

PUBLICATION

Third Circuit Allows Medical Resident to Sue Private Teaching Hospital Under Title IX

April 26, 2017

On March 7, 2017, the Third Circuit Court of Appeals held that a former medical resident could pursue a sex-discrimination claim against a private teaching hospital under Title IX of the Education Amendments of 1972. The decision reversed a Pennsylvania district court's dismissal of the former resident's claim. The Third Circuit's ruling may come as a surprise to some, since the Title IX applies to an "education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). After all, Title IX is most commonly known as a law that applies to college athletics. A separate federal statute, Title VII of the Civil Rights Act of 1964, governs employment relationships and prohibits discrimination based on sex. See 42 U.S.C. § 2200e-2(a)(1), 2000e-3(a). While Title VII includes "elaborate administrative requirements" that an employee must fulfill before filing a lawsuit, Title IX lacks similar administrative hurdles. Thus, the decision could have a significant impact on approximately 9,600 ACGME-accredited residency programs that enroll more than 120,000 residents and fellows in about 700 institutions.

What Did the Plaintiff Allege?

In *Doe v. Mercy Catholic Medical Center*, a former second-year radiology resident sued Mercy Catholic Medical Center, a private teaching hospital in Philadelphia that accepts Medicare payments and is affiliated with Drexel University's medical school. No. 16-1247, 2017 WL 894455 (3rd Cir. 2017). The former resident averred that the director of Mercy's residency program sexually harassed her and retaliated against her for complaining about his behavior. She alleged that she sent the director an email stating that she wanted their relationship to stay professional after realizing the director was attracted to her. The director reported the emails to human resources, who allegedly referred the former resident to a psychiatrist. The former resident's complaint stated that after she rebuffed the director, he acted jealous, touched her inappropriately, gave her poor fellowship recommendations, misreported her examination scores and removed her name as a contributing author from a research paper. Mercy allegedly terminated her when she complained. The former resident also alleged that the director advocated for her dismissal at a hearing in which she appealed her termination. When her initial appeal hearing was denied, the former resident opted to quit the program instead of pursuing a further appeal. She sued Mercy two years after her termination.

The Plaintiff alleged three claims under Title IX – retaliation, quid pro quo sexual harassment and hostile environment – along with three claims based on Pennsylvania law. The lower court dismissed the former resident's claim holding that a private hospital that operated a medical residency program was not an educational institution and thus was not liable for the sexual discrimination claims under Title IX. It also concluded that the former resident could not use Title IX to "circumvent" Title VII's administrative requirements, which Congress intended to be the "exclusive avenue of relief" for employment discrimination.

The Third Circuit's Decision on the Issue

The Third Circuit reversed the trial court with regards to Title IX's applicability. Relying on authority from other Circuits and federal agencies that have applied Title IX beyond education institutions, the Court held that an "education program or activity" under Title IX is a program or activity that has "features such that one could reasonably consider its mission to be, at least in part, educational." The court elaborated, "Title IX's application turns primarily on whether *the defendant-entity's* questioned program or activity has educational

characteristics. *The plaintiff's* characteristics – for example, whether she's a student, employee or something else – may be relevant in some cases, but they aren't necessarily dispositive." The Third Circuit also provided a non-exhaustive list of features that support deeming a "program or activity" an "education program or activity":

(A) a program is incrementally structured through a particular course of study or training, whether full- or part-time; (B) a program allows participants to earn a degree or diploma, qualify for a certification or certification examination, or pursue a specific occupation or trade beyond mere on-the-job training; (C) a program provides instructors, examinations, an evaluation process or grades, or accepts tuition; or (D) the entities offering, accrediting or otherwise regulating a program hold it out as educational in nature.

The Court also held that the plaintiff's Complaint provided two plausible ways in which Mercy's residency program made it an "education program or activity" under Title IX. First, the allegations raised a plausible inference that Mercy's operation of an ACGME-accredited residency program makes its mission, at least in part, educational. Second, Mercy's affiliation with Drexel University's medical program, made it plausible that the residency program's mission was, at least in part, educational. The court also noted that the plaintiff could have also pursued a Title VII claim since she was arguably an "employee" of Mercy.

Accordingly, the Third Circuit vacated the lower court's dismissal of the plaintiff's retaliation and quid pro quo harassment claim and remanded for further consideration. It assumed without deciding that Mercy received "Federal financial assistance" under Title IX, leaving the district court to address the issue on remand. The court affirmed dismissal of the plaintiff's hostile environment claim, concluding that the only incidents within Title IX's two-year statute of limitations – the plaintiff's termination and appeal hearing – were not sufficient to allege a hostile environment claim.

What are the Implications of this Decision?

A medical resident may proceed with sex discrimination claims under both Title VII and Title IX against a private hospital with a medical residency program (at least in the Third Circuit). This means that the resident pursuing a Title IX claim will not have to exhaust Title VII's administrative requirements prior to filing a lawsuit. Specifically, the resident will not be required to file an administrative charge with the EEOC within 180 days of the alleged discriminatory act (deadlines are different in states with agencies that enforce fair employment laws), participate in an EEOC investigation and conciliation process, or wait for a final EEOC decision to file a lawsuit. The plaintiff proceeding under Title IX will be required to prove an appropriate person had notice of alleged discrimination so that the institution had an opportunity to address it. *See Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998).

In other words, plaintiffs proceeding under Title IX can get to court quicker and with less hurdles along the way. The difference between the two routes to relief will be significant when a plaintiff cannot fulfill one of the above requirements for bringing a Title VII claim, (e.g., when the plaintiff misses the deadline for filing an EEOC charge). Even though the plaintiff will be precluded from proceeding under Title VII, the plaintiff will still have similar opportunities for relief under Title IX.

Under the Third Circuit's test, almost all ACGME-accredited programs could be subject to Title IX. The court emphasized that there was a plausible inference that Mercy made its mission, at least in part, educational as an ACGME-accredited residency program. It emphasized attributes of the Mercy program that are common of most accredited residency programs.

Private hospitals with residence programs may be subject to Title IX onerous requirements for investigations and claims of sex discrimination. Hospitals would be wise to consider these requirements when responding to claims of harassment and/or implementing protocols and training.

For the first time on appeal, Mercy argued that it did not receive "Federal financial assistance" under Title IX. As noted above, the court assumed without deciding that Mercy received "Federal financial assistance" based on payments from Medicare. The issue may be developed further on remand.

This decision is only binding on courts within the Third Circuit, which includes federal courts in Pennsylvania, Delaware, New Jersey and the U.S. Virgin Islands. Nevertheless, the decision is consistent with other Circuits that have interpreted "education program or activity" broadly. For example, the First Circuit has applied Title IX to a university's medical residency program. *Lipsett v. Univ. of Puerto Rico*, 864 F.2d 881 (1st Cir. 1988). The Eighth and Ninth Circuits have applied it to entire state-prison systems that offered inmates educational programs. See *Kinger v. Dep't of Corrs.*, 107 F.3d 608, 613-16 & n.5 (8th Cir. 1997); *Roubideaux v. N. Dakota Dep't of Corrs. & Rehab.*, 570 F.3d 966, 976-79 (8th Cir. 2009); and *Jeldness v. Pearce*, 30 F.3d 1220, 1224-25 (9th Cir. 1994). Thus, programs and institutions whose mission could be considered to be, at least in part, educational, should be aware of Title IX's requirements and implications. Baker Donelson has attorneys who can assist you with Title IX training and investigations.