

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

**FILED**

FEB 10 2000

ROBERT D. DENNIS, CLERK  
U.S. DIST. COURT, WESTERN DIST. OF OKLA.  
BY \_\_\_\_\_ DEPUTY

SHERRY CRAIG, as parent and next )  
friend of her minor daughter, HAILEY )  
UPTON, *et al.*, )  
Plaintiffs )

vs. )

No. CIV-99-581-C

INDEPENDENT SCHOOL DISTRICT )  
NO. 56 OF CADDO COUNTY, a/k/a )  
BOONE-APACHE PUBLIC )  
SCHOOLS, *et al.*, )  
Defendants. )

**DOCKETED**

ORDER FOR CLASS ACTION CERTIFICATION

Currently before the Court for consideration is the Motion for Class Action Certification filed by plaintiffs. Defendants have filed a response and objection, to which plaintiffs have replied. The matter is now at issue.

Plaintiffs have requested certification in a class action alleging the existence of broad-based sex discrimination in the interscholastic and other school-sponsored athletics at Boone-Apache Public Schools in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. §1681, *et seq.*, and the Equal Protection Clause of the United States Constitution, pursuant to 42 U.S.C. §1983. Plaintiffs argue that all four requirements of Fed. R. Civ. Proc. 23(a) are met, and that certification is proper under Fed. R. Civ. Proc. 23(b)(2). Defendants object to certification of the class on the following grounds: (1) plaintiffs have not met the requirements of Fed. R. Civ. Proc. 23(a); (2) certifying the class would be

unduly burdensome; and, (3) certification is unnecessary because, if the plaintiffs are awarded the requested injunctive relief, than the entire proposed class would automatically benefit.

The issue of class certification is governed by Fed. R. Civ. Proc. 23, which contains five requirements that plaintiffs seeking certification must meet. Rule 23(a) provides that:

One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable [numerosity], (2) there are questions of law or fact common to the class [commonality], (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class [typicality], and (4) the representative parties will fairly and adequately protect the interests of the class [adequacy].  
(bracketed language added)

In addition to satisfying the requirements of Rule 23(a), a putative class must also comply with one of the parts of subsection (b). In this case, plaintiffs seek certification pursuant to Rule 23(b)(2) which requires that:

[T]he party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole .

Plaintiffs have satisfied the first prerequisite, numerosity. Plaintiffs have alleged the class to include all present and future female students enrolled at Boone-Apache Public Schools. Defendants argue that plaintiffs have failed to offer any specific or estimated counting as to the number of plaintiffs in the proposed class. However, the fact that the number of persons in the class cannot be exactly determined does not necessarily preclude

class certification. A reasonable inference of class size may be drawn from the fact that the class includes, and is limited to, all female students enrolled at Boone-Apache Public Schools. Furthermore, the Court is satisfied that joinder would be impracticable, given the number of all present and future female students enrolled at Boone-Apache Public Schools which may seek to participate in interscholastic and other school-sponsored athletics and the nature of this action. Therefore, plaintiffs have satisfied the numerosity requirement of Rule 23(a).

The second prerequisite, commonality, requires that there be questions of law or fact common to the class. Plaintiffs complaint alleges discrimination involves three core issues: (1) whether female students are being deprived of equal opportunities to participate in interscholastic and other school-sponsored athletics; (2) whether female students are receiving unequal treatment and benefits in comparison with male athletes; and, (3) whether female students have been discriminated against in interscholastic and other school-sponsored athletic programs in violation of Title IX and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The alleged existence of common discriminatory practices in the schools interscholastic and other school-sponsored athletics satisfies the commonality requirement.

The third prerequisite to class certification pursuant to Rule 23(a) is typicality. A plaintiff class satisfies this requirement by showing that the claims or defenses of the representative parties are typical of the claims or defenses of the class. Fed. R. Civ. Proc. 23 (a). Therefore, in cases alleging racial, ethnic, or sex discrimination, the typicality

requirement for class certification may be satisfied if the named plaintiffs allege that the defendant discriminated against them in the same general fashion as against the other members of the class. In this case, the policies and practices which have had an alleged discriminatory affect on the named plaintiffs and the class members arise from the same conduct, i.e. defendants instituted interscholastic and other school-sponsored athletic programs. Furthermore, plaintiffs' claims of discrimination are based on the same legal theories as the legal claims available to the class members. Therefore, the claims or defenses of the representative parties are typical of the claims or defenses of the class, and the typicality requirement has been met.

The final prerequisite under Rule 23(a) requires a showing that the representative parties will fairly and adequately protect the interests of the class. Plaintiffs assert that their counsel have experience in civil rights litigation of the same nature asserted in this action, and that they have successfully represented civil rights cases in federal court. Defendants do not challenge, and the Court is independently satisfied, that plaintiffs' counsel and the representative parties are fully capable of fairly and adequately representing the interests of the class. Therefore, plaintiffs have satisfied the adequacy requirement to seeking class certification under Rule 23(a).

Plaintiffs have satisfied the four requirements of Rule 23(a). However, in addition to satisfying the requirements of Rule 23(a), they must also satisfy subsection (b)(2). Defendants maintain that this Court should refuse to certify this class of plaintiffs under Rule 23(b)(2) because the plaintiffs do not need to proceed as a class in order to obtain the

requested injunctive and declaratory relief. However, it is precisely because the relief sought is primarily injunctive that certification is appropriate under Rule 23(b)(2). Further, there is no specific requirement under Rule 23(b)(2) that the Court consider need when determining whether a class should be certified. The test hinges on whether the defendants have acted or refused to act on grounds generally applicable to the proposed class of plaintiffs. Here, the plaintiffs have alleged gender based discrimination in interscholastic and other school-sponsored athletics at Boone-Apache Public Schools. This is an important constitutional question which affects the proposed class as a whole, therefore, the requirements are met under Rule 23(b)(2). In addition, the Court must also note that the danger of mootness is great enough in the instant case to warrant class certification. Accordingly, the Court rejects defendants' necessity argument, and finds that class certification is appropriate.


After careful consideration of plaintiffs' Motion for Class Action Certification and defendants' response and objection, the Court finds that plaintiffs have met all the applicable requirements of Fed. R. Civ. Proc. 23(a) and (b)(2), and that class certification is proper in this case. The Court further finds that the plaintiffs need not provide formal notice to members of the certified class. See Fed. R. Civ. Proc. 23(d)(2). Accordingly, the Court hereby grants the plaintiffs' Motion for Class Action Certification and finds that the class should be defined as suggested by plaintiffs in the Motion for Class Action Certification.

IT IS SO ORDERED that the above-captioned action is certified as a class defined as follows:

“All present and future female students enrolled at Boone-Apache Public Schools who participate, seek to participate, or are deterred from participating in interscholastic and other school-sponsored athletics at Boone-Apache Public Schools.”

IT IS FURTHER ORDERED that plaintiffs need not provide any formal notice to any members of the certified class.

IT IS SO ORDERED this 10 day of February, 2000.

  
ROBIN J. CAUTHRON  
UNITED STATES DISTRICT JUDGE