

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

FILED
FEB 09 2007
WILLIAM B. GUTHRIE
Clerk, U.S. District Court
By _____
Deputy Clerk

1. K.S. and K.S., as parents and next friend)
of their minor daughter, C.S.)

Plaintiffs,)

vs.)

Case No. CIV 07 - 043 - SPS

1. EUFAULA INDEPENDENT SCHOOL)
DISTRICT NO.1, MCINTOSH COUNTY)
OKLAHOMA, a/k/a EUFAULA PUBLIC)
SCHOOLS;)

2. BILL WILSON, in his official capacity)
as Superintendent of EUFAULA)
PUBLIC SCHOOLS; and)

This action is not related to any
previously filed case in this Court.

3. DOES 1 through 50,)
Defendants.)

COMPLAINT

The above-captioned Plaintiffs, K.S. and K.S., as parents and next friend of their minor daughter, C.S., ("Plaintiffs"), respectfully file this Complaint against Defendants, Eufaula Independent School District No. 1, McIntosh County, Oklahoma, a/k/a Eufaula Public Schools; Bill Wilson, in his official capacity as Superintendent of Eufaula 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' daughter the

Consent form given

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' daughter based solely on her gender. Specifically, Defendants have discriminated against Plaintiffs' daughter in the following areas: (1) funding of athletics; (2) scheduling of games and practice times; (3) provision of locker rooms and facilities for both practice and competition; (4) training facilities and services; and (5) publicity.

3. This action seeks to redress the deprivation of the Plaintiffs' daughter's 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' daughter's 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' daughter with treatment and benefits equivalent to that provided to the boys' athletic teams at Eufaula Public Schools.

JURISDICTION AND VENUE

5. The Plaintiff's 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 Plaintiff's 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). Eufaula Public Schools serves the area in which Plaintiffs live in McIntosh County Oklahoma, and thus Plaintiffs' claims arose in McIntosh County, Oklahoma, which is within the jurisdiction of this Court.

THE PARTIES

9. Plaintiffs K.S. and K.S. are the parents of C.S., a 16-year-old 10th grade student in Eufaula High School. C.S. is a talented athlete who participates in softball and golf. She has endured the unequal treatment and benefits directed by Eufaula Public Schools toward its female athletes. K.S., K.S. and C.S. are residents of McIntosh County, Oklahoma, which is within the jurisdiction of this Court.

10. Defendant Eufaula Independent School District No. 1, McIntosh County Oklahoma, a/k/a Eufaula Public Schools, is a public school district authorized by Oklahoma law to operate and control Eufaula High School, where the Plaintiffs' daughter is a student. Therefore, Eufaula Public Schools' conduct is considered state action under 42 U.S.C. §1983. Defendant Eufaula Public Schools is located in Eufaula, Oklahoma in McIntosh County, Oklahoma, which is within the jurisdiction of this Court. Since the passage of Title IX, Eufaula Public Schools has received and continues to receive federal financial assistance and the benefits therefrom. Therefore, all programs at Eufaula Public Schools, including athletics, are subject to the requirements of Title IX.

11. Defendant, Bill Wilson, is the Superintendent of Schools at Eufaula Public Schools. Bill Wilson is a resident of the State of Oklahoma and thus is subject to the jurisdiction of this Court.

12. The named Plaintiffs are ignorant of the true names and capacities of Does 1-50, but believe them to be employees of Eufaula Public Schools or members of the Eufaula 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

13. 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, Eufaula 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.

14. 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").

15. 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 ...

16. 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.*

17. 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”).

18. 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

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

- (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

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.”

- (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.

20. 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.

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

22. 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, Eufaula Public Schools has still not fully complied with Title IX.

THE U.S. CONSTITUTION

23. 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."

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

INJUNCTIVE RELIEF

25. 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' daughter continues to be deprived of the rights guaranteed to her 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' daughter in that Plaintiffs' daughter's rights will be violated and that Plaintiffs' daughter will never be able to participate in interscholastic and/or other school-sponsored athletics on an equal basis with her 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

26. 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)
(Against Eufaula Public Schools Only)

27. Plaintiffs reallege and incorporate herein by this reference paragraphs 1 through 26 inclusive of this Complaint.

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

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

- (1) Eufaula Public Schools funds athletics in a manner that discriminates against Plaintiffs' daughter and other female athletes.
- (2) Eufaula Public Schools unfairly discriminates against Plaintiffs' daughter and other female athletes in the scheduling of practices and games. For example, the football, basketball and baseball programs have scheduled athletic periods. The softball program does not have a scheduled athletic period. The baseball field is located on school property. As a result, the baseball team has exclusive use of its field. The softball field is located on city property. The softball team must share use of its field with city and church teams. The city has preferential use of the field. Thus, not only does the softball team not have the exclusive use of its field as the baseball teams enjoys, it does not even have preferential use of its field. As a result, some home games have been cancelled and most of the softball team's games are played away, due to these scheduling problems. In addition, the softball program is not allowed to schedule games on the dates that football has a scrimmage or game. If any softball game date or time conflicts with a football game or scrimmage date,

that game has to be rescheduled or cancelled. Because many softball tournaments begin on Friday, the opportunity to play in those events in particular is limited by this policy.

- (3) Eufaula 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 their cars or in the tractor barn at the field. The baseball program is provided with a superior field as compared to softball. The baseball field is located on school property, while the softball field is on city property. The baseball field has painted cinder block dugouts. The softball field has smaller, inferior, chain-link dugouts. The baseball field has an enclosed press box. The softball field has no press box. The baseball field has bleachers. The softball field has no bleachers. The baseball field has a scoreboard. The softball field has no scoreboard. The baseball field is enclosed so that the school can maintain the field and the program can take a gate. The softball field is not enclosed, making it impossible to maintain the field or to take a gate. The baseball field has an outfield fence. The softball field has no outfield fence.
- (4) Eufaula Public Schools unfairly discriminates against the Plaintiffs' daughter and girls' athletic teams as compared to boys' athletic teams in the provision of training facilities and services. For example, male athletes are provided superior access to appropriate weight-training facilities and equipment as

compared to female athletes, including plaintiffs' daughter and the other softball players.

- (5) Eufaula Public Schools provides less publicity for its female athletic teams than for its male athletic teams. For example, a pep rally is held prior to football games. No pep rally is provided for softball.

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

31. Eufaula 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.

32. Eufaula 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
(Against All Defendants)

33. Plaintiffs reallege and incorporate herein by this reference paragraphs 1 through 32 inclusive of this Complaint.

34. Defendants, by their failure to provide Plaintiffs' daughter with equivalent treatment and benefits as the male athletes (as detailed above), have illegally discriminated against Plaintiffs' daughter 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.

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

Eufaula Public Schools. Therefore, Defendants' actions constitute an illegal disregard for Plaintiffs' daughter's constitutional rights.

36. 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 . . .

37. 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' daughter's 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' daughter, 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' daughter 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' daughter 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 Muskogee, Oklahoma.

Dated: 2-8-07

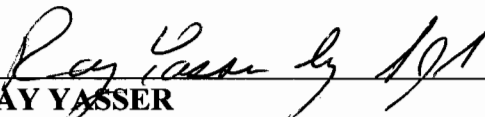
Respectfully submitted,

SCHILLER LAW FIRM



SAMUEL J. SCHILLER

Oklahoma Bar Association #016067
Tennessee Attorney Registration #021810
Suite 200, 4113 Cumby Road
Cookeville, TN 38501
Telephone: (931) 528-5050
Fax: (931) 528-5051
Email: sjs@schillerlawfirm.com



RAY YASSER

Oklahoma Bar Association #009944

3120 East 4th Place

Tulsa, OK 74104

Telephone: (918) 631-2442

Fax: (918) 631-2194

Email: raymond-yasser@utulsa.edu

Attorneys for Plaintiffs

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