



CLIENT ALERT

Tax-Exempt Private Schools May Be Subject to Title IX

Title IX of the Education Amendments Act of 1972 (“Title IX”) is a federal anti-discrimination statute that requires all schools, including elementary schools, secondary schools and post-secondary institutions that receive federal financial assistance to provide an educational environment free from discrimination on the basis of sex. Historically, there has been a general understanding among educational programs that Title IX applies to publicly-funded educational institutions (public schools and universities) but that private elementary and secondary schools that do not receive federal funds are exempt from compliance with Title IX’s obligations.

Two recent federal court cases suggest that tax-exempt private schools may be subject to the requirements of Title IX. In each of these cases, the court held that a private school’s tax-exempt status under 26 U.S.C. 501(c)(3) (“Section 501(c)(3)”) constitutes federal financial assistance for purposes of Title IX.

On July 21, 2022, the United States District Court for the District of Maryland held that a religiously-affiliated, tax-exempt private high school was required to comply with Title IX’s mandates. In Buettner-Hartsoe v. Baltimore Lutheran High School Assoc.¹ five former female students were permitted to pursue their respective Title IX claims alleging sexual assault and verbal sexual harassment by male students of the school. In allowing Title IX claims against the school to proceed against the private school, the court looked to relevant United States Supreme Court cases including Regan v. Taxation with Representation,² to conclude that the Supreme Court has recognized Section 501(c)(3) status “as a form of Congressional subsidy and the equivalent of a cash grant” that constitutes federal financial assistance for purposes of Title IX. The court further found that subsequent lower court decisions from several jurisdictions aligned with this reasoning in finding that tax-exempt status constitutes federal assistance.

On July 25, 2022, the United States District Court for the Central District of California decided E.H. v. Valley Christian Academy³, in which a female high school student and football team player (E.H.) was prohibited by a rival high school (Valley Christian Academy) from playing against their team due to the fact that she was a female. In denying Valley Christian Academy’s motion to dismiss E.H.’s Title IX claims, the court held that the school was a recipient of federal assistance (1) because it had received a federal paycheck protection program (“PPP”) loan, and (2) on the basis of its tax-exempt status. In deciding that that Valley Christian Academy’s tax-

¹ Nos. RDB-20-3132; RDB-20-3214; RDB-20-3267; RDB-21-0691 (D. Md. July 21, 2022).

² 461 U.S. 540, 544 (1983).

³ No. 2:21-cv-07574-MEMF (GJSx) (C.D. Cal. July 25, 2022).

exempt status obligated its compliance with Title IX, the court acknowledged conflicting case law among circuits as to whether tax exempt status in and of itself subjects an entity to Title IX. However, the court also considered the lack of any controlling precedent or strong legislative history, ultimately concluding that the anti-discriminatory intent of statutes such as Title IX and Title VI of the Civil Rights Act of 1964 (“Title VI”) were controlling factors and that “the method of distribution of federal funds or their equivalent [was] beside the point.”

Although courts in the First Circuit have not had an opportunity to weigh in on the Title IX obligations of tax-exempt private schools, it is possible that other federal courts will adopt the reasoning articulated in E.H. and Buettner-Hartsoe to hold that tax exempt status under Section 501(c)(3) requires a private school to comply with Title IX and other federal anti-discrimination statutes such as Title VI and Section 504 of the Rehabilitation Act. Tax-exempt private schools, if subject to Title IX, will need to develop and implement policies and grievance procedures that comply with the current Title IX regulations and train staff accordingly.

As discussed in a previous [Client Alert](#), the United States Department of Education has proposed significant amendments to the Title IX regulations which are likely to be adopted in some form in the upcoming months.

If you have questions about Title IX, including current or proposed regulations, please contact Bettina Toner (btoner@kb-law.com) or Elka Sachs (esachs@kb-law.com).