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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

|                                  |   |                                  |
|----------------------------------|---|----------------------------------|
| VERONICA OLLIER, <i>et al.</i> , | ) | Civil No. 07cv714-L(WMc)         |
|                                  | ) |                                  |
| Plaintiffs,                      | ) | <b>ORDER DENYING MOTION FOR</b>  |
|                                  | ) | <b>ADVISORY JURY [doc. #107]</b> |
| v.                               | ) |                                  |
|                                  | ) |                                  |
| SWEETWATER UNION HIGH            | ) |                                  |
| SCHOOL DISTRICT, <i>et al.</i> , | ) |                                  |
|                                  | ) |                                  |
| Defendants.                      | ) |                                  |
| _____                            | ) |                                  |

17 Defendants move for an advisory jury in this action brought under Title IX.<sup>1</sup> Plaintiffs  
18 oppose the motion. Defendants have not filed a reply to the opposition. This motion has be  
19 submitted on the papers without oral argument pursuant to Civil Local Rule 7.1(d)(1). For the  
20 reasons set forth below, defendants’ motion is denied.

21 Under Title IX, the discrimination claims brought by plaintiffs are solely equitable and  
22 are not triable by a jury as of right. 20 U.S.C. § 1681, *et seq.* Nevertheless, Federal Rule of  
23 Civil Procedure 39 provides for an advisory jury:

24 ///

25 \_\_\_\_\_  
26 <sup>1</sup> The Court notes that throughout this litigation, which commenced on April 19,  
27 2007, defendants did not request an advisory jury. Instead, at the final pretrial conference on  
28 December 14, 2009, defendants raised the issue for the first time with the Court. Although well  
past the time for the filing of motions, the Court permitted the filing of this motion and briefing  
on the issue.

1 (c) Advisory Jury; Jury Trial by Consent. In an action not triable of right by a jury,  
2 the court, on motion or on its own:

3 (1) may try any issue with an advisory jury;

4 FED. R. CIV. P. 39(c)(1).

5 In seeking an advisory jury, defendants suggest that representatives from the San Diego  
6 County community would “provide a unique perspective on the facts of the case that, although  
7 not binding, certainly can help the Court reach conclusions on the numerous issues that face the  
8 Court in this case. (Dfts’ Ps&As at 2.) Specifically, defendants believe that incorporating the  
9 “public’s views of gender equity and experience with school facilities . . . [would] provide the  
10 Court with valuable guidance in making its own findings and conclusions.”

11 (*Id.* at 3.) According to defendants, the factual issues are complex and the “issues will also be  
12 determinative of the future of Castle Park athletics.” Defendants assert community involvement  
13 with the determination of facts would assist the Court in properly viewing the facts as they are  
14 applied to the legal issues.

15 Plaintiffs oppose the motion because an advisory jury would add unnecessary expense,  
16 time and complexity to a case that has no special factors or extraordinary circumstances present.  
17 The Court concurs.

18 Further, defendants’ subtle suggestion that the legal issues presented in this case should  
19 be influenced by community beliefs about the funding of sports programs in the local schools or  
20 gender equality is inconsistent with the intent of Title IX enforcement. An advisory jury would  
21 not assist the Court in fact finding in this case.

22 Based on the foregoing, defendants’ motion for an advisory jury is **DENIED**.

23 **IT IS SO ORDERED.**

24 DATED: April 15, 2010

25   
26 M. James Lorenz  
United States District Court Judge

27 ///

28 ///

1 COPY TO:  
2 HON. WILLIAM McCURINE, JR.  
3 UNITED STATES MAGISTRATE JUDGE

4 ALL PARTIES/COUNSEL

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