

OLLIER v. SWEETWATER UNION HIGH SCHOOL DISTRICT U.S. District Court, S.D. California
February 9, 2012
858 F.Supp.2d 1093 (2012)

Summary of the lower court's 2012 ruling addressing Title IX's "Other Benefits" requirement and prohibition of "Retaliation" against those who report Title IX violations.

Defendant District is alleged to have unlawfully discriminated against female student athletes at CPHS with respect to "practice and competitive facilities; locker rooms; training facilities; equipment and supplies; travel and transportation, coaches and coaching facilities; scheduling of games and practice times; publicity; and funding" in violation of Title IX.

Recruiting Benefits

Each athletic coach at CPHS is tasked with recruiting new team players and conducting publicity for the team. The decision for how recruiting is to occur is left to the discretion of the individual coaches. Female athletes were provided with fewer coaches, coaches with more limited experience, and coaches who were unable to adequately coach because of excessive other assignments. Coaches for female athletic teams had higher turnover rates than coaches for male teams and as a result, there was less stable coaching for girls' teams which in turn means less successful teams and recruitment of players. Further, coaches for girls' sports teams were on several occasions appointed shortly before the start of the season and therefore, there was no time for recruiting by the coach. Sports teams were discontinued when coaches were not hired. The lack of coaches for girls' teams impacted negatively the teams' ability to participate in conference and non-conference competitions. This also influenced the ability to adequately recruit girls for athletic teams.

Locker Rooms, Practice and Competition Facilities

For Title IX compliance, locker rooms are evaluated with respect to location, size of lockers, exclusivity, and whether the locker room area is a team meeting area.

With respect to the quality and size of locker rooms at CPHS, 38.8% of male athletes had superior facilities as compared to 0% of female athletes. 61.2% of all male athletes had adequate facilities and 100% of female athletes had adequate facilities.

The CPHS football team had its own separate locker rooms that was rated as superior in size and quality. But female athletes had access only to a generic locker room with lockers that were too small to store athletic equipment, and was shared with all the other girls' athletic teams and with all the other physical education classes. Because of the small size of the lockers, females athletes, including the CPHS softball team, were required to carry all of their equipment with them during the school day. Female athletes at CPHS were required to vacate the girls' locker room whenever a visiting football team came to campus and therefore, they were unable to use the locker room during that time.

Locker rooms are rated superior if lockers are next to the practice and competition facilities, adequate if the lockers are in close proximity and on-campus, and inadequate if lockers were located off-campus. At CPHS, 82.9% of male athletes and 54% of female athletes have superior location of locker rooms; 11.8% of male athletes and 40% of female athletes have adequate locker rooms with respect to locker room location.

Superior or adequate team meeting facilities were provided to 58% of male athletes and 30% of female athletes. The main gymnasium at CPHS has two adjacent team rooms. The basketball, volleyball and wrestling teams have access to these team rooms. Prior to the 2010 softball season, the softball team did not meet in a team room. During the 2010 softball season, an empty classroom near the JV field was the designated softball team room; however, there were no lockers in the room. Nor was the room painted with the school colors.

The softball facility was inferior to the boys' baseball facility. The baseball facility had a netted instructional complex consisting of a main competition field for practices, two pitching areas or bullpens, rollaway backstop, multi-station instructional areas, a batting cage, significant storage area, four stands for spectators, on-field facilities that allowed for multiple practice stations, protective screens, and a separate batting cage for batting from multiple areas. The baseball complex was fully enclosed which restricted its use from any other use and prevented damage from use and overuse. The playing surface was high quality, and the outfield fences were wind-screened. The baseball field has large, cinder block dugouts with aluminum benches with backrests, cubby holes inside the dugout to store gear, and storage attached to the dugouts. The baseball dugouts are painted with the school colors and have the school logo and mascot on them. These dugouts allow greater privacy for greater player focus and fewer interruptions from the general public. The cinder block dugouts also provide protection against the weather for the players.

There was no outfield fence for the softball field. The infield dirt was extremely hard, uneven with many grooves and divots which caused players to be afraid of bad hops and reluctant to slide or dive for balls in the infield. There were large holes in the dirt in the batter's box. The outfield grass encroached into the infield dirt. The outfield grass was patchy, uneven and dangerous. The poor condition of the softball field made practices and games difficult and negatively impacted player development.

Because no one from CPHS was designated or acted to maintain the softball field, the softball team and its coach performed maintenance on the field. Maintenance of a softball field requires watering, raking and scarification so the dirt surface can be consistent and safe. The outfield needs cutting, watering and fertilization. At CPHS, the maintenance of the softball facility was particularly problematic because of the lack of perimeter fencing, the use of the field by physical education classes for kickball, softball and soccer, and use by the girls' field hockey and soccer programs. Recreational youth soccer leagues used the softball fields on weekends. In contrast, the boys' baseball field was not used for physical education classes or for any other uses.

The softball facility has no dedicated bullpens on the field. The girls use a warm-up area that was next to the Conex box. This area is unsafe because neither the catcher nor the pitcher in the area can see that ball that is being hit from the player at home plate. The boys' baseball facility had bullpens that had cement blocks that built up the mound to maintain the mound integrity, and there were two designated lanes allowing for two sets of pitchers and catchers warming up for each team. CPHS's baseball complex has four separate seating areas surrounding the backstop while the girls' softball complex has a single section of stands. Scoreboards were available for 55.6% of all male athletes at CPHS compared to 29.9% of all female athletes.

As a matter of law, we conclude that the locker room, practice and competition facilities provided to females athletes at CPHS are unequal as compared to the locker room, practice and competition facilities provided to male athletes.

Equipment, Uniforms and Storage

Because of late hires and more inexperienced coaches for the girls' athletic teams, female athletes receive fewer and lesser quality equipment and consumable supplies compared to male athletes. The softball program had significantly less sports specific equipment, e.g., ball carts, buckets and balls, than the baseball program. There was no replacement schedule for equipment that the softball team uses. Located on the baseball field was a large maintenance storage area that held all maintenance-related items. There was no similar storage area on the softball field.

With respect to uniforms, there was a nondiscriminatory uniform replacement schedule in place at CPHS but coaches were permitted to make different determinations as to what they could buy with their budgets and that could be in conflict with the replacement schedule policy. Each head coach had discretion to select and order team uniforms. The Athletic Director provided no oversight to determine whether the uniform replacement schedule was followed. At trial, no evidence was presented to show that monitoring of uniform replacement practices for gender equity occurs.

Whether dedicated and accessible storage areas are equitably available to male and female athletes is part of a Title IX analysis. 65% of male athletes and 41% of female athletes had dedicated storage areas. CPHS provided the softball team with half of a Conex box in which to store softball equipment; the other half was used by the boys' baseball program. But in addition to the Conex box, the boys' baseball team had a storage room attached to their dugouts. Player equipment storage, *i.e.*, where players have their bat bags, helmets and other amenities that they use as individual players, was available for CPHS baseball players only. There was no such equipment storage for the girls' softball players.

No evidence was presented that defendant monitors the provision of athletic equipment storage for gender equity. The Athletic Director did not provide any oversight for gender equity in the provision of equipment, supplies and uniforms to ensure that male and female athletes were provided with the same benefits.

Scheduling Benefits

Girls and boys are required under Title IX to have the same optimum practice or competition times. Immediately after schools is the most desirable practice times for sports. Female athletes had less access to premium game times than male athletes. Girls basketball games were played on Friday nights at 6:00 p.m. while the boys' basketball games were played on Friday nights at 7:30 p.m. No effort was made to alternate the times by week or season.

Athletic Director at CPHS permitted coaches to determine practice times. There is an absence of monitoring athletic practice times for gender equity at CPHS. Similarly, the District did not appoint a person responsible for monitoring the number of practice opportunities provided to the school's athletic teams for gender equity.

Equal Access to Coaching

Female athletes were provided with fewer coaches. The athlete/coach instructional ratio, which is calculated by dividing the total number of athletes on a team by the total number of coaches provided to that team, is an indicator of access to equitable coaching for males and females. The athlete/coach instructional ratio for females was not equal to that afforded to males. Assistant coaches were not provided in the same quantity or quality for female athletes at CPHS. Head coaches who were assigned late, which happened with some frequency, did not get an assistant coach although head coaches had the discretion to decide what assistants they needed.

The hiring of coaches for girls' sports was the responsibility of the Athletic Director. An open coaching position was first offered to on-campus teachers through the school's Daily Bulletin. If no response was obtained, the position was posted at the District. CPHS would take no other action to fill an open coaching position. If no coach was hired, a team was discontinued. The current athletes in that sport would be unable to participate during that year and even if a team was reconstituted the following year, the participants would have an inferior schedule. This is because the Metro Conference would not create a conference schedule for the following year for sports that were not sponsored in the current year.

Athletic Director Moore acknowledged that he had not done any analysis on gender equity for the quality of coaches for the boys' and girls' teams. Nor did CPHS conduct any reviews to determine if they were providing quality coaches equitably to male and female athletes.

Medical and Training Services

43% of the male athletes and 29% of the female athletes received these services. The weight training facility, while available for use by boy and girls, was used predominately by boys. The nature of the available equipment at CPHS was designed for absolute-strength-based sports in which boys' participate. For women's sports, a training facility will typically have lower weight plates, free weights, flexibility equipment, core strength equipment. In 2010, significant changes were made to the weight-training and conditioning facility with the intent to make the area more gender equitable. But no evidence was presented that the renovated facility was being used by girls' and boys' teams in an equitable manner. Further, neither the Athletic Director nor defendant monitored weight room usage for gender equity.

Publicity and Promotional Support

At CPHS, there was greater coverage of boys' athletic teams than girls' teams in the yearbook. The Castle Park Daily Bulletin featured almost twice as many announcements for boys' athletic teams compared to announcements for girls' athletic teams. Coaches have discretion to submit announcement to the Daily Bulletin. Coach Martinez never was told he needed to do any publicity on behalf of the softball team during his seven years as coach.

Band, cheerleaders and pep squads can provide support at athletic events. Forty-six per cent of male athletes and 13% of female athletes received the benefit of a band being at their events. The cheerleaders' schedule was decided at the discretion of the cheer coach. The cheerleaders would cheer for football and boys' basketball games but not for any girls' games. No one at CPHS was tasked with monitoring publicity or promotional opportunities for gender equity.

Fundraising Benefits

Equitable fundraising benefits are required under Title IX (along with all sources of outside resources for sports teams, including donations, booster club funding, and corporate sponsorship financial support). At CPHS, boys' teams were encouraged to fundraise. The boys' baseball team sold concessions from their snack stand and the money raised was used for the baseball team. In contrast, the softball coaches were permitted by the Athletic Director to prohibit all fund-raising by the softball team. As a result, the girls were unable to attend post-season competitions or non-conference competitions that they had previously attended with parent-raised funds.

A grant-making body akin to a booster club — the Trojan Foundation — supported the athletic program at CPHS. The coaches of girls' teams were not advised as to what they could request and the method for receiving Trojan Foundation funds. Because the coaches for boys' teams did not

have the same turnover rate as coaches for the girls' teams, they were aware of the availability of and requirements for obtaining Trojan Foundation funds. It was the responsibility of the Athletic Director and defendant to inform coaches about their funding sources so that equitable access to those sources could be obtained. Testimony was presented that action has been taken to remedy this disparity in this particular Fund-raising practice.

No one at CPHS has monitored Fund-raising opportunities or donations to the athletic program for gender equity. Defendant did not present any evidence to indicate that this situation has changed.

Administrative Activity

CPHS failed to provide a system for Title IX implementation and compliance. Instead, Title IX compliance was at the discretion of individual coaches and the defendant did not monitor coaches to determine if equitable treatment and benefits for male and female athletes was carried out. School principals are tasked with ensuring that the individual school is in compliance with Title IX. The Athletic Director is generally given the responsibility, however, to monitor specific gender equity requirements.

No evidence was presented that CPHS had ever conducted a Title IX self-evaluation, a requirement under the implementing regulations.

As a result of systemic administrative failures at CPHS, female athletes have received unequal treatment and benefits before and during the time this action has been pending. Although some remedial measures have been taken at CPHS, particularly with respect to the girls' softball facility, those steps have not been consistent, adequate or comprehensive. Additionally, there has been no evidence presented that the District has addressed or implemented policies or procedures designed to cure the myriad areas of general noncompliance with Title IX.

Retaliation

Steve Rangel, a softball parent, complained to CPHS Principal Castellija and Athletic Director Moore about inequalities for girls in the school's athletic programs in May 2006. Rangel was also present at a meeting between Moore and Chris Martinez [coach of the softball team]. Rangel pointed out the disparities between the girls' softball field and the boys' baseball field. In his deposition, Moore acknowledged that he told Martinez, with Rangel present, that coaches could be released from their employment at any time. Both Martinez and Rangel understood that Moore was threatening to terminate Martinez's continued coaching of the softball team if additional complaints were made about the girls' softball facilities. Approximately six weeks later, Coach Martinez was terminated.

CONCLUSION

Defendants have violated Title IX in failing to provide equal treatment and benefits, and retaliating against the plaintiff class. Here the plaintiff class has suffered and continues to suffer irreparable injury. Female athletes and potential athletes have been denied the opportunity to participate in high school sports on an equal level with the male students at their school. When inequalities are not addressed and corrected, female athletes, prospective students, faculty and the community at large, are told athletics for girls are not as important as boys.

The balance of hardships weighs firmly in plaintiffs' favor. The inequalities demonstrated at trial should have been rectified years ago by the District. Female students consistently have been denied athletic opportunity equal to male students. This inequity is highlighted and most apparent between the boys' baseball team and the girls' softball team at CPHS. The girls' softball team has been treated as vastly inferior to the boys' baseball team, which it is not.

The public interest in remedying gender discrimination is strong and promoting compliance with Title IX is an important societal value: Equal athletic treatment is not a luxury. It is not a luxury to grant equivalent benefits and opportunities to women. It is not a luxury to comply with the law. Equality and

justice are not luxuries. They are essential elements which are woven into the very fiber of this country. They are essential elements now codified under Title IX.

A recent assessment of the impact of Title IX suggests that although Title IX has gone a long way in increasing the status and respect for female athletes, discrimination endures. Title IX has not ended the long history of discrimination against females in sport programs; many educational institutions continue to place male sport programs in a position of superiority.

The parties are directed to jointly prepare a proposed compliance plan to include the Court's continuing jurisdiction and the monitoring of defendants' athletic programs and activities. The parties shall submit the proposed compliance plan within 45 days of the filing of this Order.

IT IS SO ORDERED.