



A Robinson+Cole Legal Update

Coronavirus (COVID-19)

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Independent Schools and PPP Loans: Are You In Compliance With Title IX?

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In the wake of the COVID-19 outbreak, many independent schools applied for and received funds from the Paycheck Protection Program (PPP) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The Small Business Association (SBA) has confirmed that recipients of PPP loans will be considered recipients of federal financial assistance, imposing obligations under numerous federal laws and corresponding regulations, including Title IX, Title IV, the Age Discrimination Act, and Section 504 of the Rehabilitation Act of 1973. All independent schools already have nondiscrimination policies and procedures, but those practices do not necessarily comply with the specific requirements under these laws. In particular, independent schools will want to ensure their policies and procedures comply with the Title IX regulations that went into effect on August 14, 2020.

Here are some key takeaways from those Title IX Regulations:

- **Scope of Title IX:** Title IX prohibits discrimination on the basis of sex in any education program or activity. Most independent schools already have a nondiscrimination statement and related policies, but these are generally not enough to demonstrate full compliance with Title IX. While Title IX is often thought of only in the context of athletic programs, it prohibits all forms of discrimination on the basis of sex, including sexual harassment, to all aspects of a school's operations.
- **Key Concepts of Title IX Sexual Harassment Regulations:** Schools are required to respond whenever any employee has notice of sexual harassment occurring in a school's educational program or activity in the United States. Sexual harassment is defined to include *quid pro quo* harassment, unwelcome conduct that a reasonable person would find so severe, pervasive and objectively offensive that it denies a person equal educational access, and any instance of sexual assault. The response must not be deliberately indifferent and must include supportive measures for the complainant, an investigation, a grievance process that complies with the Regulations and an appeal process offered to both parties. The Regulations prohibit retaliation.
- **Requirements of Title IX:** Some of the requirements of Title IX include appointing a Title IX coordinator to receive and investigate complaints; providing notice to students and employees of the contact information for the Title IX coordinator; adopting grievance procedures for complaints of discrimination, sexual harassment, and sexual violence; providing a notice of a nondiscrimination statement to all applicants for admission and employment, students, parents, and employees and including such notice in all school publications, admissions, and employment materials, as prescribed by the Regulations; and evaluating whether there are equal athletic opportunities for members of both sexes.
- **Compliance: Permanent or Temporary?** Compliance with Title IX is not permanent. The SBA has made clear that once the PPP loan is paid or forgiven, independent schools are no longer required to comply. One important caveat, however, is that the duration of compliance with federal laws and regulations depends upon the purpose for which the federal assistance was used. For example, federal funds used in relation to real property may extend the duration of compliance with the federal regulation for as long as the property or building is used to provide educational programs or activities.

- **Consequences of Noncompliance:** Similar to the SBA's investigative, compliance, and enforcement provisions of Title VI, if an independent school does not comply with Title IX the SBA can suspend or refuse any financial assistance not yet provided or accelerate the maturity of the loan. The SBA also can make a referral to the U.S. Department of Justice. Additionally, individuals who believe they have been discriminated against on the basis of sex could rely on Title IX to bring a private lawsuit against the school.

Robinson & Cole LLP has been tracking government relief programs being offered to help alleviate the economic impact of COVID-19 on businesses in the United States. The SBA, in consultation with the Treasury, has provided and continues to provide guidance in the form of [Interim Final Rules](#) and [Frequently Asked Questions](#) (FAQs) to address borrower and lender questions concerning the implementation of the Paycheck Protection Program (PPP), established by section 1102 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). For more information on the PPP, see our [Primer](#), [FAQ on the PPP](#), our [article on SBA affiliation rules](#), our [article on the Paycheck Protection Program and Health Care Enhancement Act](#), our [article on the "necessity certification,"](#) our [article on the PPP loan forgiveness application](#), our [article on The Paycheck Protection Program Flexibility Act](#), our [article on PPP Update: Loan Forgiveness FAQs](#), our [article on Treatment Of Owners And Forgiveness Of Certain Nonpayroll Costs](#), and our [article on Loan Necessity Questionnaires](#).

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