

Mobile private school gets day in court against the Alabama High School Athletic Association

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The St. Paul's Saints take the field during the St. Paul's vs Beauregard football game, Friday, November 24, 2017, at St. Paul's High School in Mobile, Ala. (Scott Donaldson | preps@al.com) (*Scott Donaldson/al.com*)

A Mobile private school's nine-month legal battle against the Alabama High School Athletic Association officially went before a judge today.

However, St. Paul's and the AHSAA left the Mobile Federal Courthouse without a ruling and with another assignment.

After more than three hours of hearing oral arguments from the two sides, U.S. District Judge Terry Moorer asked both to file a 10-page brief by Feb. 15 summarizing their arguments. He said he would have a ruling as quickly as possible.

Thursday's hearing revolved around the AHSAA's motion to dismiss St. Paul's May 2018 lawsuit that alleges that the AHSAA's competitive balance rule – instituted for the first time this school year -- penalizes some private school sports teams for being successful and puts their athletes in harm's way.

The AHSAA's 15-member Board of Control unanimously approved competitive balance in November 2017 in addition to the 1.35 private

school multiplier that has been instituted since 2001. Competitive balance currently affects 85 of the state's 820 private school teams in all sports, or about 10 percent.

Attorneys for both sides – Russel Myles for St. Paul's and Jim Williams and William Shreve for the AHSAA – refused to comment following the hearing. AHSAA Executive Director Steve Savarese, also in attendance, said he could not comment on ongoing legal procedures either.



One interested spectator who could and did comment was state Rep. Ritchie Whorton (R-Owens Cross Roads), who sponsored a 2017 Bill (HB9) that would have forced the separation of public and private schools in athletic playoffs and may have in part led to the AHSAA adopting competitive balance.

"I think we got the ball rolling," Whorton said. "I think the conversation here was good today. Hopefully, we can get something resolved and help the public schools and be good in the private schools as well."

Whorton said he liked competitive balance.

"I think it's working now," he said. "I think coach Savarese has done a really good job to come up with a committee to do the things we are doing. I think it's really working."

Shreve, a Mobile attorney, opened Thursday's hearing, arguing for approximately an hour on behalf of the AHSAA. He argued the AHSAA's decision to promote competitive balance is a legitimate state interest and said private schools clearly have certain advantages over

public schools. He said those include the complete control of the quantity and quality of student enrollment, a broader geographical area from which to draw and, for many, better facilities.

Myles, arguing for St. Paul's, spent nearly two hours at the podium. One of his chief complaints centered around whether the AHSAA should be considered a constitutional state actor and thus be entitled to the judicial deference granted by the separation of powers doctrine. He believes that is not the case.

"This association does not reside in a constitutional branch of government," he said. "They have spent a lot of time trying to convince the court that is how they should be treated."

In ruling against a preliminary injunction against competitive balance last summer, Judge William H. Steele argued, in part, that "whether the Court thinks it is a good rule or a bad rule is irrelevant. This Court may not substitute its judgment for that of the Association."



Myles also emphasized that competitive balance forces private school teams, when moved up a class, to remain in that class for a minimum of four years. One of St. Paul's arguments all along has been that forces student-athletes, especially in contact sports, to face a greater risk of injury.

Moorer had several key questions for each side.

He asked Shreve:

1.) Why wouldn't increasing the multiplier from 1.35 to a higher number be enough to promote balance without the CBF (competitive balance factor)? Shreve answered by saying that solution would have affected more private schools across the board while the CBF was more narrowly tailored.

2.) How did St. Paul's do after being moved up in football from Class 5A to Class 6A? (They won six of eight games in Region 1, finished third and lost in the first round of the playoffs. They had won three of the previous four state titles in Class 5A).

3.) Can a school opt not to participate in a particular sport without penalty? (The answer is yes, though they may have to pay other schools if contracts for games already have been signed).

Moorer did seem to agree that, on the surface, the purpose of the CBF is to discriminate against private schools.

"Call it what you will," he said. "The whole idea is to try to treat private schools differently, right?"



[10 questions about competitive balance](#)

Among the questions Moorer asked Myles were:

1. Shouldn't I take into account the Association has some expertise in this matter and a pure interest in promoting balance? (Myles responded by pointing out that capping the private school's success does nothing to help what he called a "competitive imbalance" in regard to less fortunate schools that struggle to succeed every year.

Interestingly, Moorner noted that most sports leagues of every level have some type of balance from the salary cap in Major League Baseball to the draft in the NFL.

2.) Did the AHSAA go through a similar process of evaluation when it decided to go from six classifications to seven in 2014 as it did in instituting the CBF? (Myles said he didn't believe so, while Savarese shook his head in the affirmative behind him.)

3.) Why shouldn't I give it (the AHSAA) an opportunity to see how this rule works and fine tune it if needed? Myles went back to the health and safety issue. "It's fundamentally unfair," he said.

Moorner also asked Myles why, if St. Paul's thought the rule was so unfair, the school opted to go through with playing Class 6A football after the preliminary injunction was denied. Myles called it a "Cornelian dilemma" and implied St. Paul's parents didn't have a good choice.

Moorner asked Myles if the St. Paul's football team sustained more injuries this past fall by playing in a higher class.

"Anecdotally, there were an increased number of shoulder injuries and broken bones. We don't know the concussion numbers yet," he said. "None of us know where the game of football will be in 10 years, but given the risk shouldn't we do anything we can not to heighten that?"

Moorer asked both parties if they would like him to convert the original motion to a summary judgement – a judgement for one party without a trial. Both said no.