



Federal Court Confirms that Schools Accepting PPP Loans Must Comply with Title IX

Insights

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As early as April 5, 2020, we warned independent schools that accepting COVID stimulus cash in the form of loans could put you on the hook to comply with several federal laws you might not be familiar with, including Title IX. A federal court in North Carolina recently confirmed that theory in a June 17 decision that should put independent schools across the country on notice. What do you need to know about the *Karanik v. Cape Fear Academy, Inc.* case – and what should your school do if you accepted Paycheck Protection Program (PPP) or Economic Injury Disaster (EIDL) loans under the CARES Act?

Unusual Lawsuit for Unusual Times

Cape Fear Academy, based in Wilmington, N.C., found itself on the receiving end of a federal lawsuit for sex discrimination and retaliation after three students alleged they were harassed by several classmates during the 2020-2021 school year. What made this lawsuit unique, however, was that the students alleged violations of Title IX of the Education Amendments of 1972 — commonly just known as Title IX – which prohibits discrimination on the basis of sex in any education program or activity.

The school asked the court to jettison the lawsuit, arguing that it does not accept federal financial assistance, and, therefore, was not subject to Title IX. And while the school had not accepted such financial assistance in the usual manner, it had applied for a \$1.2 million PPP loan in April 2020 and received the money on May 4, 2020.

Decision Hinged on PPP Loan Status

For those unfamiliar, the first COVID stimulus measure passed by Congress in late March 2020 (the CARES Act) allowed small- and medium-sized businesses to apply for federal loans – in many cases forgivable – to cover payroll and other expenses. An easy-to-miss provision on page 4 of the Small Business Association's (SBA) application that some in the education community may have missed (or misunderstood) stated:

Civil Rights (13 C.F.R. 112, 113, 117) – All businesses receiving SBA financial assistance must agree not to discriminate in any business practice, including employment practices and services to

the public on the basis of categories cited in 13 C.F.R., Parts 112, 113, and 117 of SBA Regulations. All borrowers must display the “Equal Employment Opportunity Poster” prescribed by SBA.

While there was no question that the school accepted a PPP loan during the pandemic, it contended that the loan did not trigger Title IX compliance – while the students argued that it put the school squarely on the hook. And that was the crux of the court dispute.

The School’s Argument

Cape Fear Academy argued that the PPP loan did not qualify for “federal financial assistance” because a private bank issued the loan monies to the school and in turn submitted an application to the SBA for a guaranty of its loan.

Per the terms of the CARES Act, the SBA eventually forgave the school’s entire PPP loan and repaid the private bank the entire amount on June 15, 2021. The school thus argued that the PPP loan fell under an exclusion in the definition of “federal financial assistance” because it believed the loan was actually a “contract of guaranty.”

Court Slams the Door on School

U.S. District Court Judge James Dever for the Eastern District of North Carolina was not buying what the school was selling. He rejected the school’s motion to dismiss the lawsuit and said the case should proceed on account of the school’s receipt of the PPP loan.

He concluded that a PPP loan is definitively considered “federal financial assistance” that renders a recipient subject to Title IX because it is a “grant or loan of federal financial assistance.” He said it was of no legal consequence that a private bank actually disbursed the PPP loan funds. Instead, the critical fact was that the SBA, acting pursuant to the CARES Act, both authorized and guaranteed the funds. “And because PPP borrowers are Congress’s intended recipients,” the judge said, “they are not merely economic beneficiaries of someone else’s receipt of federal financial assistance.”

In addition to the plain language of the application, the judge could have also cited to the SBA’s [FAQs to faith-based organizations](#) that noted quite clearly that acceptance of an SBA loan constitutes the receipt of federal financial assistance. Again, this does not seem to be that surprising of an outcome given that, under numerous federal laws beyond Title IX, the acceptance of such assistance requires the borrower to comply with certain civil rights laws.

How Long Does It Last?

The next key question to ask was how long the blanket of Title IX coverage would burden the school. In this case, the judge found that the school should be held subject to Title IX from May 4, 2020 – the date the school first received the loan proceeds – until June 15, 2021 – the date the SBA forgave the school’s loan and repaid the private bank. In this specific case, it meant the students’ sexual

harassment case (based on conduct that allegedly occurred during the 2020-2021 school year) could proceed under Title IX.

What Should Your School Do?

While this decision is only binding on school recipients in North Carolina, it would not be surprising if this same decision were repeated by other federal courts across the country. Therefore, if you received federal PPP (or EIDL) loans as part of a pandemic-relief package, you should assume there is a good chance you could also be held subject to Title IX's grip.

A few points to consider:

- As we noted back in April 2020, the mere application for an SBA loan seems unlikely to render the applicant a recipient of federal financial assistance. If you merely applied for a loan but did not receive or accept any funds, you are probably not on the hook for that reason alone.
- If other courts follow the North Carolina court's reasoning, a school will only be held liable for alleged federal statutory wrongdoing under Title IX and similar statutes for actions that occurred during the period of time the loan was outstanding. This is true even if you have no current outstanding obligations (i.e., once the loan has been repaid or forgiven).
- If your PPP or EIDL loan remains unpaid or unforgiven to this date, the period of time where you may remain subject to Title IX is probably ongoing – and will most likely remain in place until the loan is wiped off the books.

If you find yourself discovering for the first time that you may still be subject to the various laws that receipt of federal financial assistance implicates, you should seek assistance from your education or employment counsel to determine how best to come into compliance with your obligations. This may include modifying policies, procedures, postings, and investigations. In addition to Title IX, your school may also have obligations under Section 504 of the Rehabilitation Act, the Family Educational Rights & Privacy Act (FERPA), and other similar laws.

Conclusion

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

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