

Courtney Bullard:

Welcome to The Law and Higher Ed podcast. I'm your host, Courtney Bullard, an attorney that has been practicing almost two decades in the space of higher education, specializing in Title IX compliance. If you want to learn more about myself or my background, you can listen all the way back to episode one, where I share my journey in my law practice, as well as some fun facts and you can also check out my bio on my website, www.ICSlawyer.com.

It is 2020, which is hard to believe and there is so much on the horizon that ICS is bringing to you to help in your professional developments. So I wanted to cover that with you quickly before we dive into today's episode. First Title IX University launched on January 9th. It is compliance at your fingertips digital courses to help you in your Title IX proficiency that you can take anytime, anywhere. Its inaugural course is Title IX 101, which covers the evolution of Title IX from its enactment through today. A super important class to ensure that you have all the foundation that you need, whether you are an aspiring Title IX professional, a new professional, or a seasoned Title IX professional. It's also helpful for attorneys who are practicing in this field or want to begin practicing in this area. You can check out Title IX U through the link that I've provided in the show notes, which is TitleIXU.com.

We also have a signature conference, hot topics in Title IX in March here in beautiful Chattanooga, Tennessee put on by our ICS team. It will start off with a complimentary lunch and learn for Tennessee Title IX coordinators on that Thursday, where we will cover all things specific to Title IX here in Tennessee and there's a lot that has happened in the sixth circuit. So very important information, as well as an opportunity to collaborate with your colleagues across the state. We will then dive into an NPRM intensive, which is going to be the pre-conference and then at 6:00 PM that evening open to everyone is a welcome reception.

Friday, we will kick off with our keynote speaker, Dr. Laura McGuire, who is a past podcast guest. She is a sexologist and just an overall really neat person with great information to share. Then we'll dive into different sessions, covering all the hot topics that you need to know that are relevant for Title IX coordinators today. So I hope you'll join us. The link for registration is in the show notes as well.

Finally, we always try to provide you with monthly complimentary webinars and we have several lined up for you in 2020. Expect also when the NPRM drops that we will, of course, have a webinar that will be released on that, or any other timely matters that come up. But we have some really great topics. All of those can be found on our events page on our website, and there's a link to it in our show notes. So I hope you will join us for some if not all of these and that I'll get to meet you in person in Chattanooga, in March.

Jody Shipper:

Sometimes some of us doing this work, we feel like we're couple's counselors just dealing with some two people. They've just been in a bad relationship for a year, for two years. They have too much to drink on the weekends or after athletic events and they are loud, they shove, they say bad things to each other, and finally, a roommate or a neighbor has had enough and reports them. It hasn't escalated. It's not going to escalate. I'm not saying it's okay but those cases are very different from the ones where we have someone whose behavior is escalating. They're becoming more controlling, they're becoming more abusive. They are hurting the other person and they are acting out and we need to get everyone thinking about these cases in a very different way, instead of just Title IX. Yep, this meets the definition I'm going to issue a notice letter. Pause. Pause for a moment.

Courtney Bullard:

I've really enjoyed getting to know my guests this week, Jody Shipper, over the past few months. Jody is a nationally recognized subject matter expert with more than 20 years of experience in Title IX and related fields. She's known for her insight into best-in-class programming, policies, and community outreach aimed at addressing sexual misconduct on campus. She lectures extensively at universities and conferences throughout the U.S. on Title IX VAWA harassment and implementation of best and emerging practices. Jody also co-founded Project IX in 2014, a nonprofit focused on Title IX related services to schools with a mission to provide effective solutions for preventing and responding to sexual violence. Prior to becoming the co-founder of Grand River Solutions and Title IX services practice lead. She was a system-wide director for Title IX/VAWA/Clery and sexual assault/sexual violence compliance for the University of California in 2015.

Prior to that, she served for 11 years as executive director of the Office of Equity and Diversity at the University of Southern California, where she also held the post of chief Title IX administrator. In those roles, she provided direct hands-on experience in the fields of Title IX, civil rights, employment law, and workplace and academic investigations. In this episode, Jody and I discuss her approach to working with colleges and universities in Title IX compliance and the services that she provides through Grand River Solutions, as well as the intersection of Clery and Title IX.

My conversation with Jody is broken up into two parts or two episodes because we covered so much ground. We discussed the Clery Act and its overlap with Title IX, as well as common Clery mistakes that she sees in working with clients, as well as the pitfalls of having silos on campus and how your Clery folks, your threat assessment team in Title IX should all be working together with a little bit of a deeper dive into relationship violence, or dating violence and stalking. We end with some fun facts about Jody that I think you'll really enjoy hearing. She is a wealth of knowledge. Here is part two of my conversation with Jody.

So I guess to finish up on substantive matters. Talk to me about, I have a lot of Title IX coordinators listening in who are maybe saying, "Okay, y'all have been talking about Clery. How does this apply to me? What do I need to know? I know there's Clery out there." Should they have knowledge about Clery? If so, what type of knowledge? And maybe this kind of segues into just, in general, what we were talking about in prepping for this podcast and that is ensuring that you're not creating silos on your campus.

Jody Shipper:

I know. That's such a good point, Courtney, so coordinators out there, I think it's really important that you have at least a basic understanding of the Clery Act. There are some areas that somewhat if we drew a Venn diagram that overlaps somewhat and totally, completely imperfectly, and just like many other things, they just don't line up. But dating violence, domestic violence, stalking, sexual assault, those are all what we call Clery crimes.

Also when the Clery Act was amended, we often talk about VAWA, the Violence Against Women Act, but one of the amendments added a number of procedural requirements, and every coordinator hopefully is out there nodding their head. Yes, I know, I know. I know. But added a number of procedural requirements that need to get followed any time there is a VAWA case. So basically one of those Clery crimes, sexual assault, dating domestic violence, stalking, and technically those procedural steps don't fall under Title IX, exactly as written under VAWA, but they have very much been adopted as an understanding and many of them have been adopted in other ways. For example, giving notice to both parties and making sure someone who's been accused gets written notice what they've been accused of that the parties received notice simultaneously on outcomes so that no more telling one and not telling the other, no more super-secret appeals.

All of that is really also part of a sound Title IX process, but it didn't originate there. It originates on the Clery side, the other place, I think Title IX coordinators need to have some good, strong knowledge and be at the table or on the phone call or whatever it maybe is when a timely warning is going out on a sex assault. If you have a Clery coordinator or someone in campus safety who is making that decision, I think the Title IX coordinator should always be involved at least if they, whether or not they're authorized as a decision-maker, but to provide input on what factors they know as to whether or not it is likely that this may occur again. Same with dating, domestic violence, stalking anything that might be the subject of a timely warning, and when the Title IX coordinator is quite likely to have information that may be campus safety doesn't have. Then also, I think it's really important that Title IX coordinators look over the language there to make sure it's not off-putting to someone, whether it's this particular complainant or whether it's future potential complainants or to any member of the community, that it doesn't appear to blame them in ways that they think, "Well, I'm now never going to report anything because this person just got shamed in this warning that went out."

Courtney Bullard:

Yes. Definitely seen backlash over timely warning notifications and having the Title IX coordinator at the table to at least be aware and backlash on both sides from a respondent and from the complainant. But the Title IX coordinator needs to be prepared for that and be aware.

Jody Shipper:

You're so right. And the title IX coordinator's job let's just say it again and again and again, is they're not an advocate for the complainant or the respondent. They are neutral. So they need to bring that balance. Campus safety does have a slightly different, oh, and sometimes a very different lens. Campus safety sometimes, especially if they're former law enforcement, they use language that is often less balanced. The victim and the perpetrator kind of thing.

So having that lens of a Title IX coordinator who can bring balance to the timely warning and who really does understand why some should go out and some shouldn't. So that if their office then is starting to get pushback from other members of the community, they can correctly respond and sort of bring some education also to any members of the community who say, "I can't believe you sent one out on laptops two months ago and I heard my friend just reported that she was sexually assaulted three years ago and you didn't send one out for that." So being able to not just respond, but to respond of course, respectfully, but in a way that educates. So important, so important.

Courtney Bullard:

Absolutely.

Jody Shipper:

You mentioned, and I'm so glad that you did Courtney, these silos and we get so siloed in higher ed. We all try not to, but everyone's so busy and making their decisions and doing the work and people don't mean to keep things from other groups, but sometimes it happens and let's face it actually, sometimes two people do mean to keep things from others. But-

Courtney Bullard:

Yes, it totally happens. Absolutely.

Jody Shipper:

I'm not involved in, but a friend of mine who's an attorney is working on a really troubling case right now and it's made me think a lot in the last few months about how we handle dating domestic violence and sometimes stalking on a campus. The Clery side campus safety might get a report that there was an incident report, maybe someone in a dorm, an RA, someone filed. Maybe someone called for help in a situation from campus safety. So they have that lens of truly the campus safety and often if they're sworn, they also have a law enforcement lens and that's as they should. Then we have Title IX, different lens, and they're looking at is there something that should be investigated? Do we have something that if true would be a violation of our policy? Do we have a complainant who is willing to move forward and wants an investigation? Or if the complainant says, "no, I don't want one," is it of such significance and potential harm to the community that it's going to be investigated anyway? That's their lens.

Then we have threat assessment, which is looking forward. Yes, they're looking at what did happen, but they also need to be looking at what might happen. We know the horrible tragedy that occurred out in Utah sometime ago with a student who was dealing with someone who her ex-boyfriend was not a member of their community and he ended up killing her on campus. But to say, threat assessment looks ahead, Title IX is just doing the investigation. Campus safety is okay. They got the report, they put it in the log and yep. They did that. They're compliant with Clery and yes, they documented why they were or were not issuing a timely warning we're done. That scenario totally fails. Even if you were compliant in Title IX, they read their policy. They look because all of those pieces need to work together.

When we have stalking, not every stalking case, but many when we have dating domestic violence, we really need to make sure that all of those groups are coming together and sharing their information to the extent it is appropriate. If there is something that absolutely cannot be shared, because it would be inappropriate to share with one group or another people need to be mindful, but stalking cases, for example, this is just based on anecdotal. This is just me. I have no data behind this. I'm going to go out on a limb and say 95, 98% of them are resolved pretty quickly. Sit the student down, explain why their behavior is inappropriate. It's making other people uncomfortable or the other person uncomfortable. It's not wanted, they're horrified, they're embarrassed, they're humiliated. You help them get on a better path of how to connect with students in a healthier way and more successfully and the behavior stops.

It may or may not require an investigation depending on the severity. It's those few others, the two or 3%, or I don't know what percent I'm sure someone out there who studies this can be more accurate with that percentage, but it's the people who can't or won't stop. Those are the ones that interest me and then with dating and domestic violence. We've all and I'm sure Courtney you've been doing this work for a long time. You're an expert. It's why we had you on our expert panel because you really, really are.

But it's sometimes some of us doing this work we feel like we're couple's counselors, just deal with two people, they've just been in a bad relationship for a year, for two years. They have too much to drink on the weekends or after athletic events and they are loud. They shove, they say bad things to each other. Finally, a roommate or a neighbor has had enough and reports them and it hasn't escalated. It's not going to escalate. I'm not saying it's okay. But those cases are very different from the ones where we have someone whose behavior is escalating. They're becoming more controlling, they're becoming more abusive. They are hurting the other person and they are acting out and we need to get everyone thinking about these cases in a very different way. Instead of just Title IX, yep this meets the definition. I'm going to issue a notice letter. Pause. Pause for a moment.

Okay. Does campus safety have any information on this person or who may be responsible? The person who's going to become our respondent in this [inaudible 00:18:01] case. Should we have our people at threat assessment take a look? I don't mean a week, a month-long pause or six-month pause, but how do we know that sending notice isn't going to be the precipitating factor too much more severe violence.

Speaker 3:

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 Clery, 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 to become a part of the ICS family.

Courtney Bullard:

Yes. Oh my gosh. So these are the issues that keep me up at night. So yeah, sexual assault do not mistake. I see some bad things, but I feel like, again, anecdotal based on my experience, campuses are very focused on it. They are much more attuned to dealing with student on student sexual assault, but the domestic violence, dating violence, relationship violence, and stalking arena of those smaller percentages that you're talking about. I don't think we have a good handle on. Number one because they're hard. I mean, don't get me wrong those are... I mean, they're such hard situations to deal with, but I've been called as an expert witness in a couple of cases where they're just make you sick to your stomach? And there was notice to the institution through an RA and things were escalating and nothing.

People weren't talking to each other. Same thing siloed, got to the Title IX coordinator who just said, "Hey, I'm here. If you need me." To the victim in that case and again, it just continues to escalate and I don't have the answers. I'm sure there are professionals out there who could expand on this much more. But I do think it's an area and I'm about to get on my soapbox. But again, I have a webinar in a couple months on stalking for this very reason, because I think it's an area that we need to start honing in on and focusing on more. We're training on a lot of things and the training on domestic violence, relationship violence, stalking is a high-level training and I get that, but somehow we've got to do better. I think it does start with not siloing, taking a pause, talk to each other, but those are... I've been on a, I'm sure you'd have too, behavioral intervention team. I started one and there were a lot of decisions or thoughts that you're trying to figure out as a team that do keep you up at night.

Jody Shipper:

Absolutely.

Courtney Bullard:

With suicide and everything else. But yes, with this-

Jody Shipper:

It is hard and I love that you said, "I don't know." Because I think that's so important. You know Title IX through and through, you know law really well, you know Clery through and through. I'm not a forensic psychologist and I don't know that you are and so you could be hiding that from me.

Courtney Bullard:

No, I'm not.

Jody Shipper:

So that's why if you have a really great threat assessment team and you could do a whole other podcast on that, on why your threat assessment team isn't just one person checking compliance boxes. But people with really strong grounding in the realities of dating and domestic violence and the cyclical nature and what's involved. Someone who has significant clinical training. Maybe you have an outside expert who is a forensic psychologist, someone who has studied violence, who can tell you these behaviors, this doesn't worry me.

I know it's loud. I know it sounds bad, but I don't see any of the markers that we associate with someone who is going to continue or escalate or engage versus I'm deeply troubled. I don't like what I'm seeing and let's start talking about whether or not there are interventions that can move the person down the path toward violence. Or this is escalating quickly. I will say, when you get the right people around the table, it is fascinating. We had one case many years ago where I was in a position where I happened to head both the threat assessment team and I of course had my Title IX work at the same time. People have often said, "that's just crazy that you would have both." But it worked out really well.

So we had a dating violence case. There had been some very significant physical harm that one partner, in this case, it happened to be a he, had inflicted on the other partner who happened to be a she. She'd been hurt repeatedly and very badly and a friend of hers was deeply concerned and reported it. Initially, the complainant was willing, she made a complaint. We got a lot of information and then she wanted to withdraw it. We were trying to figure out what was going on because that's not uncommon and was he threatening her? And you do have to look at the possibility that her initial statements were not accurate and that it wasn't as severe.

While we were figuring that out, we also had our threat assessment people looking into him and what he was posting on social media. He had just purchased a lot of ammunition and he was showing pictures of himself with it. And posting photos of himself and things like the day is coming, you wait and see, those sorts of messages. Which if you study this can be deeply troubling and a sign that something's going to happen. Then at the same time, like this is all unfolding within a few hours, there was a report of a weird fire at her building, right by her apartment door. She didn't live on campus and people are monitoring what he's doing and someone's trying to reach her and we suddenly realized he was trying to set her building on fire. Sent people over there, caught him in the act and he's now doing many years in jail.

Courtney Bullard:

Wow.

Jody Shipper:

But and not all of them are like that let me say.

Courtney Bullard:

No. Of course. Yeah. But it is a great example of when everyone's talking to each other and you have the right people at the table, how it can absolutely prevent some serious harm.

Jody Shipper:

Yeah. Sometimes it's much simpler, but-

Courtney Bullard:

Yeah, absolutely.

Jody Shipper:

... the reason the threat assessment team works is when you get a lot of people with a different lens so that they can bring that shared view together to try and get a sense. Then I think everyone should know if this is looking bad. You should have that number of that person unless maybe you're fortunate enough and someone on your campus really is skilled at this, who can make sure that everyone is thinking in helpful ways. But hearing from all of those other points of view is how you figure it out. So I think we all need to be willing to say, I don't know, in those situations and consult, consult, consult, those are my final-

Courtney Bullard:

I'm a big fan of saying, yeah, I know what I don't know and you don't have to figure it all out yourself. That's why there's people that are in their different niches and very good at what they do. So we need to be leaning on them and I think in my opinion, we need to be doing more work in this area in general for campuses and digging a little deeper to make sure that we're addressing domestic violence and stalking because it's another complex area outside of just sexual misconduct or nonconsensual sex and what we've been doing work on for so long.

Jody Shipper:

Mm-hmm (affirmative). Then when we add the in cell population, which is out there, and has a lot of hatred and vitriol, that's too big a topic to cover here but can be really terrifying if you're on the receiving end. You may or may not know the person and not know where they're going to show up. So all of those things have if the messages are received if I open my phone and get the messages while I'm on campus, okay. Now I have the Clery side, we have the Title IX piece. We potentially have a threat assessment piece and if we're all even technically correct all by ourselves, I'm doing exactly the limited bit I'm supposed to do on Clery. You're doing exactly the limited bit you need to do on Title IX. I would argue we're both compliant and failing all at the same time.

Courtney Bullard:

I love it. I think that is an excellent point and one that I think will resonate with a lot of folks who are listening in. Okay. So I want to finish of course, with fun facts. I really do feel like I could have five podcast episodes with you on so many different topics. There's just so much to cover in this space-

Jody Shipper:

Courtney, we're going to show. Let's start a show.

Courtney Bullard:

We probably should! The Jody and Courtney show. I love that idea actually.

Jody Shipper:

CJ.

Courtney Bullard:

Okay. Courtney and Jody, whatever. I love it. I'm down. Let's definitely think about it. I love it but let's go to some fun facts really quick. You kind of teased me when we were prepping. I want to know if you were not doing this, what would Jody be doing?

Jody Shipper:

I would bake pies and I would bake pies for a living and I would sell pie to people. It would be a short transaction, short term relationship. Come in, you get your pie. You're thoroughly satisfied, great cup of coffee and then you could be free to go.

Courtney Bullard:

You would have a bakery?

Jody Shipper:

I don't know. I've actually pictured it in my mind. Now you would think I'm a good baker that I'm saying this. No, no, no, no, no. Because the fact that I've envisioned it in my mind doesn't mean that I'm qualified. But if-

Courtney Bullard:

Okay that cracks me up.

Jody Shipper:

Yeah. So if we were... I want a huge community table. People would come in they could hang out, they could use their laptops, they could chat with people. Maybe in a corner there's some cooking lessons and even if I'm the owner of the establishment, maybe I'd be actually learning how to make pie. I love the process of transforming ingredients and you take the flour and you take the butter and you do this magical thing and it looks awful. It looks like it's never going to come together. Suddenly you have dough and you put your fruit in it and it all becomes something else and I find it incredibly satisfying. So over the weekend, you'll find me this weekend in my kitchen. This weekend's going to be huckleberry pie. I have-

Courtney Bullard:

Huckleberry pie.

Jody Shipper:

I was gifted with four pounds of frozen... They were fresh, fresh, frozen huckleberries. Yeah. So-

Courtney Bullard:

I want some of that. I wish I didn't live so far away from you. I would totally be coming over for a piece-

Jody Shipper:

Okay. Well, move to the neighborhood. There you go. I find it satisfying. Then I thought I would have, or at one point when I was in deep despair because it just felt like some days the work is hard. You know?

Courtney Bullard:

Yes.

Jody Shipper:

And I know you know that. So then I thought maybe I'll have a little... I happened to live in Northern California. So I thought, okay, I'll have some serve wine and crepes, and then I thought that from time to time, I could answer a Title IX question. So then I thought I'd call it crepe, grape, don't rape. But I was assured that was terrible idea and that I should not do that.

Courtney Bullard:

Oh my gosh that's hilarious. You have put a lot of thought into this, Jody.

Jody Shipper:

You have no idea.

Courtney Bullard:

And it definitely goes back to your restaurant roots. It all comes full circle.

Jody Shipper:

Well, I like serving people food. I like giving people food. I find it satisfying and I really do believe if you're going to do this work. If you're going to work in higher ed, if you're going to work with people, you're going to work with people in trauma. You're going to work with people who are scared of what might happen to them, scared about what did happen to them, scared whether or not they're going to get heard and working with administrators who are frightened that they're getting it wrong and they're going to get pilloried. You have to have an outlet, whatever it is, whether you're a go hiking, whether you... I heard recently of a group of colleagues who went ax throwing, I'm not sure how I feel about that.

Courtney Bullard:

Oh that's a new thing here in Chattanooga. I know I'm kind of scared of it, but it's-

Jody Shipper:

Yeah, I don't know about that one. Yeah. Whatever it is, you have to have an outlet. know your outlet, find it. That's-

Courtney Bullard:

Yes. You need your self-care and you need your outlet. I also think for those of us on this side of the work, and I get this vibe from you in general, it's kind of that servant heart mentality. You're there to serve and try to make the world a better place in your way and that really translates into your pies. You want to-

Jody Shipper:

There you go!

Courtney Bullard:

... help people. And I love that and I totally want to see a picture of this huckleberry pie. So I expect a photograph.

Jody Shipper:

I will be sending it out. Okay.

Courtney Bullard:

Okay. I expect it. Well, Jody, it has been a pleasure having you on and learning about all that you're doing. I love your approach. I love the way you explain things. I can see how it would be so beneficial to your clients because it is on their level, not talking over their head as us with JD sometimes like to do. So I've really enjoyed getting to know you and being able to say you're a colleague and I appreciate you being on the show.

Jody Shipper:

Well, I can't thank you enough for this.

Courtney Bullard:

Thank you for tuning in to The Law and Higher Ed podcast. I hope you will continue listening to episodes, which are scheduled to be released every other Thursday with a couple of informational episodes sprinkled in, or if something happens on the Title IX front, which it probably will. Of course, there might be something that is more frequent. Please connect with us on social media. We are on LinkedIn, Twitter, Facebook, and Instagram, our newest platform. So be sure to connect with us there as well as visit our website for current events and upcoming conferences. If you'd like to be a guest on the podcast, don't hesitate to reach out to me at CHB@ICSlawyer.com or through the contact us form on my website, or if we could be of service to you, don't hesitate to reach out as well. Thanks again for listening and see you next episode.

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