

## **Episode 10: Informational: Courtney Bullard's Top 10 for Title IX Coordinators**

Courtney Bullard:

Welcome to the Law in Higher Ed Podcast. My name is Courtney Bullard, CEO of Institutional Compliance Solutions and your host. I am a Tennessee attorney and I began ICS after serving as campus council for eight years at a university system. In that role, I handled all legal matters affecting the campus, or as I like to say, I did everything but divorces. I bring that on the ground experience with me in working with clients today. And that experience shaped the mission behind ICS, which is to provide legally sound, but also practical advice to the institutions that we partner with.

Today, I specialize in compliance with Title IX and related laws and regulations as a result of my experience in the area on campus since the Title IX boom in 2011. This podcast provides relevant, tangible information that you can utilize in your professional life right now, and even maybe your personal life. Through interviews with campus leaders and subject matter experts, and informational episodes, you have access to information at any time, any day that has both legal and practical implications for your career and your campus. So let's get to it.

Speaker 2:

Did you know that ICS has a membership? Are you a Title IX coordinator that feels you can never keep up with the ever-changing Title IX landscape, or do you need access to tools that can help you stay current and perform your job at the highest level for your institution? Perhaps your campus needs help with training. Put our knowledge to work for you with an ICS membership. Over 15 courses that can be used to train your campus, unlimited access to all ICS webinars, compliance aids and tools that are legally current, discounts on services, and information to assist you with Title IX and other regulations such as Cleary, FERPA, and the ADA, are just a few of the benefits of an ICS membership. Whether you are interested in one as an institution or as an individual contact ICS today, or visit [www.ICSLawyer.com](http://www.ICSLawyer.com) to become a part of the ICS family.

Courtney Bullard:

It is hard to believe we are halfway through summer already. Many of you just finished your fiscal year and are taking a break, hopefully before you gear up to prepare for the next academic year. For Title IX coordinators, some of you have investigations that have gone well into the summer, while others have perhaps been able to work at a different pace. Either way, as you look to the next academic year, you should be thinking about what went right or wrong the prior year with your Title IX efforts, and taking stock of how things should perhaps look for your campus next year.

In talking with my clients through this process, I decided a quick informational podcast of some of the top 10 mistakes I see campuses make and their compliance efforts would be helpful. I could have come up with many, many, more, and please that if you do all of the things on my list, that does not mean you will not face challenges or have some issues. But by and large, these are some of the biggies that I thought might be helpful for Title IX coordinators and their teams to consider.

Number 10, an overly complicated policy. As you heard in my conversation with Lee Parker, your Title IX policy and procedures are extremely important. Ensuring they match your mission while also

being legally compliant is tantamount. Often, if an institution cuts and pastes policy, or takes a template and then tweaks it, the policy becomes overly cumbersome. It needs to be written plainly, no legalese, for example. And it needs to be as understandable as possible for your faculty, staff, and students. I often say when I'm doing audits of Title IX policies and procedures, that if I can not understand it as an attorney who practices in this area, your campus community certainly will not understand it. Ensuring your policy is not overly complicated is often easy for me to say, but harder to execute in practice. My suggestion is to loop in different facets of campus in reviewing your policies and procedures, even having students involved to ensure that it is as user friendly as possible.

Number nine, campus processes do not match your policy. Staying on the topic of your Title IX policy, it is imperative that you do what you say. Your campus process should match your policy, and your policy should match your process. There may be times when a situation arises that your policy does not speak to. And in that situation, you must use your best professional judgment under the circumstances. But by and large, what you do in practice should mirror what it states in your policy. You would be surprised by the number of times that I've gone through this exercise with campuses, and we've learned that there's many areas and situations where the campus has deviated from their policy on a very consistent basis in their practice.

Number eight, campus administrators are not trained on your policies and procedures. This is so often overlooked. Campuses are becoming great at training their campus administrators, often bringing in external folks like myself to train investigators, adjudicators, appellate panels, and so forth. What is many times lacking is training on your specific campus policies and procedures. Yes, you need to provide training on best practices, the law, and so forth. But you also need to ensure that those who touch the process on your campus are adequately trained on what the process looks like for your campus. That may include more than the Title IX policy, and extended the student code of conduct, or applicable parts of the staff code of conduct, or even the faculty handbook, for example. But everyone should be on the same page when it comes to how the process works. If you train on your policies and procedures, then you will most likely alleviate what I brought up in number nine in having a campus process that does not match your policy.

Number seven, getting derailed from your policy due to external pressure. There may be times when you need to deviate from your policies and procedures due to unique circumstances. A reason for deviating, however, should never be because of external pressure, from a complainant who has an aggressive attorney, for example, or a respondent whose parents are major donors to the university. If your institution is not providing a fair process to both parties, which is uncovered in the midst of a situation, and thus you need to make an adjustment, that's fine. But deviation due to external pressure will never bode well for the institution, and almost always result in a process that is lopsided, favoring one party over the other.

Number six, leaving out areas of campus and education efforts. Legally, campuses must train those who touch the Title IX process or procedures on campus. Investigators, adjudicators, your Title IX team, and so forth. Students also need to be educated as part of your campuses prevention efforts. But also ensure you're providing some type of education about your process to others on campus. Your board of directors, deans and department heads, president's cabinet, [Greek 00:07:25] Life. The list can go on and on. Everyone has a role in compliance that is unique, and the more educated they are in the process, the better the process will work. In addition, the more educated they are on your campus

process, the more buy in you will have, and when you reach a pocket of campus that you've not worked with before in a situation, things will go much smoother.

Number five, waiting until you were in the midst of a crisis, or the backend of a crisis, to do the work. One of my favorite sayings is that it is always best to put the airplane together on the ground versus in midair. Great policies do not get written during a crisis. Great processes are not developed in a crisis. Oftentimes a crisis as a much needed wake up call to get the right things done the right way going forward, and I recognize that. But it is far better to have done the work in creating and executing a good policy and process well before a complex situation arises.

Number four, not documenting the process. Memories fade, people leave the institution. Having a paper trail of your process is critical. At the most basic level, you should have a complaint log that is maintained and easily accessed, which contains all of the basic information for each report of sexual misconduct, including interim measures, what policy was implicated if you have several that are interconnected, and so on. If you deviate from your process due to a unique situation, document the how and why. At the end of each investigation, someone, a third party who knew nothing about it, should be able to pick up a file or look at an online management system for that case and track what happened. The when, why, and how for each facet of the investigation and adjudication. Investigators should especially be diligent in documenting delays, unique challenges, deviations in their role, and so forth.

Number three, investigating all grievances under quote unquote, Title IX. I have a webinar that I did with my guest, Tiffany Cox, who was I think in the second episode, on what types of conduct do and do not fall under Title IX. That webinar has a slide of a dumpster truck dumping a heap of trash onto a pile of trash in a junkyard. That is what the Title IX office has become on some campuses. Employees have been trained to over-report anything that may be sexual misconduct to the Title IX coordinator, and rightfully so. But I'm also seeing is that suddenly every complaint is being sent to Title IX. Race discrimination, harassment based on national origin or religion, complaints that do not fall under Title IX, do not require all the additional items that you see in a Title IX matter, such as interim measures or parity between the parties during investigation.

I'm seeing title IX coordinators over-correct, putting matters that are really not Title IX conduct under their Title IX policy and procedures because of external and internal pressure, be it from the parties involved who are insistent on having the Title IX process apply because they want, for example, advocates involved, their attorneys involved, or from other departments who want to hand the hot potato over and do not want to deal with it within their department. I always say do not take on legal obligations that you do not have. Be deliberate and intentional with every single report of misconduct. If the behavior may implicate your sexual misconduct policy, by all means proceed under that policy. But if it doesn't, get it to the appropriate area to manage the complaint.

Number two, forgetting that Title IX applies to faculty and staff, not just students. Similar to number three in many respects, I also find that administrators forget that Title IX applies to faculty and staff. In the news, in the majority of lawsuits, we hear a lot about student on student matters. In policy, most campuses clearly state that their sexual misconduct policy applies to faculty and staff. But in practice there's often a huge disconnect between the offices that handle those complaints, typically HR, sometimes the provost office, and the Title IX office.

If they're not one in the same, because oftentimes your HR folks are also your Title IX folks, then there should be a symbiotic relationship between the Title IX office and any other office tasked with handling those matters, such that the Title IX obligations are met by the institution, in addition to the Title VII obligations that the institution has. Back to my number eight, HR definitely needs to be involved, and conversations need to be had now and how these matters will be handled. I find all too often that there is no closed loop in a case when it involves a faculty and staff member, and that the ball then gets dropped in those matters, leaving the impression that a complaint against a faculty member, for example, was swept under the rug by an institution.

And finally, number one. And if you can't guess what it is after listening to my last informational, and my podcast, not knowing roles, or that you have a role, in campus compliance. And also having the wrong people in the wrong roles. Of course, number one is know your role. Be sure to listen to my informational episode on this for an expansion of this concept, but everyone should know their role in campus compliance, and reevaluate their role often in each and every situation.

I hope these top 10 mistakes that I often see will be helpful for you as you enter into the next academic year. Please be sure to tune into my upcoming episodes on the Law in Higher Ed Podcast. I have an episode with my father, actually, who serves on the board of trustees for his institution, and they have encountered some pretty serious Title IX matters on what your board should be trained, on and what you should consider, as well as a discussion on Title IX and gender equity.

I also have an episode coming up on what I like to call alcohol soaked complaints with some folks from EverFi that I'm super excited about where we delve into the effects of alcohol, but also as a Title IX investigator, how to evaluate evidence and manage those types of cases where alcohol is involved and you have of course, no witnesses. And then finally an episode ... Well, no finally, because there's many more episodes coming, but I have an episode talking about consent with a really dynamic, awesome speaker who goes around the country educating young folks on the concept of consent. So be sure to tune in. If you've not caught up yet on all the episodes in the Law in Higher Ed Podcast up to this point, now is the time to do it, and I look forward to having you next episode.

If you're interested in learning more about our services, or having me come to your campus and train any aspect of your campus on their role in Title IX compliance, please visit us at [www.ICSLawyer.com](http://www.ICSLawyer.com) and you can click on the Contact Us button and we will get right back to you. I also have my email in the show notes. Thanks for listening, until next time.

I really hope you found today's episode useful, and got some information that you can use in your professional or personal life, or both. If you enjoyed this podcast, please do me a favor and subscribe to it, provide a review, and also share it with your colleagues and friends. You can find ICS on social media through Facebook, LinkedIn, or Twitter, so we'd love for you to connect with us there. Thanks again for tuning in to the Law in Higher Ed Podcast. We'll see you next episode.