

PUBLICATION

Tax-Exempt Private Schools Treated Equally to Federally Funded Schools, Subject to Title IX Requirements

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July 28, 2022

At least one federal court – the U.S. District Court for the District of Maryland – has found that a federal tax exemption qualifies as federal financial assistance under Title IX, rendering it subject to the requirements of Title IX. Maryland schools will have 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.

Regulations expounding on the requirement of Title IX now require schools to put policies and procedures in place for the purpose of handling allegations of sex-based discrimination and harassment. This is a requirement *only* for educational institutions that receive federal financial assistance. The interpretation of what constitutes "federal financial assistance" has now been broadly interpreted and may bring many private schools within the purview of Title IX.

On July 21, 2022, the U.S. District for the District of Maryland issued a [decision](#) holding that independent schools that have tax-exempt status pursuant to 26 U.S.C. § 501(c)(3) are subject to Title IX and therefore must include and enforce Title IX policies and procedures in schools for both students and employees. Taking a 1973 U.S. Supreme Court opinion into consideration, the Court concluded that § 501(c)(3) tax exemption constitutes federal financial assistance for the purpose of Title IX and therefore that Title IX applies to institutions with that tax exemption.

In the wake of the *Buettner-Hartsoe* opinion, tax-exempt independent/private schools in Maryland will have to ensure they are in compliance with Title IX and corresponding federal regulations, which can be onerous. Specifically, Maryland's tax-exempt schools will have to establish rules, policies, and procedures to respond to sexual harassment allegations and sex-based discrimination allegations. These can include written notice, a formal investigation, due process to permit parties to review the evidence and the investigation report, a formal hearing to question parties and witnesses, a formal written determination of the investigation and findings, and an appeal process. These schools will also have to assign a Title IX coordinator and ensure individuals involved in the Title IX process receive training.

On a national scale, the *Buettner-Hartsoe* opinion may have a ripple effect, resulting in other jurisdictions following suit and requiring tax-exempt independent/private schools to incorporate Title IX policies and procedures, because they can be considered as educational entities receiving federal financial assistance. Some jurisdictions have made a [similar initial recognition](#) (concluding the plaintiff's claim that a tax exemption constitutes federal financial assistance under Title IX "is not so wholly insubstantial and frivolous that subject matter jurisdiction is inappropriate"), although have not fully made a finding such as the *Buettner-Hartsoe* opinion.

Note: Religion-affiliated schools will continue to be exempt from Title IX requirements as long as their policies and procedures do not run afoul of the law.

If you have questions about this topic or need assistance with Title IX requirements, reach out to your Baker Donelson attorney.

