

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

IVYANNE ELBOROUGH, and
DEBORAH ST. AUBIN-ELBOROUGH

Plaintiffs,

v.

Case No. 08-CV-447

EVANSVILLE COMMUNITY
SCHOOL DISTRICT and
RON GROVESTEN,
in his individual capacity,

Defendants.

COMPLAINT

I. NATURE OF ACTION

101. Ivyanne Elborough and her mother, Deborah St. Aubin-Elborough bring this civil action under Title IX of the Educational Amendments of 1972, the Fourteenth Amendment to the U.S. Constitution and Title 42 U.S.C. § 1983, and state law against the Evansville Community School District and Ron Grovesteen in order to obtain damages for the physical and emotional injuries arising out of sex-based discrimination, failure to protect from a state created danger, recklessness, wanton disregard for safety, battery, and infliction of distress.

II. JURISDICTION AND VENUE

A. Jurisdiction

201. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331 (federal question jurisdiction) and 28 U.S.C. § 1343(a)(3) (42 U.S.C. § 1983 jurisdiction).

202. The Western District of Wisconsin is the proper venue for this action because the Plaintiff's claims arose within the geographical boundaries of the Western District of Wisconsin within the meaning of 28 U.S.C. § 1391(b).

III. PARTIES

A. Plaintiff

301. Plaintiff Ivyanne Elborough, born April 30, 1993, is a minor resident of the State of Wisconsin, residing at 131 Gunther Dr., Evansville, Wisconsin.

302. Plaintiff Deborah St. Aubin-Elborough is an adult resident of the State of Wisconsin, residing at 131 Gunther Dr. Evansville, Wisconsin. Plaintiff St. Aubin-Elborough is the mother of Plaintiff Ivyanne Elborough.

B. Defendants

302. Defendant Evansville Community School District is a unit of local government, which receives federal funding as a public educational institution, and has the capacity to sue and be sued in this Court.

303. Defendant Ron Grovesteen is an adult resident of the State of Wisconsin. At all times pertinent, Defendant Grovesteen was the head football coach for Evansville High School, with final policymaking authority, and acting under the color of state law.

IV. ALLEGATIONS OF FACT AS TO ALL CAUSES OF ACTION

401. Plaintiff Elborough joined the Evansville High School 2007 school year football team.

402. Plaintiff Elborough was a high school freshman during the 2007 school year.

403. Plaintiff Elborough was the only female member the otherwise all-male 2007 Evansville High School football team.

404. On information and belief, there had been at most one previous girl to ever be on the Evansville High School football team.

405. Plaintiff Elborough was discriminated against by the Defendants because Plaintiff Elborough is female.

406. For instance, Plaintiff Elborough was never given a permanent team jersey as were the other members of the team.

407. The football practice schedule was posted only in the boys' locker room where Plaintiff Elborough was not granted access, when the schedule could have easily been placed in a sex neutral public area such as the hallway, or a copy could have been placed the girls' locker room.

408. Similarly, snacks and treats were served in the boys' locker room which prohibited Ms. Elborough from participating in the team snack time. This had the effect of locating certain aspects of team camaraderie in a place that was inaccessible to Plaintiff Elborough.

409. Defendant Grovesteen made Plaintiff Elborough cut her hair very short, two times, claiming this was for safety reasons, even though boys on the team were allowed to keep longer hair styles.

410. Defendant Grovesteen told Plaintiff Elborough that cutting her hair like a boy's was a commitment she needed to be willing to make to play football.

411. Defendant Grovesteen refused to unlock the girls' locker room for Plaintiff Elborough to change into her football clothing and safety gear, though Defendant Grovesteen unlocked the boys' locker room for the male players.

412. Plaintiff Elborough was told to find a custodian on a day-to-day basis before practice to request that the girls' locker room be unlocked.

413. The Defendants refused to end this practice of Plaintiff Elborough trying to find a custodian on a day-to-day basis to grant her access to the locker room, and replace it with a policy that Defendant Grovesteen, or some other coach, would simply unlock the girls' locker room at the same time as the boys' locker room was unlocked.

414. Plaintiff Elborough, not having easy access to the schedule or locker room, would sometimes be late for practice and would be forced to do push-ups during practice as punishment.

415. During the week August 20, 2007, Plaintiff St. Aubin-Elborough complained to Defendant Grovesteen that Plaintiff Elborough was not able to get into a locker room before practice as were the other players, and that this was dangerous and not fair.

416. Defendant Grovesteen's response amounted to deliberate indifference, as he simply said there was nothing he could do.

417. On August 29, 2007, Plaintiff St. Aubin-Elborough complained to Athletic Director Brian Cashore about the unfair and discriminatory treatment Plaintiff Elborough had been experiencing on the football team as alleged above.

418. Later that day, August 29, 2007, Defendant Grovesteen yelled at Plaintiff Elborough and other team members that they should not bring complaints to parents.

419. On August 30, 2007, Plaintiff Elborough had not yet found a custodian to let her into the girls' locker room by the time practice was starting, and she did not have access to her safety gear.

420. Plaintiff Elborough did not want to be late and be forced to do push-ups throughout practice, so she went out to the field for the start of practice without her safety gear.

421. Defendant Grovesteen instructed the children on what drills to practice.

422. Male team members were wearing their safety gear, as they had access to the boys' locker room.

423. Defendant Grovesteen saw that Plaintiff Elborough did not have her safety gear on, but he took no action to correct the situation.

424. Plaintiff Elborough began participating in the drills with her team as instructed.

425. Defendant Grovesteen saw or should have seen that Plaintiff Elborough was participating without her safety gear.

426. Coach Grovesteen had an absolute and imperative duty to ensure all football players were wearing proper safety gear before participating in practice drills which required such gear.

427. It was self-evident that allowing Plaintiff Elborough to participate in football drills without safety gear with a group of male players who were wearing safety gear created a dangerous and hazardous situation, and was almost certain to cause injury if not corrected.

428. Yet, the Defendants failed to take any action to prevent injury to Plaintiff Elborough.

429. On information and belief, Defendant Grovesteen was malicious and willful in failing to prevent injury to Plaintiff Elborough, because he wanted to show that girls were not tough enough to play football, and because he wanted to deter Plaintiff Elborough and future female students from participating on the football team.

430. Plaintiff Elborough sustained severe injuries including a broken clavicle on August 30, 2007, during football practice.

431. Plaintiff Elborough suffered severe and prolonged pain due to her August 30, 2007 injury, and had to take prescription pain medication.

432. Plaintiff Elborough was required to undergo multiple doctors' visits and medical procedures, including many very painful diagnostic procedures and surgery, due to her August 30, 2007 injury.

433. Plaintiff Elborough had to miss class often due to her pain and medical procedures.

434. Plaintiff Elborough's grade point average suffered due to her August 30, 2007, injury.

V. VIOLATIONS OF LAW

A. Title IX: Evansville Community School District

501. The Evansville Community School District subjected Plaintiff Elborough to discrimination on the basis of sex and was deliberately indifferent to the sex discrimination propounded by Defendant Grovesteen of which it had actual knowledge, in violation of Title IX of the Educational Amendments of 1972.

B. The Due Process Clause of the Fourteenth Amendment: Evansville Community School District and Defendant Grovesteen.

502. The Defendants, acting under color of law, failed to protect Plaintiff Elborough from a state created danger in violation of 42 U.S. § 1983. The Defendants developed a policy of unlocking the boys' locker room but not the

girls' locker room prior to football practice, which granted male football players easy access to their safety gear before football practice and denied Plaintiff Elborough easy access to her safety gear. This created a clear danger that Plaintiff Elborough would not have access to safety gear during certain sessions of football practice. The Defendants' failure to protect Plaintiff Elborough from this danger caused her significant injury including a broken clavicle. The Defendants' adoption of this policy amounted to deliberate indifference toward the Plaintiff's safety, and the Defendants' failure to protect her, while amply protecting the male football players, shocks the conscious.

C. The Equal Protection Clause of the Fourteenth Amendment: Defendant Grovesteen in his individual capacity.

503. Defendant Grovesteen, acting under color of law, willfully and maliciously violated Plaintiff Elborough's constitutional rights under the Equal Protection Clause of the Fourteenth Amendment by discriminating against her because of her sex as alleged above, in violation of 42 U.S.C. § 1983. Defendant Grovesteen maliciously intended for Plaintiff Elborough to suffer injury in an effort to deter her and other female high school students from participating on the football team.

D. Common law Intentional Infliction of Harm: Defendant Grovesteen.

504. Defendant Grovesteen acted willfully to deter Plaintiff Elborough from remaining on the football team and with wanton disregard of her safety, when he instructed and allowed Plaintiff Elborough to participate in football

practice drills without her safety gear with male football players who were wearing safety gear, and which resulted in severe injuries being inflicted upon Plaintiff Elborough including a broken clavicle, in violation of the common law.

E. Common law Recklessness: Evansville Community School District and Defendant Grovesteen.

505. Defendants recklessly allowed Plaintiff Elborough to participate on the football team even though they knew or should have known that there was a substantial risk that Plaintiff Elborough would not have, and did not have, access to her safety gear, because the girls' locker room would not be unlocked before practice, and allowed her to practice with male players who all had easy and regular access to the boys' locker room and safety gear, which resulted in severe injuries being inflicted upon Plaintiff Elborough including a broken clavicle in violation of the common law.

F. Battery: Defendant Grovesteen

506. Defendant Grovesteen knew that instructing and allowing Plaintiff Elborough to participate in practice drills without protective gear when the male players were wearing protective gear was practically certain to cause bodily harm to Plaintiff Elborough, yet he instructed and allowed her to do so anyway, which did cause Plaintiff Elborough significant injury as alleged above to which Plaintiff Elborough did not consent.

G. Negligent Infliction of Emotional Distress: Evansville Community School District.

507. Evansville Community School District, in allowing Defendant Grovesteen to harass, discriminate, pick on, and single out, and cause physical injury to Plaintiff Elborough, and in acting indifferent to Plaintiff St. Aubin-Elborough's complaints both before and after Plaintiff Elborough suffered a broken clavicle, caused emotional distress to the Plaintiffs, in violation of the common law.

H. Intentional and Negligent Infliction of Emotional Distress: Defendant Grovesteen.

508. Defendant Grovesteen, in using his position of power and mentorship to discriminate, harass, pick on, and single out Plaintiff Elborough, caused injury and emotional distress to Plaintiff Elborough, in violation of the common law.

509. Defendant Grovesteen, in instructing and allowing Plaintiff Elborough to participate in football practice without any safety gear amongst male players who were wearing safety gear, caused severe physical injury to Plaintiff Elborough, which made her unable to participate in football, crushed her dreams of becoming the first professional female football player, caused her to miss school, go through surgery and other medical procedures, and caused significant pain, which all caused Plaintiff Elborough to suffer emotional distress, in violation of the common law.

510. Defendant Grovesteen, in failing to address any of Plaintiff St. Aubin-Elborough's complaints of discrimination and unfair treatment toward her daughter, caused Plaintiff St. Aubin-Elborough to feel that her daughter was unsafe at school and made her feel she was unable to protect her daughter, and additionally, Plaintiff St. Aubin-Elborough had to witness the immediate aftermath of her daughter's serious injury, which all caused Plaintiff St. Aubin-Elborough to suffer severe emotional distress, in violation of the common law.

VI. DAMAGES AND EQUITY

A. Damages

601. By virtue of unlawful actions alleged above, Plaintiffs sustained grave physical injury, economic losses and expenditures, humiliation, embarrassment, mental and emotional distress, and other damages for which she should be compensated in an amount deemed just by the Court.

602. Because the acts of the individual Defendant herein alleged were carried out maliciously or with reckless disregard for the Plaintiff Elborough's fundamental rights, Ms. Elborough seeks awards of punitive damages against the individual Defendant to deter him and others similarly situated from similar wrongful acts in the future.

603. Plaintiff Deborah St. Aubin-Elborough incurred significant treatment expenses for her daughter's injuries as a result of the Defendants' wrongful acts.

VII. CONDITIONS PRECEDENT

701. All conditions precedent to this action, within the meaning of Rule 9(c), Fed. R. Civ. Pro., have been performed or have otherwise occurred.

VIII. DEMAND FOR JURY TRIAL

801. The Plaintiff hereby demands a trial by jury of all issues triable of right to a jury.

IX. PRAYER FOR RELIEF

WHEREFORE, Ms. Elborough prays that the Court grant judgment against the Defendants, awarding her:

901. Monetary damages in an amount that will fairly compensate the Plaintiff for her injuries;

902. Punitive damages in amount that will justly punish the Defendants for their actions;

903. Her costs, attorneys' fees and litigation expenses as well as any further relief this Court deems just.

Dated this 4th day of August, 2008.

Respectfully submitted,

Ivyanne Elborough and
Deborah St. Aubin-Elborough, Plaintiffs

By

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