

Courtney Bullard:

Welcome to The Law and Higher Ed Podcast. My name is Courtney Bullard, and I am your host. I'm a practicing attorney who specializes in Title IX compliance for K-12 and colleges and universities. If you want to learn more about me, go all the way back to episode one.

Here at ICS, we're hard at work with our clients to get them into compliance by August 14th, the implementation deadline set forth by the Department of Education for the new Title IX regulations. We know school districts and institutions are still digesting all that is required under the new regulations, and we get regular phone calls even with less than a month remaining for compliance from folks needing help, because frankly, all of you are stretched to the max with COVID and all that comes with it. I wanted to pop in an informational episode to talk about what implementation of the new regulations will look like, as well as quickly discuss how to prioritize your compliance obligations as you work towards August 14th.

Some institutions have a full-blown plan, but many are just beginning their analysis, not because compliance isn't important and having a safe learning, living, and working environment free from sexual harassment isn't important, but because these are unprecedented times, and you're facing unprecedented decisions in the midst of trying to meet this deadline.

First, let's talk about priorities. My advice is you get your Title IX policy in place, your Title IX officials designated, such as your investigators, decision-makers, and formal resolution facilitators, and your policies and information disseminated by August 14th. As for training, all of those serving in the various key Title IX roles must be trained, but it is okay if it is not done by August 14th. It simply needs to be done before they do the work, in other words, before they investigate a matter, make a determination as a decision-maker, hear an appeal, or facilitate an informal resolution process.

It is unlikely those would all take place on August 15th, so what is most important is that you have a good handle on your policies and procedures, and then you worry about training. We've been doing training all summer, so I'm not saying training those folks right now is futile, but I will say that it will be most effective once your policy is in place and your process is identified. I also want to note another matter, and that is that we understand and know that many are utilizing model policies, some of which are put out by colleagues I deeply respect. I understand if that is the route your institution or your school district takes. However, I want to implore you to do the work to ensure effective implementation of those policies. A policy you cannot follow will lead to litigation. A policy or campus community or school district community cannot understand because it is overly complex will lead to litigation.

We saw that time and time again here at ICS and serving in our roles as expert witnesses in Title IX litigation, where an institution or school district adopted a model policy to check the box, but then was unable to follow that policy. Now we have the new regulations, and the requirements under the new regulations are very nuanced and specific. It is going to take intentional and important planning for each aspect of your policies and your process to ensure effective implementation.

We have many clients utilizing model policies, and we review them often once they are done making their own edits. In every single conversation we've had with general counsels or Title IX administrators, once we've reviewed and commented on those policies, the Title IX professional or attorney will state, "I haven't thought of that," or, "This is more complex than I realized," or, "We don't have to do that, but it is stated in this model policy," or, "We do have to do that. We thought we could take that out and didn't realize that was required under the new regulations."

Again, I completely understand everyone is stretched and why model policies may be helpful to jumpstart this process, but I would be remiss by not putting out this word of caution. And the reasons

why, philosophically, despite all of the requests we get at ICS, we do not have model policies. Please use them if that's what makes sense for your campus or your school district, but you will need to do the additional work it takes to avoid not only litigation, but confusion for those parties that will need to go through this process once a complaint comes in.

So what will implementation look like post-August 14th? The reality is that's when the hard work will begin. The short answer is we don't know. What we know at ICS, and what I know, is that everyone is working diligently to get as much of this figured out by the 14th of August as possible. But no one has done this before. No one has conducted a live hearing under these new regulations. A live hearing in general? Sure. A hearing where parties may submit questions to a hearing chair? Yes. A hearing that allows cross-examination? Yes, in some circumstances. A hearing under these new regulations with advisors and relevancy determinations and evaluations of statements being allowed in if a party will not submit to cross-examination? No. This will take time. No one has the perfect answer right now on how to run a hearing. There are suggestions, thoughts, recommendations, but everyone will have to get into an actual live hearing and pivot when necessary, and over time, some best practices will develop. I always say, there's no substitute for experience, and no one has experience in this. In short, you are not alone.

We also know many institutions will not have their policies and procedures in place by August 14th or will simply be unprepared for compliance based on the calls that we are fielding. It is simply reality, given that many administrators have been furloughed, and therefore unable to do the work, or they're wearing too many hats and reopening has had to take priority. There's no judgment if that is your institution or school district, but know we are here to help, and compliance with Title IX is fluid. It is not going to end on August 14th. So if you're an institution or a school district who feels unprepared or has not started this process, there is still time and work that can be done, both in the next few weeks, leading up to the August 14th deadline, but certainly even after it has passed.

Fall semester is fast approaching, and a lot of difficult decisions are being made by institutions in school districts in light of COVID. For Title IX professionals, I know it has been a wild summer without the drop of the new regulations in May. Hang in there. Do the best you can to get into compliance, and keep doing the hard work every day. As I like to say, and as Dory says, "Just keep swimming."

We've had the privilege of training hundreds of Title IX professionals over this summer virtually. Our second virtual Title IX investigator training was one week after the new regulations were issued. One week. It was already on the calendar, and so we worked diligently to ensure that those trainees were trained pursuant to the new regulations. That means we have seen and heard firsthand over the summer the toll that both COVID, distance working and learning, and the new regulations has taken on all of you. We've also seen and heard firsthand how seriously schools take these new mandates and how hard all of the boots on the ground folks are working. I know I speak for the ICS team when I say that we admire and respect the work you are doing. We wish you health and safety, and we wish you the best of luck as you embark on the fall semester.

Speaker 2:

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. ICS Community Access 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, as well as live, interactive, certified virtual trainings for Title IX investigators, decision-makers, advisors, and informal resolution facilitators. You can learn more about all of these offerings at 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 community partners at a deeply discounted rate. Contact us today for more information on how we can serve you through this transition.

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Please stay in contact with us through all of our social media sites. We're on LinkedIn. We have an ICS page, but we also have my page, as well as one for Betsy Smith, Instagram, Twitter, and Facebook. We have a Facebook page for Title IX coordinators. We'd love to have you join one also specifically for K-12 Title IX coordinators. You should look for that.

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