

## **AACS LEGAL REPORT**

### **PPP LOAN ACCEPTANCE AND TITLE IX COMPLIANCE**

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#### **I. Introduction**

A federal court in North Carolina recently held that a private, independent school that accepted a PPP loan was required to comply with a federal statute known as Title IX during the life of the PPP loan (*Karanick v. Cape Fear Academy, Inc.*). Although the Small Business Administration (“SBA”) had attempted to clarify earlier that the acceptance of a PPP loan under the CARES Act was not considered federal financial aid, the court found that a PPP loan should be considered as “a grant or loan of Federal financial assistance.” As a result, the court held that Cape Fear Academy was required to comply with Title IX from the time the school accepted the PPP loan until the time the loan was forgiven.

#### **II. TITLE IX and Background of the Case**

Title IX is a federal law that prohibits sex discrimination in educational programs that receive federal funding. Title IX has been in the news recently as the Biden administration is attempting to expand the definition of sex in Title IX to include sexual orientation and gender identity. The AACS has joined more than 100 other organizations to oppose the proposed changes because they would violate the religious liberty of Christian schools and colleges that accept federal funding.

In the *Karanick* case, three female high school students alleged that they were subjected to sustained harassment by a number of male classmates. In particular, the female students claimed the harassment consisted of “dismissive, inappropriate, or offensive remarks, and jokes about women, sexual assault on women, and violence toward women.” The female students further alleged that they repeatedly informed individuals at the Academy about the harassment, but no action was taken. One student also claimed that the Academy retaliated against her for speaking out about the harassment. The three plaintiffs argued that the Academy violated Title IX by allowing the discriminatory behavior to take place.

After the lawsuit was filed, the Academy moved to dismiss the case. One argument made by the Academy in support of dismissal was that the school does not accept federal financial aid, and therefore, is not subject to Title IX. The Court rejected this argument and held that the PPP loan received by the school

should be considered federal financial assistance. As a result, the Court held that the Academy was subject to Title IX requirements from May 4, 2020, the date the school received the PPP loan, through June 15, 2021, the date the SBA forgave the loan and repaid the lender in full. The Court further held that any discrimination claims that occurred during the 2020–21 school year could move forward.

Other law firms that have looked at this case have reached the conclusion that the case was well-reasoned and probably decided correctly.\* As a result, any Christian school that received a PPP loan could be subject to claims filed under Title IX during the time the loan proceeds were received and until the loan was forgiven.

### III. Two Other Recent and Troubling Court Rulings

Two federal courts in Maryland and California recently concluded that private and independent schools were subject to Title IX solely on the basis of the schools' nonprofit status. One case involves the Baltimore Lutheran High School Association in Maryland, and the other involves an AACCS school, Valley Christian Academy in Santa Maria, California. In both cases, the federal courts concluded that the schools should be considered as having received federal financial aid simply by being classified as a tax-exempt entity. Stated another way, the courts concluded that the benefit of tax-exempt status in and of itself means that the schools had received federal financial aid.

These decisions threaten to upend decades of well-settled law and, if upheld on appeal or at the Supreme Court level, would significantly impact Christian schools across the country. At this point, these two decisions impact only the schools within the jurisdiction of the federal courts that rendered the rulings. Nevertheless, all private and Christian schools should take note of these two cases.

\*One such firm is Schwartz Hannum PC in Andover, MA. Certain information in this Legal Report came from a July 6, 2022, article published by the firm entitled, *PPP Loan Acceptance May Trigger Title IX Compliance Obligations for Independent Schools*.

### IV. Conclusion

One takeaway from the *Karanick v. Cape Fear Academy, Inc.* case is that Christian schools must take allegations of sex discrimination seriously. While we do not know all of the facts of the case or the parties involved, if the school did refuse to address legitimate complaints, then that refusal may have triggered legal action.

We do not yet know the status of appeals of any of these cases. Appeals are likely, and final decisions are not yet settled.

Of course, the most troubling news in this Report is that two federal courts in the last month have ruled that a private or Christian school is considered to have received federal financial aid solely on the basis of its tax-exempt status. This is a new attack on Christian schools and may be the next huge battle we will face.

If you have questions or comments concerning the issues raised in this Report, please feel free to contact Steve Cummings at the AACCS Legal Hotline number in Athens, Georgia; (706) 549-7586.

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