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GENDER EQUITY IN INTERSCHOLASTIC SPORTS: A CASE STUDY

Ray Yasser†
Samuel J. Schiller††

In a previous article,¹ we discussed the progress of this case up until the time of the filing of the complaint.² The earlier article included a copy of the Complaint with annotations. This article is a sequel, beginning with a brief overview of the complaint and tracking the case procedurally through class action certification. This article focuses on the historic Consent Decree which culminated the case. The actual Consent Decree is included, annotated with our "behind the scenes" comments and observations in brackets. As with the first article, the purpose of this article is to provide practical assistance for those seeking to enforce Title IX mandates at the interscholastic level.

The Complaint named as defendants, Owasso Public Schools, Dale Johnson (Superintendent), Rick Dossett (Principal), John Scott (Athletic Director) and Does 1 through 50. It was filed as a class action for declaratory and injunctive relief brought on behalf of female students at Owasso Public Schools. The named plaintiffs also sought compensatory damages in their individual capacities. The Complaint alleged violations of Title IX³ of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688 ("Title IX") and the regulations adopted thereto, along with violations of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.⁴

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1. See Ray Yasser and Samuel J. Schiller, *Gender Equity in Athletics: The New Battleground of Interscholastic Sports*, 15 CARDOZO ARTS & ENT. L.J. 601 (1997).

2. The complaint in this case was modeled after the complaint in *Thomsen v. Fremont Public School District #1*, No. 4CV95-3124 (Dist. Of Neb.) (complaint filed April 10, 1995). It was provided to us by Deborah Brake and Judith Appelbaum from the National Women's Law Center in Washington, D.C. They served as co-counsel with Alan G. Stoler of Omaha, Nebraska and Kristen M. Galles and William C. Crenshaw of Powell, Goldstein, Frazer & Murphy in Washington, D.C.

3. 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.

4. It was alleged that the school district was in violation of Title IX because it intentionally denied the female students at Owasso (1) an equal opportunity to participate in interscholastic and other school-sponsored

Class action certification was based on Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure which will be discussed more fully later in this article.

In their answer,⁵ the Defendants denied each of the Plaintiffs' allegations, claiming that the school district continuously reviewed its athletic program and tried to provide additional sports opportunities when warranted. Specifically, the Defendants claimed that the district had attempted to establish a volleyball program for female students even before the lawsuit was filed.

We then filed a Motion for Class Action Certification along with a Brief in Support which argued that this case represented a textbook example of the type of lawsuit for which class certification is appropriate.⁶ Plaintiffs sought both declaratory and injunctive relief to end the discriminatory practices of Owasso Public Schools' athletic programs,⁷ and sought to represent all present and future female students enrolled at Owasso Public schools who, "participate, seek to participate, or are deterred from participating in interscholastic and/or other school sponsored athletics at Owasso [Public Schools]."⁸

Rule 23 of the Federal Rules of Civil Procedure governs class certification. The rule "was intended to promote the efficient resolution of claims in cases involving multiple parties with similar claims, to eliminate repetitious litigation, and to avoid inconsistent judgments."⁹ In order for a class to be certified, the proponent must satisfy all four requirements of Rule 23(a) and one of the three requirements of Rule 23(b).¹⁰ Our Brief in Support of Class Certification asserted that the plaintiffs satisfied all of these requirements.¹¹

The first requirement, numerosity, is satisfied if there are enough members in the class so that the joinder of all class members would be impracticable in light of the particular circumstances of the case.¹² Accordingly, we needed to show that the size of the plaintiffs' class was clearly large enough to satisfy the numerosity requirement. The most readily identifiable potential class members were the girls currently participating in interscholastic athletics at the school.

athletics and (2) the equal treatment and benefits that must necessarily accompany an equal opportunity to participate.

5. There were actually four separate answers (one for each named defendant) filed in the case which were essentially the same.

6. The article mentioned in footnote 1 contains the complaint which sets forth the Plaintiffs' discrimination allegations.

7. Although the named Plaintiffs brought claims for monetary damages in their individual capacities, they did not seek damages for the class as a whole.

8. Plaintiff's Complaint at 9, *Randolph v. Owasso Independent School District No. 1-001* (No. 96-CV-0105K).

9. *Gottlieb v. Wiles*, 11 F.3d 1004, 1007 (10th Cir. 1993).

10. See JACK H. FRIEDENTHAL, ET AL., *CIVIL PROCEDURE* 721 (2nd ed., 1993); C. WRIGHT, *LAW OF FEDERAL COURTS* 507 (5th ed., 1994); *Paxton v. Union Nat'l Bank*, 688 F.2d 552, 563 (8th Cir. 1982); *cert. denied*, 460 U.S. 1083 (1983); *Cook v. Rockwell Intern. Corp.*, 151 F.R.D. 378, 381 (D. Colo. 1993).

11. 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, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

12. See FRIEDENTHAL ET AL., *supra* note 10, at 727; *United States Fidelity & Guaranty Co. v. Lord*, 585 F.2d 860, 870 (8th Cir. 1978).

Those numbers alone would have satisfied the numerosity requirement.¹³ The identity of future female students and current and future female students who may wish to participate in sports was impossible to determine. Nevertheless, the existence of a large number of potential plaintiffs constituted a reasonable basis for concluding that there was a sufficient number to make joinder impracticable.

In addition, the broad injunctive relief sought would benefit all members of the class and not just the named plaintiffs. Furthermore, it would have been highly inconvenient and impracticable for each individual victim of gender discrimination to bring her own lawsuit against the school. Therefore, we felt numerosity was easily satisfied.

We also had to show that questions of law or fact were common to the class. The central issues in the case were (1) whether female students at Owasso Public Schools were being deprived of equal opportunities to participate in interscholastic and other school-sponsored athletics; (2) whether female students at Owasso Public Schools were receiving unequal treatment and benefits in comparison to the male students at the school; and (3) whether the Defendants discriminated against female students in Owasso Public Schools' interscholastic and other school-sponsored athletics programs in violation of Title IX and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Even though the discriminatory conduct may have affected different class members in different ways, any factual differences among class members would not affect commonality where, as here, there was a common issue as to liability.¹⁴

The third requirement of typicality is satisfied, "if the claims or defenses of the representatives and the members of the class stem from a single event or are based on the same legal or remedial theory."¹⁵ Like commonality, the typicality requirement did not require us to show that the claims of all class members were factually similar in all respects.¹⁶

In this case, the named plaintiffs' claims were based on the same legal theory as other class members' claims, and they arose from the same course of conduct; the discriminatory practices of Defendants with respect to (1) the opportunities for female students to play interscholastic and other school sponsored athletics and (2) the treatment of female student athletes. Plaintiffs' claims were, therefore, typical of the claims of the class.

The last requirement that we had to satisfy under Rule 23(a) was that the representative parties would fairly and adequately protect the interests of the

13. See *Arkansas Educ. Ass'n. v. Board of Educ. of Portland*, 446 F.2d 763, 765 (8th Cir. 1971) (seventeen is sufficient).

14. See *Paxton*, 688 F.2d at 561 and *Linquist v. Bowen*, 633 F. Supp. 846, 859 (W.D. Mo. 1986) (citing *Califano v. Yamasaki*, 442 U.S. 682, 701 (1979)).

15. *FRIEDENTHAL ET AL.*, *supra* note 10, at 728.

16. See *Adamson v. Bowen*, 855 F.2d 668, 676 (10th Cir. 1988) ("[D]iffering fact situations of class members do not defeat typicality under Rule 23(a)(3) so long as the claims of the class representative and class members are based on the same legal or remedial theory.")

class. The purpose of the adequacy of representation requirement under Rule 23(a)(4) is to ensure that the class representatives will "vigorously prosecute the interests of the class."¹⁷ This determination turns on the representatives themselves and their attorneys. First, the named plaintiffs must have representative claims and must not have interests antagonistic to the interests of the class.¹⁸ Second, plaintiffs' counsel must be competent and diligent in representing the plaintiff class.¹⁹

We believed that the interests of the named plaintiffs were clearly representative of those of the class and that there was no potential for conflict or reason to anticipate conflict within the class. The named plaintiffs and potential class members sought increased athletic participation opportunities for female students and equitable treatment and benefits for all female athletes.

We addressed the potential argument that some members of the class may have had an interest in participating in different sports than the named plaintiffs by showing that class certification should not be defeated where, as here, the predominant interest of every class member is to expand opportunities for female athletes.²⁰ Furthermore, the fact that the named Plaintiffs sought damages in their individual capacities did not defeat the commonality of interest.²¹

In order to show adequate class representation, we also had to show that counsel for the Plaintiffs was "qualified and experienced" and would "vigorously prosecute the action."²²

In addition to satisfying Rule 23(a), we had to satisfy one of the three categories of Rule 23(b) in order to maintain a class action. This action fell squarely under Rule 23(b)(2) which states that a class action is certifiable where "the 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."²³ This rule was intended primarily to facilitate civil rights class actions, such as this one, in which class representatives seek injunctive or declaratory relief against discriminatory practices.²⁴

Because Owasso Public Schools acted in a discriminatory manner with respect to all class members, and because the Plaintiff class sought declaratory

17. *In re Workers Compensation*, 130 F.R.D. 99, 107 (D. Minn. 1990)(citation omitted).

18. See *In re Texas Int'l. Sec. Litigation*, 114 F.R.D. 33, 45 (W.D. Okla. 1987).

19. See *id.*

20. See *Penn v. San Juan Hospital, Inc.*, 528 F.2d 1181, 1189 (10th Cir. 1975) ("It is to be recognized that there may be varying fact situations among individual members of the class and this is all right so long as the claims of the plaintiffs and the other class members are based on the same legal or remedial theory.") (citations omitted).

21. The Fifth Circuit has explained: "An individual claim for large damages does not necessarily make a putative representative's interests 'antagonistic' to those of the class; to the contrary, the courts have often viewed the assertion of such a claim as an indication that the representative will prosecute the action vigorously." *Stewart v. Winter*, 669 F.2d 328, 334-335 (5th Cir. 1982) (citing 7 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1767 at 637-38 (1972)).

22. *In Re Texas Int'l. Sec. Litigation*, 114 F.R.D. at 45.

23. FED. R. CIV. P. 23(b)(2).

24. See *Penson v. Terminal Transport Co.*, 634 F.2d 989, 993 (5th Cir. 1981); see also 7A C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1776 at 495 (1986).

and injunctive relief, this class met the requirements of Rule 23(b)(2). Class Certification was especially appropriate in this case because of the transitory nature of the class members. Any relief granted by the Court would only affect the named plaintiffs while they were students at the school. We argued that, absent class certification, Owasso Public Schools could continue to evade its full responsibilities under the civil rights laws by accommodating only the named plaintiffs. In addition to these arguments in favor of class certification, we relied on the fact that Federal Courts have routinely certified similar class action challenges to sex discrimination in athletic programs sponsored by educational institutions.²⁵

The Defendants' Brief in Opposition to Class Certification was as expected. They opposed class certification in regard to all of the requirements of Rule 23(a) and Rule 23(b)(2). They argued that we, as the plaintiffs, had the burden of showing that class certification was both appropriate and warranted. They alleged that without discovery regarding the plaintiffs and their individual allegations, there was no way of knowing whether the requirements of Rule 23 had been met. Still, the Defendants agreed to class certification. It was at this point that serious settlement negotiations began.

From the beginning, we made the tactical decision to seek a quick resolution through a consent decree. Since this was a case of first impression and we anticipated that others would follow, we believed that a quick and solid consent decree would be more desirable than protracted litigation. With this in mind,, we drafted a model decree to use as a working draft at the outset of the negotiations. This "working draft approach" proved to be invaluable. As a tactical matter, the draft opened with the wholly unobjectionable notion that Owasso intended to fully comply with Title IX, the Regulations and the Policy Interpretation. (How could Owasso argue with this?) The draft then tracked the requirements laid out in the Regulations. We consciously avoided laying blame in an effort to develop a blueprint for compliance.

What follows is the actual Consent Decree we hammered out after intensive negotiations. Our comments and observations are in brackets.

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

RON RANDOLPH, as parent and
next friend of his minor
daughter, AMANDA M. (MIMI)
RANDOLPH; COY E. & CANDACE L.
BROWN, as parents and next

25. See, e.g., *Cohen v. Brown University*, 991 F.2d 888 (1st Cir. 1993); *Favia v. Indiana Univ. of Penn.*, 7 F.3d 332 (3rd Cir. 1993); *Haffer v. Temple Univ.*, 678 F. Supp. 517 (E.D. Pa. 1987); *Ridgeway v. Montana High Sch. Ass'n*, 633 F. Supp. 1564 (D. Mont. 1986), *aff'd*, 858 F.2d 579 (9th Cir. 1988); *Bucha v. Illinois High Sch. Ass'n*, 351 F. Supp. 69 (N.D. Ill. 1982); and *Leffel v. Wisconsin Interscholastic Athletic Ass'n*, 444 F. Supp. 1117 (E.D. Wis. 1978).

friend of their minor
 daughter, HAYLEY E. BROWN;
 ROBERT C. & SUSAN J. PARKER,
 as parents and next friend
 of their minor daughter,
 SARAH J. PARKER, ROBERT C. &
 SUSAN J. PARKER, as parents
 and next friend of their
 minor daughter, REBEKAH S.
 PARKER; ROBERT F. & VICKI L.
 RANDOLPH, JR., as parents
 and next friend of their
 minor daughter, TERI JO
 RANDOLPH; JIM & KAY PIGG, as
 parents and next friend of
 their minor daughter,
 MELISA PIGG; TOM & BECKY
 MARTIN, as parents and next
 friend of their minor
 daughter, SHERA MAE MARTIN;
 and on behalf of all others
 similarly situated,

CONSENT DECREE

Plaintiffs,

v.

Case No. 96-CV-0105K

OWASSO INDEPENDENT SCHOOL
 DISTRICT NO. I-001, a/k/a
 OWASSO PUBLIC SCHOOLS; DALE
 JOHNSON, individually and in
 his official capacity as
 Superintendent; RICK DOSSETT,
 individually and in his
 official capacity as
 Principal; JOHN SCOTT,
 individually and in his
 official capacity as Athletic
 Director; and Does 1 through 50,

CLASS ACTION

Defendants.

THE CONSENT DECREE

This Consent Decree is entered by the Court based upon an agreement between the above captioned Plaintiffs individually and in their capacity as representatives of a class of individuals described as, “[A]ll present and future female students enrolled at Owasso Public Schools who participate, seek to participate, or are deterred from participating in interscholastic and other school-sponsored athletics at Owasso Public Schools” (“the Class”) and Defendants Owasso Independent School District No. I-011 (“Owasso” or “District”), Dale Johnson, Rick Dossett and John Scott. No John Doe defendants were named during the course of the litigation and no additional defendants will be named as parties to this case.

[IT SHOULD BE NOTED THAT THE DEFINITION OF OUR CLASS WAS CAREFULLY CRAFTED TO BROADLY DESCRIBE THE PROTECTED GROUP. WE PERSUADED OWASSO THAT IT SERVED THE INTERESTS OF THE DISTRICT TO AGREE TO THIS BROAD DEFINITION. THE BROAD DEFINITION WOULD INSULATE OWASSO FROM SUITS BROUGHT BY NON-CLASS MEMBERS. IT ALSO ALLOWED US TO ADDRESS ALL OF THE GENDER-RELATED ATHLETIC ISSUES. THIS TYPE OF LITIGATION IS REPRESENTATIVE OF CIVIL RIGHTS LITIGATION WHERE THE INTERESTS OF BOTH CITIZENS AND THE GOVERNMENT ARE BEST SERVED BY A GENEROUSLY DEFINED CLASS.

IN THE ORIGINAL COMPLAINT, WE LEFT ROOM TO NAME ADDITIONAL DEFENDANTS BY SUING “JOHN DOE.” THIS WAS USEFUL BECAUSE IT KEPT OPEN THE OPTION OF NAMING OTHER INDIVIDUALS, SHOULD THE NEED ARISE. WHILE WE CAME CLOSE IN A NUMBER OF INSTANCES, WE NEVER NAMED ADDITIONAL DEFENDANTS.]

This Consent Decree settles each of the claims stated in the Complaint in the captioned case alleging gender discrimination and also resolves all claims asserted against individuals who were named in their official and individual capacities. With the Court’s approval of this Consent Decree, and upon Defendants’ compliance with its terms, all claims in this action will be dismissed with prejudice. The term Claims as used in this Consent Decree means all claims asserted in the complaint or all claims which could have been asserted through the date of this Consent Decree.

[UNDERSTANDABLY, THE DISMISSAL OF THE DAMAGES CLAIMS WAS EXTREMELY SIGNIFICANT FROM THE DEFENDANTS’ PERSPECTIVE. WHILE WE HAD VERY SOLID GROUNDS TO PURSUE ALL OF THE DAMAGES CLAIMS, THE FOCUS OF THE SUIT WAS TO FIX THE ENTIRE SYSTEM. THE DISMISSAL OF THE DAMAGES CLAIMS HELPED TO MOVE OWASSO TOWARDS COMPROMISE, CONCILIATION AND COMPLIANCE.]

I. PRELIMINARY STATEMENT

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. The parties concur that increasing participation options, combined with affording equal treatment and benefits to female students, is essential to Title IX compliance. 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.

The parties believe that through the reaffirmation of the mandatory requirements of Title IX, implementation of a plan for achieving compliance with Title IX's requirements related to athletic programs, and adoption of a procedure for encouraging the expression of comments or grievances involving questions relating to the District's athletic programs, the parties will achieve a model Title IX compliance plan.

Accordingly, the parties have approved this Consent Decree with the purpose of desiring to stimulate and accommodate the interest and participation of female students in athletics. It is hoped that the actions, to which the parties jointly agree, will lead other public schools to review their sports programs with the goal of providing increased opportunities for female participation on sports combined with treatment and benefits that are not differentiated in practice or philosophy on the basis of gender.

This Consent Decree applies to the members of the Class as described in the opening paragraph of this Decree.

[THE PRELIMINARY STATEMENT IS ILLUSTRATIVE OF THE "HIGH ROAD" THE PARTIES MANAGED TO TRAVEL AFTER SOME SIGNIFICANT DISAGREEMENT AT THE OUTSET. OWASSO EVEN AGREED TO TRY TO CREATE AN INTERSCHOLASTIC SPORTS SYSTEM WHICH WOULD SERVE AS A MODEL AND INSPIRATION TO OTHER DISTRICTS. IN REALITY, BOTH SIDES AGREED THAT THE CREATION OF A TRULY GENDER-NEUTRAL PROGRAM WOULD BE GOOD FOR THE COMMUNITY. THE PRELIMINARY STATEMENT IS CERTAINLY MARKED BY ITS UPBEAT ATTITUDE.]

II. GENERAL PRINCIPLES

Owasso agrees to comply with the general mandates of Title IX, its Regulations, and its Interpretive Guidance.²⁶ Title IX prohibits gender-based discrimination by educational institutions receiving federal financial support. Special attention is afforded the area of participation opportunities and accommodation of athletic interests. Female students must have ample opportunities to participate in sports. Furthermore, the interests of female students must be effectively accommodated. Accommodation of interests may be accomplished through the installation of new sports or through the addition of appropriate

26. Footnote 1 of the Consent Decree:

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 Benefiting from Federal Financial Assistance." 34 C.F.R. § 106 (1994); and Related Policy Guidance.

levels of teams in connection with existing sports.

A second prong of Title IX mandates equality in treatment and benefits afforded to female and male students who participate in sports. The District's obligation is to be responsive to the expressed interest of female students in the District and to avoid discrimination against female students in treatment and the provision of benefits.

The District is not required to have or maintain an athletic program. However, when it does maintain such a program, the program must be gender neutral. Treatment and benefits for secondary public schools, as distinguished from colleges and universities, involve the following program components:

1. Funding of interscholastic and other school-sponsored sports programs;
2. Equipment and supplies;
3. Uniforms;
4. Scheduling of games and practice times;
5. Opportunity to receive competent coaching and the assignment and compensation of coaches;
6. Provision of locker rooms, practice facilities, and competitive facilities;
7. Provision of medical and training facilities and services;
8. Provision of publicity;
9. Provision of support services.

The above is a brief review of Title IX as it relates to public school athletic programs. It is not intended to be comprehensive or dispositive of schools' obligations or individual rights or responsibilities. It is, however, the statutory and decisional framework upon which this Consent Decree has been considered and reached.

In some areas the parties have agreed to actions which are designed to provide information which will guide future decisions related to female student participation opportunities. In other areas the parties have agreed that particular practices should be immediately altered in order to assure compliance with Title IX and its Regulations.

Accordingly, the District agrees to take specific actions to insure that the mandates of Title IX are met. The District also agrees to institute a periodic survey of student interest to insure that female student participation interest and opportunities are identified and, when appropriate, responded to. The District agrees that its discrimination grievance procedure, as amended, shall be available to students and employees who believe that Title IX's requirements related to public school athletic programs have not been adhered to.

[THE "GENERAL PRINCIPLES" SECTION IS SELF-EXPLANATORY. INDEED, IT IS HARD TO IMAGINE ANY BASIS FOR A SCHOOL DISTRICT TO OBJECT TO WHAT IS ESSENTIALLY AN AGREEMENT TO ABIDE BY FEDERAL LAW. THE SPECIFIC AGREEMENT TO CONDUCT PERIODIC SURVEYS REFLECTS THE FACT THAT OWASSO SIMPLY HAD NEVER PREVIOUSLY DONE SO EVEN THOUGH SUCH SURVEYS ARE CLEARLY CONTEMPLATED BY TITLE IX. THIS IS ALSO TRUE OF THE AGREEMENT TO INSTITUTE A GRIEVANCE PROCEDURE. BUT IT SHOULD BE NOTED THAT AN ATTEMPT WAS MADE TO CRAFT A DECREE WHICH WOULD PROVIDE A BLUEPRINT FOR COMPLIANCE. IT IS ESSENTIALLY A FORWARD-

LOOKING DOCUMENT. OUR GOAL WAS TO FIX A SYSTEM, AND NOT TO DOCUMENT NON-COMPLIANCE, OR TO FORCE ADMISSIONS OF LIABILITY.]

A. Participation

1. Owasso shall conduct a student interest survey during the last quarter of the school year, as further set out below, for the purpose of ascertaining the level of interest in existing sports or in sports which are not currently offered by the District. The student interest survey shall be conducted during the 1996-97 and 1997-98 school years and every other year thereafter. The District shall consider the results of the survey, along with the opportunity for competition which realistically exists, 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, the District shall make reasonable effort to insure that the maximum number of competitive opportunities are available to female participants. When the maximum available games are not played, the coach shall document any reason(s) for not completing a full schedule of competition opportunities.

[THIS PROVISION, LIKE MANY OTHERS, WAS THE PRODUCT OF LENGTHY NEGOTIATIONS. THE PERIODIC SURVEY REQUIREMENTS (ONCE A YEAR FOR TWO YEARS, THEN EVERY OTHER YEAR) WERE A PRODUCT OF COMPROMISE. WHILE WE WANTED TO MAKE SURE THAT THE DISTRICT CONDUCTED REGULAR SURVEYS, WE REALLY DID NOT WANT TO EITHER OVER-BURDEN THE DISTRICT OR MICROMANAGE THEIR SPORTS PROGRAMS. EARLY ON IN THE NEGOTIATIONS WE RECOGNIZED THAT INTERSCHOLASTIC OPPORTUNITIES ARE SOMETIMES LIMITED BY THE FACT THAT THERE MAY NOT BE OTHER SCHOOLS TO COMPETE AGAINST. THAT IS WHY WE AGREED TO ADD INTRAMURAL ALTERNATIVES. THE GOAL HERE IS FOR THE DISTRICT TO DO WHAT IS REASONABLE, AND NOT TO FORCE IT TO ACCOMPLISH THE IMPOSSIBLE.

WE DID ENCOUNTER AN AREA OF CONCERN IN THE DISTRICT WITH COACHES WHO DID NOT ACTIVELY SEEK COMPETITION OPPORTUNITIES FOR GIRLS TEAMS. THE LAST SENTENCE OF THIS PARAGRAPH ADDRESSES THIS PROBLEM. AGAIN, WE DIDN'T FEEL THE NEED TO DOCUMENT OR PROVE THE EXISTENCE OF THE PROBLEM; WE DID FEEL THAT IT WAS APPROPRIATE, HOWEVER, TO ADDRESS IT.]

2. Owasso currently sponsors a varsity and junior varsity female softball team. It shall consider the addition of a freshman team in future years. The establishment of interscholastic and other school-sponsored teams shall be based on the level of demonstrated interest in softball, on the results of the student interest survey, and on related factors, as expressed herein, that show interest in sports participation.

[GIRLS SOFTBALL IS BOOMING IN OWASSO. IN FACT, THE YEAR BEFORE THE CONSENT DECREE, THE OWASSO GIRLS WON THE STATE CHAMPIONSHIP. MORE AND MORE GIRLS ARE SHOWING INTEREST IN PLAYING SOFTBALL. WE WANTED OWASSO TO SERIOUSLY CONSIDER THE EFFICACY OF ADDING A FRESHMAN TEAM. WHEN IT COMES TO EVALUATING OPPORTUNITIES FOR

GIRLS TO PLAY SPORTS, OFTEN WHAT'S LACKING IS NOT JUST THE NUMBER OF SPORTS OFFERED, BUT THE LEVEL OF OPPORTUNITIES OFFERED WITHIN A PARTICULAR SPORT. FOR EXAMPLE, IF 25 FRESHMAN GIRLS TRY OUT FOR SOFTBALL AND OWASSO ONLY OFFERS JUNIOR VARSITY OR VARSITY TEAMS, THEN INEVITABLY A NUMBER OF GIRLS WILL BE "CUT" AND DENIED THE OPPORTUNITY TO PLAY THE SPORT. WE ATTEMPTED TO ADDRESS THIS "LEVELS OF PLAY" PROBLEM THROUGHOUT THE DECREE.]

3. The reference in this consent decree to "intramural" opportunities refers to the provision of intra school competitive sports opportunities based on student interest in the areas of softball, volleyball, and tennis. The District may consider, in establishing intramural opportunities, the availability of coaches, facilities and volunteers. Owasso shall initiate its intramural plan effective with the 1997-98 school year. It shall make reasonable effort to have some intramural opportunities available for middle school (7th and 8th grade) students in the Spring of 1997. Both parties acknowledge that the District's intramural opportunities do not require the District to provide softball fields, volleyball courts or other arenas of competition which are the same as or equal to those provided in connection with interscholastic sports. Similarly, the District is not required to utilize paid coaches to staff its intramural program. Intramural activities shall be scheduled seasonally during each school year. Intramural sports activities, involving the middle school, may be discontinued, as to any sport, at such time as the District provides interscholastic competition.

[WE BELIEVED THAT INTRAMURAL OPPORTUNITIES WERE DESIRABLE, PARTICULARLY WHEN INTERSCHOLASTIC OPPORTUNITIES ARE LIMITED BY THE LACK OF COMPETITORS. IN ORDER TO BUILD INTEREST AND ULTIMATELY TO PROVIDE INTERSCHOLASTIC COMPETITION, INTRAMURAL OPPORTUNITIES CONSTITUTED A VIABLE FIRST-STEP ALTERNATIVE. WE AGREED TO THE PROVISION OF THIS ALTERNATIVE AT A RELATIVELY LOW COST (HENCE THE STATEMENTS ABOUT UNPAID COACHES AND THE LACK OF A REQUIREMENT TO BUILD FACILITIES) TO COUNTER OWASSO'S OBJECTIONS TO THE PLAN ON FINANCIAL GROUNDS.]

4. Owasso has previously initiated plans to include volleyball as a new sport available to female students at the secondary level (grades 9-12). The sport shall begin with the 1996-97 school year and the District shall sponsor a varsity and junior varsity team. During the 1996-97 school year the District will consider the active interest in volleyball as revealed by the number of students who try out for volleyball and who actively participate during the season, the level or community support for volleyball as evidenced by volleyball activity in the surrounding community, the responses received from female students as documented by the student interest survey, the comments of coaches and similar information in determining whether to add additional teams in volleyball and whether to extend volleyball to the middle school level for the 1997-98 school year.

[IT MEANT A LOT TO THE DISTRICT FOR US TO AGREE TO LANGUAGE WHICH CONFORMED TO THEIR CONTENTION THAT THEY HAD "PREVIOUSLY INITIATED PLANS TO INCLUDE VOLLEYBALL AS A NEW SPORT," THOUGH IN REALITY WE BELIEVED THESE "PLANS" TO BE INCHOATE AND INDEFINITE. SINCE WE

WANTED THE DECREE TO BE FORWARD-LOOKING, WE DIDN'T QUIBBLE WITH THAT PROFESSED COMMITMENT TO ADDING VOLLEYBALL. WE WERE, HOWEVER, CLEARLY INTERESTED IN INSURING THAT IT WOULD BE OFFERED IN THE NEXT SCHOOL YEAR.]

5. In connection with any interscholastic sport offered to females, if a sufficient number of females are "cut" from any existing team, Owasso 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. Owasso 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, Owasso may provide intramural opportunities, as described in paragraph 3 above, to meet these obligations. The term "cut" as used in this Consent Decree 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.

[WE WORKED LONG AND HARD ON THIS "NO-CUT" PROVISION. IF GIRLS ARE TO BE PROVIDED INCREASED OPPORTUNITIES TO PARTICIPATE IN SPORTS, OPPORTUNITIES MUST BE PROVIDED TO GIRLS WHO, EARLY ON, DON'T "MAKE THE CUT." IN OWASSO, IT WAS COMMONPLACE FOR THE DISTRICT TO CREATE NEW TEAMS (EITHER AT THE FRESHMAN LEVEL, THE JUNIOR VARSITY LEVEL OR SOMETIMES AN "ALL SOPHOMORE" TEAM) TO ACCOMMODATE THE INTERESTS OF BOYS. WE BELIEVED THAT IT WAS IMPORTANT FOR GIRLS TO ENJOY THE SAME LEVELS OF ACCOMMODATION. THE "NO-CUT" LANGUAGE IS BORROWED FROM THE STANDARD "NO-CUT" CLAUSE THAT APPEARS IN PROFESSIONAL SPORTS CONTRACTS.]

6. Owasso shall make reasonable effort to expand participation opportunities for female students at the middle school level. Owasso's middle school consists of 7th and 8th grade students. This effort shall involve a study conducted during the 1996-97 school year to ascertain the opportunities for sports participation available to girls as compared with boys. The District shall establish a plan, effective for the 1997-98 school year, that will, at the middle school level, provide equal opportunity for girls who desire to participate in school-sponsored sports. This shall take into consideration the reasonable interscholastic competitive opportunities available at the middle school level and intramural opportunities as provided for in this Consent Decree. The District's plan may, at its option, provide for the elimination of school-sponsored middle school sports.

[WE BELIEVE THAT THIS DECREE IS THE FIRST IN THE COUNTRY TO ADDRESS TITLE IX PROBLEMS AT THE MIDDLE SCHOOL LEVEL. AS A POLICY MATTER, IT IS IMPORTANT TO PROVIDE COMPETITIVE OPPORTUNITIES TO YOUNG GIRLS IN ORDER TO PAVE THE WAY FOR LATER PARTICIPATION. IF OWASSO OFFERS COMPETITIVE OPPORTUNITIES FOR MIDDLE SCHOOL BOYS, SIMILAR OPPORTUNITIES SHOULD BE PROVIDED TO MIDDLE SCHOOL GIRLS. WE AGREED THAT OWASSO COULD CHOOSE TO ELIMINATE SCHOOL-SPONSORED MIDDLE SCHOOL SPORTS, WITH CONFIDENCE THAT IT WOULD NEVER CHOOSE TO DO SO.]

7. Owasso shall review all of its policies related to athletic participation

or participation in extracurricular activities which may impact the opportunity of a female student to participate in a sport or to participate in more than one sport. Policies shall be adopted to encourage and not discourage girls' sports participation at all levels. Whenever possible and feasible within the school schedule and the underlying requirements of an activity (whether athletic or non-athletic) reasonable effort shall be made to permit female students an opportunity to participate in one or more athletic activities and also participate in nonathletic activities. For example, cheerleader or pompon participants should not be excluded from participating in interscholastic or intramural sports by policies or practices which would require them to select one activity over the other for the entire academic year.

[OWASSO MAINTAINED POLICIES WHICH IT BELIEVED ENCOURAGED GIRLS TO PARTICIPATE IN CHEERLEADING AND "POM." WE FOUND THIS KIND OF STEERING OBJECTIONABLE. WHILE WE NEVER TOOK AN ANTI-CHEERLEADING POSITION, WE DID BELIEVE THAT POLICIES COULD BE FORMULATED WHICH DID NOT PRECLUDE COMPETITIVE ATHLETIC OPPORTUNITIES FOR GIRLS. FOR EXAMPLE, OWASSO PREVIOUSLY CHOSE ITS CHEERLEADING SQUAD FOR THE ENTIRE YEAR, AND CHEERLEADERS WERE ASKED NOT TO PARTICIPATE IN ACTIVITIES WHICH MIGHT CONFLICT WITH CHEERLEADING. IT WAS DIFFICULT, IF NOT IMPOSSIBLE, FOR A CHEERLEADER TO PLAY BASKETBALL. AN OPPORTUNITY-CREATING OPTION WOULD BE FOR OWASSO TO PICK ITS CHEERLEADERS SEASONALLY. IF THIS WERE THE CASE, A FOOTBALL CHEERLEADER COULD PLAY BASKETBALL AND A BASKETBALL CHEERLEADER COULD PLAY SOCCER.]

B. Treatment and Benefits

1. Owasso places all revenue generated from its interscholastic sports programs into a central fund. The District shall continue this practice and revenue from all sources will be subject to the School District's normal accounting requirements. This includes gate receipts, concessions, advertising revenue, donations from boosters (in cash and in-kind) and any other revenue applied to Owasso's interscholastic and other school-sponsored athletic programs. The District shall maintain a written budget applicable to its anticipated expenditures which details all revenue and expenses in connection with interscholastic and other school-sponsored sports. Owasso shall fund its interscholastic and other school-sponsored sports programs in a manner which does not discriminate against female athletes.

[ONE OF THE LINCHPINS OF THE SETTLEMENT WAS OWASSO'S AGREEMENT TO COMMIT TO A BUDGETARY PROCESS WHICH WOULD ALLOW FOR A SPORT-BY-SPORT EXAMINATION OF EXPENDITURES. OWASSO CONTENDED THAT IT HAD ALWAYS MAINTAINED SUCH A PROCESS. WHILE WE DIDN'T NECESSARILY AGREE THAT THEY HAD, WE WERE SATISFIED WITH THE DISTRICT'S FULL AGREEMENT TO A FINANCING PLAN WHICH WOULD PERMIT OVERSIGHT, WITHOUT HARPING ON WHAT WE BELIEVED TO BE HISTORIC SHORTCOMINGS. AGAIN, THIS TACTIC OF NOT EMPHASIZING PAST PROBLEMS SERVED EVERYONE'S INTERESTS WELL.]

2. Owasso shall provide female athletes with comparable equipment and supplies (in terms of both quality and quantity) as provided male athletes and as are appropriate to the particular sport.

3. Owasso shall provide female athletes with comparable uniforms (in terms of both quality and quantity) as provided male athletes and as is appropriate to the particular sport.

4. Owasso has taken affirmative steps to eliminate any disparities relating to the scheduling of games and practice times. Sixth hour credit, when sixth hour credit exists, shall be offered equally to female and male sports participants. Sixth hour athletics can be addressed by Owasso in the following ways: Owasso's decision not to provide sixth hour athletics related to any school-sponsored sports, an offer of sixth hour athletics to all student athletes who desire to enroll in sixth hour athletics, or rotation of sixth hour athletics in a manner that equally distributes opportunity to enroll in sixth hour athletics to all student athletes. In any event, by the beginning of the 1997-98 school year the District shall implement a procedure that shall insure that girls have equal access to sixth hour athletics. Basketball games shall be scheduled in a manner which provides males and females and equal opportunity to play at the most desirable game times. This may be accomplished, at the District's option, by alternating game times from one game night to the other or by alternating schedules from one year to the next to provide females with an opportunity to play games at the hour historically reserved to males' basketball teams. Likewise, soccer games shall also be scheduled in a manner which extends to females an opportunity to play the same number of games at the time considered the most desirable game time. Softball games may be scheduled even if they conflict with football games.

[ONE OF THE VAGARIES OF OKLAHOMA'S INTERSCHOLASTIC SPORTS PROGRAM IS THE PRACTICE OF WHAT WE CALL HERE "6TH HOUR CREDIT." WHILE THE NAME CHANGES FROM ONE DISTRICT TO ANOTHER, THE BASIC PRACTICE REMAINS THE SAME: SCHOOL DISTRICTS IN OKLAHOMA REGULARLY BLOCK A PORTION OF THE SCHOOL DAY FOR ATHLETIC TEAM PRACTICE. (ONE MIGHT WELL QUESTION THE ACADEMIC MERITS OF SUCH A PRACTICE, BUT IN OUR CONTEXT, THE POINT IS THAT "6TH HOUR CREDIT" WAS REGULARLY MADE MORE READILY AVAILABLE TO BOYS THAN GIRLS.) THE PROPOSAL AIMS TO ELIMINATE GENDER-BASED DISCRIMINATION IN REGARD TO THIS PRACTICE WITHOUT TAKING A POSITION ON ITS EFFICACY.

OWASSO SCHEDULED GIRLS' VARSITY BASKETBALL AT 6:30 P.M. WITH THE BOYS' GAME TO FOLLOW. SIMILARLY, GIRLS' SOCCER GAMES PRECEDED THE BOYS' GAMES. THE PROPOSED REFORM WILL END THIS SCHEDULING DISCRIMINATION. IT SHOULD BE POINTED OUT THAT THIS IS AN EXTREMELY HOT TOPIC, PARTICULARLY IN REGARD TO BASKETBALL. INDEED, WE HEARD COMMENTS FROM MANY QUARTERS THAT THE GIRLS PREFERRED THE EARLIER HOUR. BE THAT AS IT MAY, WE BELIEVE THAT TITLE IX DOES NOT PERMIT THIS KIND OF GENDER-BASED SCHEDULING.

A THORN IN THE SIDE OF MANY SOFTBALL PARENTS WAS OWASSO'S RULE WHICH PREVENTED OWASSO GIRLS FROM PLAYING SOFTBALL ON EVENINGS THAT THE FOOTBALL TEAM PLAYED. THIS RULE GREATLY IMPEDED SOFTBALL SCHEDULING. OWASSO AGREED TO REPEAL THE RULE.]

5. Female athletes shall be treated in the same manner as male athletes with respect to travel privileges and travel support. This means that females who have opportunities to participate in out-of-state tournaments shall be given the same consideration as males who have that opportunity. Likewise, both groups shall be treated in the same manner as to travel arrangements, housing, and meals. When females are presented with opportunities for out-of-state or overnight travel, the arrangements for travel shall be the same as those available to males in connection with the same or similar sports.

[THIS PROVISION WAS DESIGNED TO ADDRESS A PROBLEM PERCEIVED BY THE PARENTS OF FEMALE ATHLETES THAT THE BOYS' TEAMS REGULARLY RECEIVED SUPERIOR TRAVEL OPPORTUNITIES. FOR EXAMPLE, THE BOYS' BASEBALL TEAM ANNUALLY TRAVELED TO OUT OF STATE TOURNAMENTS. ADDITIONALLY, THE DISTRICT MAINTAINED A PRACTICE OF DISCOURAGING OVERNIGHT STAYS FOR GIRLS; THIS PROVISION REQUIRES GENDER NEUTRALITY IN CONNECTION WITH TRAVEL OPPORTUNITIES.]

6. Owasso shall make reasonable effort to insure that coaches are selected for female athletic teams in the same manner as they are selected for male athletic teams. The district shall adhere to relevant negotiated collective bargaining agreements related to the selection of personnel, shall advertise for coaches, and shall insure that salary applicable to coaching duties is gender neutral. The District shall make reasonable effort 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. Owasso shall allow utilization of volunteer coaches in the same manner for female team sports as for male team sports.

[A PERVASIVE AND SIGNIFICANT PROBLEM IN CONNECTION WITH GIRLS' ATHLETICS HAS TO DO WITH THE SELECTION OF COACHES. OVER AND OVER AGAIN, WE HEAR ACCOUNTS FROM VARIOUS SCHOOL DISTRICTS WHICH BEAR OUT OUR VIEW THAT MANY DISTRICTS SUBSCRIBE TO WHAT WE CALL THE "HEY, YOU" SCHOOL OF HIRING. OFTEN, LITTLE CARE AND ATTENTION IS OFTEN GIVEN TO THE HIRING PROCESS. ASSISTANT FOOTBALL COACHES ARE OFTEN UTILIZED AS GIRLS' COACHES IN WHAT APPEARS TO BE AN EFFORT TO PROVIDE THEM WITH AN ADDITIONAL EASY STIPEND. AN ADDITIONAL PROBLEM IN OWASSO WAS THE USE OF VOLUNTEER COACHES. THE FOOTBALL TEAM BENEFITTED FROM A VOLUNTEER COACH (A FORMER NFL PLAYER) WHILE GIRLS' SOCCER WAS TOLD THAT DISTRICT POLICY DID NOT ALLOW VOLUNTEER COACHES.]

7. Owasso shall provide comparable athletic facilities for male and female athletes based on the sports offered, taking into consideration the nature and needs of the particular sport and the District's need to engage in long-term planning related to construction of new facilities or major renovation of existing facilities.

8. In regard to softball, for the 1996-97 school year, Owasso shall insure that the lights at the City Park are in working order, shall add portable bleachers, shall insure that a portable concession trailer is available for scheduled

games, shall ensure that sanitary restrooms are maintained, and shall ensure the field is maintained and regularly mowed. This shall continue for as long as the City Park is used by the Owasso girls' softball teams.

9. Owasso shall construct an on-campus softball field which is comparable in quality to the existing baseball field. The on-campus softball field shall be made competition-ready, if possible, by August 1, 1997. The total commitment to a softball field shall be phased in over a three-year period or longer dependent upon the availability of revenues as discussed in paragraph 10 below. Phase I shall be completed by August 1, 1997, and shall include: dirt work, grade work, fences, infield dirt, sprinkler system, outfield grass, scoreboard (moved from prior location), temporary covered dugouts, portable bleachers, portable restrooms, and a portable concession trailer. If financially feasible lighting will be included in Phase I and, in any event, a priority in Phase II. Phase II shall be completed on or before August 1, 1998, and shall include dugouts, press box, public address system, parking, flag pole and lighting (if not already completed). Phase III shall be completed on or before August 1, 1999, and shall include a permanent concession and restroom facility. Owasso shall not construct a softball/baseball work-out facility until such time as it has completed the softball field provided for within this Consent Decree.

10. Owasso is a public school district. In order to obtain money to construct a softball field, and related facilities, it must pass a bond issue and access funds available through its building fund. Accordingly, the district shall commit to placing before eligible voters a spring 1997 bond issue which shall include a proposition for a softball field. Additionally, the District shall commit, for the school year 1996-97, Seventy-five Thousand Dollars (\$75,000) from its building fund toward the construction of a softball field to be located on the high school campus. The district shall continue to present bond issues, when feasible, to its voters until such time as all phases of the softball field are complete. The District is dependent, absent an infusion of funds from outside the school district, on its ability to pass bond issues in order to fund the construction of a softball field. If funds are not available to complete the softball field, due to voters' failure to pass one or more bond issues proposing the construction of the softball field, in accordance with the phases for construction laid out in paragraph 9 above, the District shall, notwithstanding failure of a bond issue, commit a minimum of \$75,000 per year from the District's building fund until all phases are completed.

11. Softball parents and students are committed to raising, through their own fund raising activities, monies to be dedicated to the completion of the softball field. Accordingly, Owasso shall match up to \$5,000 of fund privately raised by softball parents and students during each year of construction of the softball field. Moreover, if more than \$5,000 is privately raised in any year Owasso shall seriously consider matching such additional amount, taking into account budgetary constraints. These funds shall be utilized exclusively for the construction of the softball field as described in paragraph 9 above.

12. During the period prior to completion of the softball field, Owasso

shall continue to make available the use to the City Park to the softball team.

[PARAGRAPHS 8 THROUGH 12 DEAL WITH GIRLS' SOFTBALL IN OWASSO. IN TRUTH, THE DRIVING FORCE BEHIND THE SUIT WAS THE INTENSE FRUSTRATION OF SOFTBALL PARENTS. IT IS NOT SURPRISING THEREFORE THAT SO MUCH TIME AND ATTENTION WAS SPENT IN ADDRESSING THESE PROBLEMS. THE SOFTBALL PORTION OF THE DECREE IS THE HEART OF THE SETTLEMENT; IT REPRESENTS THE MOST TANGIBLE BENEFIT OF THE LAWSUIT. FROM THE PLAINTIFFS' PERSPECTIVE, THE CONSTRUCTION OF A QUALITY SOFTBALL FIELD WILL BE THE MOST VISIBLE SYMBOL OF THE SUCCESS OF THEIR EFFORTS.]

PARAGRAPH 8 DEALS SPECIFICALLY WITH THE CITY PARK FIELD THAT THE GIRLS WILL CONTINUE TO UTILIZE UNTIL THE NEW FIELD IS COMPLETED. PARAGRAPH 9 IS THE PRODUCT OF EXTENSIVE NEGOTIATIONS, AND IT DOVE-TAILS WITH PARAGRAPH 10, WHICH DEALS WITH FUNDING. WE DID NOT WANT THE NEW FIELD CONSTRUCTION TO DEPEND ON THE PASSAGE OF A BOND. (IN FACT, AFTER THE CONSENT DECREE WAS ENTERED, OWASSO FLOATED A BOND TO FUND FIELD CONSTRUCTION AND IT WAS DEFEATED.) PARAGRAPH 10 COMMITS THE DISTRICT TO BUILDING A FIELD, IN PHASES, IRRESPECTIVE OF THE AVAILABILITY OF BOND MONEY. PARAGRAPH 11 WAS AGREED TO AT A SETTLEMENT CONFERENCE; IT IS DESIGNED TO PROVIDE INCENTIVES FOR FUND RAISING BY SOFTBALL PARENTS AND TO SHOW OWASSO'S DESIRE TO SUPPORT THOSE EFFORTS.]

13. Owasso shall provide equal access to weight training and conditioning facilities and equipment to female athletes and male athletes. Owasso shall also provide, by the end of the 1996-97 fiscal school year, to be effective at the beginning of the 1997-98 school year, a plan for achieving sports specific weight training and conditioning facilities and equipment which are designed to offer benefits to girls which are comparable to those offered by Owasso to boys.

[PRIOR TO THE SUIT, OWASSO CLUNG TO OUTDATED NOTIONS ABOUT WEIGHT TRAINING. THIS PROVISION RIDS OWASSO OF ITS GENDER BIAS IN CONNECTION WITH WEIGHT TRAINING. IT ALSO OBLIGATES OWASSO TO PROVIDE A PLAN FOR DELIVERING SPORT-SPECIFIC WEIGHT TRAINING FOR GIRLS.]

14. Owasso shall promote and publicize female and male sports and shall encourage individual female team coaches to utilize available opportunities to publicize female sports involvement and accomplishment. This means that Owasso 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), pep rallies, and other opportunities to publicize female involvement in sports.

[ONE OF THE MOST POIGNANT STORIES TO EMERGE IN OWASSO WAS ONE TOLD TO US BY OUR LEAD PLAINTIFF, MIMI RANDOLPH. IT WAS AN ACCOUNT OF AN OWASSO PEP RALLY FOR THE BASKETBALL TEAMS. THE ENTIRE SCHOOL WAS INVITED. THE GIRLS' VARSITY WAS ADVISED TO PREPARE FOR THE RALLY BY "DRESSING NICE." THEY WERE THEN DULY INTRODUCED AND SEATED COURTSIDE. WHAT THEN ENSUED CONJURES UP VISIONS OF A CHICAGO BULLS PRE-GAME INTRODUCTION. THE LIGHTS DIMMED, THE MUSIC STARTED, AND THE BOYS' TEAM CEREMONIOUSLY ENTERED THE GYM THROUGH A PAPER

HOOP AND BEGAN THEIR LAY-UP DRILLS, CULMINATED BY A POWERFUL SLAM DUNK. THE PLACE WENT WILD. THE GIRLS SAT IDLY BY, DRESSED IN SCHOOL CLOTHES. MIMI WAS STUNNED BY THIS AND SO WERE WE. (INTERESTINGLY ENOUGH, THE GIRLS' TEAM SIGNIFICANTLY OUTPERFORMED THE BOYS' TEAM THAT YEAR.) THIS PARAGRAPH ADDRESSES THIS AND OTHER "PROMOTION" RELATED PROBLEMS.]

C. Other Provisions — Title IX Compliance Officer Position

Owasso has an employee of the District who is designated as its Title IX Compliance Officer. The Compliance Officer shall be responsible for ensuring the District's compliance with Title IX, the Regulations, and the Policy Interpretations. The Compliance Officer shall also have specific duties. The specific duties shall include the periodic survey of student interest in sports participation. The survey and the compilation of results shall be made available to any person for inspection within five (5) business days after a written request for the same. A copy of the survey and results shall be made available for any person who pays the District its normal and customary copy expense.

The Compliance Officer shall compile and retain for inspection financial data about Owasso's interscholastic and other school-sponsored sports programs which details all revenues produced sport-by-sport and expenditures made in connection with each sport. This financial accounting shall include revenues as previously defined in B.1. The financial accounting shall include expenditures pertaining to equipment, coaching, travel, supplies, facilities and any other factors listed in 34 C.F.R. § 106.41(c). The data shall be compiled annually and shall be available for inspection following the end of each school fiscal year, within five (5) business days after a request for the same. A copy of the data shall be made for any person who pays the District its normal and customary copy expense.

The Compliance Officer shall schedule annual educational seminars for Owasso teachers and administrators which explain the mandates of Title IX herein described. The seminar for employees shall occur during the first quarter of each year. Additionally, the Compliance Officer shall be responsible for insuring, on an annual basis, that interested parents or guardians are provided an opportunity to understand the application of Title IX to the District's athletics program. This may be accomplished through mailings, seminars or in other ways calculated to educate interested parents or guardians regarding the District's programs and legal mandates in this area.

The Compliance Officer shall coordinate student education regarding Title IX and its relationship to student participation on sports through the school's physical education classes. This instruction shall be provided no less than annually.

The Compliance Officer shall prepare an amended grievance procedure which shall be based on Owasso's "Grievance Procedures For Filing, Processing And Resolving Alleged Discrimination Complaints." This grievance procedure shall provide a mechanism for a grievance hearing for a parent or student who

believes he or she is aggrieved by Owasso's alleged failure to comply with the mandates of Title IX, the Regulations, the Policy Interpretations, or the terms of this Consent Decree. The procedure shall be amended to provide for an initial hearing before either the Principal or the Superintendent, and a right of appeal to the Board of Education. The lapse of time from the date of filing of the written grievance with the Compliance Officer to the date of final decision by the Board of Education shall not exceed seventy (70) calendar days.

The Compliance Officer shall insure distribution of the District's amended grievance procedure to District employees, parents and students in a manner designed to achieve widespread publication. A summary of the Consent Decree shall be published in "News to You," which is a regular publication of the Owasso School District.

The parties to this Decree concur that it is not the purpose of this agreement to impose any obligation not imposed by Title IX's provisions related to athletic programs. Accordingly, this law shall provide the basis for evaluating the District's compliance with the provisions of this Decree.

[WHEN WE BEGAN THE SUIT, OWASSO HAD NO COMPLIANCE OFFICER. AS NEGOTIATIONS TOWARD SETTLEMENT PROGRESSED, IT BECAME INCREASINGLY APPARENT THAT AN EMPOWERED COMPLIANCE PERSON WAS ESSENTIAL. THESE PROVISIONS DETAIL THE DUTIES OF THE COMPLIANCE OFFICER, WHO BECOMES A KEY PLAYER. NOTE ESPECIALLY THE CREATION OF A SPEEDY GRIEVANCE PROCEDURE.]

III. COURT'S INVOLVEMENT

This Consent Decree 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. All claims against individually named defendants shall be dismissed with prejudice upon the approval and entry of this Decree by the Court. In the event that a party believes that there has been a default of an obligation under this Consent Decree, such party shall take its complaint through the District's amended nondiscrimination grievance procedure as provided for in this Consent Decree. If the grievance process does not produce a mutually agreeable resolution, either party may present its claims directly to the Court and seek any relief authorized by law.

The District shall on or before August 15, 1999, submit its report to the Court and counsel for the Class showing compliance with this Consent Decree or shall clearly set out areas in which compliance has not been achieved. Should the District establish compliance with the Decree prior to that date, it is not prohibited from submitting its report setting forth its compliance prior to August 1999. The report shall show the District's compliance with all terms and conditions of this Consent Decree. The Court shall schedule a Hearing on Compliance and will determine if the District has complied with the terms of this Consent Decree. The Court's determination of Compliance by the District shall result in a Final Order of the Court that the District has achieved compliance

and the dismissal with prejudice of this action.

[WE WERE UNWILLING TO SIMPLY TURN THE DISTRICT LOOSE UPON THE SIGNING OF THE DECREE. TIME WILL TELL WHETHER WE RETURN TO COURT TO ASK FOR INTERVENTION IN CONNECTION WITH AN UNRESOLVED GRIEVANCE. THIS OPTION, HOWEVER, AVOIDS THE NECESSITY OF STARTING ALL OVER WITH AN ENTIRELY NEW LAWSUIT IN THE EVENT OF NON-COMPLIANCE. WE AGREED THAT, UPON THE FILING OF A COMPLIANCE REPORT TO BE REVIEWED BY THE COURT, A FINAL ORDER OF DISMISSAL COULD TERMINATE THE ACTION.]

IV. COSTS AND ATTORNEYS' FEES

The parties agree that the District shall pay the reasonable costs and attorneys fees incurred in connection with this lawsuit to Ray Yasser and Sam Schiller as determined by the Court or by agreement of the parties.

[WE WERE NEVER ABLE TO AGREE ON OUR FEES. IN FACT, WHILE WE SUBMITTED DETAILED BILLINGS TO THE DISTRICT, IT NEVER ENTERED INTO NEGOTIATIONS ABOUT FEES. THE DISPUTE OVER OUR FEES, WHICH WE HAD HOPED TO AVOID, IS PERHAPS THE FINAL SAGA OF THE CASE.]²⁷

Entered this 2nd day of October, 1996.

UNITED STATES DISTRICT JUDGE
TERRY C. KERN

CONCLUSION

The Consent Decree provides a sound framework for Owasso to achieve compliance with Title IX. In many ways, the document is a blueprint for compliance. It anticipates that problems might arise and provides a grievance process which empowers the District to manage its own problems and to avoid judicial micromanagement. The shared hope of all the parties is that it will not be necessary to return to Court except for the final approval of the Decree. However, much depends on the commitment and good faith of the Owasso administrators who have the responsibility of implementing the Decree. Without that commitment and good faith, it is foreseeable that the Court will be asked to intervene. With that commitment and good faith, Owasso can be a model for an interscholastic sports system serving both girls and boys equally.

27. A third article is planned which documents the fee dispute.