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Fourth Circuit: Institution's Tax-Exempt Status Does Not Trigger the Applicability of Title IX's Requirements

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On March 27, the Fourth Circuit Court of Appeals concluded that an independent high school's Section 501(c)(3) tax-exempt status does not constitute "receiving Federal financial assistance," for purposes of subjecting an independent high school to Title IX's requirements. Based on a plain reading of Title IX's text as well as on Supreme Court precedent concerning federal assistance, the Fourth Circuit held that a tax exemption is not the same as directly (or indirectly) receiving financial assistance from the federal government, and therefore does not trigger the applicability of Title IX's requirements.

Case Overview

Various students who attended Baltimore Lutheran High School Association (dba Concordia Preparatory School) in Towson, MD, sued Concordia Prep in the U.S. District Court for the District of Maryland for alleged Title IX violations. The cases were consolidated into one case captioned *Buettner-Hartsoe v. Baltimore Lutheran High School Association*. Concordia Prep moved to dismiss plaintiffs' Title IX claim, arguing that the school was not subject to Title IX liability because it did not receive any direct federal funding or federal financial assistance. In response, plaintiffs argued that the school's Section 501(c)(3) tax-exempt status constituted federal financial assistance for Title IX purposes.

The district court denied Concordia Prep's motion to dismiss, finding that its tax-exempt status constituted federal financial assistance and therefore Concordia Prep could not "avail itself of federal tax exemption but not adhere to the mandates of Title IX." Concordia Prep filed a motion for reconsideration or to certify an order for interlocutory appeal. The district court granted the motion to certify the order for interlocutory appeal, and the Fourth Circuit granted Concordia Prep's petition for leave to appeal.

Fourth Circuit's Decision

On interlocutory appeal, the issue before the Fourth Circuit was "whether § 501(c)(3) status constitutes receiving federal financial assistance for Title IX purposes." The court concluded it does not.

In order to determine whether a tax exemption for charitable organization triggers the applicability of Title IX's requirements, the court first looked to the text of the Title IX statute. The court explained that the "hook" for Title IX liability is whether or not an institution is "receiving federal financial assistance." The ordinary meaning of these words, the court said, is "taking or accepting federal financial aid, help, or support." According to the court, this phrase contemplates the actual transfer of funds from the federal government to an entity. The court explained

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that this interpretation is consistent with other Title IX provisions, which refer to “affirmative forms of assistance” such as grants or loans.

The Fourth Circuit also analyzed the Supreme Court precedent concerning federal assistance and concluded that such precedent recognized a distinction between directly or indirectly (through an intermediary) receiving federal assistance, on the one hand, and merely benefitting indirectly from federal assistance, on the other. According to such Supreme Court precedent, merely benefiting from federal funding does not constitute receiving federal assistance.

With these principles in mind, the court concluded that an entity’s tax-exempt status does not constitute accepting federal financial aid, help, or support. The Fourth Circuit explained that a tax exemption is the withholding of a tax burden, and not the affirmative grant of funds from the federal government to an entity. Although the exemption provides a benefit, it does not mean it is “Federal financial assistance” as set forth in the Title IX statute.

Implications

Before the Fourth Circuit’s decision in *Buettner-Hartsoe*, there had been a split among federal district courts as to whether or not an entity’s tax-exempt status is a form of federal financial assistance that would require the institution to comply with Title IX’s requirements. Now, independent schools in the Fourth Circuit who do not receive any federal funding (such as grants or loans) have some certainty that they are not subject to the requirements of Title IX. The Fourth Circuit decision provides some comfort to tax-exempt independent schools outside of the Fourth Circuit because the decision may be persuasive to other lower federal courts who have not already weighed in on the issue. However, until additional federal appellate courts or the Supreme Court resolves this growing divide among the federal courts, institutions should continue to consult the rules in their jurisdiction. Schools also should be mindful that acceptance of various forms of financial assistance may subject them to Title IX and other federal statutes, and should therefore carefully consider participation in any such programs.

Troutman Pepper’s Higher Education practice will continue to monitor developments on this and other Title IX issues.

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