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ALERT

Higher Education Practice

MARCH 2021

Revisiting Title IX's Applicability to Academic Medical Centers

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Whether and how Title IX applies to academic medical centers has historically been a difficult issue to get solid guidance on. While the preamble to the recent Title IX Sexual Harassment regulations touched lightly on the question, it provided next to no concrete detail. The United States District Court for the District of Connecticut recently weighed in with some additional authority standing for the proposition that academic medical centers *are* subject to Title IX.

In *Castro v. Yale University,*[1] six physicians brought claims of alleged sex discrimination and retaliation under, among other theories, Title IX. The plaintiffs in *Castro* alleged that their superior at Yale New Haven Hospital sexually harassed them, and that both the hospital and university ignored their complaints. The hospital filed a motion to dismiss, arguing, among other things, that (1) Title IX does not apply to the hospital, an entity not principally engaged in the business of education; (2) the plaintiffs' relationships to an educational program or activity are too attenuated to entitle them to Title IX coverage; and (3) Title IX does not provide a private remedy for employment discrimination based on sex.

In addressing the motion to dismiss, the court separately addressed (a) the hospital's defense that, even as a teaching hospital receiving federal funds, it is not subject to Title IX, and (b) the assertion "that the statute provides no private right of action for employees of educational programs to bring sex-based discrimination claims."

Title IX applies to academic medical centers when certain criteria are met.

In arguing for dismissal, the hospital cited a section of the preamble to the Title IX regulations stating that "academic medical centers are not post-secondary institutions[,]" 85 Fed. Reg. 30446, and therefore, the hospital argued, even if the hospital is affiliated with a post-secondary institution or considered part of the same entity as a post-secondary institution, the recent Title IX amendments clarify that Title IX does not apply to an academic medical center. Rejecting this argument, the court began by highlighting that "Title IX prohibits sex-based discrimination in 'any educational program or activity receiving Federal assistance.'" The court emphasized that "the Supreme Court's instruction [is] to afford Title IX a broad scope" and that the Department of Education provided the guidance that "Congress did not exempt academic medical centers that receive Federal financial assistance from Title IX…." The court also acknowledged the Department's position that whether Title IX applies to a medical resident "requires a factual determination."

Mindful of this backdrop, the court listed a series of factors that federal appellate courts have used to determine the "educational nature" of a program or activity: "the structure of the program, including the involvement of instructors and inclusion of examinations or formal evaluations; whether tuition is required; the benefits conferred through the program, such as degrees, diplomas, or other certifications; the 'primary purpose' of the program; and whether regulators accrediting the institution 'hold it out as educational in nature.'" These are the so-called "*Mercy-O'Connor* factors," derived from the Third Circuit case *Doe v. Mercy Catholic Medical Center*[2] and the Second Circuit case *O'Connor v. Davis.*[3] In *Mercy*, the Third Circuit held that a teaching hospital affiliated with a university and operating an accredited residency program was subject to Title IX because "its mission, at least in part, [was] educational." Conversely, in *O'Connor*, the Second Circuit found that Title IX was inapplicable to a medical center because the center's relationship to the school was "too attenuated."

Applying the *Mercy-O'Connor factors*, the court found the following key allegations to be persuasive, leading the court to conclude the hospital is subject to Title IX: (1) The university and hospital have a contractual agreement formally integrating the hospital and the university, designed for the sharing of both staff and resources; (2) Instructors at the hospital are employed by both the university and the hospital; (3) The hospital receives federal funding because of its status as a teaching hospital; (4) Participation in the residency program prepares residents and fellows to sit for examinations necessary for board certification; and (5) The hospital's website states that it is the primary teaching hospital of the university.

Employees of educational programs may bring claims for sex-based discrimination under Title IX even if they also seek remedies under Title VII

Breaking with Fifth and Seventh Circuit cases holding that Congress intended Title VII to be the exclusive remedy for sex-based employment discrimination,[4] and siding with the First, Third, Fourth, Sixth, and Tenth Circuits,[5] the *Castro* court explained that the "Supreme Court has consistently held that Congress intended Title IX to be interpreted broadly and limiting its scope would be at odds with that directive." The court also noted that because the two laws derive from two distinct Congressional powers—Title VII stems from Congress's commerce power, while Title IX arises from Congress's spending authority—that the two provisions "are not inherently incompatible." Ultimately, the court construed "Title IX with the breadth intended by Congress and recognized by the Supreme Court" and concluded that "employees of educational programs may bring suit against their federally-funded employers for sex-based discrimination, including retaliation, even if they could also seek remedy by suit under Title VII."

Takeaway

Trendlines here are clear. With courts increasingly finding that academic medical centers are (i) subject to Title IX, and (ii) Title IX provides a private cause of action for employees of *all* education programs, it is critical for academic medical centers to take stock of current compliance and plan for likely future claims in these areas. While arguments remain that not *all* employees of academically-affiliated hospitals are protected by Title IX, universities and health systems alike would do well to account for decisions like *Castro* in their risk analyses. Crafting well-designed programs, policies, and procedures that are tailored specifically to an academic medical center—and the services and programs they offer—should be a key step for any institution in its efforts to comply with Title IX and reduce potential liability.

The authors will continue to closely monitor developments in this area. If you have questions about this alert or the regulations and guidance referenced in it, please contact the authors or your customary Saul Ewing Arnstein & Lehr point of contact.

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1. No. 3:20CV330 (JBA), 2021 WL 467026 (D. Conn. Feb. 9, 2021).
2. *Doe v. Mercy Catholic Med. Ctr.*, 850 F.3d 545 (3d Cir. 2017).
3. *O'Connor v. Davis*, 126 F.3d 112 (2d Cir. 1997).
4. *See, e.g., Waid v. Merrill Area Pub. Sch.*, 91 F.3d 857, 861 (7th Cir. 1996); *Lakoski v. James*, 66 F.3d 751, 757 (5th Cir. 1995).
5. *See, e.g., Doe*, 850 F.3d at 559; *Hiatt v. Colo. Seminary*, 858 F.3d 1307, 1315 (10th Cir. 2017); *Ivan v. Kent State Univ.*, 92 F.3d 1185 (6th Cir. 1996); *Preston v. Com. of Va. ex rel. New River Cmty. Coll.*, 31 F.3d 203, 206 (4th Cir. 1994); *Lipsett v. Univ. of P.R.*, 864 F.2d 881, 896 (D.P.R. 1988).

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