

2001 WL 34784312 (N.D.Okla.) (Trial Pleading)  
United States District Court, N.D. Oklahoma.

Ron and Bobbie GWINN, as parents and next friend of their minor daughter, Jamie Gwinn; Marla Stanford as parent and next friend of her minor daughter, Elaina Stanford; Jeannie and Barry Whitten as parents and next friend of their minor daughter, Dara J. Burge; and on behalf of all others similarly situated, Plaintiffs,

v.

INDEPENDENT SCHOOL DISTRICT #9 OF TULSA COUNTY, Oklahoma a/k/a Union Public Schools,  
Defendant.

Case No. 01CV0460H (M).  
June 27, 2001.

### **Complaint**

The above-captioned Plaintiffs, as parents and next friend of their minor daughters, and on behalf of all others similarly situated ("Plaintiffs"), respectfully file this Complaint against Defendant, Independent School District #9 of Tulsa County, Oklahoma, a/k/a Union Public Schools, and allege as follows:

#### ***STATEMENT OF THE CASE***

1. This action is posed as a class action for declaratory and injunctive relief brought on behalf of female students at Union Public Schools in Tulsa, Oklahoma. Defendant has violated Title IX of the Education Amendment of 1972, 20 U.S.C. § 1681 *et seq.* ("Title IX") and the regulations adopted thereto, by illegally denying the female students at Union Public Schools the equal treatment and benefits that must necessarily accompany an equal opportunity to participate in interscholastic and other school-sponsored athletics.
2. Defendant's denial of equal treatment and benefits constitutes discrimination against the named plaintiffs and all members of the class based solely on their gender. Specifically, Defendant has discriminated against Union Public Schools' female students in the following areas: (1) funding of athletics (2) equipment and supplies; (3) scheduling of practice times; (4) travel and meals; (5) assignment and compensation of coaches; (6) provision of locker rooms and facilities for both practice and competition and (7) provision of training facilities and services.
3. This action seeks to redress the deprivation of the named Plaintiffs' daughters' rights and the rights of the class to receive the equal treatment and benefits which must necessarily accompany an equal opportunity to participate in interscholastic and other school-sponsored athletics. This action seeks a declaratory judgment that Defendant has violated the rights of Union Public Schools' female students under federal law. This action further seeks an injunction requiring Defendant to immediately cease its discriminatory practices and to remedy the effects of its discriminatory practices and to remedy the effects of its discriminatory conduct.
4. Plaintiffs seek injunctive relief which, among other things, requires that Defendant provide the girls' softball teams at Union Public Schools with equal treatment and benefits as Union Public Schools already provides to its boys' athletic teams.

#### ***JURISDICTION AND VENUE***

5. The Plaintiffs' claims arise under 20 U.S.C. §1681 *et seq.* and its interpreting regulations. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4).

6. Jurisdiction for declaratory and other reliefs invoked pursuant to 28 U.S.C. §§ 2201(a) and 2202.

7. Venue is proper pursuant to 28 U.S.C. §1391(b). These claims arose in Tulsa, Oklahoma, which is within the jurisdiction of this Court.

### ***THE PARTIES***

8. Plaintiffs Ron and Bobbie Gwinn are the parents of Jamie Gwinn, a 15-year-old 9th grade student at Union Public Schools. Jamie is a talented athlete who participates in softball. She has endured the unequal treatment and benefits directed by Union Public Schools toward its female athletes. The Gwinns are residents of Broken Arrow, Oklahoma, which is within the jurisdiction of this Court.

9. Plaintiff Marla Stanford is the parent of Elaina Stanford, a 15-year-old 9th grade student at Union Public Schools. Elaina is a talented athlete who participates in softball. She has endured the unequal treatment and benefits directed by Union Public Schools toward its female athletes. The Stanfords are residents of Tulsa, Oklahoma, which is within the jurisdiction of this Court.

10. Plaintiffs Jeannie and Barry Whitten are the parents of Dara J. Burge, a 15-year-old 9th grade student at Union Public Schools. Dara is a talented athlete who participates in softball. She has endured the unequal treatment and benefits directed by Union Public Schools toward its female athletes. The Whittens are residents of Tulsa, Oklahoma, which is within the jurisdiction of this Court.

11. Defendant Independent School District No. 9 of Tulsa County, Oklahoma, a/k/a Union Public Schools, is a public school district authorized by Oklahoma law to operate and control Union Public Schools, where the Plaintiffs' daughters are students. Defendant Union Public Schools is located in Tulsa, Oklahoma, which is within the jurisdiction of this Court. Since the passage of Title IX, Union Public Schools has received and continues to receive federal financial assistance and the benefits therefrom. Therefore, all programs at Union Public Schools, including athletics, are subject to the requirements of Title IX.

### ***CLASS ACTION ALLEGATIONS***

12. The named Plaintiffs bring these claims on behalf of their minor daughters, and, pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, for declaratory and injunctive relief, on behalf of all present and future female students enrolled at Union Public Schools who participate, seek to participate, or are deterred from participating in softball at Union Public Schools as a result of Union Public Schools' discriminatory treatment and benefits policies toward the girls' softball programs.

13. Each of the named Plaintiffs' daughters is a student at Union Public Schools and is an athlete who is subjected to Union Public Schools' unequal treatment and benefits.

14. In bringing this lawsuit, Plaintiffs seek to require Defendant to comply with Title IX by ending its discriminatory policies toward the softball programs in Union Public Schools. Accordingly, Plaintiffs seek injunctive relief requiring Union Public Schools to fund and sponsor softball so that the interests and abilities of softball players at Union Public Schools are accommodated in a non-discriminatory manner. Plaintiffs propose to represent all female students at Union Public Schools who wish to participate in softball at Union Public Schools. In addition, Plaintiffs seek declaratory and injunctive relief to remedy discrimination against current and future softball players at Union Public Schools regarding their receipt of treatment and benefits which are not comparable to those received by the male athletes.

15. The class is so numerous that joinder of all members is impractical. It is unknown how many of the current Union Public Schools female students or how many future Union Public Schools female students would seek to participate in softball.

Moreover, joinder of all members is impractical because members of the class who may suffer future injury are not capable of being identified at this time.

16. There are many questions of law and fact common to the class, including: (a) whether softball players at Union Public Schools are receiving unequal treatment and benefits in comparison to the male students at Union Public Schools, and (b) whether Defendant has been and is discriminating against girls in Union Public Schools' programs in violation of Title IX.

17. The claims of the named Plaintiffs are typical of the claims of the class. The types of gender discrimination which Plaintiffs' daughters have suffered as a result of their gender include receipt of unequal treatment and benefits in Union Public Schools' softball programs. These are typical of the types of gender discrimination which members of the class have suffered, are suffering, and, unless this Court grants relief, will continue to suffer.

18. The named Plaintiffs will fairly and adequately represent and protect the interests of the class. Plaintiffs intend to prosecute this action rigorously in order to secure remedies for the entire class.

19. Defendant has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole.

### ***GENERAL ALLEGATIONS***

#### ***THE REQUIREMENTS OF TITLE IX***

20. Title IX, enacted in 1972, provides in relevant part:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

20 U.S.C. § 1681(a). The Civil Rights Restoration Act of 1987 made Congress' intent plain that "program or activity," as used in Title IX, applies to any program or activity so long as any part of the public institution receives federal financial assistance. 20 U.S.C. § 1687. Thus, Union Public Schools is subject to Title IX even if none of the funding for either its girls' or boys' athletic programs comes specifically from federal sources.

21. In 1975, the Department of Health, Education and Welfare (the predecessor of the United States Department of Education ("DOE")) adopted regulations interpreting Title IX. These regulations are codified at 34 C.F.R. Part 106. (the "Regulations").

22. With regard to athletic programs, § 106.41(a) of 34 C.F.R. provides that interscholastic athletics are included within the "program or activity" requirements of Title IX:

No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient....

23. 34 C.F.R. § 106.41(c) specifies ten (10) factors that are to be considered in the determination of equal athletic opportunity:

1. Whether the selection of sports and levels of competition effectively accommodate the interest and abilities of members of both sexes;
2. The provision of equipment and supplies;
3. Scheduling of games and practice time;

4. Travel and per diem allowance;
5. Opportunity to receive coaching and academic tutoring;
6. Assignment and compensation of coaches and tutors;
7. Provision of locker rooms, practice and competitive facilities;
8. Provision of medical and training facilities and services;
9. Provision of housing and dining facilities and services; and
10. Publicity.

Another factor to be considered is a school's "failure to provide necessary funds for teams for one sex." *Id.*

24. In 1979, the Office of Civil Rights of the Department of Education ("OCR") issued a policy interpretation of Title IX and the Regulations. This policy interpretation is found at 44 Fed. Reg. 71413 (1979) (the "Policy Interpretation").

25. The Policy Interpretation provides that, in order to comply with Title IX and 34 C.F.R. § 106.41(c), schools must provide equal athletic opportunities in three general areas: (1) awarding of scholarships (aimed primarily at problems at the intercollegiate level); (2) participation opportunities (including both the number of opportunities and whether the selection of sports and the level of competition effectively accommodate the interests and abilities of members of both sexes); and (3) treatment and benefits. 44 Fed. Reg. at 71414.

26. Under both the Regulations and the Policy Interpretation, compliance in the area of equal treatment and benefits is assessed based on an overall comparison of the male and female athletic programs, including an analysis of factors (2) through (10) of 34 C.F.R. § 106.41(c) listed above and an analysis of whether the necessary funds are provided for teams of both sexes.

27. The Regulations require that sponsors of interscholastic and other school-sponsored athletics (such as Union Public Schools) take such remedial actions as are necessary to overcome the effects of gender discrimination in violation of Title IX. *See* 34 C.F.R. § 106.3(a). On information and belief, any remedial actions which Union Public Schools has taken in the past have been insufficient to satisfy Union Public Schools' obligations under Title IX.

28. The Regulations further require that sponsors of interscholastic and other school-sponsored athletics comply with the Regulations within three years of their effective date (which was July 21, 1975). Now, more than twenty-five (25) years later, Union Public Schools has still not fully complied with Title IX.

#### ***INJUNCTIVE RELIEF***

29. Plaintiffs are entitled to injunctive relief to end Defendant's unequal, discriminatory, and unlawful treatment of female student athletes. Because of Defendant's acts and omissions, Plaintiffs' daughters continue to be deprived of the rights guaranteed to them by the laws of the United States. Failure to grant the injunctive relief requested will result in irreparable harm to Plaintiffs' daughters in that Plaintiffs' daughters' rights will be violated and that Plaintiffs' daughters will never be able to participate in athletics on an equal basis with their male classmates, if at all. Accordingly, Plaintiffs do not have an adequate remedy at law for this harm. This threatened harm far outweighs any possible harm that granting injunctive relief might cause Defendant. Finally, the injunctive relief sought would in no way disserve the public interest but, on the contrary, would prevent discrimination based on gender and would promote the goal of full equality before the law.

***ATTORNEYS' FEES***

30. Plaintiffs have been required to retain the undersigned attorneys to prosecute this action. Plaintiffs are entitled to recover reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

***CLAIM FOR RELIEF: TITLE IX (Unequal Treatment and Benefits)***

31. Plaintiffs reallege and incorporate herein by this reference paragraphs I through 30 inclusive of this Complaint.

32. Union Public Schools, by its conduct, has violated Title IX by discriminating against female students, including the Plaintiffs' daughters, by failing to provide softball players at Union Public Schools with the same treatment and benefits which are comparable overall to the treatment and benefits provided to male athletes.

33. On information and belief, Plaintiffs allege that Union Public Schools has failed to comply with Title IX by failing to provide softball players with comparable treatment and benefits including, but not limited to, the following areas:

- (1) Union Public Schools funds softball in a manner that discriminates against female athletes.
- (2) Union Public Schools provides male athletes with newer equipment and supplies that are of better quality than those provided to softball players.
- (3) Union Public Schools unfairly discriminates against softball players in the scheduling of their practice times.
- (4) Softball players are discriminated against in regard to meals and travel.
- (5) Softball players have fewer opportunities to receive coaching because they have more players per coach than the male teams.
- (6) Union Public Schools compensates coaches for softball, as compared to boys' teams, in a manner which discriminates against female athletes.
- (7) Union Public Schools supplies superior locker rooms, practice facilities and competition facilities to boys as compared to softball players.
- (8) The provision of training facilities and services is inequitable in that the male athletes have superior access to these facilities and services, while the softball players have limited access to these facilities and services.

34. The gross imbalance in the treatment of female and male athletes at Union Public Schools, as detailed above, demonstrates Union Public Schools' failure to comply with Title IX.

35. Union Public Schools' conduct has persisted despite the mandates of the Regulations, particularly 34 C.F.R §§ 106.3(a) and 106.41(d), and the Policy Interpretation.

36. Union Public Schools' conduct violates 20 U.S.C. § 1681 *et seq.*, as interpreted by 34 C.F.R. §§ 106.31 and 106.41 and the Policy Interpretation thereof.

***RELIEF REQUESTED***

WHEREFORE, on each of their claims, Plaintiffs respectfully pray that this Court:

A. Certify this action as a class action for declaratory and injunctive relief on behalf of all present and future female students at Union Public Schools who participate, seek to participate, or are deterred from participating in softball at Union Public

Schools as a result of Union Public Schools' discriminatory treatment and benefits policies toward the girls' softball programs.

B. Enter an order declaring that Defendant has engaged in a past and continuing pattern and practice of discrimination against female students on the basis of gender in violation of Title IX and the regulations promulgated thereunder.

C. Issue a permanent injunction (a) restraining Defendant and its officers, agents, employees, successors, and any other persons acting in concert with them, from continuing to maintain practices and policies of discrimination against female students on the basis of gender, and (b) requiring Defendant, immediately upon issuance of the injunctive order, to adopt and implement a budget and plan which corrects and remediates Defendant's violation of Title IX. Such a plan should include providing softball players with treatment and benefits comparable to those provided to male athletes.

D. Grant an expedited hearing and ruling on the permanent injunction request in C above.

E. Award Plaintiffs their reasonable attorneys' fees and costs pursuant to U.S.C. §1988.

F. Order such other and further relief as the Court deems appropriate.

G. Designate that the trial take place before the U.S. District Court in Tulsa, Oklahoma.