

Courtney Bullard:

Welcome to the Law and Higher Ed podcast. My name is Courtney Bullard and I am your host. You can learn more about me and my company, ICS, way back in episode one.

The country's facing an unprecedented challenge with the COVID-19 pandemic. I know all of you listening are facing significant stressors, personally and professionally.

Betsy Smith, senior investigator and consultant, and I, wanted to provide a quick, informational episode for Title IX professionals on ways to remain Title IX compliant as campuses move to distance learning.

Before we dig in, a few things ICS is working on in response to what we have seen with our clients to date. April 30th and May 1st we are hosting a certified virtual investigator training. This training is not a webinar, but will be an interactive training, over a day and a half, that includes mock investigations, virtually, of course, and much more.

Second, we've set up a Title IX triage service at a deeply discounted rate to help Title IX coordinators in universities during this transition. The triage service provides you with two to three hours of consulting time with Betsy or I to help you transition your open cases and come up with an action plan for ensuring that they're completed in a timely manner, any Clery advice you might need, how to work through any open adjudications that you have through a panel hearing or otherwise, virtually, and anything else that your institution might be specifically facing with respect to Title IX.

Third, Title IX University contains online courses that you can take any time, anywhere. This may be a good time to catch up on your professional development. And Title IX 101 is the inaugural course that is available today. It's a course that I believe every Title IX professional should take, whether you're a new, aspiring, or seasoned professional.

The content's based on my own experience in working with colleges across the country, as well as serving as an expert witness on what the expectations are for Title IX coordinators and their knowledge in this area. 2020 Legal Updates is releasing April 1st. And there'll be several more courses releasing after that, no doubt.

Finally, we have monthly webinars that are free. This month is for K through 12. Next month is one on stalking. And there will be more to come there, as well.

You can find all of these at www.icslawyer.com, if you just click on events. So without further ado, Betsy and I will get to it.

(music)

All right, Betsy. You ready to tackle all of the challenges that institutions are facing on the Title IX compliance front with the COVID-19 outbreak?

Betsy:

Absolutely. Let's do this.

Courtney Bullard:

We're going to try best.

Betsy:

Absolutely.

Courtney Bullard:

So I think we talked about three different points we want to get across in this quick, informational podcast. I know everyone listening is facing personal and professional challenges, as I mentioned in the intro. For Betsy and I, same thing, we've got five kids between us and some of mine are sleeping right now and I'm hoping they don't wake up and interrupt our recording. But if they do, maybe that would be good comic relief.

But we know everybody's balancing childcare as schools close, as well as taking care of their parents and other loved ones, as well as transitioning their work, potentially, virtually. Or maybe you're on campus, but everyone else has gone.

So, we wanted to provide this quick informational to see if we could get some points out there for our Title IX professionals and helping them through the transition.

So Betsy, the first that we talked about, that we really talked about a lot in the conference last week, as well, before this hit in the way that we see it today, is support measures. So talk about, from your perspective, what we need to be doing, what Title IX coordinators need to be doing with respect to support measures for their students, faculty, and staff?

Betsy:

Yeah, absolutely. It's really one of the most important things that I think we all need to be considering, is the students who we were already supporting before this. So, the students who are in our investigations, the students who are being supported by the Title IX process in any way, shape, or form.

And I really think the first step for every campus, right now, needs to be a reach-out to those students because they are going through a significant transition. And we also know that they were going through trauma prior to, so this is only escalating, potentially, and causing hardship for them.

So just an intentional reach-out to those students, whether it's the complainants and the respondents, maybe even some of your witnesses, just to make sure that they're okay and that they know that you are still there as the first step.

Then, I guess, my next advice would be just to reach out to the counseling staff, the counseling center. Make sure you understand what your counseling center is offering virtually, and if your students, who are in counseling currently, are willing to move to a virtual counseling opportunity.

And, if not, it's going to have to be thinking outside the box and finding out where they're located, kind of making that connection for them with an off campus provider.

And I'm not saying, necessarily, that your school needs to be paying for, or providing that, but certainly providing options for them wherever they are and helping them through navigating through getting connected in that way, I think is definitely something that I would be doing right away.

Courtney Bullard:

We talked a lot about this last week at the conference and being intentional with support measures and making sure those are provided, kind of holistically, all the way through an investigation and after. And certainly this is going to be a challenging time with respect to all students on all fronts, but if they are in a Title IX investigation or a situation, definitely providing support measures is so crucial during this time.

And I know, for me, I'm getting emails - I know everybody is - from everyone under the sun. Like from retail places that I shop, to restaurants, to, I don't know, everything. And I keep thinking, for students, they're probably inundated with emails, but that is the primary format and the official form of communication for campuses.

But I also see campuses doing a lot of tweeting, and some Title IX offices have their own platform. Maybe this is a time, if they don't, to establish a social media platform to try to help get the word out that they're there and available if they need it. What do you think about that?

Betsy:

Yeah, I think that would be great. I know sometimes Title IX offices and conduct offices are hesitant to do that, but I think now is the best time to start. And then, also, I was just going to add in, making a phone call to those students.

Everyone, you're right, my inbox is flooded and everything's getting buried right now. So just reaching out with a phone call as well, just to check in. And leave a voicemail if they don't answer, just so that they know you're there. Kind of that personal touch.

Courtney Bullard:

Exactly. And I understand being reticent about having an online platform, but this might be the time to at least consider it, if nothing else. But I think a phone call goes a long way.

I was on the phone with a Title IX coordinator an hour ago, and she was so thankful that I was willing to take the time to talk to her. And, of course, we always do that. But I think a phone call can go a long way right now when people are experiencing a lot of anxiety and angst.

So, speaking of anxiety and angst, every time I pull up the news media to follow what's going on out there with respect to the students who are leaving campus to start distance learning, I see pictures of students lined up around the block at bars. And we always say the youth is wasted on the young. They're definitely out and about.

Let's talk about accountability and the fact that these are still your students, even when they leave, so long as they're engaging in that distance learning, and how do we ensure accountability?

Of course, step one is making sure that they know you're there and that you still exist. And that if they have a complaint or need anything, where to get those resources. But, what else on accountability do you think we need to be focusing on?

Betsy:

Yes. I think first you need to check your policy and make sure that it's covered. Most schools are related to the student and their relationship with the school and not necessarily the proximity, especially for these more serious allegations that would involve Title IX violations.

So just making sure that it exists. And then if you need to do any tweaks, make sure that you make them and then publicize them. But, I know we said inboxes are flooded, but it is a good time to remind students, "Hey, you are still under our code of conduct or our Title IX policy," and make sure that they understand that their decisions can impact them.

I'm thinking, especially, about our graduating seniors, who may never end up being back on campus. There's a lot riding on them to just get to May successfully or whenever graduation might be, so just reminding them that their behavior could impact that. Again, that's all of your students. But, in my mind, and what I'm seeing, at least online, is that seniors are kind of really enjoying these last couple of months before graduation.

Courtney Bullard:

Yes. And especially without the structure of going to class every day, it's just sort of a recipe for folks getting together. It's we were talking about earlier, not just at bars, but they'll move to house parties when restaurants start to close down or they'll go back home, take the online courses or the distance learning, but still be interacting with their friends who are at other institutions, drinking and those types of things.

The other thing is not everyone has closed their residence halls yet. Now, of course, it's probably coming, but you do have international students who are still on some campuses or all the student body that are still able to stay on campus, even though they're not in classes.

And so, idle hands... I mean, I see it with my own children. You got to keep them busy and when they don't have things to do, like go to class and stay in a routine, some things can happen. So being sure... Again, communication, I mean, we talk about all the time. Communicate, communicate, communicate, communicate.

I read somewhere, I think in the COVID higher ed Facebook group, you cannot communicate enough. You literally can't communicate enough about your office, your resources, and then that accountability piece and a reminder that they're still your students and the code of conduct still applies. Assuming it does, once you double check all of that.

Anything else?

Betsy:

Well, I think you hit on some of it that it's not just at the bars. Once those all close, which we're anticipating that they will, or at least become more limited, that students are going to start having those house parties. And we've already seen some of the really classy sheets hanging from the porches with COVID party signs.

So, I think that's the next thing that we need to worry about, and advising our students against that as well, letting them know the risks. And not only the risks to them, but the risk to the community and their family. And also that accountability piece.

Courtney Bullard:

Well, and you talked earlier about getting in contact with specific offices. So, of course, if you're stand-alone Title IX coordinator - I mean, you're still probably wearing a lot of hats, but you're not also housed in HR and also housed in student affairs - bringing your team together, making sure you're connected with student affairs, Greek life, if you have it, because those folks are staying in those houses, whooping it up at the moment.

And athletics. We talk about athletics as a high risk area, but certainly all that's getting shut down and a lot of student athletes are going to struggle that.

So, I just went backwards for a minute, but talking about support measures. Just being mindful, as well as you can, because we're all adjusting on a minute-by-minute basis of all those things.

But, also disability services. That is another area you make sure you connect with to see what's going on, because, certainly... Well, and this might get us into our next topic, which is if you have open investigations and hearings.

And so quick transition into that. Disability services... Basically, if you're going to move to an online format in order to... Or you're going to have to move to a virtual format, I'm sorry, in order to connect with students or staff or faculty if you've got open investigations and hearings, making sure that they're accessible to all.

And that might require some help from your disability resource center. So, on that note, let's talk about if you've got open investigations and what universities and Title IX coordinators need to be considering as they transition.

Betsy:

Yeah. So they need to continue. I don't think there is any reason for these investigations to stop for long periods of time. I think our investigations continue virtually with Zoom or Skype or other sorts of platforms, and making sure that you have those in that you're providing them to your students to communicate, to conduct an investigation, to have a meeting, to stay up-to-date, and all of that.

I don't think there's any reason for them to stop. So, just making sure that we're staying on top of that and that you're able to organize it and schedule it. And still hold your students accountable to those scheduled meetings that you're putting in place.

Obviously we got to be a bit flexible and understanding, but long periods of time, you don't have to be. You can schedule it and hold them accountable in that way.

Courtney Bullard:

Agreed. I think flexibility is going to be important, and empathy, but accountability just as important. And along those lines, delays are going to be inevitable and expected. More important than ever to just be noting what's going on in your timelines and in your files that you're keeping.

You may fall ill, one of your investigators may fall ill, which causes a delay. Of course, you could have somebody involved in investigation, a complainant, respondent, witness who falls ill. Or they're caring for a family member now that they've returned home, who falls ill. A lot that's going to happen and things are probably going to get worse.

So, to the extent you can, we're not looking for perfection, but just noting where you're experiencing issues, I think is going to be really important.

Would you say the same with hearings? If you had hearings planned, if you're a campus that does adjudicate through a hearing, then that needs to proceed as well, with some flexibility, of course, and moving to a virtual format. But that needs to continue to move forward as well. Correct?

Betsy:

Yeah, I would say so. And I think you can do it. I want to empower you to know that you can. It's going to take some practice and set up that hearing format.

Take everyone in your office or the office next door and attempt a Zoom call in a mock hearing, just to make sure that you understand the way that it will work in the practice and all of that. It's going to feel wonky a bit if you're not used to it, but give it a try.

Set it up first and then explain to your students really clearly how it's going to work. And I think you can absolutely continue with hearings. You don't want this backlog. You don't want that gap in your timelines, but you also don't want a backlog once students do return, or summer hits or fall, whichever we end up with everyone back on campus. You certainly don't want... you're going to have new cases then. So you don't want this backlog at that point.

Courtney Bullard:

Yeah. Absolutely. Another thing that I thought of is, emphasizing again, you're going to have a renewed focus on accessibility with your virtual platform.

And one of the areas that really might come up is - we talked about this in our conference and the preparing for the NPRM - but meaningful access to information, having to do that all online, which I think most universities already were doing, which is sharing investigative reports or witness statements, but hearing packets, all of that, ensuring that your technology is working well. And double checking with whomever you're sending it to, to ensure they received it, they could access it, is going to be imperative.

And I think most folks will think of that anyways, but there's so much great about technology. But as Betsy and I know, from a webinar we put on last month, there's also a lot that can go wrong. And having a backup plan is really important.

Everyone is going to be online at the same time. I think it's going to be interesting and we're probably going to see failures and connections and things like that. So again, having a plan B with your folks.

They're going to be anxious anyways, not only because they're involved in a hearing process, but because of everything else going on in the world. So being as transparent and communicating, communicating, communicating, and having a plan B. If we get disconnected, this is what we'll do. We'll be in touch to reconvene on this date or whatever you've got to do.

But, to the extent possible, business as usual out of the Title IX offices. And continuing to provide the service that you provide, I think, is what we're trying to get at, within the confines of today's reality.

Betsy:

Yeah. I think you can provide a stability to the people going through your process in this kind of unstable world. So, to the best of your ability.

Courtney Bullard:

Absolutely. Okay. So, I think those were the three main things we want to talk about. Support measures, ensuring accountability, how to handle open investigations and hearings.

Just wanted to touch on the big things that we're seeing from our clients and then just kind of empower you to continue doing what you're doing. We know, from a personal standpoint, how hard all this is. We can only imagine from a professional standpoint. But we are fielding those calls from our clients and sort of seeing what they're dealing with on the ground.

But, wanted to end, Betsy is our resident cheerleader, in addition to our resident PowerPoint creator. And so I know we wanted to sort of try to end on a couple of positives. Betsy, go ahead with your first.

Betsy:

Yeah. So, I think the first one that has come to my mind is this is the progress of the world, this virtual communication. And so a lot of the schools and institutions are moving, or were already moving, towards online platforms and distance learning and things like that.

So this is giving us kind of a crash course, in practice, to be able to catch up to that from a Title IX perspective and make sure that we're ready as just the institutions start to move more of that way in general.

So, that's kind of a positive side, is that you're going to be prepared for that. And you're not going to have to do this slow walk into it because we're definitely at that point right now. So certainly [inaudible 00:18:49]

Courtney Bullard:

Yeah. And the NPRM talks a lot about ability to access stuff online. Ability to access those hearing panel packets and everything that's used in investigations online.

And again, we don't know what's going to happen with the NPRM. Goodness knows, we really don't know now. But it's still a standard that's been thrown out there. So this will be a really good trial by fire, for lack of a better word, in coming up with new and novel ways to approach investigations virtually.

Which I know everybody will be able to rise to the occasion on, but just a reminder from us, perfection is not the requirement. And as long as you're trying and putting forth a good faith effort, as I know everyone is, and trying to meet student needs and faculty and staff needs, that's all you can do.

Betsy:

Well, and also I was just thinking it's time to make sure Title IX coordinators have a spot at the table. So, if you haven't had a spot at the table in these communications meetings and things like that, now's the time to say Title IX matters.

And we need you, campus leadership and communications teams, to be listening to us, too, because we have a lot of people that we're impacting. And so making sure that you're getting your spot there.

Courtney Bullard:

Yes. So again, things are evolving rapidly. We are going to do everything we can at ICS to meet any needs and serve you in the best way possible. If there's anything specific you're looking for from us that we're not offering, please reach out to us.

We will record more informationals as the need arises. As of the time that this is going to be posted, we'll have hosted a webinar on our top three recommendations, which really go over what we talked about here, but in a much more in depth manner.

But we're here for you and definitely want to help support you in any way that we can. So, good luck out there. Stay safe, stay, well. And thank you, Betsy, for getting on and doing this with me in all of the chaos of stomach viruses and children at home and travel. We're definitely feeling it.

Betsy:

Okay. Well, thanks. And again, as Courtney said, we're here for you.

Courtney Bullard:

Thanks Betsy.

Here at ICS, we know things are challenging and our thoughts are with all of you on the ground who are working to adjust to the significant transitions on campus.

Stay connected with us on LinkedIn, Twitter, Instagram, and Facebook. We have a Title IX Facebook group as well. Please ask to join that group where we talk about all kinds of things. But, specifically, we'll be providing some real-time updates as we navigate the COVID challenge.

Be safe and be well. And as always, if you need anything, you can reach out to us through our website or email me directly at chb@icslawyer.com.

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