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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 27 2006

Phil Lombardi, Clerk
U.S. DISTRICT COURT

D.H. and T.H., as parents and next friend)
of their minor daughter, K.H.; and)
B.S. and S.S., as parents and next friend)
their minor daughter, K.S.,)

Plaintiffs,)

vs.)

Case No. **06CV 523 CVE- SAJ**

PONCA CITY INDEPENDENT SCHOOL)
DISTRICT NO. 71, KAY COUNTY)
OKLAHOMA, a/k/a PONCA CITY)
PUBLIC SCHOOLS; DR. DAVID)
PENNINGTON, in his official capacity as)
Superintendent of PONCA CITY PUBLIC)
SCHOOLS; and DOES 1 through 50,)

Defendants.)

COMPLAINT

The above-captioned Plaintiffs, D.H. and T.H., as parents and next friend of their minor daughter, K.H.; and B.S. and S.S., as parents and next friend of their minor daughter, K.S.; ("Plaintiffs"), respectfully file this Complaint against Defendants, Ponca City Independent School District No. 71, Kay County, Oklahoma, a/k/a Ponca City Public Schools; Dr. David Pennington, in his official capacity as Superintendent of Ponca City Public Schools; and Does 1 through 50; ("Defendants"), and allege as follows:

STATEMENT OF THE CASE

1. This action is posed for declaratory and injunctive relief. Defendants have violated (1) Title IX of the Education Amendment of 1972, 20 U.S.C. §1681 *et seq.* ("Title IX") and the regulations adopted thereto, and (2) the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983, by illegally denying Plaintiffs' daughters the

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equal treatment and benefits that must necessarily accompany an equal opportunity to participate in athletics.

2. Defendants' denial of equal treatment and benefits constitutes discrimination against the Plaintiffs' daughters based solely on their gender. Specifically, Defendants have discriminated against Plaintiffs' daughters in the following areas: (1) funding of athletics; (2) equipment and supplies; (3) scheduling of games and practice times; and (4) assignment and compensation of coaches; (5) provision of locker rooms and facilities for both practice and competition; and (6) provision of medical and training facilities and services.

3. This action seeks to redress the deprivation of the Plaintiffs' daughters' rights 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 Defendants have violated the Plaintiffs' daughters' rights under federal law. This action further seeks an injunction requiring Defendants to immediately cease their discriminatory practices and to remedy the effects of their discriminatory practices and to remedy the effects of their discriminatory conduct.

4. Plaintiffs seek injunctive relief which, among other things, requires that Defendants provide Plaintiffs' daughters with treatment and benefits equivalent to that provided to the boys' athletic teams at Ponca City Public Schools.

JURISDICTION AND VENUE

5. The Plaintiffs' first claim arises 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. The Plaintiffs' second claim arises under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and 42 U.S.C. §1983. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4).

7. Jurisdiction for declaratory and other relief is invoked pursuant to 28 U.S.C. §§ 2201(a) and 2202.

8. Venue is proper pursuant to 28 U.S.C. § 1391(b). The portion of the area served by Ponca City Public Schools in which Plaintiffs live is in Osage County Oklahoma, and thus these claims arose in part in Osage County, Oklahoma, which is within the jurisdiction of this Court.

THE PARTIES

9. Plaintiffs D.H. and T.H. are the parents of K.H., a 15-year-old 9th grade student in Ponca City Public Schools. K.H. is a talented athlete who participates in softball. She has endured the unequal treatment and benefits directed by Ponca City Public Schools toward its female athletes. D.H., T.H. AND K.H. are residents of Osage County, Oklahoma, which is within the jurisdiction of this Court.

10. Plaintiffs B.S. and S.S. are the parents of K.S., a 15-year-old 10th grade student in Ponca City Public Schools. K.S. is a talented athlete who participates in softball. She has endured the unequal treatment and benefits directed by Ponca City Public Schools toward its female athletes. B.S., S.S. and K.S. are residents of Osage County, Oklahoma, which is within the jurisdiction of this Court.

11. Defendant Ponca City Independent School District No. 71, Kay County Oklahoma, a/k/a Ponca City Public Schools, is a public school district authorized by Oklahoma law to operate and control Ponca City Senior High School, where the Plaintiffs' daughters are students. Therefore,

Ponca City Public Schools' conduct is considered state action under 42 U.S.C. §1983. Defendant Ponca City Public Schools is located in Ponca City, Oklahoma and serves part of Osage County, Oklahoma, which is within the jurisdiction of this Court. Since the passage of Title IX, Ponca City Public Schools has received and continues to receive federal financial assistance and the benefits therefrom. Therefore, all programs at Ponca City Public Schools, including athletics, are subject to the requirements of Title IX.

12. Defendant, Dr. David Pennington, is the Superintendent of Schools at Ponca City Public Schools. Dr. David Pennington is a resident of the State of Oklahoma and thus is subject to the jurisdiction of this Court.

13. The named Plaintiffs are ignorant of the true names and capacities of Does 1-50, but believe them to be employees of Ponca City Public Schools or members of the Ponca City Public Schools Board of Education. Plaintiffs will seek to amend this Complaint to set forth their true names and capacities when they are ascertained. Plaintiffs are informed and believe, and on that basis allege, that each of these fictitiously named defendants is responsible in some manner for the discriminatory actions alleged herein and that each is a resident of the State of Oklahoma and thus is subject to the jurisdiction of this Court.

GENERAL ALLEGATIONS
THE REQUIREMENTS OF TITLE IX

14. 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, Ponca City 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.

15. 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").

16. 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 ...

17. 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.*

18. 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").

19. 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 71414.¹

20. According to the Policy Interpretation, compliance in the area of equivalent participation opportunities is to be determined by the following three-part test:

¹Although the Policy Interpretation refers to "intercollegiate" sports, it is applicable to all recipients of federal education funds, including high schools, and is, thus, applicable to interscholastic high school sports as well as intercollegiate sports. 34 C.F.R. § 106.11. *See also*, 44 Fed. Reg. at 71413 which provides that the Policy Interpretation's "general principles will often apply to ... interscholastic athletic programs which are also covered by the Regulations."

- (1) whether interscholastic and other school-sponsored athletic participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
 - (2) where the members of one sex have been and are underrepresented among interscholastic and other school-sponsored athletics, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or
 - (3) where the members of one sex are underrepresented among interscholastic and other school-sponsored athletics and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.
- See* 44 Fed. Reg. at 71418.

21. 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.

22. The Regulations require that sponsors of interscholastic and other school-sponsored athletics (such as Ponca City 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 Ponca City Public Schools has taken in the past have been insufficient to satisfy Ponca City Public Schools' obligations under Title IX.

23. 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 thirty-one (31) years later, Ponca City Public Schools has still not fully complied with Title IX.

THE U.S. CONSTITUTION

24. The Fourteenth Amendment to the United States Constitution requires that a state shall not "deny to any person within its jurisdiction the equal protection of the laws."

25. Under 42 U.S.C. § 1983, Defendants may be held liable for their actions in violating Plaintiffs' daughters' rights under the Fourteenth Amendment.

INJUNCTIVE RELIEF

26. Plaintiffs are entitled to injunctive relief to end Defendants' unequal, discriminatory, and unlawful treatment of female student athletes. Because of Defendants' acts and omissions, Plaintiffs' daughters continue to be deprived of the rights guaranteed to them by the United States Constitution and 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 interscholastic and/or other school-sponsored athletics on an equal basis with their male classmates. 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 Defendants. 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

27. 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.

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

28. Plaintiffs reallege and incorporate herein by this reference paragraphs 1 through 27 inclusive of this Complaint.

29. Ponca City Public Schools, by its conduct, has violated Title IX by discriminating against female students, including the Plaintiffs' daughters, by failing to provide them with treatment and benefits which are comparable overall to the treatment and benefits provided to male athletes.

30. On information and belief, Plaintiffs allege that Ponca City Public Schools has failed to comply with Title IX by failing to provide their daughters with comparable treatment and benefits including, but not limited to, the following areas:

- (1) Ponca City Public Schools funds athletics in a manner that discriminates against Plaintiffs' daughters and other female athletes.
- (2) Ponca City Public Schools provides male athletes with equipment and supplies in a manner that discriminates against female athletes. For example, Ponca City Schools requires the softball team to raise money for sufficient equipment and supplies, including bats, pitching machine, balls for the

pitching machine, protective screens, bases for the field, chalk and uniforms.

- (3) Ponca City Public Schools unfairly discriminates against Plaintiffs' daughters and other female athletes in the scheduling of practices and games. For example, softball games are scheduled to begin between 3:30 p.m. and 5:00 p.m. On the other hand, baseball games are scheduled to begin between 6:00 p.m. and 7:00 p.m., allowing the parents of baseball players more opportunity to attend their sons' games and the community more opportunity to support baseball. In addition, softball is scheduled to play fewer games than baseball, at both the Junior Varsity and Varsity levels, even though more games are allowable under OSSAA rules. Also, softball has not been afforded the opportunity for off-season training that other sports, such as baseball, are afforded.
- (4) Ponca City Public Schools unfairly discriminates against Plaintiffs' daughters and other female athletes in the assignment and compensation of coaches. For example, some coaches of girls' athletic teams are paid less as compared to coaches of boys' athletic teams. In addition, Ponca City Public Schools selects its coaches for female athletic teams with less effort, care and attention than for male athletic teams.
- (5) Ponca City Public Schools supplies superior locker rooms, practice facilities and competition facilities to boys as compared to girls. For example, softball players do not have access to a locker room. Baseball players do have such

access adjacent to their field. Softball players change in the public bathroom at the field, several miles from campus. The baseball program is provided with a superior field on campus, while softball is provided with an inferior field off campus. The baseball field has painted cinder block dugouts with storage attached to the home dugout. The softball field has inferior, chain-link dugouts. The benches in the baseball dugouts are superior to the benches in the softball dugouts. The baseball dugout has a painted school mascot logo. The softball dugouts have no such logo or walls on which such a logo could be painted. The baseball field has a cinder block, enclosed press box. The softball field has a raised, open metal platform for a press box. The baseball field has raised grandstand-type bleachers. The softball field has a small set of bleachers without even handrails. The baseball field has a public address system. The softball program recently received an old public address system handed down from some other program that got a new one. The baseball field has multiple batting cages. The softball field has one inferior batting cage as compared to the baseball batting cages. The baseball program has a mobile batting cage for batting practice prior to a game. The softball program has no such batting cage. The lights at the baseball field are superior to the lights at the softball field. The baseball field is better maintained than the softball field. The baseball field has a screened outfield fence with advertisements. The softball field has a chainlink outfield fence.

(6) Ponca City Public Schools unfairly discriminates against girls' athletic teams as compared to boys' athletic teams in the provision of medical and training facilities and services. For example, softball players do not have access to trainers. Baseball players do have such access. In addition, male athletes are provided superior access to appropriate weight training facilities and equipment as compared to female athletes, including softball players.

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

32. Ponca City 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.

33. Ponca City 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.

SECOND CLAIM FOR RELIEF: EQUAL PROTECTION

34. Plaintiffs reallege and incorporate herein by this reference paragraphs 1 through 33 inclusive of this Complaint.

35. Defendants, by their failure to provide Plaintiffs' daughters with equivalent treatment and benefits as the male athletes (as detailed above), have illegally discriminated against Plaintiffs' daughters and other female students on the basis of gender, and have illegally deprived them of their rights to equal protection secured by the Fourteenth Amendment to the United States Constitution.

36. Defendants have illegally failed and refused to remedy the unequal treatment and benefits received by Plaintiffs' daughters and other female athletes as compared to male athletes at

Ponca City Public Schools. Therefore, Defendants' actions constitute an illegal disregard for Plaintiffs' daughters' constitutional rights.

37. Section 1983 of Title 42 of the United States Code provides, in part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

38. When Defendants engaged in the improper actions described above, they were acting under color of law for purposes of the Equal Protection Clause of the United States Constitution and 42 U.S.C. § 1983. Under this section, the Defendants are liable for their violations of the Plaintiffs' daughters' constitutional rights under the Fourteenth Amendment.

RELIEF REQUESTED

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

A. Enter an order declaring that Defendants have engaged in a past and continuing pattern and practice of discrimination against female students, including Plaintiffs' daughters, on the basis of gender in violation of Title IX and the regulations promulgated thereunder (including unequal treatment and benefits), and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

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

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

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

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

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

Dated: 9-26-06

Respectfully submitted,

SCHILLER LAW FIRM



SAMUEL J. SCHILLER

Oklahoma Bar Association #016067

Tennessee Attorney Registration #021810

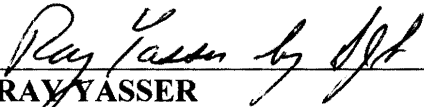
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