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

TOM AND BRENDA DYER, as parents and)
next friend of their minor daughter, KANDIS)
DYER; TOM AND BRENDA DYER, as)
parents and next friend of their minor daughter,)
TAMARA DYER; ROGER AND VICKI)
WHEELER, as parents and next friend of their)
minor daughter, JILLIAN WHEELER;)
ROGER AND VICKI WHEELER, as parents)
and next friend of their minor daughter,)
RACHAEL WHEELER; GREG AND)
SHELLY BILLEN, as parents and next)
friend of their minor daughter, HEATHER)
BILLEN;)

Plaintiffs,)

v.)

INDEPENDENT SCHOOL DISTRICT)
NO. 38 OF OSAGE COUNTY, a/k/a)
HOMINY PUBLIC SCHOOLS;)
GERALD CHRISTY, individually and in)
his official capacity as Superintendent; and)
Does 1 through 50)

FILED

NOV 30 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 99-CV-0816 BU(E) ✓
CLASS ACTION

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between the Plaintiffs, Tom and Brenda Dyer, as parents and next friend of their minor daughters, Kandis Dyer and Tamara Dyer; Roger and Vicki Wheeler, as parents and next friend of their minor daughters, Jillian Wheeler and Rachael Wheeler; and Greg and Shelly Billen, as parents and next friend of their minor daughter, Heather Billen, and the Defendant, Independent School District No. 38 of Osage County, Oklahoma, also known as Hominy Public Schools (hereafter School District). Plaintiffs are also representatives of a class certified as "All present and future female students enrolled at Hominy Public Schools who participate, seek to participate, or are deterred from participating in interscholastic and other school-sponsored athletics at Hominy Public Schools."

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WHEREAS, Plaintiffs have sued the School District with respect to their claims that the 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 the School District has denied female students 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, Plaintiffs and the School District desire to avoid the uncertainty, time, and expense of maintaining and defending a lawsuit;

WHEREAS, this Agreement represents the Plaintiffs' and School District's mutual desire for the District to achieve full compliance with Title IX and its implementing regulations and the School District, by this Agreement, agrees to comply with the general mandates of Title IX and its regulations.¹

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

1. The School District agrees to take affirmative steps to increase the participation of female students in the District's athletic program. This shall include the addition of 7th and 8th grade fast pitch softball for the 2000-2001 school year. Additionally, the District shall, during the fall of the 2000-2001 school year, conduct a sports interest survey of girls, grades 6-11, for the specific purpose of determining the interest of female students in the addition of and participation in volleyball, soccer, and slow pitch softball. Based on the results of the student interest survey and in combination with other factors related to the assessment of interest, the District agrees to fully and effectively accommodate the interest of girls. The District agrees to engage in the active promotion of sports participation opportunities available to girls and active promotion of the applicable dates for try-outs for various sports.

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).

2. In addition to the 2000-2001 sports interest survey, as described above, the District shall conduct a 2001-2002 student sports interest survey of female students in grades 6 - 11 for the purpose of determining the level of interest in sports not offered to female students as of 2001-2002. The results of the sports interest survey shall be used by the District to determine whether there is sufficient interest in selected sports to add a sport at the middle school, high school or both levels for the 2002-2003 school year. The survey shall be one of several tools utilized by the District in assessing the extent to which its athletic program is responsive to student interest. Other tools which the District may utilize include the professional opinion of the District's coaching staff, parental and student comment, information regarding sports activities that are prominent in the surrounding community, the extent to which the addition of a new sport would substantially impair participation in an existing sport, and similar factors. The 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.

3. The District's addition of new sports shall include the assignment of coaching salaries in a gender neutral fashion. A coaching office or offices shall be established which shall ensure access to offices without the necessity of a student entering male or female dressing rooms. Until such time as other coaching offices shall be constructed or designated, the District shall convert the existing boys' varsity basketball locker room to a coaching office. Limited renovation of the area shall ensure male and female access to the coaching offices without the necessity of entering a male or female locker room.

4. The School District agrees to establish a system for accounting for revenues and expenditures for male and female sports. A revenue and expenditure report shall be available from the School District, upon written request, within twenty working days following the closure of the District's fiscal year (June 30) which shall show for each sport the amount expended and any revenues received with respect to the sport. An individual requesting copies of this information shall pay the District's customary charge for public records. An individual may also choose to inspect records and may do so in accordance with the provisions of the *Oklahoma Open Records Act* which includes the right to inspect public records. Sources of revenues and expenditures shall include but not be limited to general fund revenues, booster club donations, and all other third party donations or payments. The District agrees that it has the responsibility to equitably support boys' and girls' sports.

5. The District shall publish to students at the beginning of the 2000-2001 school year its commitment to equal opportunity for male and female student athletes to include participation opportunities and equal treatment and benefits, notice of the District's grievance procedure which can be used for reporting possible gender inequity with respect

to the District's sports offerings, and the identity, address, and telephone number of the District's Title IX Compliance Officer.

6. The School District, for the 2000-2001 school year, shall institute specific education related to gender equity in school sponsored sports, which education shall be delivered to the District's administrative and athletic staff and shall also include other staff members or volunteers who are associated with the District's program of school sponsored sports. The District shall furnish information concerning the date, time and location of training, and shall also furnish a program agenda sufficient for any interested party to identify the matters covered.

7. The School District agrees to publish to students, as a part of the Student Handbook, its commitment to equal opportunity for male and female student athletes. This information shall be published annually, whether in the Student Handbook or an alternate publication designed to reach students and their parents. The District shall notify parents that it has a grievance procedure which can be used for reporting possible gender inequity with respect to the School District's sports offerings. The District shall also list the District's Title IX Compliance Officer, his or her address, telephone number, and availability of a copy of the grievance procedure. The 2001-2002 publication to students shall include a statement that a summary of this Settlement Agreement is available from the Compliance Officer upon parental or student request.

8. The School District has a softball and baseball field for use by athletes involved in these sports. The District has purchased and installed new bleachers adjacent to the softball field. By July 1, 2001, the District agrees to make the following improvements to the softball field: electrical wiring to the dug-outs; addition of pipe across the top of the batting cage to protect against sinking caused by the weight of the net; construction of a press box with primary construction material – tin; concession area, comparable to baseball's existing area, which shall be either a portable concession facility or a permanent concession area located at the softball field; purchase and installation of a scoreboard; and dirt to be added to center field. Softball, like baseball, may utilize fencing around the softball field for advertising sales and the revenue from those sales shall be used to purchase lights for the softball field. Lights for the softball and baseball field shall be installed, if at all, at the same time.

9. The District shall encourage parents to support interscholastic sports through fundraisers and in other ways designed to enhance opportunities to secure financial and parental support for school sponsored sports. Plaintiffs for themselves and the class they represent agree that parental support of school sponsored sports is a critical component of

a well-rounded and successful sports program. To this end Plaintiffs agree to support the District's school sponsored sports' program as boys' parents are requested and encouraged to participate in the support of school sports. The reference to parental contributions, in this Section, refers to Plaintiffs and class efforts made in support of school sports and is not meant as a reference to a specific level of monetary contributions.

10. The School District shall select coaches for all teams (male and female) using the same criteria and with the same motivation to attract qualified and skilled coaches. Plaintiffs acknowledge that not all sports or teams or schools are able to attract equally qualified coaches. The School District's obligation, in the face of applicants of varying backgrounds and interests, is to utilize a gender neutral system for attracting coaches for all of its teams. Similarly, if the District chooses to use lay or volunteer coaches it must afford the opportunity for extra coaching assistance without regard to team gender. The coach-player ratio shall be consistent with the regulations of Title IX. Coaches, with respect to the scheduling of games, shall schedule a full slate of competition opportunities for teams and shall notify the District's Athletic Director in writing regarding any circumstances resulting in a reduced competition schedule. The Plaintiffs seek, through this provision, to emphasize the importance of assigning experienced and qualified coaches in a gender-neutral manner, and doing so in a manner which does not treat female and male sports differently because of the gender of the team members.

11. District shall schedule all games and practices on a gender neutral basis. In the instance of middle school, the District shall avoid a schedule that routinely sets middle school girls' basketball at the earliest time slot, which may adversely impact the ability of parents and others to attend games.

12. Coaches for male and female teams shall coordinate use of facilities which permits female teams an equivalent opportunity to utilize the District's available gyms. Gyms shall be equally available to male and female teams within the District's middle school and high school sports programs. The District shall provide for equal access to gyms for varsity, junior varsity or middle school teams by designation of a schedule that insures that one team's use of a more or less desirable facility does not predominate over another team's use when comparing girls' varsity teams with boys' varsity teams or girls' and boys' middle school teams.

13. The District has typically scheduled male sports during the last hour of the school day. The parties agree that the District is not required to schedule some or all sports during any particular hour of the school day including the last hour. However, the District's schedule must provide for a similar advantage or disadvantage based on its schedule for

male and female athletes. Accordingly, the District agrees to schedule students in a manner that provides female athletes with athletics during the last hour to the same extent that male athletes are provided that schedule. Students, male and female, shall be provided equivalent scheduling of athletics while taking into consideration the desire to maximize a student's ability to participate in more than one sport.

14. The School District shall provide equipment, supplies, and uniforms for students and coaches who participate in school sponsored sports in a gender neutral manner.

15. Plaintiffs agree, with respect to uniforms, equipment, and supplies, to promptly notify the Athletic Director or the Superintendent in writing of any instance where they have formed a belief that equipment, supplies, or uniforms fall short of Title IX requirements. This shall include equipment, supplies, or uniforms which Plaintiffs believe are the responsibility of the school to provide to female athletes and which Plaintiffs have concluded are routinely provided to male teams or athletes. Plaintiffs' notification to the Athletic Director or the Superintendent shall include the facts underlying their belief that female students have been treated unfairly with respect to these areas and that any disparity in treatment is based on gender. Plaintiffs may accomplish this by utilizing the District's Grievance Procedure applicable to claims of discrimination, but are not required to do so.

16. The School District has a weight room which shall be available to students without regard to gender. The weight room is located adjacent to the football locker room. In order to facilitate meaningful use of the weight facilities, the District shall insure that coaches of female teams receive special instruction regarding the value of strength and conditioning and with respect to the use of the weight room to enhance athletic skills and training. Supervision of the weight room shall be performed in a manner conducive to equal access to weight facilities and equipment for males and females. The parties mutually agree that the District may, without violation of this agreement, establish separate weight rooms for male and female athletes or students. However, separate weight rooms must afford both genders a similar opportunity to benefit from the strength and conditioning benefits available as a result of an established and available weight room. Additionally, the School District has purchased dumbbell weights ranging from 1-21 pounds.

17. The District and Plaintiffs acknowledge the interest that athletes participating in school sponsored sports may have in connection with scholarship opportunities connected with sports. The District's coaches shall be responsive to student or parent requests to respond to third party requests for information regarding a student and her involvement in school sports. Students/parents should alert coaches to pending requests for information and

should cooperate with the coaches in the provision of information relevant to outside inquiries.

18. The School District acknowledges the need to equalize the locker/dressing room space available to male and female athletes utilizing the District's available facilities. The parties acknowledge that the School District lacks the funds necessary to construct new facilities for female athletes. Likewise, the parties acknowledge the long-term goal of constructing new facilities that will provide sufficient locker and dressing room space for all of the District's athletes. However, at the time of this Settlement Agreement the District faces the obligation to provide female athletes locker/dressing areas comparable to those available to the District's male athletes. Accordingly, until such time as the District constructs new facilities sufficient to alleviate the existing differences in the facilities available to female athletes as compared with male athletes, the District shall split the use of the female and male locker/dressing rooms located in the High School as follows: the girls shall utilize the space currently designated as the girls' locker dressing area until the conclusion of boys' junior high football. At that time the boys and girls shall exchange locker/dressing areas for the remainder of the school year. The same schedule shall be used in subsequent school years until such time as the School District is able to provide girls and boys with locker/dressing room areas that are substantially equal. Likewise, the football locker/dressing area located adjacent to the District's weight room shall be retained as a football locker/dressing area for the first semester of each school year. The same facility shall be designated as a girls' locker/dressing area for the second semester of each school year – until such time as the District is able to provide female athletes with locker/dressing areas for boys and girls that are substantially equal, taking into consideration the nature of the sports and relative participation levels.

19. The School District and the Plaintiffs agree that the District is in need of a new school gymnasium and that any gymnasium construction would also require the construction of locker/dressing areas for student athletes. New construction of this type can only be accomplished with the passage of a bond issue and the District is, at the time of approval and signing of this Agreement, at its full bonding capacity. Accordingly, the School District at the first bond election opportunity, which is likely at least four years away, will propose the construction of a gymnasium which shall include locker/dressing room facilities and weight facilities which shall provide female athletes with the same benefits with respect to locker/dressing room areas as male athletes.

20. At the time of construction of a new gymnasium facility the District shall have the option of retaining the weight room adjacent to the football locker/dressing room for the use of male athletes and constructing new weight facilities for female athletes as a part of

the new construction or may discontinue the use of the weight room located as a part of the football building annex in favor of a single weight room that serves all athletes.

21. It is understood and acknowledged by the parties hereto that the School District 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 any infusion of non-school monetary or non-monetary contributions to result in programs which are unequal. School District acknowledges that it has a responsibility to monitor contributions and the effect contributions have on school-sponsored sports. School District recognizes that it has the responsibility to ensure that boys' and girls' sports are supported equitably, and that all sports are funded on a gender-neutral basis.

22. 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 the 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 take its complaint through the District's Grievance Procedure applicable to claims of discrimination before returning to the Court for enforcement of this Settlement Agreement.

23. Plaintiffs and Defendant agree that the issue of attorney fees and costs connected with the instant action shall be submitted to the Court pursuant to a briefing schedule which shall be designated by the Court unless the parties, by separate agreement, resolve the issue of payment of attorney fees and costs to Plaintiffs for the benefit of their counsel.

24. The Plaintiffs agree to release and by this instrument release the School District, its attorneys, assigns and successors, of any and all claims, liabilities, or actions which Plaintiffs presently have or have had against the School District existing as of the date of execution of this Agreement except for the claim for attorney fees and costs related to this action.

25. The parties shall enter a Stipulation for Dismissal With Prejudice which shall be filed in this matter within five calendar days of the final disposition of all issues including the issue of attorney fees.

26. This Agreement shall be binding on the successors, assigns, and transferees of the School District and the Plaintiffs as well as the class which the named Plaintiffs represent.

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

28. Any modifications to this Agreement must be set forth in writing and signed by the designated representatives of the School District and the named representatives of the Plaintiffs' class.

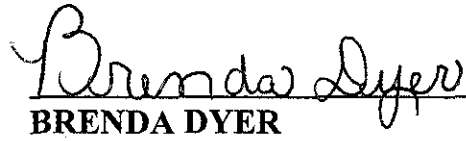
29. The parties acknowledge that each has been represented by legal counsel, of their choice, at all times material to this action and that they have had a full opportunity to consult with legal counsel throughout the legal proceedings occasioned by Plaintiffs' lawsuit.

Signed this 29th day of November, 2000.



HONORABLE MICHAEL BURRAGE
JUDGE OF THE DISTRICT COURT


TOM DYER


BRENDA DYER

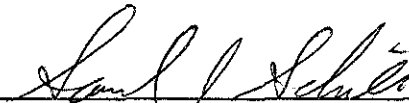

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VICKI WHEELER


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HOMINY PUBLIC SCHOOLS**

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~~Jerry Ballard~~, President of the
Board of Education **RHONDA C WALLACE**

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