

Courtney Bullard:

Welcome to the law and higher Ed podcast. My name is Courtney Bullard, and I am your host. If you want to learn more about myself and my background, please go all the way back to episode one of this podcast. In short, I'm an education attorney specializing in Title IX compliance.

There's no question that these are unprecedented times for everyone, including school districts and institutions of Higher Education. COVID, killer bees, natural disasters, and now the new Title IX regulations issued by the Department of Education with an implementation deadline of August.

My team has been hard at work with resources to address the virtual world. Now, of course, we're also working on assisting you with coming into compliance with the new regs. Here at ICS, we have a lot of different offerings. First, we have a lot of summer courses, virtual of course, including investigator adjudicator and hearing officer training, all of which will be compliant with the new regulations.

We are also hosting a breakdown and implementation of the new Title IX regs, both on May 27th and in June to get a deeper dive into what all of this is going to look like for colleges and universities and to assist you with that process. Second, we have complimentary webinars, one on the date of this release. It is an overview of the regs, and we'll have more of those to come.

But speaking of complimentary, we're also part of what I call a Title IX think tank. It is 50 plus lawyers from across the country who are contributing to a joint guidance on the new regulations. And that's hosted on Sunni's website, SUNY standing for the State University of New York.

Finally, we're partnering with school districts and institutions of Higher Education on policy revision and review and implementation to get them in compliance with the new regs by the current stated deadline. You can find out about our events, including the free webinars on [www.ICSlawyer.com/ics-events](http://www.ICSlawyer.com/ics-events).

If you're interested in working with us to help your institution or school district come into compliance, you can always email me at [C-H-B@ICSlawyer.com](mailto:C-H-B@ICSlawyer.com) or use the contact us button on our website.

Joe Storch:

By the way, the preamble itself is longer than the Old Testament. It's longer than Moby Dick. It's longer than Ulysses. It's longer than most of the Harry Potter series. So this is not a simple thing to get through.

Courtney Bullard:

If you are a Higher Education attorney, chances are my guest today, Joe Storch. He's a regular contributor through NACWAA, the National Association for College and University Attorneys, and overall resource to all of us in Higher Education. Joe is an associate counsel in the SUNY office of general counsel and chair of the student affairs practice group.

He concentrates his practice on student affairs, intellectual property and campus safety and serves as principal investigator on more than 9 million in grants and external funding to support his innovations in violence prevention and response on campus and in the community. He also oversees the SUNY, Student Conduct Institute, which offers compliance and best practice training to college staff engaged in response to violence and conduct violations.

Joe and I of course, dive into the new regulations and its impact on colleges universities, his first impressions on what that looks like. And we talk about the collaboration that is hosted on SUNY's

website of more than 50 attorneys across the country who are working on a joint guidance document that is completely free of charge, for institutions as they navigate compliance with the new regulations.

I hope you enjoy our conversation. Hi Joe, the man, the myth, the legend, I'm so excited to finally get you on the podcast. And of course, given what's happened this week, super excited. We got this scheduled when we did, because it was perfect timing. So welcome.

Joe Storch:

You're very kind Courtney. Thank you. And is there something going on this week? I hadn't heard yet.

Courtney Bullard:

Not really. I mean, honestly 2020 has been pretty boring year.

Joe Storch:

Yeah. It is nice that we all get to just relax and work on some longterm projects.

Courtney Bullard:

Enjoy the summer.

Joe Storch:

Right.

Courtney Bullard:

Mother's day. Yeah, I was like, "I'm going to be spending mother's day basically reading regs or some of it." So, speaking of that, obviously a lot has happened this week and just the last two days, the new regulations were released. Mayhem has ensued and we're all now scrambling or we're not, depending on who you talk to, to figure out kind of next step.

So, obviously I know this is early days. We are day two, we're recording this on the eighth. The regulations were released on the sixth. There's 100 days to comply, which is August 14th. And so now we're on day 98.

So, early days, 2000 plus page document to review. So, just want to put that caveat out there because when this was released, we might be further into our review, but as you've looked at it and read all that's going on out there, kind of what are your first impressions?

Joe Storch:

Yeah, there's a lot there. 2033 or 2080 pages, depending on which version you look at that was published by the department, one on the sixth one on the seventh. As we record it, we're not even yet 48 hours in from it being released. So your caveat, my caveat, I am on page 266 of the preamble, and I've also started, I'm sure you did the same skipping to the end and reading the regs.

There are some things that are the same. There are quite a number of differences, and those are not clear just from looking at the regs. You have to use comparison documents and really you have to get into the preamble. And I think you would join me in this.

The idea of every K-12 institution in America, reading, understanding, implementing, training everybody on this to be ready for August 14th in regular times, is very hard to imagine in this time of a global pandemic, where as we record this more than 60,000 Americans have lost their lives.

Tens of thousands of New Yorkers here, where I sit, mostly downstate New York, but still my fellow New Yorkers have lost their lives. Our campuses are remote. Our students are all over the place. Our faculty and administrators are addressing challenges that we could not have imagined in our wildest dreams.

There were no conference sessions on what to do these last two months at any of the conferences that I think you and I go to. To put it out during that time, and expect all of that in what is to my research, the shortest implementation of any major change in Higher Education Law that I've ever seen is a bit beyond anything I could have imagined.

Courtney Bullard:

Totally agree. And when NPRM came out or they announced their intentions to engage in this formal rulemaking process, I listened to an FAQ. You probably listen to the same one on Nakheel, where they said they would give significant time for implementation. And this is not a lot of time at all. And I agree wholeheartedly with you. And I empathize with my clients and professionals everywhere who are truly shellshocked from COVID alone and still figuring that out.

Now we have this. So, two questions for you. The first is, why are these new regulations so significant? We've had guidance in the past, just a little quick primer on what the difference is between the guidance before and these regulations.

And then the second is, what does this preamble all about? I mean, obviously it's so long, what does a preamble even mean in a regulation? If you could just explain that a little bit for our listeners who don't have a legal background and maybe don't fully understand what all this means. Would be helpful.

Joe Storch:

Absolutely. So, Title IX of the education amendments of 1972 is itself only 37 words. It is a very compact piece of writing. It was not, to my reading and my research, the education amendments of 1972 were not actually a major civil rights law, almost every other page and I actually, one time found the education amendments of 1972 and read it skim some parts.

Most of it is financial aid. Most of it is funding for this school type or that school type. And interestingly, when you think about justification, juxtaposition rather of different sections, and most people don't know this, Title VIII of the education amendments of 1972 forbid the use of federal funds for busing to integrate schools. And right up against it, is Title IX of the education amendments of 1972 equality in access to education without regard to sex or gender.

So, it did not come out of the Civil Rights Act of 1965 or another major Civil Rights Act. It really was just put in there at the tail end of a long laundry list of laws and that's law and that's binding. And then there've been some regulations over the years. There were regulations, there were some Supreme court cases. There were changes to regulations, congressional action changes to regulations, and those are binding.

Those have the force of law. And for the last several decades in the area of sexual and interpersonal violence, sexual harassment, the Department of Education has issued what we call sub-regulatory guidance. They call them dear colleague letters and it says, "Dear colleague, here is how

we interpret our own statute and our own regulations." And those don't have the force of law, but they feel like they have the force of law.

And this is not limited to sexual assault, sexual harassment, the department issues dear colleague letters, all the time, third semester Pell for this type of institution of education. How to interpret this aspect of this statute. The department issues, dozens and dozens of dear colleague letters. In fact, on the Clery act side, we have a lot of sub-regulatory guidance. We have the handbook that didn't go through notice and comments.

So, these are not law, but they feel like law and what the department, and I want to give them credit, what they are saying here is that by putting these rules in regulation, rather than guidance, whatever you think about the rules, and I know you and I have our own feelings about some specific aspects of these, they were saying by putting it into notice and comment regulations and publishing final regulations and implementing those, it has the force of law.

So there would be some clarity, both for educational institutions, K-12 and Higher Ed. And for the students that they serve. Switching to the preamble, the preamble is the explanation for why they made the decisions they made. The preamble to the VAWA amendments to Clery was dozens of pages. And those were some major, major changes.

If you print out the 2014 final rule the VAWA amendments to Clery, I think it's probably close to 200 pages printed out. This is 10 times the length of that. And what they do is they go in for each section, they go into the comments, they go into some of the research and they say, whether they agree or disagree.

Spoiler, they tend to agree with the people who said, "We thought the NPRM was the best thing ever." And they tend to disagree with the people who said, "We thought the NPRM was not good." Or, "Had some issues." And that's where they explain if they may change is why they made it. And that's why it's important to read the preamble. But boy, is it a lot to read in a short amount of time?

Courtney Bullard:

It absolutely is. And I think you're talking about the guidance documents that are put out, or I should say sub-regulatory guidance that's put out by the Office for Civil Rights or other agencies. And I think the difference here is in 2011, really the difference was OCR is enforcement posture.

That's what I say all the time. And that's what made it feel even more like law than before. But of course there's all the arguments. Well, it's just guidance. It's not required. We see that in litigation all the time. Now that's different. Correct? Now it's not just guidance it's law.

Joe Storch:

Yeah. And that would be right. And it's binding. And there's some more teeth behind the department's ultimate threat because unlike with the Clery Act, where they could assess a fine of tens of thousands of dollars per substantial violation, but something less than what we call the death penalty in Higher Education, which is removing access to federal funding, under Title IX of the Education Amendments of 1972, it's an offer on.

Either, they can remove federal funding, which they have never yet done in their history, or they can ask colleges to come into compliance and voluntarily come into compliance. And I think by putting it into regulation, making it hard law as it were, I think that might give them a bit more teeth in that. And that's not me predicting that tomorrow. We're going to start hearing of that. But I think it will give them a stronger hand when they're negotiating with institutions.

Courtney Bullard:

Yeah, I agree. I agree. So, we've got these 2000 pages plus depending on which one you're looking at, and everyone's scrambling. I know campus administrators Title IX professionals, they're receiving myriads of emails and information from different areas, different folks. I know I saw where some campus administrators were saying that their colleagues keep sending it to them.

Title IX coordinators saying, "Have you seen this?" But they're just trying to be helpful, but it's like an overwhelming onslaught of information right now. My organization is included. We're putting things out because we want to be a resource and we want to help support through these times. But any advice from the ground as institutions and Title IX professionals sift through the madness and figure out where to go from here, any advice.

Joe Storch:

So, if I were on a campus as a Title IX professional, and this is not legal advice, and you should consult your own attorney, but I would consider taking a beat and letting things settle and letting some of the folks who are doing their review, do their review before you jump headfirst into any "solution or any policy change."

Yes, I've been saying 100 days of Title IX, the turnaround is extraordinarily short, but we know still so little. I don't know anyone even in our sort of circles, Courtney, who can say that they've gotten through all 2000 pages. By the way, the preamble itself is longer than the Old Testament. It's longer than Moby Dick. It's longer than Ulysses. It's longer than most of the Harry Potter series.

So, this is not a simple thing to get through, and I'm a little more than 10% in. And so I would say, take a breath, take a beat and let some of the folks who do the analysis, and you and I are working with about four dozen attorneys on turning around some high quality analysis at no charge that we're making available.

And so wait a little bit for that analysis to see what's actually in there. It is going to be weeks, honestly, before most of the people who are most deeply involved will have read the entire preamble. There are some real interesting nuggets in there and I've been highlighting some stuff that we plan to talk about at a later date, once we have all that information.

So, there's a tendency to say, "Okay, let me get this done. Let me be the first." And I don't know that you necessarily want to be the first here as opposed to being right. Courtney, you had a phrase that you were using.

Courtney Bullard:

Right not rushed.

Joe Storch:

Right not rushed. Yeah. And I think that's the way to go. This is hard. This is really, really hard. And I am not taking that away. And I know in New York and colleagues across the country, we are also dealing with other incredibly difficult things. We have a SUNY campus downstate medical that is COVID only, and it's a hospital and a medical school. They are COVID only, these are not average times and these are not standard times.

And so, I would say to the extent that you are able take a beat, let some of the folks who are really in the weeds on this, do their thing. Let's get that guidance. Let's read it. Let's consider let's track what else is going on out there, and then make those decisions rather than saying, "Okay, we want to be

completely in compliance by the 15th of May." And then on the 15th of June saying, "Oh God, we got it all wrong and have to restart." Just because you hadn't seen some little part of the preamble that actually changes an interpretation or changes an understanding.

Courtney Bullard:

Yeah, I completely agree with you. Like I said, right not rushed. That's what we've been telling our clients. I mean, we want to know who needs us, because there's a lot of folks that are reaching out and we want to do a good job, but I'm also telling them, "We're not going to have the answers tomorrow. If there's someone telling you that they have the answers right now, I would be highly suspicious of that."

Because there is so much to digest just like you said. And, first steps, you would agree with me based on what we've done with the joint guidance is really just... What we've been recommending is getting with your people, figuring out your response to the community. I mean, you're going to have to acknowledge this is happening and that you're going to be looking into it as a college or university, and we've got those talking points in the joint guidance.

I mean, that's really the first step. And then, like you said, I completely agree letting the subject matter experts and the folks who are going to take those deeper dives, take some time to figure that out. And then we'll get to the policies and procedures and implementation, which is coming. I'm not saying don't be working towards that end, but we kind of have an intake process that is really step by step. It's like eat the Apple, one bite at a time. No one has the answers right now. Do you agree with me on that?

Joe Storch:

I would agree completely. And you referenced the small document we put up on the joint guidance and that is absolutely free resource, 50 plus attorneys from 25 institutions and firms who are all doing this pro bono, working together, getting out high quality information. And we put out some things to think about when talking to your community about initial conversations, about the regs and that's available on the website on the joint guidance website.

That is the first step. And you want to start having the conversations about how you do your policy changes at a lot of institutions that require shared governance, at a lot of institutions that requires board action, at a lot of institutions that might require some conversations with students, and in each institution is different. So, you want to begin thinking about what that process entails, and how and if you can do that in a digital and distanced environment.

Are you required to meet in person? Are you required to meet in a way that if you're a public institution allows public access and public comments to changes you make? Are you required to let things sit for a certain number of days before boards vote on them? Are you required to have a certain implementation period for your own policies in place?

Courtney, I'll mention something and I know you also find interesting, the August 14th date because in Higher Ed, we're used to July 1st. We're used to that being the date, that's the date of the master calendar. That's the date and the Higher Education Act where we see the changes. So August 14th, there are some schools that have actually already started.

Maybe these regulations are aimed at traditional four year Ivy leaf on the brick building institutions that enroll traditional age students in undergraduate programs, but some institutions will already have begun. Some institutions, the student basically signs on as a contract to the policies when they enroll, when they pay their deposit.

Some of those deposits already paid. Sometimes policies attached at orientation or at some other point before that. So, that is something institutions are going to have to think about because if you have to make policies that change the basis of the bargain, upon which a student enrolled, there are some additional things to think about there.

Courtney Bullard:

Absolutely. I'm going to go out on a limb about what you were talking about with the shared governance. I'd like your thoughts on this. I've been in the midst in House Counsel of Crisis Management for sure, nowhere near a COVID crisis, but certainly Crisis Management, I think John Graff mentioned in one of his podcasts as well. And it really resonated with me.

In a Crisis Management context universities didn't move to a virtual environment by getting the faculty Senate vote and go into student government and getting their involvement. I mean, they had to make quick decisions. So with these new regs, certainly, when I work with campuses and they do have to go through certain processes that are in place in order to get approval to change specific policies, it seems like there's going to have to be a happy medium here.

[Turner 00:22:30] and Courtney have had some institutions that get hung up on a policy redraft for years, because they've got to go through... They feel like they've got to involve community as they do, or faculty as they should and all of that. But in this circumstance, if this timeline stands, some of that is going to mean you're going to have to follow your bylaws and things like that with when it comes to enacting policies, but probably not going to be able to get so much of that community input like you typically would. Would you agree with that?

Joe Storch:

Maybe, and reluctantly, because I agree with you and John Graff and that conversation, that for an absolute emergency, like a global pandemic, yes we need to relax some of what we practice in Higher Education and institutions did that. And we did that at the State University of New York. We have an incredible chancellor.

I know you know of Dr. Johnson and her leadership is incredible. I don't just say that because she's the head of my university, just great leadership. We have a great cabinet and I have a lot of respect for these folks and the decisions, the really searingly, painful decisions they had to make very quickly, but they were actually engaging with the students. They were actually engaging with the faculty. And so we did have some sense of shared governance. It wasn't the same as, "Yes. Let's think about commas and semicolons for three months." [crosstalk 00:24:00]

Courtney Bullard:

Right. You need some buy in and you want to involve your community of course.

Joe Storch:

Exactly. And they did that, and they did that in very, very meaningful way, even amid a terrible, terrible set of facts that seemed, especially in a place like New York to get worse by the day. That being said, this is not that. And so, I saw some post [crosstalk 00:24:23].

Courtney Bullard:

No it is not. I do want to be clear, I'm not equating this to-

Joe Storch:

Of course.

Courtney Bullard:

... I'm not equating this to COVID, but just saying, there's this rapid turnaround, so continue.

Joe Storch:

Right. But that rapid turnaround is manufactured, not natural. And so in New York, there were things we had to do after 9/11, to save people and to rebuild and to stabilize buildings. And we're not going to say, "Well, you know what? We did it okay. Let's just throw out the building code forever, because we had to throw out the building code in order to stabilize this building from falling over. So now let's just never use the building code again."

Well, that was an emergency that we were responding to. COVID-19 was an emergency that we were responding to so we had to make some changes. I saw some comments from some folks who are aligned with these who said, "Civil Rights can't wait." And I hear you on that. But this process has been going on since 2018. The department took longer to publish the proposed regulations from when they started working on it, then colleges will have to implement them.

The department took longer having the regulations. There are so many pieces of their process took longer than colleges will have to implement this. And I think there's a false sense of emergency coming in having to get this done by August 14th, maybe hoping that colleges will kind of jump into and make these changes quickly, but it's not actually a real emergency.

So yeah, I agree with you from what we might have to do, but I do so reluctantly because these things are important to Higher Education. These processes are important. The collegiality of building policies and getting engagement is something that we have done for literally decades and centuries at some institutions.

And, it's one thing for a naturally occurring emergency. It's another thing for a manufactured emergency. They could have released these in October of last year. They could release them now and say, they're effective July 1st of 2021, but that's not the choice the department's making.

Courtney Bullard:

Yeah. I completely agree with you. That's so well said, and I love the distinction. And just to be clear, John was talking about the COVID crisis, not the new regs because they weren't out yet when he was discussing it in his podcast. But, I think that distinction is so important and I very much agree with you. It is a crazy timeline that we're allegedly under. We'll see what happens.

So, we are still in the very broad phases, as we've talked about it at length at this point in reviewing all of this. But any quick overview of what is changing, I mean, obviously we're not going to cover it all, but just like some high points of what these regs are requiring, that's different than what we've been doing as Higher Education Institutions and school districts since 2011.

Joe Storch:

Yeah. So, much of it is actually similar or in the same vein to things that institutions have been doing since 2011 and even before. Somebody discloses that they were a victim of sexual and interpersonal violence, sexual harassment, other types of violence, and we try to provide resources.

We have some type of process where if we have jurisdiction over the person or persons who were accused, we have some type of fact finding process, and if it is shown that they violated our policies, there would be some sanctions and some remedial measures. The goal of Title IX of course, is to provide equal access regardless of sex or gender. And so resources and investigations and adjudications can help towards that.

So, it is in the same zone as that. But the approach is quite a bit different from the approach of the Department of Education since before our traditional age students were born. The department through sub-regulatory guidance had essentially said the same thing for decades through multiple administrations, Republican and Democratic had taken the same approach.

These set of regulations is different from the proposed. And I want to be clear on that. It was not just the exact same thing, a cut and paste. A gun is the safe harbor for not properly responding to what we call a New Yorker reporting individual, but that's often called a complainant or a victim. There are some changes to the requirement of providing resources.

There are additional training obligations, not only for the formal process board, for the informal process, which were missing from the proposed regulations. And there are a number of very fine and nuanced changes. We've gone through them on the joint guidance webpage, and they're available for free there.

But, what the department I think has done, if I had to say it in a tweet length statement would be, the department has significantly narrowed the definition of what is in fact, sexual harassment, unequal treatment on the basis of sex under Title IX, and required that when somebody discloses that and it meets all the different factors and all the different tenants of that definition, the institution have a process that both provides resources to the reporting individual, resources that cannot harm the respondent, but some resources, and has a grievance process that has more due process in it than any statute, any court case, including the Sixth Circuit has ever required.

And that is something that is really node worthy. That is something that with changes remains from the proposed regulations.

Speaker 3:

Feeling overwhelmed in this current virtual environment and pressure to comply with the new federal mandates by the end of summer? Check out all that ICS has to offer to assist you through these challenging times. An ICS membership provides your institution with trainings, compliance AIDS, zoom meetings, newsletters, and more including significant discounts on ICS services.

All of these items are designed to help your institution with its compliance efforts, which is more important now than ever. ICS also offers complimentary webinars and resources, virtual trainings for investigators, adjudicators and hearing officers, and an intensive course. Breakdown an implementation of the new Title IX regulations.

You can learn more about all of these offerings at [www.ICSlawyer.com](http://www.ICSlawyer.com). Finally, we partner with institutions and school districts to formulate an implementation strategy for compliance with the new regulations. And, as always, this service is provided to our members at a deeply discounted rate. Contact us today for more information on how we can serve you through this transition.

Courtney Bullard:

Lots of changes. We've talked about the joint guidance document in this collaboration. I do want to dig into that just a little bit further to just explain what that's going to provide with the lead in that we met

finally in person in LA, at Jody Shippers in Grand River Solutions Conference, which is where I met a lot of folks in person. That was an awesome event to kind of collaborate and get together with colleagues.

After that, I had a conversation with a colleague, "Wouldn't it be great to kind of be able to get all these minds together on resources and things like that" I was like, "Yeah, but how in the world would we ever do that? That just sounds like a monumental task and there's just no way to do it."

And then, I got a voicemail from you, and it was like immediately I knew why you were calling. And we got on the phone. You explained what you're proposing to do. Talk to me about that process. Talk to me about what we're doing. I know we've talked about it here in the episode a couple of times, but the impetus behind it, what is going to be coming out through this resource for folks? When we're releasing updates, all of those great things.

Joe Storch:

Yeah. And I remember that call and I had a number of those calls all at once. The joint guidance hit me, it just came out of the blue one day. I was texting with a couple of Higher Education attorneys, and everybody was joking. "I've got trip to Disney world. That's when the regulations are going to come out." "I've got my cousin's sweet 16. No, that's when the regs are going to come out." "Oh, I have a vacation in France. No, that's when the regs are going to come out."

We were all sort of joking around like, "It's going to come out at the worst possible time and ruin our vacation." And I said to folks, "What if instead of every single firm and every single institution doing their own analysis of what..." And I wasn't expecting 2000 pages but I was expecting lengthy, "Of what will be a lengthy thing and basically recreating the wheel. What if instead we all got together, we did some shared documents on the backend. We published it together and we credited everyone equally."

And this way, if it happens to come out while you're at Disney world, you say, "You know what? I just can't, it's too important. I'm with my family. I can't step away from Disney world, but at least I know my colleagues have got me on this. And then when I get back next Thursday, whatever it is, I'll do some of the advanced stuff."

And everybody, every single person I talked to was like, "Oh my God. Let's do this." Because, we all had a little bit of insurance to let us live our lives over the last year of not saying, "All right, I better have my whole packet of stuff and my laptop with me on space mountain just in case the regulations drop and I'm called into action."

And that was the original impetus for it, talking to folks who do the best work. As I think about the people who are on the joint guidance, it's the people that I would trust and I don't trust them easily. And I also knew that sometimes when these things come out, there is a rush to say, "Look at this thing. Look at this thing. Look at this thing. Look at this thing." There's so much, so many resources that come out all at once that it's hard for an institution to figure it out.

And then, the last thought I had behind it was, everybody who signed on had to agree absolutely pro bono and everybody quickly agreed absolutely pro bono, because is we have multiple tiers in Higher Education of access. That's something that kills me working for the State University of New York, which is an institution that at its core is about access to education.

So, when I see, "Oh, this institution, well, you get all the model policies and you get this and all the guidance. But, Oh, you're just a small community college you don't get access." Or, "You're a small technical school." Or, "A small religious college." Or what have you. "So you don't get access."

My goal was, everybody in Higher Education and the K-12 folks, if they want it as well, should be able to access it on a continuously updated website at no cost. There's certainly going to be a lot of

additional quality stuff that other folks are going to put out, but at least to get folks onto the baseline, I wanted it to be available and accessible.

And 100% of the folks, and these are the highest quality folks out there, bought into that mission quickly, bought into that mission, and people are doing work even as we speak. We're putting together sections, we've published within 24 hours a ton of stuff. We're going to have even more up today day two by the time folks listen to this next week, there'll be even more.

It's a really moving thing for me to be a part of, with all these people who I respect so deeply from literally all across the country, joining together, working together to do something for the good of Higher Education. The fact that I got 100% of people that I reached out to said, "Yes." 100% of them wanted to do it pro bono, and 100% of them are engaged. It's a very moving thing, especially in such a difficult time.

Courtney Bullard:

Yeah. I am honestly honored to be a part of the group and have so much respect for everyone that's involved. And I have to give a shout out to SUNY, for this infrastructure and time and people to make this a cohesive document. Attorneys are not always notorious for working playing well in the sandbox, but that's not what's happening here.

It's pretty amazing I agree with you to see, and it's going to be such a robust analysis and guidance document to really give universities and school districts if they wanted a great jumping off point. So, huge shout out to you all for even putting this together. Because as I said, it was overwhelming for me to even think about, and y'all have been pretty amazing at the communication and just making it as seamless as possible.

Joe Storch:

Yeah. I have to give props for sure, to my general counsel Sandra Casey, who's very supportive of this. She has been in Higher Education law for a long time. We've all been involved in NACWAA and some state groups for a long time. She's so supportive of this, our chancellor and that whole... Everybody has been supportive of this.

Nobody has said, "Well, why don't we just create this and just make it for [inaudible 00:37:30]." No, the opposite. Everyone is saying, "Well, if we're going to create some of these resources, let's do it so other folks can benefit."

We started working on the joint guidance long before COVID-19, and I think it became even more important in this time where our folks who are charged with this, they're doing other things that are literally in some cases, and I don't mean to overstate this, but it's not. They're making life and death decisions on some things.

Courtney Bullard:

Yes.

Joe Storch:

So, to take this off their plate, it's an honor.

Courtney Bullard:

Absolutely. I completely agree. What I was saying is, who knew when we were having these conversations in January, that this is what May would look like as a country or really as a world with COVID. I mean if someone had told us this was going to happen, we never would have believed it. And then to add these new regs on just feels really crappy.

I was going to say a lot of other words I could say, but it feels pretty awful. So, yes, you're right. My clients was on the phone with somebody yesterday and he's like, "I have to go to..." We need every day about reopening and what that's going to look like and risk management. I mean, there's so much going on that everyone's dealing with outside of this. So, it's insane.

So, having this joint guidance is awesome. And talking to colleagues, everyone's also personally dealing with their own things, working from home. I've got four children at home, all doing distance learning. It's a wild time personally and professionally. So, having the collaboration is, is awesome and I think it's going to be a great foundation for some future ability future work too and resources.

Joe Storch:

Couldn't agree more. Yeah. Couldn't agree more.

Courtney Bullard:

Yeah. So, any final thoughts on kind of these substantive issues?

Joe Storch:

Yeah. Let's talk about COVID-19 and these regs for a second.

Courtney Bullard:

Yeah. Let's do it.

Joe Storch:

These regulations don't cover that, on their face they don't cover that. That's not a little narrow part from the preamble or some weird interpretation. They don't cover that. And that is how at least a majority of our students are accessing education now. That's really something. And I haven't seen any... This is really the first time I'm discussing this in sort of a more public forum. We've discussed it a lot internally. That to me is really something.

Courtney Bullard:

Yeah. Especially when this is our world and I don't think that's going to change for quite some time. I mean, distance learning is going to stay a part of Higher Education learning in school districts. I think for some time, even as campuses do choose to reopen. And I agree with you, there's no consideration for the times that we're in.

In the new regs, I did see in the table of contents, which by itself is seven pages, something about online harassment. And I didn't know if it addressed it or not, but it's further along than where I am. So, it's not going to address the situation that you're talking about, which was my problem from the beginning.

I don't get as deep into which organizations made comments, this and the other, but, my perception was that the Office of Civil Rights really didn't get with practitioners, the people that are

doing this every day to see real world situations, like the example that you just gave me and whether these regs are going to address them. You know what I'm saying?

Joe Storch:

Yeah, I do. Certainly we weren't involved in any of those conversations. I can't speak for others. SUNY did submit a comment, and our general counsel at the time and our deputy general counsel and our chancellor were actually engaged in writing that, we had a team of attorneys, 82 pages. And that was our only ability to comment, but no.

And I think SUNY as a university is, some would say has some good involvement in this, has some good knowledge on this. Certainly shares that knowledge, but no, we were not engaged and I can't speak for others who were, but I'm not aware.

Courtney Bullard:

Yeah. That was something that I found to be frustrating. Of course, there was the comments, then folks had the ability who are campus administrators and leaders to weigh in, but it just... Anyways, it doesn't... That practical component to me has been missing and will, I'm sure continue to be missing.

And here I was about to wrap things up and I didn't even ask you about one of the more important things too, which is challenges to the regs. Do we expect to see challenges? What are those going to look like? I've had a lot of clients ask me, "Do you think this August 14th deadline is going to stick?" My answer is, "I have no idea right now." Any thoughts there?

Joe Storch:

Yeah. And my answer is I have no idea as well. I do know that there are some organizations, National Women's Law Center, ACLU, that have already announced that they're going to be litigating and that's in public. And I imagine that there are other institutions, advocacy organization states that are considering it. Most major regulatory changes like this and administrations do have some type of challenge.

And so, it's something I'm going to be watching, but it's also maybe another reason for what we talked about earlier, that folks should maybe take a little bit of a breath and see how that looks as they consider making changes, as opposed to the COVID timeline, which is we have to make all these changes today. That's the only time we could make them because tomorrow is too late. There may be more things that we know a week from now that can help folks in making their policy decisions.

Courtney Bullard:

Absolutely. There's going to be a lot here to keep following. I'm definitely interested, not only just professionally to serve my clients, but also as a lawyer. I think it's fascinating times, this is stuff. I mean, COVID alone, I mean, that's a whole nother ball of wax. It's much bigger.

This whole area Title IX compliance I love working in it. It's something that is going to be in the... People are going to learn about law school and just be interesting to see what happens. Definitely want to keep tabs on that. Anything else? I mean, there's so much. Let me just say this, there's so much I could talk to you about, I always love your analogies.

Only Joe Storch would have compared the Bible and other documents to the length of this one, which I love. I love that visual. So, you're a wealth of knowledge. Any other areas that we want to touch on for this one? Quite frankly, I'm thinking about doing episodes almost once a week on different areas

of the regs and kind of what's going on. So, I have a feeling I'll be reaching out to you to come back on, but anything else sits top of mind?

Joe Storch:

Yeah. No, I think those are the things I've been thinking about. We are going to keep putting out guidance. We're going to keep putting out different programs. There are a lot of great organizations that are offering webinars and other guidance. Your podcast, and some other colleague's podcasts are I think the great places to turn to.

I'll rest on my briefs other than that. And yeah, if you do want to have me on again, this has been great. You know how I feel about the work you're doing and I'd love to come back on as we know more. I have 1,750 pages to go. So, who knows what we'll find.

Courtney Bullard:

Yeah, absolutely. So as we close, I did want to talk about a little bit of a fun fact unknown fact about Joe Storch. I have heard from some folks that are close to you, that you once held a political office.

Joe Storch:

Once and never again. I did. In fact, 20 years ago, when I studied abroad in Italy, I studied in a town called Altomonte, an incredible program through my undergrad SUNY Oswego. There were a lot of people from different colleges that were studying in that town in the South of Italy.

And we met with the mayor, and the mayor said in Italian, which I was barely able to understand it. He wanted us all to write a name on a piece of paper and vote for who you would want to be the mayor and nobody ran. So, it wasn't like we had declared candidates and speeches or anything like that. So, I wrote down a friend of mine and apparently like 70% of the people wrote me down.

So, I was mayor for the day of Altomonte, Italy. I actually got to wear a sash that said, [foreign language 00:45:45], if I remember correctly. And I had to give a speech, which my professor basically gave, and I just repeated with emphasis, everything he said. And I had essentially no other duties or powers other than that, but I did get to wear this very cool sash.

And that is my lifetime experience in political office, it's a fun memory. So, that is the fun fact that people tell about me, mayor of Altomonte, Italy for a day, many, many years ago.

Courtney Bullard:

Do you still have your sash?

Joe Storch:

No, I had to give it back.

Courtney Bullard:

Oh man, because you could wear it in the office just to kind of show your prowess. And I guess what you're saying is though that you were good with that experience. We're not going to see Joe Storch for president or anything like that in the near future?

Joe Storch:

Clearly. If nominated, I will not run. If elected, I will not serve or whatever the [inaudible 00:46:35] is. But no, I had to give the sash back, but I do have a couple of photos. They had a weekly paper and I was on the front cover of the weekly paper.

And I didn't think I should have bought a couple of copies. I didn't even think to do that. But I do have a couple of photos that someone had taken. So, it is a fun memory of a wonderful trip of a great institution.

Courtney Bullard:

I need to see that on Twitter. Please that's my request. I guess that was pre cell phones where we could just snap a picture of the front page of a newspaper and have it forever. Right?

Joe Storch:

Right. I literally have photo of photos [crosstalk 00:47:11] photographs. I'd have to find where they are.

Courtney Bullard:

I love it.

Joe Storch:

Yeah. One day I'll find it and I'll share it out.

Courtney Bullard:

You'll run in a political office. I love it. I love that story. Well, thanks again. I so appreciate your time. I know you guys are really, really busy just dealing with campus issues, have nothing to do with the joint guidance, and then you have that on top of it. So, appreciate your time. Very glad that we got this scheduled. And I know for a fact, I will have you back on as well. And I know we will be talking soon. So, thanks so much.

Joe Storch:

Absolutely. Thanks Courtney. Be well.

Courtney Bullard:

You too. I hope you enjoyed today's episode and found it informative and were able to either take away some items that will help you as we navigate these uncertain times. And maybe even give you a little bit of a calming effect, or maybe not. I know for us, it changes hourly.

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