

## Federal Court Rules Tax-Exempt Independent Schools Must Comply with Title IX

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A recent federal court Title IX decision could affect private and independent schools nationwide. In *Buttner-Hartsoe v. Balt. Lutheran High Sch. Ass'n*, No. RDB-20-3229 (D. Md. July 21, 2022), five women brought a Title IX suit against their independent high school, alleging that the school failed to adequately address their complaints of sexual assault and harassment by male students. In response, the school argued that it was not subject to Title IX requirements because it was not a recipient of federal financial assistance and asked the court to dismiss the claims. On July 21, 2022, the Maryland federal court held that the school's tax-exempt status under 26 U.S.C. § 501(c)(3) amounted to federal financial assistance and thus Title IX was applicable. Crucially, as a result of this holding, any independent school in Maryland with 501(c)(3) status must comply with Title IX and the mandates it imposes.

The decision builds upon prior U.S. Supreme Court and federal court opinions on related subjects but appears to be the first court to establish this bright-line rule. For example, the decision relies upon *Regan v. Taxation with Representation*, a U.S. Supreme Court case from 1983, that equated a tax exemption to a "form of subsidy" equal to a cash grant. The Maryland court also finds support in Eleventh Circuit and Southern District of New York cases that contemplate whether tax exemption constitutes federal financial assistance as defined by Title IX. *Buttner-Hartsoe* takes these prior cases one step further by determining that a school's tax-exempt status obligates Title IX compliance.

Although the tax-exempt status was enough to persuade the Maryland court of federal financial assistance, the court also noted that the school's receipt of a Paycheck Protection Program (PPP) loan pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act separately imposed Title IX compliance for the duration of the loan. Consistent with our recent [legal update](#) on the North Carolina federal court decision *Karanik et al. v. Cape Fear Academy, Inc.*, No. 7:21-CV-169D (E.D.N.C. June 17, 2022), more courts are considering PPP loans as acceptance of federal financial assistance.

While *Buttner-Hartsoe* currently only applies to schools in Maryland, it could indicate a growing trend

in the Mid-Atlantic and Northeast to expand Title IX's application to private and independent schools. Currently, private and independent schools not covered by Title IX often have non-discrimination policies in place, but to a less prescriptive degree. Title IX gives students and/or individuals another pathway to pursue claims of discrimination on the basis of sex.

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