

New Cases Apply Title IX to Independent Schools: Tips for Schools and Next Steps

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Title IX and its regulations apply to recipients of federal funds. Most independent schools do not receive federal funds and therefore Title IX compliance has not been traditionally required.

Title IX prohibits discrimination on the basis of sex by educational programs or activities. Compliance with Title IX can be complicated when conforming sexual misconduct policies to Title IX's required grievance process.

Recently, courts from Maryland, California, and North Carolina have applied Title IX to independent schools.

In a [Maryland case](#), the court held that the school's tax-exempt status obligated the school to comply with Title IX. The court reasoned that an independent school's tax exemptions are a "form of a subsidy" that is the equivalent of a cash grant that counts as "federal financial assistance." Similarly, in a [California case](#), the court held that a private school's tax-exempt status subjected it to Title IX. There, the court reasoned that "[d]istinctions as to the method of distribution of federal funds or their equivalent [are] beside the point." That court also held that a school's receipt of Paycheck Protection Program (PPP) funds also obligates compliance with Title IX.

These cases may be outliers, and not binding in all jurisdictions, but they are reminders that all schools should be evaluating their policies on at least an annual basis.

While many independent schools already have written policies in their student handbooks that explain how the school will treat allegations of sexual harassment and sexual assault, most, if not all, of these policies would fall short of full Title IX compliance. By way of example, the Title IX regulations have specific requirements for the initiation and investigation of a complaint of sexual harassment, obligating schools to provide written notice to the parties and allowing parties to review

and respond to the evidence collected by investigators. Moreover, Title IX limits schools' ability to resolve complaints of sexual harassment informally without completing a full investigation.

While we cannot predict how the law will continue to evolve, schools should consider whether their sexual misconduct policies can be revised to incorporate at least some of Title IX's requirements. At a minimum, schools should consider training and identifying a person who will be responsible for administering the school's policy, and receiving and facilitating complaints of sexual harassment or assault so that students know to whom complaints should be directed. Schools should also consider updating their existing sexual misconduct policies to include information about how students can obtain supportive measures and should work with legal counsel to develop and publish a meaningful grievance process that the school will follow if it receives a complaint of severe and pervasive sexual harassment or assault.

Independent schools should continue to monitor this issue carefully and be aware that the Biden administration has proposed changes to the existing Title IX regulations, which could further modify the grievance process that schools must follow.

Should you have questions about this issue or need assistance modifying your sexual misconduct policies, please contact the authors of this article.

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