Polk County has been to place a "letter" in his personnel file! Thus, he is **benefitting from his illegal activity** while Kathleen is suffering from the gross inequity of his illegal action.

23. After Kathleen High School was informed of the potential that an ineligible student was playing on their football team, they did not allow the student to play and reported this information to the FHSAA.

24. This school is, and has at all relevant times been, a member of FHSAA and subject to its rules, regulations and Bylaws as are the students who attend Kathleen High School.

25. The FHSAA conducts its activities subject to certain rules which have been codified in the document entitled "2009/2010 Official Handbook" which contains the Bylaws of the Defendant.

26. On or around October 28, 2009, the FHSAA issued a ruling that Kathleen High School inadvertently permitted an ineligible player to participate in six varsity football games.

27. In accordance with FHSAA policy 10.2.1, which states: "If an ineligible student is inadvertently or intentionally permitted to participate in an interscholastic athletic contest, forfeiture of the game and honors shall be automatic and mandatory."

28. Based on the FHSAA's ruling, Kathleen High School football team has forfeited 6 games, making them ineligible for the playoffs.

29. If not for the adverse ruling of the FHSAA, the Kathleen High School football team would be district champions, if they won their upcoming game on November 6, 2009, based on their previous record of 8-0.

30. On or around October 30, 2009, Kathleen High School filed an appeal **on behalf of its student athletes** to the FHSAA section 3 appeals board.

31. The appeal consists of two meritorious claims. The first is based upon an ethical concern. Coach Killets and others **illegally** procured confidential information by violating federal law in contravention to FERPA guidelines and regulations. After the initial violation, Coach Killets maliciously held this information to gain an advantage over a competitor (Kathleen High School) in the district football standings. It is the position of Kathleen High School that had they been notified immediately, the student in question would not have been allowed to participate in the games played on October 2, 2009 and October 9, 2009 until an official ruling of eligibility or ineligibility was made concerning the student by FHSAA. This is made evident by Kathleen High School not allowing the student to participate in games played by the Kathleen High School football team on October 16, 2009 and October 23, 2009, even though the FHSAA did not rule until on or around October 28, 2009 as to the player's

ineligibility. If this part of the appeal is granted, it would allow Kathleen High School Football team to only have to forfeit 4 games, as opposed to 6 games, and they would still be eligible to play for the district championship.

32. The second meritorious claim that is the subject of the appeal is Polk County School Board's forgiveness procedure. Upon review of the procedure, the length of time the procedure has been in place, and the reality that **every or virtually every** high school in Polk County would be subject to having football games this season (and in seasons past) taken away, the FHSAA **may** rule that every high school in Polk County has exercised and is using these procedures, and therefore either Kathleen High School will have its 6 games restored, or every other high school will be penalized in the same manner as Kathleen High School so that equity is meted out across the school district.

33. Unless FHSAA, the Defendant herein, is immediately enjoined, Defendant will be disqualified from playing for the district championship on November 6, 2009.

34. Unless this Honorable Court immediately enjoins the Defendant, the Plaintiff will suffer immediate and irreparable injury, loss and damage. Once the playoff game on November 6, 2009 has been played, the football team of Kathleen High School will be forever excluded from the 2009/2010 playoff season.

35. Plaintiff has no adequate remedy at law because this injunction is currently the only means by which the Kathleen High School football team would be able to compete in the district playoffs.

36. The harm, if any, that would result to Defendant if this injunction is granted would be relatively insignificant compared to the immediate and irreparable injury, loss and damage that Plaintiff would suffer in the event that this injunction is not granted.

37. There is a great likelihood that the FHSAA will grant Kathleen High School's appeal either on the grounds of only having to forfeit two games or having all 6 games reinstated based on the Polk County School Board's aforementioned procedure.

38. A temporary injunction will serve the public's interest in that it will show equity in the face of illegal and unethical practices, and it will allow students of the community to compete and perform on their own merit, and not be inequitably singled out for participating in a practice that has been sanctioned by Polk County for years.

39. As the 2nd DCA explained **in Lewis v. Sunbelt Rentals, Inc.**, 949 So. 2d 114(Fla.

App. 2 Dist. 2007), Florida Rules of Civil Procedure Rule “1.610 (a) (1) specifies that a temporary injunction without notice may be granted only if (1) the affidavits or verified pleadings demonstrate that “immediate irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition’ and (2) ‘the movant’s attorney certifies in writing any efforts that have been made to give notice and reasons why notice should not be required.” Moreover, rule 1.610(a)(2) provides that ‘[e] very temporary injunction granted without notice shall be endorsed with the date and hour of entry and shall...define the injury, state findings by the court why the injury may be irreparable, and give reasons why the order was granted without notice if notice was not given.’” **Lewis** 949 So. 2d at 1114, 1115

As aforementioned, this Friday, November 6, 2009 is the district playoff game for Polk County. If this petition is not granted on an emergency basis either today, Tuesday, November 3, 2009, Wednesday, November 4, 2009, or Thursday, November 5, 2009, the plaintiffs will not be afforded the opportunity to play in the football game that would determine whether or not they could ultimately play for a state championship. This will cause irreparable harm to the plaintiffs in that they will not be afforded the opportunity to play for a state title after such a stellar season and some will be unable to complete their high school football career due to the fact they are seniors and it could be detrimental to collegiate football aspirations. As such, the facts of this case satisfy the requirement of 1.610(a) (1).

Pursuant to Florida Rule of Civil Procedure 1.610(a)(2), the undersigned certifies that he contacted the FHSAA on Wednesday, October 28, 2009 and put them on notice that this petition would be filed if an adverse ruling was handed down by the FHSAA. A copy of this petition is also being sent via facsimile and email to the FHSAA, and this petition was filed after an appeal of the FHSAA decision was filed.

Under the circumstances of this case, the undersigned would assert that the notice given is reasonable. However, the undersigned would also assert that it is reasonable under the circumstances to grant this emergency petition for injunctive relief on an emergency basis immediately unless a hearing can take place by Wednesday, November 4, 2009, or Thursday, November 5, 2009.

40. The 2nd DCA in **High School Athletic v. Marazzito**, 891 So. 2d 653 (Fla. App. 2 Dist. 2005), explained “that a Court should only intervene when ‘(1) the association’s action adversely affects ‘substantial property, contract or other economic rights’ and the association’s

own internal procedures were inadequate or unfair, or if (2) the association acted maliciously or in bad faith.”

The undersigned would assert that the association’s action adversely affects substantial property, contract or other economic rights in that the very likely potential of Kathleen High School winning a state championship would be taken away. The prestige of winning another state championship would help to boost Kathleen High School’s standing in the community, it would attract more boosters and sponsors for the various athletic programs at Kathleen High School, it would foster a sense of pride and accomplishment in the faculty, students and staff of Kathleen High School, and it would further increase the chances of various colleges and universities recruiting the seniors on the football team for their collegiate programs.

The undersigned would also assert that the association’s own internal procedures were inadequate in the sense that a decision regarding an appeal to the FHSAA normally takes no less than a month to be rendered. If that happens, even if the decision from the appeal is favorable, Kathleen High School would not have an opportunity to play for the state championship because they would not be permitted to play for the district championship on November 6, 2009, unless the honorable court enjoins the FHSAA’s current decision regarding Kathleen High School’s football team.

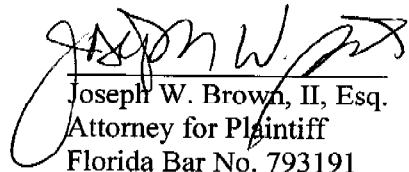
Unless this honorable court enters this temporary injunction, a rivals’ illegal actions and a school district’s inequitable application of a well-founded procedure will inequitably impact Kathleen High School football team’s unique opportunity to participate in an activity that would enrich their lives, bring the community together, and provide for further opportunities for the student athletes beyond the playing field.

WHEREFORE, the Plaintiff requests this Honorable Court to grant this emergency petition of injunctive relief.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail, facsimile, and email to FHSAA, 1801 NW 80th Blvd., Gainesville, FL 32606-9176, and fax (352) 373-1528, and Dr. Roger Dearing, Jr. rdearing@fhsaa.org, and M. Denarvise Thornton, Jr. dthornton@fhsaa.org, 3 day of November, 2009.

JOSEPH BROWN, P.A.

A handwritten signature in black ink, appearing to read "Joseph W. Brown, II", is written over a horizontal line. The signature is fluid and cursive, with a large initial "J" and a stylized "B".

Joseph W. Brown, II, Esq.

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