ALERTS

Federal Courts in Maryland and California Rule School's Federal Tax-Exempt Status Constitutes Federal Financial Assistance Under Title IX

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Two recent federal court decisions have ruled that a school's 501(c)(3) status constitutes federal financial assistance under Title IX of the Education Amendments of 1972 ("Title IX"), obligating such schools to comply with Title IX. These recent decisions are a significant departure from the long accepted legal position that independent and private schools need not comply with certain federal non-discrimination laws, including Title IX (which prohibits discrimination on the basis of sex in any education program or activity), if the school does not accept federal financial assistance, and that a school's 501(c)(3) status does *not* alone qualify as such assistance.

The U.S. District Court for the District of Maryland decided *Buettner-Hartsoe v. Baltimore Lutheran High School Association*[1] on July 21, 2022. In *Buettner-Hartsoe*, five former students sued their former independent high school, Concordia Preparatory School ("CPS"), claiming that school officials had failed to take any meaningful action in response to the students' allegations of sexual assault and verbal sexual harassment by male students at the school. CPS argued claims brought under Title IX should be dismissed because the school was not a recipient of federal financial assistance during the relevant time periods. The Court concluded that the school's federal tax exemption constituted federal financial assistance under Title IX, thus subjecting CPS to Title IX compliance.

Just days later, on July 25, 2022, the United States District Court for the Central District of California ruled on *E.H. v. Valley Christian Academy*.[2] In this case, a female student who played football for a public school alleged that when she traveled to play a football game at Valley Christian ("VC") in 2021, she was prohibited from playing future games against the private school after VC learned she was female. The student brought suit, in part alleging violations of Title IX. VC moved to dismiss the Title IX allegations, arguing that since the school did not receive federal financial assistance it was not subject to Title IX. In denying VC's motion the Court held that the school's 501(c)(3) status constituted federal financial assistance, and accordingly, VC was subject to Title IX.[3]

These trial court decisions are noteworthy, as they serve as a substantial departure from prior interpretations of whether an independent school's federal tax-exempt status constitutes federal financial assistance. In addition to Title IX, this decision could create obligations for schools under other federal laws, such as Family Educational Rights & Privacy Act (FERPA) and Title VI. These decisions are expected to be appealed and there are conflicting decisions from other jurisdictions. Accordingly, we recommend that independent schools in New York await further guidance. We will monitor these trial court decisions and this evolving legal landscape.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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[1] *Buettner-Hartsoe v. Balt. Lutheran High Sch. Ass'n*, No. RDB-20-3132, 2022 BL 255532 (D. Md. July 21, 2022).

[2] *E.H. v. Valley Christian Acad.*, No. 2:21-cv-07574-MEMF (GJSx), 2022 BL 259464 (C.D. Cal. July 25, 2022).

[3] The decision also provided that VC's acceptance of a Paycheck Protection Program ("PPP") loan constituted federal financial assistance that would subject VC to Title IX compliance. It is unclear whether the Plaintiff's claim arose during the PPP loan or after it was forgiven or repaid. In *Buettner-Hartsoe*, the parties agreed CPS's acceptance of a PPP loan constituted federal financial assistance. However, the Court suggested that once a PPP loan is forgiven a recipient is no longer subject to "any legal obligations [it] incur[s] through [its] receipt of [the]loan."

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