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Independent & Private Schools Alert

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Private school subject to Title IX for PPP loan

By Tina Sciocchetti and Jennifer A. Jovceviski

Private and independent schools that received PPP loans may be subject to Title IX and other federal civil rights laws based on receipt of Federal financial assistance.



What's the Impact?

- / A federal district court in North Carolina held that a private school's receipt of a PPP loan constituted receipt of Federal financial assistance that triggered application of Title IX for the life of the loan
- / Schools should seek guidance to determine whether receipt of Federal financial assistance, including PPP funds, triggered anti-discrimination obligations and if so, ensure compliance

When Congress authorized billions of dollars of funding following the onset of the COVID-19 pandemic in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), many private entities sought and received Small Business Administration (SBA)-backed Paycheck Protection Program (PPP) loans. At the time, the SBA issued [guidance informing faith-based entities](#) that “[r]eceipt of a loan through any SBA program constitutes Federal financial assistance and carries with it the application of certain nondiscrimination obligations,” which would last through repayment or forgiveness of the loan. Given this guidance, the Government may take the position that PPP funding constitutes “Federal financial assistance,” subjecting private and

independent schools to federal civil rights laws, including the anti-sex discrimination provisions of Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681, *et seq.* (Title IX), until the loans are forgiven or repaid.¹ Many private schools affected by the pandemic accepted PPP funds, which could be applied toward payroll costs, rent, utilities, mortgage interest, and other specified expenses.

This week, in what appears to be a case of first impression, a federal district court in North Carolina held in *Karanik et al. v. Cape Fear Academy, Inc.*² that a private school's receipt of a PPP loan constituted receipt of "Federal financial assistance" that triggered application of Title IX for the life of the loan. *Karanik* concerned a complaint filed by former students of Cape Fear Academy, Inc. (CFA) alleging, among other claims, that CFA discriminated against one of the plaintiff students and retaliated against that student and another plaintiff student in violation of Title IX. CFA had received a PPP loan before the 2020–21 academic year that was forgiven after the end of that academic year, a period of approximately 13 months. The events at issue took place during that time period.

The plaintiffs contended that CFA's receipt of the PPP loan made CFA an educational institution in receipt of "Federal financial assistance" subject to Title IX. CFA moved to dismiss the complaint, asserting that the PPP loan fell within an exclusion in the definition of the phrase "Federal financial assistance" in Title IX's implementing regulations as a contract of guaranty. See 34 C.F.R. § 106.2(g)(defining federal financial assistance to include "[a] grant or loan of Federal financial assistance," and "any other contract, agreement or arrangement which...[provides]...assistance to any education program or activity, *except a contract of insurance or guaranty*")(emphasis added).

The district court disagreed, holding that a PPP loan was "[a] grant or loan of Federal financial assistance" under Title IX's implementing regulations. Noting the CARES Act used the word "loan" "about 75 times to describe the PPP," the court stated, "the PPP is, in substance and in form, a loan program" under which borrowers received Federal financial assistance through private lenders, under loans the SBA registered and guaranteed. The court further reasoned that even if a PPP loan did not constitute a "loan of Federal financial assistance" because it was issued by a private lender, it still was covered under the Title IX regulatory definition as an "arrangement which has as one of its purposes the provision of assistance to any education program or activity." The PPP's structure under which private lenders made loans to borrowers with a guaranty from the SBA met the definition of "arrangement." Although the SBA did guarantee the subject PPP loan to the private bank lender through a separate application by the lender to the SBA, "the loan itself was not the guaranty," and CFA was not a party to the

¹ Title IX prohibits discrimination on the basis of sex in any education program or activity receiving Federal financial assistance.

² *Karanik et al. v. Cape Fear Academy, Inc.*, No. 2:21-CV-169-D (E.D.N.C. 2022).

application between the lender and the SBA. Accordingly, as a recipient of Federal financial assistance, the court reasoned, CFA had to comply with Title IX for the life of its PPP loan.

Takeaways

Consistent with the SBA's guidance and the court in *Karanik*, courts may find that private and independent schools that received PPP loans were required for the life of the loan to comply with Title IX and other federal civil rights laws. Other anti-discrimination protections triggered by receipt of federal funds include those found in Title VI of the Civil Rights Act of 1964 (prohibiting discrimination on the basis of race, color, or national origin), the Americans with Disabilities Act of 1990 (prohibiting discrimination based on disability), and Section 504 of the Rehabilitation Act (prohibiting the exclusion or denial of program benefits and services to disabled individuals). Courts similarly may find that other CARES Act or pandemic-related funding provided through the SBA (for example, Economic Injury Disaster Loans (EIDL) disaster relief funds) also trigger such obligations. To the extent schools have unpaid or unforgiven PPP loans (or other SBA funding), these obligations could remain for the life of the loan. Schools should seek guidance to determine whether receipt of CARES Act funding, including PPP loans, triggered anti-discrimination obligations and if so, ensure compliance with applicable federal laws.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

[Tina Sciocchetti](#)

518.427.2677

tsciocchetti@nixonpeabody.com

[Tara E. Daub](#)

516.832.7613 or 212.940.3046

tdaub@nixonpeabody.com

[Neal J. McNamara](#)

401.454.1019

nmcnamara@nixonpeabody.com

[Julie K. Seymour](#)

312.977.4353

jkseymour@nixonpeabody.com
