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

RANDY & CATHERINE MARTIN, as parents and next friend of their minor daughter, BRANDY MARTIN, *et al.*,

Plaintiffs,

v.

INDEPENDENT SCHOOL DISTRICT NO. 8 OF TULSA COUNTY, a/k/a SPERRY PUBLIC SCHOOLS, *et al.*,

Defendants.

Case No. 98-CV-416-H
CLASS ACTION

ORDER

This matter comes before the Court on Plaintiffs' application for attorney fees (Docket # 25). Plaintiffs seek attorney fees for Professor Ray Yasser and Mr. Samuel J. Schiller in the amounts of $14,347.50 and $24,210.00, respectively. Plaintiffs further seek costs for Professor Yasser and Mr. Schiller in the amounts of $21.00 and $2006.01, respectively. Defendant Independent School District No. 8 of Tulsa County ("Sperry School District") objects to the award of any fees in this case, contending that the settlement agreement entered into by the parties on January 6, 2000, does not provide for such an award, and furthermore, that Plaintiffs did not obtain their primary objective in bringing the suit. Alternatively, Sperry School District requests that the Court reduce the Plaintiffs' lodestar calculation by at least 50%.

Sperry School District first argues that the Court should decline to award attorney fees in this case because Plaintiffs failed to give the school district notice of their claims prior to filing this suit. In doing so, the school district draws an analogy to recent Supreme Court and Tenth Circuit cases holding that school districts will be held liable for sexual harrassment claims by students only where they had notice of the harassment and failed to take appropriate steps to prevent such harassment. See Davis v. Monroe County Board of Ed., 526 U.S. 629 (1999); Murell v. School District No. 1, Denver, Colo., 186 F.3d 1238 (10th Cir. 1999). The Court

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rejects the application of these principles in the context of Title IX claims for failure to provide equal opportunities for participation in athletics. Unlike sexual harrasment, where the liability of school districts has only recently been clarified, the Title IX requirement of equivalent athletic opportunities for female and male students has long been established. Furthermore, while it is conceivable that a school district would not have notice of an individual incident of sexual harrassment, the Court finds that, given the longstanding requirements of Title IX and the direct control exerted by school officials over interscholastic sports teams, notice of significant inequality between the opportunities provided boys and girls may be imputed to the school district. Finally, the Court notes that in this case, following the notice of alleged deficiencies set forth in the complaint, the parties reached a temporary impasse over the proper allocation and use of school facilities. This suggests that notice prior to the filing of the instant action would have been unavailing. Accordingly, the Court rejects the notion that Plaintiffs should have been required to provide the school district with notice of their claims, or that they be denied an award of attorney fees for failing to provide such notice.[1]

Sperry School District also argues that attorney fees should be denied because Plaintiffs failed to obtain their primary objective in bringing the suit, i.e., construction of a new locker room for female athletes. Plaintiffs respond that construction of a new facility was not their primary objective, and in support, point to their brief of May 5, 1999, which states that the school district has two options: to reconfigure the existing facility, or to construct new facilities for female athletes. The Court finds that Plaintiffs' goals in filing this lawsuit were not limited to achieving the construction of a new locker facility for female athletes. The Court further finds that the settlement agreement reached by the parties satisfied Plaintiffs' primary objectives. Based on the above, the Court concludes that Plaintiffs are entitled to an award of attorney fees in this case, and turns to the appropriate amount of such an award.

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[1] The Court observes that Plaintiffs indicate that they did communicate with both school administrators and school board members prior to filing this lawsuit.

The district court has discretion in determining the amount of an attorney fee award. Hensley v. Eckerhart, 461 U.S. 424, 437 (1983). The underlying principle for determining this amount is one of reasonableness. Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 562 (1986). The lodestar figure, which is the reasonable number of hours times the reasonable rate, is the "mainstay" of the calculation of a reasonable fee. Anderson v. Secretary of Health and Human Services, 80 F.3d 1500, 1504 (10th Cir. 1996).

The plaintiff in an application for attorney fees has the burden of proving the reasonableness of each hour in the application, making a good faith effort to exclude hours that are excessive, redundant, or unnecessary. Jane L. v. Bangerter, 61 F.3d 1505, 1510 (10th Cir. 1995). Likewise, the district court must also exclude from the granting of fees hours not "reasonably expended." Malloy v. Monahan, 73 F.3d 1012, 1018 (10th Cir. 1996). The court may also make a general reduction in hours to achieve what the court perceives to be a reasonable award. Carter v. Sedgwick County, 36 F.3d 952, 956 (10th Cir. 1994).

Applying these principles in the instant case, as well as the reasoning of the Court in Gilbert, et al. v. Inola Public Schools, et al., No. 97-CV-20-H (N.D. Okla. June 15, 1998) and Bull, et al. v. Tulsa Public Schools, et al., No. 96-C-180-H (N.D. Okla. Sept. 4, 1997), the Court finds that Plaintiffs are entitled to reasonable attorney fees in this case. The Court further finds that due to the facts and circumstances of this case a reduction in the lodestar amount is appropriate. Of course, this reduction in no way reflects adversely on the high quality of the legal work in this matter. The Court hereby awards the amount of $11,478.00 for Professor Yasser and the amount of $19,368.00 for Mr. Schiller as reasonable attorney fees. In making this determination, the Court awards Professor Yasser and Mr. Schiller an hourly rate of $150 per hour, based upon their experience in the litigation of similar Title IX cases. The Court also finds that Professor Yasser is entitled to reasonable costs in the amount of $21.00 and that Mr. Schiller is entitled to reasonable costs in the amount of $2,006.01. Thus, the Court hereby

awards to Plaintiffs fees in the total amount of $30,846.00 and costs in the total amount of $2,027.01.

IT IS SO ORDERED.

This 17TH day of March, 2000.

Sven Erik Holmes
United States District Judge