

Management Alert



Third Circuit Rules Private Hospital Is Subject to Medical Resident's Title IX Claims

By Bridget M. Maricich and Mary Kay Klimesh

Seyfarth Synopsis: *In Doe v. Mercy Catholic Medical Center, No. 16-1247 (3d Cir. 2017), the U.S. Court of Appeals for the Third Circuit recently held that the nondiscrimination and anti-harassment protections of Title IX apply to a private medical hospital's residency program and therefore allowed a medical resident to proceed with her Title IX claims against the hospital. The three judge panel also declined to rule that Title VII's concurrent applicability and administrative requirements precluded Doe from filing the instant Title IX claim. The Court's analysis illustrates the potential breadth of Title IX's reach beyond school house gates and college and university arches to any entity operating an "education program or activity" and which receives "Federal financial assistance."*

On March 7, 2017, the Third Circuit waded into the increasing body of Title IX jurisprudence, largely vacating a Pennsylvania District Court order dismissing a former medical resident's ("Doe") Title IX claims against the host of her residency program, Mercy Catholic Medical Center ("Mercy"). In doing so, the three-judge panel affirmatively ruled that: (1) Title IX of the Education Amendment Acts of 1972 applied to Mercy; and (2) that Title VII of the Civil Rights Act of 1964 is not the exclusive remedy for private employees covered by both Title IX and Title VII.

Doe was a resident in the diagnostic radiology program at Mercy, which is affiliated with Drexel University's College of Medicine. According to Doe's complaint, during her tenure in the program, her program director, referred to as "James Roe," subjected her to increasingly persistent and unwanted sexual advances which interfered in her medical training. Doe also asserts that once she complained about Roe's behavior, Roe and other Mercy representatives subjected her to a series of retaliatory behavior, culminating in her dismissal from the program in April of 2013. Two years to the date of her dismissal, on April 20, 2015, Doe filed suit against Mercy alleging, among other things, *quid pro quo* sexual harassment, hostile environment sexual harassment, and retaliation in violation of Title IX. Mercy moved to dismiss Doe's complaint on the grounds that as a community hospital, it did not constitute an educational program or activity as defined by Title IX and therefore was not subject to the law. Mercy also argued that even if Title IX covered Doe, she was required to exhaust the administrative remedies of Title VII, which is the exclusive remedy for employees of private employers in sex discrimination cases. The District Court agreed and dismissed Doe's suit.

Upon appeal, the Third Circuit reversed. Disagreeing with the District Court's reasoning, the Third Circuit panel found that Mercy was subject to Title IX because its medical residency program, under the facts presented, constituted an education program or activity receiving Federal financial assistance as defined by Title IX. In doing so, the panel closely examined the statutory language of Title IX, which states that the law applies to entities that (1) operate any education program or activity; and (2) receive Federal financial assistance.

With respect to the first prong, the panel reviewed that statutory history of Title IX, noting Congress chose to specifically define “program or activity,” but not the term’s modifier “education.” The panel opined that the definition of “program or activity” expressly included programs or activities at a broad range of entities, not just educational institutions, and explicitly excluded others, like social fraternities and the YMCA. Based on this analysis, the panel determined that Mercy, although engaged primarily in the business of healthcare, could be subject to Title IX if operating an education program or activity. Noting that Congress had opted not to define the term, the Third Circuit panel stated that “education” should be interpreted broadly and therefore should include any entity operating a program or activity that has “educational characteristics.” The panel indicated that such a determination is a mixed question of law and fact, but could in part be guided by “features which support deeming a program an ‘education program or activity’” including:

“(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 Third Circuit panel noted that the status of the participants in the given program as a student, nonstudent, or employee is pertinent, but not dispositive, to this inquiry. Indicating the analytical framework is consistent with broader application of Title IX, the panel also cited the respective positions of the 21 federal agencies enforcing Title IX and the Eighth and Ninth Circuit, which have applied Title IX to jails and prisons operating educational programs for inmates.

Applying this standard, the panel easily decided that Mercy’s residency program is an education program or activity under Title IX. Key to the Court’s analysis was, among other things, Doe’s participation in both didactic and clinical work, supervision by attending physicians and faculty, completion of required annual examinations, completion of clinical evaluations, attendance at mandatory lectures, participation in at least one course on Drexel University’s campus as part of the program, and the fact that completion of the program would have entitled Doe to complete licensure exams. The panel also considered that the national residency accreditation agency, the Accreditation Counsel for Graduate Medical Education (ACGME), calls residency programs “structured educational experience[s]” and cited numerous courts characterizing the educational nature of medical residencies in other contexts. Importantly, the panel also cited the existence of formal affiliation agreements with educational institutions, such as Mercy’s presumed affiliation with Drexel University’s College of Medicine, as a significant consideration.

Of course, it is not sufficient to establish that Mercy operated an education program or activity in order to establish Title IX jurisdiction. The facts must also show that Mercy received Federal financial assistance, which Mercy denied. In a footnote in its brief before the panel, Mercy argued that it did not receive Federal financial assistance and that the Medicare payments intended to supplement residency training costs instead “stem ‘from contracts of insurance.’” Interestingly, the Third Circuit panel declined to address this argument because Mercy failed to raise it in the lower court. Though the panel hinted skepticism of Mercy’s argument, it ultimately assumed, without deciding, that Mercy received Federal financial assistance.

Finally, the Third Circuit panel, having found Mercy is subject to Title IX, determined whether Title VII barred Doe’s private right of action for sex discrimination and retaliation under Title IX. In the first instance, the panel found that Doe was an “employee” of Mercy when she participated in the residency program and therefore could have brought Title VII claims with the EEOC and eventually in court. Caveating this conclusion was not applicable to all residents, the panel articulated that under the specific circumstances of this case, it was “plausible” to find Doe was an employee because she performed tasks part of Mercy’s regular business, received the tools and materials needed for her work from Mercy, had no control over schedule and length of shifts, was paid for the work, paid taxes on that income, and could collectively bargain like other employees. However, having found Doe to be an employee, the court declined to rule that Title VII’s concurrent applicability and administrative requirements precluded her from filing the instant Title IX claim, despite the fact that she never filed a charge with the EEOC or otherwise pursued Title VII claims. Citing the First and Fourth Circuits, the panel ruled that when an individual is covered by both Title VII and Title IX, he or she may seek relief through whichever statutory scheme he or she chooses. The panel acknowledged that its decision is in conflict with the Fifth and Seventh Circuits that have ruled that Title VII is the exclusive remedy for private employees of institutions subject to Title IX.

Implications for Hospitals and Other Healthcare Institutions

This case illustrates the pressing need of medical centers, hospitals, and other healthcare institutions providing accredited teaching and training programs, particularly programs formally affiliated with educational institutions, to evaluate the application of Title IX to health care education programs. Public hospitals and medical centers likely have little room to argue they are exempt from Title IX's reach because they are not recipients of Federal financial assistance, but for private entities, a question remains whether receipt of Medicare payments will qualify as "Federal financial assistance." But as the Third Circuit panel hinted here, there is a strong likelihood that private teaching hospitals and medical centers with accredited residency programs will be brought under Title IX's purview as Federal funding recipients. Moreover, the Third Circuit's decision speaks only to Doe's private right of action under Title IX, raising additional questions as to the long term practical impact of subjecting private medical centers to the statutory and regulatory requirements of Title IX. This question poses a particularly significant quandary for such institutions, given the heightened requirements for response to, and investigation of, all forms of sex discrimination enforced in the higher education context in recent years. Hospitals and medical centers should now pay heightened attention to how their institutions address potential complaints and claims of all forms of discrimination, harassment, and retaliation, including those that may be brought under Title IX and Title VII, as well as consider best practices for mitigating the risks associated with operating medical residency and other educational programs.

If you would like further information, please contact your Seyfarth attorney, [Bridget Maricich](mailto:bmaricich@seyfarth.com) at bmaricich@seyfarth.com or [Mary Kay Klimesh](mailto:mklimesh@seyfarth.com) at mklimesh@seyfarth.com.

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