



Third Circuit rules that Title IX applies to a private hospital's medical residency program

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Federal courts are adjudicating diverse cases pled under Title IX of the Education Amendments of 1972 (Title IX), which increasingly present claims arising beyond the gates of a university, college or school. As Title IX cases proliferate, courts must analyze the boundaries of a federally funded “education program or activity” within the statute’s scope.

On March 7, 2017, the United States Court of Appeals for the Third Circuit issued an important decision in the evolving Title IX jurisprudence. In *Jane Doe v. Mercy Catholic Med. Ctr.*,¹ the Third Circuit found that a private teaching hospital’s medical residency program is subject to Title IX and revived a former resident’s Title IX claims against the hospital. In doing so, the court held the fact that the resident may bring a claim under Title VII of the Civil Rights Act of 1964 (Title VII) for sex-based employment discrimination does not preclude her lawsuit under Title IX for the same conduct.

Background

The plaintiff, referenced under the pseudonym Jane Doe, contends that she was subjected to a supervisor’s improper sexual advances throughout her participation in the hospital’s diagnostic radiology residency program. The hospital accepts Medicare payments to fund its graduate medical education and is affiliated with a college of medicine. Doe’s residency entailed hands-on experience with didactic training. She also attended case presentations, took a mandatory physics class taught on the affiliated college’s campus, attended monthly lectures, joined in interdepartmental conferences and sat for annual examinations to assess her progress and competence. Doe maintains that the hospital terminated her residency because she complained about the supervisor’s purported behavior.

In her lawsuit against the hospital filed in the United States District Court for the Eastern District of Pennsylvania, Doe pled six causes of action, three under Title IX—retaliation, *quid pro quo* and hostile environment—and three under Pennsylvania law—contract-based sex discrimination, wrongful termination and breach of covenant of good faith and fair dealing. The district court

¹ Case No. 16-1247, 2017 U.S. App. LEXIS 4004 (3d Cir. 3/7/17)

granted the hospital's motion to dismiss Doe's complaint, ruling that Title IX does not apply to the hospital because it is not an "education program or activity." Even if Title IX did apply, the court held that Doe could not use Title IX to "circumvent" Title VII's requirements of administrative proceedings before the Equal Employment Opportunity Commission, concluding that Congress intended Title VII as the "exclusive avenue for relief" for employment discrimination. The court also found that Doe's hostile environment claim was time-barred. As a result of its dismissal of Doe's Title IX claims, the court declined jurisdiction over her related state law claims. Doe appealed to the Third Circuit.

Education program or activity

Title IX prohibits sex discrimination in "any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). Title IX does not define the phrase "*education program or activity*." Analyzing this phrase in light of Title IX's language and scope, the Third Circuit first held that a "*program or activity*" means "all of the operations" of those entities referenced in § 1687 of the statute, "any part of which is extended federal funding." Section 1687 includes entities "principally engaged in the business of providing ... health care."

Next, the Third Circuit examined whether the hospital's "program or activity" has "educational characteristics." The court outlined four features to determine what constitutes an "*education program or activity*" under Title IX:

- Whether it is incrementally structured through a particular course of study or training;
- Whether it 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;
- Whether it provides instructors, examinations, an evaluation process or grades or accepts tuition; or
- Whether entities offering, accrediting or otherwise regulating the program hold it out as educational in nature.

Applying these factors to the above-stated aspects of Doe's residency, the Third Circuit held that the hospital's residency program is subject to Title IX.

Title VII is not exclusive

The United States Supreme Court has held that Title IX implies a private cause of action allowing a litigant to sue in court. By contrast, Title VII, which governs employment relationships and prohibits discrimination based upon sex, imposes administrative requirements that an employee must satisfy before filing suit in court. The hospital argued that Doe's lawsuit filed under Title IX circumvented Title VII's administrative scheme.

Based upon the allegations in her complaint, the Third Circuit concluded that it is plausible to conclude that Doe was a hospital employee. The court, however, was careful to note that its fact-specific review of Doe's status should not be construed to mean that all residents in every setting are automatically deemed to be hospital employees.

Reversing the lower court, the Third Circuit held that Title IX and Title VII are separate enforcement mechanisms, either or both of which an individual such as Doe may use to challenge

alleged sex-based employment discrimination in an education program or activity receiving federal funding. Particularly, the Third Circuit relied upon four guiding principles from United States Supreme Court precedent:

- Private-sector employees are not limited to Title VII in their search for relief from workplace discrimination.
- It is a matter of policy left for Congress' review whether an alternative avenue for relief from employment discrimination (such as a Title IX claim) might improperly circumvent Title VII's administrative requirements.
- Title IX's implied private cause of action under 20 U.S.C. § 1681(a), with its directive that "no person" may be discriminated against based upon sex, supports its reach to employees, not just students.
- Title IX's implied private cause of action has been held to extend explicitly to employees of federally-funded education programs who allege sex-based retaliation claims.

In the end, the Third Circuit remanded Doe's case back to the district court for adjudication of her Title IX *quid pro quo* and retaliation claims. The court affirmed the dismissal of Doe's Title IX hostile environment claim, finding it was filed too late under the applicable statute of limitations.

Takeaways

For the first time, the Third Circuit has determined that a medical residency program can be subject to Title IX, and its ruling follows an earlier similar decision by the First Circuit in *Lipsett v. University of Puerto Rico*, 864 F.2d 881 (1st Cir. 1998). The Third Circuit's analysis is especially timely and instructive to evidence Title IX's broad remedial scope. As the ruling shows, Title IX can apply to "education programs or activities" beyond schools. Hospitals with teaching programs and higher education affiliations should take careful note of this Title IX ruling.

On a practical and operational level, hospital residency programs must be cognizant of both Title IX and Title VII when drafting and implementing internal policies and trainings. Further, within the Third Circuit and other circuits applying similar analysis, hospital residency programs must be prepared to defend themselves promptly in court because residents with employment status such as Doe may sue under Title IX without being limited to Title VII and its required administrative processes.

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