

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

FILED

JUN 2 2000

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

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

Plaintiffs,

v.

1. INDEPENDENT SCHOOL DISTRICT NO. 56 OF CADDO
COUNTY, a/k/a BOONE-APACHE PUBLIC SCHOOLS;
2. DWIGHT MYERS, individually and in his official capacity as
Superintendent; and Does 1 through 50,

Defendants.

Case No. CIV-99-581-C

DOCKETED

ORDER AND JUDGMENT

On joint application of the parties and for good cause shown, judgment is hereby entered herein in accordance with the terms of the settlement agreement reached by the parties, a copy of which shall be attached hereto.



Robin J. Cauthron, United States District Judge

ENTERED IN JUDGEMENT DOCKET ON JUN 2 2000

John Doe Defendants were named during the course of this litigation and no additional Defendants will be named as parties to this case.

WHEREAS, Plaintiffs have sued School District with respect to their claims that School District has violated Title IX of the Education Amendments of 1972 and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and have contended that School District has denied female students at School District an equal opportunity to participate in interscholastic and other school-sponsored athletics and have denied equal treatment and benefits that should accompany equal participation opportunities;

WHEREAS, the parties to this Agreement agree that the School District is bound by the requirements of Title IX of the Education Amendments of 1972 and the parties have jointly agreed, through their designated representatives, that the interests of the District's students (male and female) are best served by reaching agreement regarding the manner in which the District will comply with Title IX;

WHEREAS, the parties concur that increasing participation opportunities, combined with affording equal treatment and benefits to female students, is essential to Title IX compliance and that this can best be achieved by a cooperative effort joining Title IX's mandatory requirements with the parties' genuine dedication to designing an athletic program that enhances the benefits of athletic involvement for female students;

WHEREAS, in the spirit of this cooperative effort undertaken by the parties, this Agreement is not a statement of the respective legal positions of the parties. Plaintiffs and School District desire to avoid the uncertainty, time, and expenses of maintaining and defending a lawsuit;

WHEREAS, Plaintiffs and School District believe that they can work together to achieve the goal of equal opportunities for female athletes as well as corresponding treatment and benefits; and,

WHEREAS, this Agreement represents a mutual intention to move forward with the further development of School District's sports program for female athletes that complements the program available to male athletes with respect to participation opportunities and with respect to treatment and benefits available to participants.

NOW THEREFORE, intending to be legally bound hereby, the parties agree to settle this matter as set forth below.

1. Boone-Apache agrees to comply with the general mandates of Title IX, its Regulations, and its Interpretive Guidance.¹
2. Boone-Apache shall make reasonable efforts to encourage increased female participation in school-sponsored sports. These efforts shall include: notifying female students of sports offered; insuring that interested female students have information available regarding scheduled try-outs for school sports: publicly announcing Boone-Apache's support for female athletics; educating students regarding School District's Title IX athletic program obligations and the manner in which the procedure governing complaints can be used; and actively promoting sports participation opportunities available to female students.
3. School District shall conduct a written survey of student interest in school sports at least once every other year. The survey shall be designed to maximize the input

¹ Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et. seq.* (1988); OCR Regulations "Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefitting from Federal Financial Assistance." 34 C.F.R. §106 (1994); and Related Policy Guidance.

from students and parents. A survey shall be conducted during the 1999-2000 school year. This is to serve as an aid in determining the interest of females in school-sponsored sports. The survey shall be one of several tools utilized by School District in assessing the extent to which its athletic program is responsive to student interest. Other tools which School District may utilize include the professional opinion of School District's coaching staff, parental and student comment, knowledge of sports activities that are prominent in the surrounding community, and similar tools. School District shall utilize this information to determine whether new sports should be offered to female students or whether additional teams involving existing sports should be added. The District shall consider the results of the survey along with the opportunity for competition which realistically exists, along with the current participation levels of females in interscholastic athletics, in determining whether to add female teams to existing sports, add new female interscholastic sports, or add female intramural sports. When interscholastic competition is available and warranted by the numbers of students participating in a sport, School District shall make reasonable efforts to ensure that the maximum number of competitive opportunities are available to female participants. When the maximum number of available games are not played, the coach shall document any reasons(s) for not completing a full schedule of games. Failure to play a full complement of games without adequate reasons shall be grounds to discipline or terminate a coach.

4. School District agrees to include in the next survey as referenced in Paragraph 3 questions specifically designed to assess the degree of interest in 4th-6th grade softball, 4th-12th grade girls' volleyball and 4th-12th grade girls' soccer. District agrees to add any or all

of these programs in which there is sufficient interest as shown by the survey as complimented by other tools available to it as referenced in Paragraph 3. Such programs may be interscholastic or intramural pursuant to Paragraph 6 below.

5. Boone-Apache shall provide all female athletes with uniforms comparable to those provided to its male athletes. Uniforms for either gender shall not be replaced on a more frequent basis than the uniforms of the sports of the other gender unless the wear and tear on uniforms or other gender neutral factors clearly require such replacement. School District shall provide student athletes with a basic uniform applicable to the sport in which the student participates and which is sponsored by the school. School District shall ensure that all coaches are advised of School District's commitment to providing male and female participants with a sports-specific uniform. School District shall also ensure that coaches are aware that uniforms of teams shall be of similar quality and that uniforms selected and furnished to female athletes shall not be inferior in quality to the uniforms furnished to male athletes. Similarly, the policy of passing uniforms from one level of team to another (i.e. from Varsity to Junior Varsity) shall be the same for boys' and girls' teams. School District shall also inform School District's coaches that coaches shall not instruct students or their parents to purchase uniforms. School District may comply with the duty to provide its coaches with the notice required in this paragraph by distributing a copy of this Agreement to all coaches.

6. The reference in this Agreement to "intramural" opportunities refers to the provision of intraschool competitive sports opportunities based on student interest, where interscholastic competition is not available. If an intramural program is needed, Boone-

Apache shall initiate its intramural plan effective with the 2000-2001 school year. Intramural sports activities may be discontinued as to any sport, at such time as the District provides interscholastic competition, or at such time as student interest, as shown by surveys required herein or by actual participation levels, is insufficient to make intramural programs practicable.

7. In connection with any interscholastic sport offered to females, if a sufficient number of females are "cut" from any existing team, Boone-Apache shall make a good faith effort to establish a new team at the appropriate level of athletic performance, in order to accommodate the participation interest of cut players. Boone-Apache shall make a good faith effort to provide a meaningful competitive schedule or other competitive outlet for females who have shown interest in participation but who have been "cut" from a team. For example, Boone-Apache may provide intramural opportunities, as described in Paragraph 6 above, to meet these obligations. The term "cut" as used in this Agreement means that a female student is removed from a team roster by the team's coach due to perceived lack of skill of the student as compared to other members of the team, or due to insufficient roster space at the particular level of the sport to accommodate the student.

8. Boone-Apache shall review all of its policies related to athletic participation or participation in extracurricular activities which may affect the opportunity of a female student to participate in a sport or to participate in more than one sport. If shown by such review to be lacking, policies shall be adopted to encourage girls' sports participation at all levels. Whenever possible, Boone-Apache shall permit female students an opportunity to participate in one or more athletic activities and also participate in nonathletic activities. For example,

cheerleader or pompom participants, when reasonably possible, should be provided the opportunity to also participate in interscholastic or intramural sports, as opposed to being required to select one activity over the other for the entire academic year.

9. School District typically provides the basic equipment and supplies related to school-sponsored sports. In some instances students will, with the permission of assigned coaches, choose to use their personal equipment or supplies or to donate certain types of equipment and supplies to School District. However, female students (like male students) are not required to provide basic equipment and supplies. School District shall provide equipment and supplies to female athletes that are of like quality to equipment and supplies provided to School District's male athletes. Additionally, School District shall insure that replacement equipment is provided and existing equipment reconditioned on a gender-neutral basis.

10. Plaintiffs agree, with respect to uniforms, equipment, and supplies, to promptly notify the Athletic Director, the Title IX Compliance Officer or the Superintendent in writing of any instance where any of them have been directed or required to furnish uniforms (or any part thereof), equipment, or supplies which Plaintiffs believe are the responsibility of School District and routinely provided to male teams or athletes.

11. School District agrees to maintain accurate accounts for revenues and expenditures for male and female sports, and to consolidate such information in a Sports Revenues and Expenditures Report, which shall be available from School District, upon written request, within twenty days following the closure of School District's fiscal year. The Report shall show for each sport the revenues and expenditures with respect to the sport. An

individual requesting this information who pays School District's customary cost for records will be provided a copy. An individual requesting this information may inspect the records at no cost. The School District will comply with the Oklahoma Open Records Act with respect to inspection and copying of the Report. Revenues and expenditures which must be accounted for include, but are not limited to, general fund revenues, booster club donations, and all other third party donations, which directly or indirectly benefit the athletics program, as well as expenditures for equipment, coaching, travel, supplies and facilities. School District agrees that it has the responsibility to equitably support boys' and girls' sports, regardless of the source of the revenue. The District agrees to support in-service and coaching clinics on a gender-neutral basis.

12. The School District acknowledges the interest of male and female athletes in securing the last hour of the school day for athletics without the burden of having to forego academic offerings in order to participate in last hour athletics. Accordingly, the District agrees to maintain a practice of scheduling athletics for all grade levels in a manner that insures that male and female students are treated equally with respect to the scheduling of opportunities for practice and the availability of practice facilities. School District agrees to schedule practices so as to insure that females have an equal opportunity to enroll and participate in sports training and practice opportunities on a schedule which is as favorable as that available to males. Similarly, participation in all sports shall receive academic credit, if any, on a gender neutral basis.

13. School District acknowledges its obligation to select coaches for all teams (male and female) using the same criteria and with the same motivation to attract qualified

and skilled coaches. In particular the School District shall make special efforts to employ fully qualified softball coaches at all levels. The District recognizes its obligation to assign head coaching responsibilities for more than one sport, when necessary, on a gender neutral basis. School District must utilize a nondiscriminatory system for attracting coaches for all of its teams. The same procedures must be used for publicizing openings, interviewing candidates, and selecting candidates for girls' teams and boys' teams. The District shall ensure that salaries applicable to coaching duties are gender neutral. The District shall make the same reasonable efforts to advertise the position and seek the best qualified individual for the position when selecting a coach for female team sports as the District uses in selecting a coach for male team sports. Boone-Apache shall allow utilization of volunteer coaches in a gender-neutral manner. The ability of a head coach to select assistant coaches shall be administered on a gender-neutral basis. Plaintiffs seek through this provision to emphasize the importance of assigning experienced and qualified coaches in a gender-neutral manner, doing so in a manner which does not treat female and male sports differently because of the gender of the team members.

14. The District acknowledges its obligation to establish a ratio of coaches to students that is comparable for male and female teams. For example, if the boys' baseball team has three coaches, then the girls' softball team shall have three coaches, unless there are significantly fewer female softball players. Accordingly, with the 2000-2001 school year, the District shall ensure that baseball and softball are treated the same with respect to the ratio of coaches to students. Assistant coaches shall be assigned to teams on a gender-neutral basis. In instances involving comparable sports, such as boys' and girls' basketball (as well as others

which have male and female teams), teams with comparable participation numbers shall have a similar level of coaching support.

15. Basketball games shall be scheduled in a manner which provides males and females an equal opportunity to play at the most desirable game times. This may be accomplished, for example, by alternating game times from one game night to the next or by alternating schedules from one year to the next. Softball games may be scheduled even if they conflict with football games.

16. Female athletes shall be treated in the same manner as male athletes with respect to travel, meals, and lodging. This means that females who have opportunities, based on team achievement, to participate in tournaments shall be given the same consideration as males who have that opportunity. When females are presented with opportunities for out-of-state or overnight travel, the arrangements for travel shall be the same as or similar to those available to males.

17. School District has a weight room available at the high school. Plaintiffs and School District agree that male and female students should have equal access to the School District's weight room facilities. In order to facilitate meaningful use of the facilities, School District shall insure that coaches of female teams receive special instruction regarding the value of strength and conditioning, proper weight lifting techniques for female athletes, and the use of the weight room, and shall insure that all female athletes have scheduled usage of the weight facilities equivalent to that of the boys. The weight room shall be equipped with weights appropriate for female athletes and equipment appropriate for strength and conditioning for female athletes. The weight room shall, in addition to other weights, include

dumb bell weights in the following ranges: two, three, five, eight, ten, and fifteen pounds.

School District shall insure that female athletes are made aware of the benefits of strength and conditioning activities.

18. Boone-Apache shall provide comparable athletic facilities for male and female athletes. Facilities must be available to student athletes on a gender-neutral basis. Boone-Apache shall insure that preferential use of facilities, except in the case of dressing, locker, or restroom facilities, shall not be scheduled based on gender. Accordingly, Boone-Apache shall insure that girls' and boys' teams have equitable access to large and small school gyms, and equivalent dressing and locker rooms. The School District shall construct locker room facilities for girls at a site convenient to the weight room facilities. The facilities shall be reviewed to insure that the locker rooms available to male and females are comparable with respect to amenities including sinks, showers, shower curtains, hot water, and similar features. School District agrees to furnish the females' locker rooms in the high-school gym with lockers, floor coverings, grease boards, and electrical deodorizers equivalent to those in the males' locker room.

19. School District agrees to upgrade the softball field to achieve equivalence with the baseball field. Improvements shall include permanent restrooms, a concession stand equivalent to the one at the baseball field, and a batting cage.

20. School District agrees to publish to students at least once during the remainder of the 1999-2000 school year and at the beginning of the 2000-2001 school year its commitment to equal opportunity for male and female student athletes. Annually the School District shall notify parents that the School District has a grievance procedure which can be

used for reporting possible gender inequity with respect to School District's sport offerings, and the identity, address, and telephone number of School District's Title IX Compliance Officer. A summary of this Agreement shall be published and distributed by the Boone-Apache School District to all parents of students at School District.

21. Boone-Apache shall promote and publicize female sports and shall encourage individual female team coaches to utilize available opportunities to publicize female sports involvement and accomplishments. This means that Boone-Apache shall give equivalent attention to the female teams in connection with school announcements, advertisements, assemblies, signage, school publications (such as the paper, yearbook, letters to parents), and other opportunities to publicize female involvement in sports. The School District is not required to hold pep rallies. However, if the School District chooses to have pep rallies, it shall have one in the fall, one in the winter, and one in the spring. At each of these pep rallies, every student participating in athletics during that time period shall be recognized, regardless of gender. Thus, if plaques or signage are used to highlight accomplishments of a boys team, girls teams shall receive similar treatment. To the extent that Boone-Apache or any of its employees contacts the media regarding the results of school-sponsored athletic competition, School District and its employees shall equitably provide such assistance and information for the sports of both genders. Similarly, in instances where media guides and other information are prepared for the media or other organizations, School District shall provide such items for the teams of both genders in a similar format and comparable size. When public address systems are used to announce upcoming athletic events, School District shall ensure that comparable announcements are made regarding the upcoming events of both

genders. School District is not required to print and/or pay for the publication of competitive schedules. To the extent that schedules are printed and/or paid for by School District, booster clubs, or others, they shall be made available on a gender-neutral basis. One option the School District may exercise is to have an All Sports program printed.

22. When Boone-Apache elects to provide training and/or medical services, it shall ensure that such services are provided equitably to the teams and athletes of each gender.

23. Boone-Apache relies on the contributions of time, money, equipment and supplies that come from individual donors, organizations such as booster clubs, businesses, parents and others. The School District desires to retain the enormous benefits provided by private as well as public donors. However, School District shall not permit an infusion of non-school monetary or non-monetary contributions to result in programs which are unequal. Boone-Apache acknowledges that it has a responsibility to monitor contributions and the effect contributions have on school-sponsored sports. The School District recognizes that it has the responsibility to ensure that boys and girls sports are supported equitably.

**RESPONSIBILITY OF SCHOOL DISTRICT'S TITLE IX COMPLIANCE
OFFICER WITH RESPECT TO ATHLETIC PROGRAMS**

24. Boone-Apache Public Schools has designated an employee of School District as its Title IX Compliance Officer. The Compliance Officer or, at the option of School District, a special compliance director with responsibility for athletic programs, shall be responsible for ensuring School District's compliance with Title IX, as well as the general principles embodied in the Regulations, and the Policy Interpretations applicable to school-sponsored sports. The Compliance Officer shall also have other specific duties.

25. These duties shall include the periodic survey of student interest in sports participation. Student interest surveys, as designed by School District, shall be conducted as specified in this Agreement. The summary of results, by school, shall be made available to any person for inspection within five (5) business days after a written request for the same, as long as the request is received after the Summary has been prepared. The Summary shall be made available to any person who pays School District its normal and customary copy expense. The survey shall involve sports which are offered or which reasonably could be offered by School District if sufficient participation interest existed.

26. The Compliance Officer shall retain for inspection the Sports Revenues and Expenditures Report, which District shall compile pursuant to Paragraph 11.

27. The Compliance Officer shall oversee annual educational seminars for Boone-Apache high school teachers and administrators which explain the mandates of Title IX with respect to athletic programs. The seminar(s) for employees shall occur during the first semester of the 2000-2001 and 2001-2002 school years. Additionally, the Compliance Officer shall be responsible for insuring that interested parents or guardians are provided an opportunity to understand the application of Title IX to School District's athletics program.

28. The Compliance Officer shall educate students regarding Title IX and its relationship to student participation in sports, through the school's physical education classes. This instruction shall be provided in 2000-2001 and 2001-20002. After 2001-20002, it is sufficient to include information related to Title IX in student handbooks.

29. The Compliance Officer shall insure distribution of School District's grievance procedure related to claims of discrimination or a summary of the procedure to District

employees, parents and students in a manner designed to achieve widespread notice. A summary of this Settlement Agreement shall be published in a regular publication of the Boone-Apache School District at least once in the 2000-20001 school year.

30. Plaintiffs agree that they shall actively work, when possible, in connection with the sports with which their daughters are affiliated and shall organize and work to obtain funds which shall be utilized for the benefits of girls' sports or in connection with School District's commitment to establishing new sports participation opportunities for female athletes.

31. This Settlement Agreement is approved by and entered as an order and judgment of the Court and shall be subject to the full enforcement powers of the Court. The parties agree not to object to the Court's authority to enforce the terms of this Settlement Agreement. In the event a party believes that there has been a default of an obligation created by this Agreement and that the default is the result of gender discrimination, prohibited by Title IX, such party shall first take its complaint through School District's Grievance Procedure applicable to claims of discrimination. If a satisfactory resolution is not rendered through the Grievance Procedure, the parties agree that nothing in this Settlement Agreement is meant to prevent the aggrieved party from pursuing the matter through the courts.

32. In connection with this Agreement, School District agrees to pay the reasonable attorney's fees and costs incurred in prosecuting this action and negotiating this Agreement to Ray Yasser and Samuel J. Schiller, the amount to be as determined by the Court or by agreement of the parties, within thirty (30) days of such determination or agreement. No

other fees, costs or monetary damages of any kind or type will be due pursuant to the terms of this Agreement.

33. The Plaintiffs agree to release and by this instrument release School District and individual Defendant Dwight Myers, their attorneys, insurers, assigns and successors, of any and all claims, liabilities, or actions which Plaintiffs presently have or have had against School District, and Mr. Myers, existing as of the date of execution of this Agreement.

34. The parties shall enter a Stipulation for Dismissal with Prejudice which shall be filed in this matter within five calendar days of Plaintiffs' counsels' receipt of all monies due in accordance with this Agreement and any subsequent agreement or Order of the court applicable to fees and costs. The sum to be paid represents all sums due for any and all claims made in connection with this lawsuit.

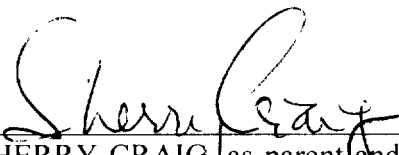
35. This Agreement shall be binding on the successors, assigns, and transferees of School District and Plaintiffs.


36. This Agreement contains the complete description of the terms between the parties. All material representations, understandings, and promises for the parties are contained in this Agreement.

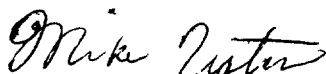
37. Any modifications to this Agreement must be set forth in writing and signed by all parties.


38. The parties acknowledge that each has been represented by legal counsel, of their choice, at all times material to this action and that they have had a full opportunity to consult with legal counsel throughout the legal proceedings occasioned by Plaintiffs' lawsuit.


ROBYN CAUTHRON
UNITED STATES DISTRICT JUDGE

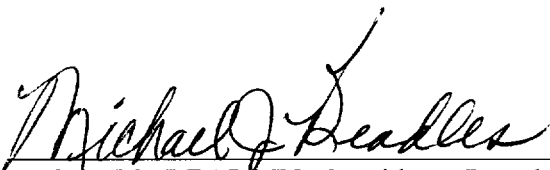

SHERRY CRAIG, as parent and next friend
of her minor daughter, HAILLY UPTON


PATRICIA JANIS, as parent and next
friend of her minor daughter, KAYSE
JANIS and BRITTNEY JANIS

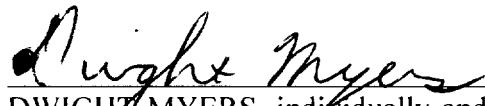

MIKE UPTON as parent of his minor daughter
TIFFANY UPTON


CAROL UPTON, as parent of her minor
TIFFANY UPTON


MAGDALINE CARLA CODOPONY, as parent
and next friend of her minor daughters, KARA
LYNN CODOPONY and MEGAN CODOPONY



MICHAEL BEADLES, President, Board of Education, Independent School District No. 56 of Caddo County, a/k/a Boone-Apache Public Schools



DWIGHT MYERS, individually and in his official capacity as Superintendent of Independent School District No. 56 of Caddo County, a/k/a Boone-Apache Public Schools