



## The Law and Higher Ed – ICS's Podcast

*The Law and Higher Ed* podcast discusses the many legal issues that affect colleges and universities and intersect with Title IX. Host Courtney Bullard interviews subject matter experts, thought leaders and advocates to provide a diverse perspective on these legal issues and Title IX compliance.

*itunes link, subscribe & download:*  
<https://podcasts.apple.com/us/podcast/the-law-and-higher-ed/id1460610104>

*Web link:*  
<https://icslawyer.com/podcasts/>

*Titles of recent podcasts and links are listed on page 4 of this newsletter.*

### Status of NPRM

On November 4th, the final regulations were sent from the Department of Education to the Office of Management and Budget. The OMB has 90 days, with a potential 30-day extension, to review the regulations before they are published as final. The OMB has meetings scheduled regarding these regulations through February 5, 2020. At this time, the finalized regulations are not expected to be released before early February.

To view upcoming OMB meetings visit: <https://www.reginfo.gov/public/do/eom12866SearchResults?publ=&rin=1870-AA14&viewRule=true>

In the meantime, in a November 13th speech, Betsy DeVos alluded to the content of the finalized regulations, which are expected to be similar to what was proposed last November.

Secretary DeVos' remarks can be viewed at <https://www.ed.gov/news/speeches/prepared-remarks-secretary-devos-independent-womens-forum-annual-awards-gala>

The NPRM are not expected to be adopted in final form without significant opposition, both in the courts and legislatively. Already, on December 10th, several Representatives of the House introduced legislation aimed at blocking the Department of Education's implementation of the new regulations. <https://www.newsweek.com/dems-aim-block-devos-title-ix-rule-changes-say-they-could-have-chilling-effect-students-1476537>

### Case of Interest

*Survjustice, Inc. v. Devos*, Case No. 18-cv-00535-JSC (N.D. Cal Nov. 1, 2019) <https://www.courthousenews.com/wp-content/uploads/2019/11/DOESexAssaultGuidance-JUDGMENT.pdf>

The Department of Justice took the unusual stance of arguing against its own September 2017 Q&A Guidance, taking the position that "the 2017 Guidance does not produce legal consequences because neither the OCR nor OMB Assurance requires schools to comply with the 2017 Guidance." The Court agreed. "[T]he 2017 Guidance is not binding on schools and does not otherwise produce legal consequences, but instead provides only 'information' for schools regarding how OCR will assess a school's compliance with Title IX and its implementing regulations."



Introducing  
**Betsy Smith**

### ICS is proud to introduce our newest team member, Senior Investigator and Consultant Betsy Smith!

Betsy brings a unique skill set to the ICS team, having served as both a student affairs professional and an assistant district attorney. Most recently, she worked for five years as a Director of Student Conduct and Deputy Title IX Coordinator at a large state institution where she conducted and oversaw over 2,000 Title IX and other campus investigations a year. The combination of Betsy's familiarity with campus life, Title IX, and her background as a prosecutor provides for a distinct, trauma informed, approach to her investigations. Betsy also specializes in using and presenting data to inform an institution's prevention and response efforts in addressing sexual misconduct.

Betsy earned her B.A. in Political Science and Sociology, in 2006, from the University of Tennessee, Knoxville, where she was a member of the Lady Vols Swim Team. She graduated from the University of Tennessee College of Law in 2009. She served as an Assistant District Attorney from 2009-2014 and worked at the University of Tennessee, Knoxville from 2014-2019.

Betsy and her husband, Jared have one son, Brogen (6). In her free time, Betsy can be found coaching local high school and middle school swim teams and chauffeuring her son to all his sports practices.



### What has Courtney been doing?

Courtney has been on several college campuses this fall sharing her Title IX knowledge, including conducting trainings at University of Alabama at Huntsville and University of Southern Mississippi. In addition, in October, Courtney travelled to California to speak at a Grand River Solutions Conference, "Title IX, Clery Act, and Equity: Finding Solutions for a Shifting Landscape."



### Title IX U is compliance at your fingertips.

Self-paced, certified courses led by attorneys and subject-matter experts that can be taken anytime, anywhere, and that will enhance your Title IX proficiency. *Title IX U* launches on January 9, 2020. See <https://www.titleixu.com/>

### The Law and Higher Ed PODCAST EPISODES

- EPISODE 13** | Dr. Laura McGuire on consent, trauma-informed practices and restorative justice
- EPISODE 14** | Title IX and International Program with Jill Creighton
- EPISODE 15** | Informational Episode on the Circuit Split on Due Process in Title IX Cases

Plus replays of some of the favorites! Watch for many new podcasts to come in 2020 starting January 16th.

### #TitleIX2020

### Hot Topics in Title IX Compliance Conference

— MARCH 5th & 6th, 2020 —

Note that the pre-conference will include an NPRM intensive AND if you are a Tennessee Title IX Coordinator, there will be a **FREE Lunch & Learn** on March 5th. To check out pricing/agenda/hotel accommodations, you can go to <https://icslawyer.com/ics-higher-education-conference-2020/>

## BLOG OF THE MONTH

### Courtney Bullard's Top 10 for Title IX Coordinators

As the academic year reaches its midpoint and Title IX Coordinators take stock of changes that may be needed in their campus policies and procedures, here are some common mistakes to avoid:

- 10 An overly complicated policy.** Have a policy that matches the mission of the school while also being legally compliant. A policy should be plainly written, user friendly, and easily understandable to faculty, staff and students.
- 9 Campus processes that do not match the policy.** Do what you say. And use best judgement in situations where the policy doesn't address the issue.
- 8 Campus administrators not trained in campus policy and procedures.** Include training on a campus's own specific policies and procedures, such as the Student Code of Conduct and Faculty Handbook.
- 7 Getting derailed from the policy due to external pressures.** Unique circumstances may require deviation, but those circumstances should not include when there is external pressure (e.g., a complainant with aggressive attorney or a respondent whose parents are major donors).
- 6 Leaving out areas of campus in education efforts.** Remember the Board of Directors, Deans and Department Heads, Greek Life, and Athletics.
- 5 Waiting until the midst or back end of a crisis to do the work.** Do the work for creating a good policy and processes before the crisis.
- 4 Not documenting the process.** Memories fade; people leave. Be sure to have a paper trail, with a complaint log that details interim measures and what policy is implicated. If there is a deviation from procedures, document how and why. Also document delays and unique challenges.
- 3 Investigating all grievances under Title IX.** Not all types of conduct fall under Title IX. Title IX is not for race, national origin, or religion. Don't take on legal obligations that you do not have.
- 2 Forgetting that Title IX applies also to faculty and staff.** Title IX is not just students. Policies usually do recognize this, but it sometimes gets forgotten. When faculty and staff are involved, loop in HR to work together for Title VII obligations.
- 1 Not knowing roles or wrong people in wrong roles. KNOW YOUR ROLE!!**

For more information on this topic, check out *The Law and Higher Ed Podcast Episode 10* at <https://podcasts.apple.com/us/podcast/the-law-and-higher-ed/id1460610104> and new ICS team member Betsy Smith's December 2 blog, <https://icslawyer.com/the-nprm-power-in-the-waiting/>



## ICS MEMBERS' CORNER

### Rebecca Malley | University of Southern Mississippi

ICS introduces the University of Southern Mississippi as one of its valued members. Founded in 1910, The University of Southern Mississippi has grown from a small teachers' college into a comprehensive doctoral and research-driven university that is a haven for the arts with a tradition of success in both academics and athletics.

Southern Miss has a diverse student body of approximately 16,000 students from 67 foreign countries, all regions of the United States and every corner of Mississippi. The school offers more than 180 undergraduate and graduate degree programs in six degree-granting colleges. A dual-campus university, Southern Miss serves students on campuses in Hattiesburg and Long Beach, in addition to five teaching and research sites in Mississippi.

As the premier research university of the Gulf South, Southern Miss takes pride in being classified as a RU/H: Research University (high research activity) by the Carnegie Foundation for the advancement of teaching among doctorate-granting universities. Southern Miss has been honored with the Carnegie Community Engagement Classification for the many ways in which its students, faculty, staff and programs engage and enhance the people and places of South Mississippi and beyond. The university is one of a select number of institutions in the nation accredited in all four arts disciplines: theatre, dance, art, and music. The Department of Athletics offers 16 sport programs at the Division I level sponsored by the National Collegiate Athletic Association (NCAA), and has won five Conference USA football championships and three Conference USA baseball championships. Since 2006, Southern Miss students have collected seven Goldwater Scholarships, three Truman Scholarships, 10 National Science Foundation Graduate Research Fellowships and numerous other prestigious awards.

Rebecca Malley serves as the Title IX Coordinator as Southern Miss and has been functioning in that capacity since February 2015. In this role – with the assistance of deputy coordinator, Cristin Reynolds, and two graduate assistants, Lauren Lassabe and Alex Rhoden - she oversees implementation of the university's sexual misconduct policy, facilitates educational outreach endeavors, and provides training for 21 employees who serve as members of the Sexual Misconduct Investigative Team. She joined the University in 2000 as USM's first full-time Affirmative Action/EEO Officer. Prior to joining USM, Rebecca worked in higher education administration for over 25 years with positions in student life and institutional equity at each of the following institutions: Oregon State, University of Northern Iowa, Illinois College, and Oberlin College. Rebecca received a B.A. from Millsaps College, a master's from Oregon State University, and a Ph.D. (in Communications Studies) from USM during which she conducted research focused on organizational crisis communication. A native of Oxford, Mississippi, Rebecca enjoys spending her free time with her husband and puppy, as well as reading and watching college sports.

## REGISTER NOW:

<https://icslawyer.com/ics-events/>

Year-End Review Webinar | January 29, 2020 | 1:00 EST

“Three Tips to Track Title IX Patterns and Trends”  
with Betsy Smith | February 12, 2020 | 1:00 EST

**Hot Topics in Title IX Compliance Conference**

Conference March 6 | Preconference March 5

Members-Only Quarterly Zoom Meeting | Date TBD, to be held shortly after the new regulations are released

