

A SIGH OF RELIEF FOR PRIVATE SCHOOLS: 4TH CIRCUIT RULES TAX-EXEMPT STATUS DOES NOT TRIGGER TITLE IX COVERAGE

Insights
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A federal appeals court ruled yesterday that Title IX does not apply to a private school based purely on its nonprofit status, reversing a lower court's bombshell decision that put the entire private and independent school community on notice. This decision by the 4th U.S. Circuit Court of Appeals represents a big win for private schools in Maryland, Virginia, West Virginia, North Carolina, and South Carolina – and helps restore the status quo that had been in place for decades. Private schools nationwide can cautiously celebrate this decision, as it may influence other courts to follow suit on an issue that has courts split across the country. We'll explain what happened and guide nonprofit private schools on what they should do next.

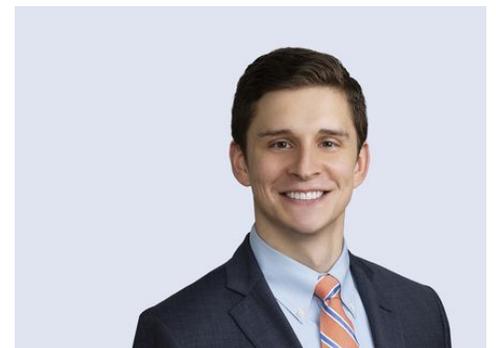
How Did We Get Here?

In 2022, [a federal district court in Baltimore ruled](#) that a nonprofit school's tax-exempt status constituted receipt of federal financial assistance for purposes of Title IX. Under that ruling – which ran contrary to longstanding federal administrative policy and was the first of its kind in the country – private nonprofit schools in Maryland scrambled to determine whether they must comply with Title IX's web of regulations and administrative obligations. The school immediately appealed the decision.

Now What Happened?

The 4th Circuit unanimously ruled that a school's tax-exempt status *does not* constitute accepting "federal financial assistance." While that term is not defined in Title

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IX, the court concluded that under the law's plain text, "receiving federal financial assistance" involves "taking or accepting" support. "Thus, the plain text of Title IX contemplates the transfer of funds from the federal government to an entity," the court said.

A tax exemption, however, is merely the "*withholding* of a tax burden, rather than the *affirmative* grant of funds." Therefore, the court concluded that nonprofit entities are not recipients of federal financial assistance by virtue of their tax-exempt status and are not subject to Title IX.

The court also determined that the favorable tax treatment of charitable contributions to nonprofit entities does not function as an indirect grant to the school. The court said the benefit that the school might receive from donors potentially donating more money than they otherwise would due to the favorable tax treatment is "far too attenuated to constitute 'receiving' federal financial assistance."

What Does This Mean For Private and Independent Schools?

Private and independent schools that operate as 501(c)(3) entities in the states covered by the ruling (Maryland, Virginia, West Virginia, North Carolina, and South Carolina) can now breathe a sigh of relief. These schools no longer have to worry about the complexities of Title IX compliance based on their nonprofit status.

This ruling is also another data point for courts across the country to consider in cases raising the same or similar arguments. While the court's ruling in this case would not be binding outside the states listed above, courts are constantly in dialogue with one another, and this type of unanimous opinion could be highly persuasive to other courts in other jurisdictions.

What's Next?

If you are a school in any of the states affected by this ruling, you can return to the pre-July 2022 status quo before the lower court's bombshell decision. If you are located outside of these states, we recommend filing this decision away but keeping it handy if similar litigation pops up in your area.

All schools should continue to monitor this issue, as the court's decision today may not be the last word. This issue

of whether a school's tax-exempt status is akin to federal financial assistance also has popped up in California and Arizona (you can read more about those cases [here](#) and [here](#)), so it very well could resurface in other states.

Conclusion

We will monitor these developments and provide updates as warranted, so make sure that you are subscribed to [Fisher Phillips' Insights system](#) to get the most up-to-date information directly to your inbox. If you have further questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Education Practice Group](#).