

# Third Circuit Holds that Medical Resident May Bring a Title IX Claim Against a Private Hospital

Barbara E. Hoey

March 14, 2017

Earlier this month, the Third Circuit Court of Appeals reversed the lower court's dismissal of a medical resident's Title IX suit against Mercy Catholic Medical Center in Philadelphia, which alleged that the plaintiff was kicked out of the hospital's residency program in retaliation for denying a superior's sexual advances. See, [Doe v. Mercy Medical Center](#).

The decision is significant for two reasons: it holds that Title IX is applicable to a private hospital, and also held that the resident was not required to satisfy Title VII's administrative prerequisites (i.e. file a charge with the EEOC or state agency) before suing the hospital. Each of these findings opens the door to increased claims against hospitals who sponsor educational programs.

## The Facts

The plaintiff in *Doe* sued under Title IX, alleging that she was sexually harassed by the male doctor who directed the residency program over the course of two years. She claimed that after she declined his advances, the doctor began to sabotage her career and as a result she was eventually kicked out of the program.

The lower court dismissed the plaintiff's suit, finding that the hospital's residency program was not an "education program or entity" as defined by Title IX.

## The Decision

The Third Circuit reversed the district court's ruling, holding that the residency program was an "educational program," and the hospital was therefore subject to liability for the alleged retaliatory conduct under Title IX.

The Third Circuit looked at whether the residency program was an "education program" as defined in Title IX, and whether the hospital received "federal financial assistance." The court held that the fact that the program was housed in a hospital, as opposed to a school, was not determinative of whether it was an "education program" under Title IX, as the language of the statute was broad enough to cover a wide variety of programs.

The test the court developed to answer this question considered whether the program: (i) was structured as an educational program; (ii) allowed participants to get a degree or certification or qualify for an examination; (iii) had instructions, tests, grades or accepted tuition, and (iv) was promoted as educational. The court concluded that because the hospital's residency program met

those standards, it was subject to liability under Title IX. Key to that decision was the fact that Dr. Doe was required to attend lectures and do clinical work, was supervised by physicians and faculty, took examinations, and would have been licensed at the conclusion of the program.

On the second point, the court found that the Hospital's receipt of Medicare funds was "federal financial assistance" – sufficient to make it subject to Title IX. It was an argument, however, that was not fully developed on appeal and not given a great deal of analysis.

The court also rejected the hospital's argument that the plaintiff was bound by Title VII to first pursue any workplace discrimination claim through administrative means – in other words by filing an EEOC charge. Notably, it found that Doe was an "employee" of the hospital and could have chosen to sue under Title VII or Title IX. However, it held that where both Title IX and Title VII apply, plaintiffs can pursue their complaints through either means. In effect, the court held that a plaintiff can skip the Title VII administrative process and proceed straight to federal court by opting to bring a discrimination claim under Title IX as opposed to Title VII.

Although Third Circuit case law is not binding in New York, this decision is consistent with the holdings in other circuit courts that have taken the position that the definition of an "educational program or entity" under Title IX is to be interpreted broadly. According to the Third Circuit's test, virtually all accredited residency programs would likely be considered "educational programs" under Title IX due to the fact that most medical residency programs require residents to attend lectures, take exams, and receive grades.

### **What does this mean for private hospitals?**

All hospitals know that they are subject to state and federal employment discrimination laws, like Title VII. However, the requirements of Title IX are more onerous than Title VII, and thus this case is one that should be noted by any hospital that runs teaching programs, especially those that are linked or affiliated with a university or medical school.

Public hospitals likely have little ground to argue that they are not subject to Title IX. Whether receipt of government payments from Medicare and Medicaid is sufficient "federal financial assistance" to subject private hospitals to Title IX is less certain. It appears, however, that the Third Circuit thinks the answer may well be YES.

If other courts adopt the Third Circuit's view that a medical resident has a private right of action under Title IX, does that also mean that a private hospital is now subject to all of the other requirements of Title IX? As many readers know, Title IX has significantly more onerous standards for the response and investigation of claims of gender discrimination and harassment. Do hospitals with teaching programs now have to worry about meeting those requirements?

The *Doe* case does not answer that question. However, it certainly does raise the issue and it would be prudent for hospitals to take a look at those standards, and consider them when responding to a complaint of discrimination or harassment by a medical resident or student.

Hospitals and medical centers should now pay heightened attention to how their institutions address all forms of potential discrimination, harassment and retaliation complaints and claims, including those that may be brought under Title IX and Title VII. They should also consider best practices for mitigating the risks associated with operating medical residency and other educational programs.

This is a good reminder for hospitals to ensure that anti-discrimination training is provided to medical professionals who participate in residency programs, and that they have anti-discrimination policies

in place that provide procedures with multiple avenues for complaints. Any such policy should include and be provided to medical residents. It would also be advisable to make sure that residency program directors and faculty understand that it is critical to respond promptly to any resident's complaint of harassment or discrimination.