

## CLIENT NEWS BRIEF

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### **SCHOOL DISTRICTS MUST PROVIDE FEMALE STUDENTS WITH EQUAL ATHLETIC PARTICIPATION OPPORTUNITIES**

In a recent decision, Ollier v. Sweetwater Union High School District (S.D. Cal. Mar. 30, 2009), \_\_ F.Supp.2d \_\_, 2009 WL 886223, the United States District Court for the Southern District of California granted summary adjudication in favor of a female student who alleged a violation of Title IX based on a failure to provide female students with equal athletic participation opportunities.

The plaintiffs alleged, among other things, that the Sweetwater Union High School District (“District”) failed to provide female students with equal athletic participation opportunities, despite their demonstrated athletic interest and abilities to participate in athletics. The court applied an Office of Civil Rights (“OCR”) published Policy Interpretation of Title IX that laid out the three factors used to assess whether an institution complies with Title IX. (See OCR Policy Interpretation, 44 Fed. Reg. 71,413 (1979); Neal v. Bd. of Trustees of Cal. State Universities (9th Cir. 1999) 198 F.3d 763, 767.)

The three-part test asks:

1. Whether the participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
2. Whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or
3. Whether it can be demonstrated that the interests and abilities of the members of the under-represented sex have been fully and effectively accommodated by the present program.

To be in compliance with Title IX, an institution need only meet one of the three prongs of the test. If an institution fails to achieve the first prong, substantial proportionality, compliance may be found under the second prong of the test if the “institution can show a history and continuing

practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex.” Because there was no steady increase in female participation, the District could not meet prong two of the test. The third prong requires the District to show that interests and abilities of the under-represented sex have been fully and effectively accommodated. Here, the District failed to meet the third prong because field hockey, tennis, and water-polo teams were eliminated, not based upon lack of interest, but because of an inability to find available coaches. The court rejected the unavailability of coaches as a viable defense, clarifying that the issue is whether there is unmet need on the part of females, not whether coaches are available.

Accordingly, the court found that the District failed each part of the test, and therefore violated Title IX.

If you have any questions about this case or your school district’s obligations under Title IX, please contact one of our seven offices located statewide.

*As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.*

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