



INSTITUTIONAL
COMPLIANCE SOLUTIONS



ICS NEWSLETTER

Legal & Consulting Services for Higher Education Institutions & K-12



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:
<http://thelawandhighered.libsyn.com/>

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

Case to Watch

This fall, the Supreme Court will be hearing the case of *R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission*. At issue is whether a funeral home that fired a transgender employee violated Title VII's prohibition of discrimination on the basis of sex. The Department of Justice, in its brief to the Court, has asked for a ruling that Title VII protections not extend to transgender individuals.

To learn more visit: <https://time.com/5654844/title-vii-trump-transgender-department-of-justice-supreme-court/>

A Circuit Split on Cross-Examination Rights

Last month, the First Circuit Court of Appeals rejected a 2018 ruling from the Sixth Circuit Court of Appeals concerning an accused's right to cross examine the accuser in Title IX hearings.

The Sixth Circuit ruled in *Doe v. Baum*, 903 F.3d 575 (6th Cir. 2018) that due process requires that when credibility is at issue, a public university "must give the accused student or his agent an opportunity to cross examine the accuser and adverse witnesses in the presence of a neutral fact finder."

In contrast, in *Haidak v. UMass-Amherst* (No 18-1248P Decided August 6, 2019) the First Circuit found sufficient due process in an "inquisitorial system" where the accused submitted questions to a panel, and the panel in turn was responsible for questioning the accuser. The court in *Haidak* looks to *Gorman v. University of Rhode Island* (837 F.2d 7, 14) for guidance, examining whether the procedure used by UMass gave Haidak "an opportunity to answer, explain, and defend."

The Sixth Circuit includes the states of Kentucky, Michigan, Ohio, Tennessee; the First Circuit includes the states of Maine, Massachusetts, New Hampshire, Puerto Rico, and Rhode Island. Public universities within those states should follow the respective rulings of their circuits, while those in other states now are faced with conflicting ideas of what constitutes due process for the accused in Title IX hearings. In addition, the Department of Education is expected to release finalized regulations in September 2019 that are likely to also address this issue, potentially in a way that conflicts with one or both of the above cases.

Upcoming Webinars

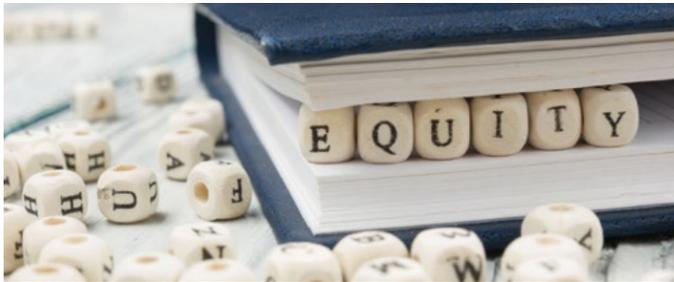


Know Your Role – Athletics

October 16, 2019 | 1:00 (EST)

It is crucial that athletic administrators understand their role in Title IX compliance. Courtney will discuss that role as well as special considerations for athletics in policy drafting and managing reports of sexual misconduct that implicate a member of athletics. This webinar is appropriate for Title IX Coordinators, Title IX Team members and all members of your athletic administration and staff.

Register for this webinar at: https://zoom.us/webinar/register/WN_yZkdNYKXRYuNhxqZIE3cGw



Title IX Coordinators

November 6, 2019 | 1:00 (EST)

This webinar lays the foundation for Title IX Coordinators in considering their role on campus. Courtney delves into the fundamental purpose for a Title IX Coordinator, special considerations on where the role should be housed on campus, how to structure a Title IX team and support for Coordinators and more! This webinar is ideal for Title IX Coordinators new to the role but appropriate even for the most seasoned Coordinator.

Register for this webinar at: https://zoom.us/webinar/register/WN_9qCJZ-5KSH6lliiyySPuoQ

Upcoming Training

ONLINE BOOT CAMP FOR TITLE IX COORDINATORS DEC. 4, 11 & 18TH

This is the first ever on-line Title IX Bootcamp offered by ICS. In three interactive 1 hour and fifteen minute sessions, Courtney will work with online participants from the ground up in evaluating your campus compliance efforts, identifying areas of strength and challenges for your campus, working through hypotheticals and doing a deep dive into your campus policy and process. Participants will receive an online manual and materials. Invoicing will be done through email.

Online Boot Camp Fees:

ICS members: \$199

Non-members: \$699

Early bird special \$599

(Registered by November 1st)

Register at: <https://zoom.us/meeting/register/4eb5792d6275cf9bc5b9141539e44ee6>

UPDATE: NPRM Status

The Department of Education has indicated that it plans to release finalized regulations for the NPRM sometime in September. ICS will keep you updated as new information on the release becomes available.

For more information visit: www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=1870-AA14

Resource of Interest:

NCAA Sexual Violence Prevention Toolkit

Visit: www.ncaa.org/sport-science-institute/sexual-violence-prevention-tool-kit

Blog of the Month

Title IX Conduct: What It Is and What It Isn't

A growing trend on campuses is for all conduct complaints to be sent to the Title IX Office. Title IX cases involve rights that don't apply in other types of conduct cases, such as interim measures and access to advisors. Accordingly, to avoid putting an institution in a position of taking on a legal obligation it does not have, it is important to assess whether alleged conduct is actually covered by Title IX.

Is or May be Title IX	Is NOT Title IX
<ul style="list-style-type: none"> • Discrimination based on gender • Pregnancy discrimination • Sexual Assault • Sexual Harassment • Sexual Misconduct • Stalking • Retaliation • Domestic violence/Dating violence • Sexual exploitation • Bullying/Cyber-Bullying when it involves sexual misconduct • Hazing when it involves sexual misconduct 	<ul style="list-style-type: none"> • Disability discrimination (ADAA) • Employment discrimination based on race, religion, or national origin (Title VII) – note overlap with sex • Student discrimination based on race, religion, or national origin (Title VI) • Age discrimination (ADEA)

Also, even if the allegations are true, the Title IX Office should consider whether the allegations meet the definition of one of the above offenses listed in the left column. For example, behavior such a one-time nude photo or offensive meme is not likely pervasive enough to be a Title IX violation. It is helpful to have a Title IX policy that provides for a gatekeeper “inquiry” phase before investigation.

When it is determined that Title IX is not implicated, the Title IX Coordinator should clearly communicate to the complainant why. If the conduct does fall under another policy, the complainant should be provided with instructions for filing a complaint under the other applicable procedures, their rights under each, and new contacts. A Title IX Coordinator should know other campus policies and how they may apply to complaints, especially the Faculty Handbook, Code of Conduct for employees, and Code of Conduct for students. If there is a pass-off from the Title IX Office to another department, it should be well-documented, and with roles reestablished.



ICS MEMBERS' CORNER

Andrew Myaing | Southern Adventist University

ICS introduces Southern Adventist University as one of its valued members. Southern is located on 1,300 acres in Collegedale, Tennessee. Its mission statement is “Grounded in Jesus Christ and dedicated to the beliefs of the Seventh-day Adventist Church, we equip students to embrace biblical truth, embody academic and professional excellence, and pursue Spirit-filled lives of service.”

Approximately 2,500 undergraduate students are enrolled at Southern; students may choose from 64 baccalaureate majors, 17 associate majors, plus numerous emphases, minors, and certificate programs. An additional 400 students are enrolled in graduate programs. Southern Adventist has been recognized by the Princeton Review in its “Best in the Southeast” category, a designation earned by only 25 percent of the institutions studied.

With an emphasis on affordability, value, Christian peers and professors, and the spiritual environment of the campus, Southern Adventist has become the largest Seventh-day Adventist undergraduate institution in the North American Division.

Andrew Myaing serves as Title IX Coordinator for Southern. He worked for thirteen years in the field of Risk Management and Loss Control before joining the Financial Administration department of Southern in September of 2014. In February 2017, his role at Southern expanded as he was named Title IX Coordinator. In addition to his continuing responsibilities as Title IX Coordinator, Andrew also currently serves as Southern’s Director of Risk Management. In that position, he oversees loss control for property/casualty, workers compensation, and compliance with OSHA, the EPA, and the Department of Education.

Andrew is a native of the country of Myanmar (formerly, Burma). When Andrew is out of the office, he enjoys a variety of outdoor activities including camping, water sports, biking, and hiking. He is also active in his church’s youth ministries.

Stay in the “Know” with ICS’s Podcasts Episodes 7 – 12

EPISODE 7

Part 2 – Title IX Investigations, the NPRM and more with Scott Schneider

EPISODE 8

Part 1 – Due Process, Strong Title IX Policies, How to Create an Effective Title IX Team and More with Leigh Parker

EPISODE 9

Part 2 – Due Process Strong Title IX Policies How to Create an Effective Title IX Team and More with Leigh Parker

EPISODE 10

Informational: Courtney Bullard’s Top 10 for Title IX Coordinators

EPISODE 11

Educating your trustees, the evolution of gender equity in athletics and youth sports with Bill Nuttall

EPISODE 12

An interview with Sarah Brown, Senior Reporter at the Chronicle for Higher Education, on the legal landscape in higher ed