



CLIENT NEWS BRIEF

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NINTH CIRCUIT REMOVES BARRIERS FOR PRIVATE DAMAGE ACTIONS UNDER TITLE IX AGAINST EDUCATIONAL ENTITIES

In Mansourian v. Regents of the University of California (9th Cir. Feb. 8, 2010) ___F.3d___ (“Mansourian”), the United States Court of Appeals for the Ninth Circuit overturned a lower court’s summary judgment against former female wrestling team members, reinstating their claims against the University of California at Davis (“University”). The trial court had dismissed the plaintiffs’ claims because they failed to give the University notice of and an opportunity to remedy their exclusion from the University’s wrestling team before bringing a suit for private damages for ineffective accommodation under Title IX (20 U.S.C. § 1681), the federal law that prohibits sex discrimination in athletic and educational programs at federally funded schools. The Ninth Circuit held that in a Title IX private enforcement action, proof of actual notice is required only when the claims allege an institution’s deliberate indifference to discriminatory acts not involving agency officials.

In 2000, the University removed all women from its wrestling program. Female wrestlers at the University filed a number of complaints with the U.S. Department of Education’s (“DOE”) Office for Civil Rights regarding their exclusion from the wrestling program. Later, women were permitted to try out for the men’s wrestling team. However, none of the former female wrestlers received a place on the men’s team after trying out. The former female wrestlers then filed a private suit for damages under Title IX, also known as a private enforcement action.

The DOE conducts public enforcement of Title IX, and the notice requirements for a public enforcement action are well-established. The DOE may not take action against an educational entity to enforce Title IX compliance until after advising the institution of its failure to comply with Title IX and giving the institution time to correct. Only when the institution has refused to comply with Title IX requirements may any enforcement proceedings occur, such as revocation of all federal funding.

In 2008, the United States District Court for the Eastern District of California granted summary judgment against the Mansourian plaintiffs because the court imposed a requirement that the plaintiffs meet the notice and time to remedy requirements applicable to a public enforcement action before initiating their private enforcement action.

The Ninth Circuit overturned the lower court’s summary judgment, agreeing with the plaintiffs’ argument that sufficient notice of the ineffective accommodation violation was unnecessary because the University oversees the athletic program. Decisions to create or eliminate teams or to add and decrease roster slots for male or female athletes are official decisions of the institution itself; therefore an institution cannot be unaware of official discriminatory athletic program policies.

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The Ninth Circuit also refused to uphold summary judgment for the University because the University failed to demonstrate effective accommodation of women's interest in athletic participation. Whether a Title IX funding recipient has met its duty of effective accommodation is determined by passing one of three possible tests, the relevant test to this case being whether the school demonstrated a history and continuing practice of program expansion for women. The Ninth Circuit explained that the analysis for this test focuses on increasing the number of female athletes rather than increasing the number of teams, which was an issue of disputed fact in the case. The University needed to show an expansion of participation opportunities that was also demonstrably responsive to women's developing interests and abilities. However, the history of the University's athletic program demonstrated choices that did not align with students' interests and resulted in fewer varsity female athletes.

The Ninth Circuit also reinstated the students' 42 U.S.C. § 1983 claim, which alleged that the University violated the federal Equal Protection Clause by maintaining an athletic program that gender-discriminated. The Ninth Circuit confirmed that Title IX was not intended to preclude § 1983 claims seeking to enforce federal Constitutional rights.

By eliminating notice requirements the Ninth Circuit's decision removes barriers to private enforcement suits under Title IX. Also, this case further delineates requirements for establishing effective accommodation of women's interest in athletics. As a result, institutions may be more vulnerable to Title IX and § 1983 claims regarding women's athletic programs.

If you have any questions regarding the Mansourian decision, or Title IX enforcement in general, do not hesitate to contact one of our [seven statewide offices](#).

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