

Two Federal Courts Apply Title IX to Nonprofit Schools

08.04.22 | Linda J. Rosenthal, JD



It was “just days after a Baltimore [federal] [court dropped a bombshell on the nation’s private and independent school community](#)” that “a California federal court joined the fray....”

According to the education law experts at Fisher & Phillips LLP, these two late-July rulings, flying well below almost everyone’s radar, could turn out to be a big deal.

So what happened?

In a nutshell, District Judge Richard Bennett of the District of Maryland ruled on July 21, 2022, that “a school should be considered to have received federal financial assistance just by being classified as a nonprofit entity.”

And “receiving federal financial assistance” automatically triggers duties under federal Title IX of the Education Acts of 1972. This landmark anti-discrimination law reads: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

“A recipient institution that receives Department funds must operate its education program or activity in a nondiscriminatory manner free of discrimination based on sex, including sexual orientation and gender identity.” As the U.S. Department of Education explains [here](#), that covers a broad swath of activities including – for example – “recruitment, admissions, and counseling; financial assistance; athletics; sex-based harassment, which encompasses sexual assault and other forms of sexual violence; treatment of pregnant and parenting students; treatment of LGBTQI+ students; discipline; single-sex education; and employment.”

And just a few days later on July 25, 2022, Los-Angeles based Judge Maame Ewusi-Mensah Frimpong in the Central District of California came to the same conclusion. The facts are not identical but the legal principle applies just the same.

The Baltimore Case

In *Baltimore Bombshell: Federal Court Rules Private School's Nonprofit Status Leads to Title IX Coverage* (July 26, 2022) *Insights, fisherphillips.com*, the writers briefly describe the facts and procedural status of the case.

There, “a group of former students sued Baltimore-based Concordia Preparatory School alleging sexual assault and harassment based on the alleged actions of other students dating back to 2016.” They brought claims under Title IX.

In the school's motion to dismiss, it “argued that it was not a direct recipient of federal financial assistance, which is a requirement for any school to be subject to Title IX.”

Judge Bennett denied the school's request and cleared the lawsuit to proceed. “He concluded that the school's tax-exempt status, in and of itself, constitutes ‘federal financial assistance’ for the purpose of Title IX and other similar statutes.” He reasoned that the “... tax-exempt status of a private school subjects it to the same requirements of Title IX imposed on any educational institution. The school cannot avail itself of federal tax exemption but not adhere to the mandates of Title IX.”

In regard to this case, the Fisher Phillips lawyers explained that right now the ruling “only impacts schools in Maryland, and will surely be appealed. It's likely there would be a stay pending appeal. But, they caution, “this could be the beginning of a trend that could catch on elsewhere, meaning that all private tax-exempt schools should review this ruling and be on guard to adapt your policies and practices if necessary.”

Similarly, employment law experts at Baker Donelson advise Maryland schools to “initiate steps to comply with Title IX. Schools in other states should stay vigilant in the event courts in their jurisdictions issue similar decisions.” See *Tax-Exempt Private Schools Treated Equally to Federally Funded Schools, Subject to Title IX Requirements* (August 1, 2022) Chaitra Gowda, Esq. & Emma Redden.

The Los Angeles Case

In *California Joins the Fray: Another Court Rules that Nonprofit Schools are Subject to Title IX* (July 28, 2022) *Insights, fisherphillips.com*, there was a similar conclusion out of the Central District of California on July 25, 2022. The court concluded that a school should be considered to have received federal financial assistance just by being classified as a nonprofit entity.

A California high school football player competed in a game against Valley Christian Academy in March 2021 without incident – until removing her helmet at the end of the game revealing herself as female.” A few days later, Valley Christian sent her a letter indicating “she was not welcome to play football on their field again because of the ‘guiding principles of the Bible regarding the care of a woman.’”

In her lawsuit, she raised violation of Title IX among other claims. The school moved to dismiss arguing it does not receive federal financial assistance and so is not required to comply with Title IX. “In a July 25 decision that threatens to upend decades of well-settled law, District Court Judge Maame Ewusi-Mensah Frimpong denied the Motion and concluded that the student could proceed with her Title IX claim against the private school.”

Judge Frimpong acknowledged that the Ninth Circuit had not yet opined on the specific issue here; namely, “whether tax-exempt status in and of itself confers federal financial assistance status.” But she asserted that “the purpose of Title IX is to eliminate discrimination in activities benefiting from federal financial assistance, and the distinction as to how such federal funds are distributed is irrelevant.”

The Fisher Phillips writers advise that, because a second federal court has come to the same conclusion as the Maryland district judge, “... California-based private schools” should “... take a fresh look at the situation,” adding that this new ruling “raises the stakes for all other private and independent schools across the country.

Conclusion

Early in the pandemic, Fisher Phillips began advising their clients that they may be “on the hook for Title IX compliance” if they accept “a COVID-related PPP loan.” They add: “Private schools have generally operated with the understanding that they would be subject to Title IX compliance during the pendency of the PPP loan but once the loan was fully forgiven or paid off and closed out, the federal regulation would cease.” See *Schools Accepting COVID-19 Loans Must Be Aware Of Workplace Law Consequences* (April 5, 2020) and *Federal Court Confirms that Schools Accepting PPP Loans Must Comply with Title IX* (July 13, 2022).

The Los Angeles district judge “also said that Valley Christian was on the hook for Title IX compliance because it accepted a COVID-related PPP loan, but this conclusion is far less controversial” than the court holding that tax-exempt status is the equivalent of “federal financial assistance.”

– Linda J. Rosenthal, J.D., FPLG Information & Research Director