

Courtney Bullard:

Welcome to The Law and Higher Ed Podcast, my name is Courtney Bullard and I am your host. I'm an attorney located in Chattanooga, Tennessee, and I've been practicing law for almost two decades in the higher ed space. You can learn more about me all the way back in episode one. We are no doubt in unprecedented times with the COVID crisis that has hit. Here at ICS, our thoughts are with you and your families as we navigate these tough times. ICS is also working to bring you some trainings and materials in response to the COVID crisis. We have a Title IX triage service that we're offering to clients to help them transition their Title IX cases, as well as a virtual certified investigator training, which will be on April 30th and May 1st.

We're coming up with different compliance aids as well, each day, some that are specifically for our members and others that we'll put on the website for anyone to use as well. So, check all of those out on our website at www.icslawyer.com. If we can be of service to you, please let us know. We are also hosting a webinar every other week that discusses any new developments in staying compliant with Title IX in this new COVID world, so be sure to keep an eye out for that as well. Again, our thoughts are with all of you all, both professionally and personally. I hope that you can use some of this time to catch up on podcast episodes in addition to, of course, taking great care of yourself and your families.

Elizabeth Conklin:

There's a set of prescribed behaviors that are outlined in the policy, there's conduct expectations for everyone. If there are allegations that those aren't being met, there's a clear process.

Courtney Bullard:

I met my guest this week, Elizabeth Conklin, all the way over in sunny California when we were attending a conference and happened to sit next to each other. But our paths had previously crossed, although we'd never met, so it was awesome to get to meet her in person. So, Elizabeth has served as the Associate Vice President of the Office of Institutional Equity and as the University of Connecticut's Title IX Coordinator and ADA Coordinator since December of 2011. She's responsible for overseeing each of OIE, that's her office's areas of focus, including discrimination case management, campus wide trainings for diversity awareness, and sexual harassment prevention, search and hiring affirmative action, an equal employment opportunity compliance, and various diversity and harassment prevention initiatives.

In addition to serving as the University of Connecticut's Title IX Coordinator, Elizabeth coordinates the university's response to reports of sex-based discrimination, including sexual harassment and sexual violence. She works collaboratively with on and off campus partners on sexual harassment and sexual violence prevention and education efforts to ensure UConn's commitment to creating and maintaining a campus environment free from all forms of sexual violence, harassment, exploitation and intimidation. She joined OIE as a case manager in April 2010 and in that role, she investigated complaints of discrimination and discriminatory harassment, involving university employees, and also coordinated requests for accommodation under the ADA. In addition, as a member of the OIE case management team, she developed materials and provided training to university employees regarding diversity and sexual harassment.

Prior to joining OIE, she was an attorney with a Hartford firm, practicing labor and employment law, and she represented employees with claims of employment discrimination, wrongful termination, sexual harassment and many other disputes in all phases of litigation. She additionally represented labor unions before state and federal agencies, and in arbitrations and negotiations. She earned her law

degree from the University of Oregon School of Law and is a Cum Laude graduate of the University of Connecticut.

Elizabeth shares with me an awful lot about her thoughts on the overlap of Title VII and Title IX, institutions, how they should consider structuring their policies and processes with respect to student cases versus faculty and staff cases. We talk about training, such an important topic, of your faculty and staff and also, facilitating interim measures. Elizabeth also talks with me about her experience serving on an appointed committee for the University of Tennessee after a 2.5 million dollar settlement, which was a result of a Title IX lawsuit back in 2016, and some takeaways she learned from that that impacts how she does her work today and so very much more. I hope you enjoy my conversation with Elizabeth. Hi, Elizabeth, and thank you for joining me today and recording this episode. I know it's the beginning of the semester and things are really busy for you.

Elizabeth Conklin:

Hi. Very happy to be here. Thanks for having me.

Courtney Bullard:

You and I are, to me, just yet another example of working in the same space, hearing each other's names over the years, but never meeting and then low and behold, we're at a conference and you're sitting right next to me and, thankfully, said something to me and I love it. So, I'm so glad we've gotten to meet in person and that we're getting to do this episode today.

Elizabeth Conklin:

Me too. Thanks for having me.

Courtney Bullard:

So you serve as the Title IX Coordinator at the University of Connecticut, among many other duties, I know, but you've also done some outside consulting work. And so I know in this episode, I want to talk to you about specifically faculty and staff matters in the Title IX space, but I also wanted to explore a little bit in the beginning outside consulting work and specifically, a committee that you are on for the University of Tennessee, Knoxville. So to give a little background for those listening, in 2016, there was a Title IX lawsuit against the University of Tennessee. It was settled for almost 2.5 million dollars, and the lawsuit was centered on cases of alleged sexual or physical assault by student athletes that were reported by eight female students between 2013 and 2015. And as the result of the settlement, many things came out of it, but one was that the University of Tennessee's system president appointed a four person committee of experts to look at, and I think I'm saying this right, but the Title IX structure across campuses, and you were a member of that committee.

So in 2017, I think it took you all about a year to put together a 28 page report and some recommendations. And some of the recommendations, and this, I got out of a google search, were adding additional Title IX staff and resources, updates and modifications to policies and procedures, enhancing support for students, additional education, prevention and training efforts, as well as a Title IX coordinator for the system, overseeing all the efforts across the campuses. And, again, for those listening, the University of Tennessee's system is comprised of many campuses. And so I know you can't talk specifically about everything that happened and working on that report, but I love reading reports like that. The Baylor one, for example, had a lot of takeaways that are still used for training. I think there's so much that can be gleaned from those types of committees coming together. And so I wanted

to just get your perspective on what you would say you learned from that experience, and how you approach your work today, and the advice you give when you're serving as a consultant.

Elizabeth Conklin:

Sure, yeah. Thank you. So this was a really interesting project that we undertook between ... Really during the winter and spring of 2017, it began in the fall of '16, following the litigation, as you said. And our charge was to look pretty broadly. It was Knoxville, but also the other campuses, so across the system, at Title IX compliance policy, procedure, training, what did it look like? And as President DiPietro said, "How could UT, the system be really a leader in the nation on best practice for both prevention and response?" So, we were really tasked to dig deep. We were totally independent, there were four of us and it was a really unique project in that way. I think a lot of folks who consult on Title IX are accustomed to doing things on their own, solo or as part of a law firm, but we were a team of people brought together with different perspectives and backgrounds, which I think really added to the richness of it.

So, I was the person on the commission who was coming from the perspective of being on a campus and there were also individuals involved in the legal practice, both in Tennessee nationally, and then Janet Judge, who does Title IX work nationally as well, with some athletics focus. I was the person on the commission who is living and breathing the work as a Title IX Coordinator on campus every day. And so there were so many things that were interesting about this, but one of the things that was the most interesting to me personally was in having all of the listening sessions we did and the meetings that we had with various administrators and students and others, what struck me was the similarities between what I was hearing and what I was living and how deeply universal some of the challenges are, regardless of geography or campus system. So, there was a lot of the recommendations that were things that, I think, would really apply to most major systems, major public universities, in terms of things that might enhance prevention and response. And, certainly, some of the recommendations were things that we were in the process of doing on our own campus or had done or had endeavored to do.

And so, I think, for me, in many ways, I hope that our process and our recommendations were helpful. I hope that they have caused enhancements and improvements, I believe that they have. For me, as the consultant, I think they also opened my eyes to ways of doing things or issues that were helpful to me in my work at UConn. So, I feel like it was a big project, it was a lot of hard work, it was a lot of trips to Tennessee, which I actually really enjoyed very much, but I also think that I was able to bring some of the ideas and synergies back to my own campus, which was a nice bonus.

Courtney Bullard:

Yeah. I really find that, even in my work when I'm looking at different campuses, whether they're small, big, state, private, there's just a lot of similar threads you run into over and over. And then I also find, for me, I worked in-house and saw one process and, of course, it was through the University of Tennessee system, but it's sometimes hard. I don't know if you'll agree with me on this, but when you're working inside of a process and a policy that maybe you even helped create, there are blind spots that you don't see and somebody from the outside that's looking at it can help uncover those that will make it a more accessible process or the training more accessible to everyone or what have you. I don't know if that's something that you took away from that, but that's something I definitely see in my work.

Elizabeth Conklin:

Yeah, I think that's right. And in terms of policy specifically, all of us have some similarities because we have to under the law. But I think that length is not always our friend, and so I think that there was a real

desire by UT to simplify and streamline the policy and it really confirmed for me the approach that we've been trying to use at UConn, which is these policies are not short, but to keep them as short and simply written as possible [inaudible 00:11:47] understanding.

Courtney Bullard:

Yes, I feel like I say that till I'm blue in the face. But it's hard because us lawyers ... I mean, you're a lawyer too, got involved at the beginning-

Elizabeth Conklin:

Right.

Courtney Bullard:

And we like to use legalese and interesting language and everyone was trying to just do the best they could with what they had in that moment, but I think over time, getting things to where they're more simplified and user-friendly is really key.

Elizabeth Conklin:

Yeah, I totally agree. And one of the things I often think about on my own campus and when I do consulting is how to read this document from the perspective of an 18 year old undergraduate student, their parent or their friend. And clearly, I think the best resource on any campus is its people, so, certainly, let's hope we're structured in a way that they wouldn't have to search through that 25 pages and figure it out alone, they'd have a lot of live help with that. But that being said, we want to make sure that these make some sense to just any individual student, graduate student, faculty member, international student. So, I think one of the things that became clear to me in that process was clarity of policy and procedure [inaudible 00:12:54].

Courtney Bullard:

Yes, for sure. When we spoke in person and met for the first time, I wanted to shift gears and talk about cases involving faculty and staff because that's something that we talked over when we met and triggered me to want to, for many reasons, but that was one of the big ones, have you as a guest. And you and I have similar backgrounds in that our foundation really is in labor and employment law, I like to say that was my first love. As a lawyer, I did a lot of things for about a year and when I finally fell into labor and employment, that was when I was like, "Okay, I really have found my place." And this is an area where I find that there can be a big disconnect in the Title IX work on campuses. So, to begin with, my question for you is, do Title VII and Title IX obligations overlap for colleges and universities? And if so, how? As simple as possible. I know we could talk about that for a while, but ...

Elizabeth Conklin:

Sure. Yeah. I mean, I think the simple answer is yes, definitely. And when we are thinking about Title IX, it doesn't limit its application to students or learners. So, there are some interesting legal questions and private litigation, but ignoring that, just thinking about the structure and the intention behind the laws and the regulations, the intention is to ensure that anyone on our university campus that receives federal funding has an experience free from discrimination based on sex. And so that applies really broadly to students, but as well as employees. And Title VII, we think of as the workplace, civil rights statute, thinking about ensuring a non-discriminatory workplace. It's interesting because for a student,

the classroom is their learning environment. For the faculty member, the classroom is their workplace. So, you literally have the two happening simultaneously and they feed each other.

So if you have a difficult or harassing or challenging climate in a particular department among faculty ... So let's say faculty are having conflict with one another or faculty and staff, in my experience in academic departments, that can bleed into the learning environment as well. So as a really practical matter, you have the two worlds colliding. Think about student employees, that's the workplace for the employees they're working with, but maybe it's their learning environment, maybe it's work study, or maybe it's an internship and they're working in an office and getting credit for it, surrounded by people who are getting paid as employees. So, I think there is a lot of overlap between the two and it's really the amount in which various campuses have acknowledged this, in my experience, depends a lot upon their structure. So, where are the folks who do the prevention and response to this work housed different for students and employees? But I think there's deep synergy between the two.

Courtney Bullard:

You have some schools ... And I think all these are obviously okay. You have some schools where you have two different policies that, hopefully, are consistent with if you have a faculty or a staff member involved in an allegation who's a respondent versus if you have a student who's a respondent. And then you have other people who have their one policy, one process and then you have kind of everything in between. And then you have some that's housed with HR, some that's housed with student affairs and, again, everything in between. And then you've got your Title IX coordinator up there overseeing it all. So, any tips or things that you've seen that you feel like work to ensure that faculty and staff are part of the Title IX process on your campus just as much as students?

Elizabeth Conklin:

Yeah. I appreciate your comment that different structures can work for different campuses. I think we all have a little bit of a bias towards structures that we've created or that we think have worked well that we've been a part of. But I do think that it's really important that there's clarity for everyone, including, to begin, the administrators involved, about who oversees what and what the obligations are. And so I think a variety of frameworks can work, but, to begin, certainly the people involved in administrating them have to be crystal clear because if they're not, it won't be clear to the campus community. I have a little bit of a bias, I'll tell you what I prefer, but this is not the only correct way to do things. But my preference is to have a single policy on discrimination and harassment, including sexual harassment and sexual misconduct, that applies to the entire campus community. Then, where necessary, have separate procedures about how you respond and what resources are available based on the identity of the parties involved.

I think that procedures being separated from policy has a couple of really good benefits. One is that they allow policy to be shorter and that they provide clarity about what do you do when something is reported without bogging down policy with all of that, so that trained students, faculty staff and administrators on the same policy, so everyone's hearing the same message. And then if there is a concern or a case, a clearly laid out set of procedures. Okay, if you have a concern about a student, here are the procedures for student investigations. If you're concerned about a staff member, here are the staff investigations. If it's a faculty, here are faculty. So, that's my preference to have very consistent and clear policy, but allow flexibility for procedures.

Courtney Bullard:

And I think that makes so much sense.

Elizabeth Conklin:

Yeah.

Courtney Bullard:

And I think what you're saying in the policy is the policy's going to define prohibitive behavior on your campus, and that prohibitive behavior could be by anybody, and have your definitions and what constitutes sexual misconduct. But then your procedures as far as how you make the complaint, how it's investigated, how it's adjudicated can be bifurcated depending on who the parties are. Am I summarizing that correctly?

Elizabeth Conklin:

That's exactly right. And I think that's particularly compelling right now under the messaging that we're getting from the current administration and the proposed regulations that is particularly critical of a single investigator model. Obama administration 2011 forward, many schools tried different single investigator models or single office models, some of which worked beautifully, some of which didn't. But I think that there's a sense that there are maybe different steps to the process, different offices that have a review piece or a hearing piece, and so [inaudible 00:19:34] procedures allows for that flexibility and allows for offices to engage.

Courtney Bullard:

Yeah. And I have clients who are medical colleges, where everything is different because-

Elizabeth Conklin:

Right.

Courtney Bullard:

They have committees that hear ... If there was some type of ethics violations, you're talking-

Elizabeth Conklin:

Sure.

Courtney Bullard:

About pharmacy schools, medical, dental, you name it, and it can get very different even between the schools and who sits on committees and all of that. And so I find that sometimes, schools get so bogged down. The work is hard. When you really dig down and try to figure out what makes the most sense for your campus, it's hard work, in my opinion, rigorous work and they get bogged down in well, we need to have these definitions over here and these over here. And I like your idea and I think ... I mean, I agree with it, that having all your behavior to find in one place makes perfect sense, and then you go out to whatever procedure makes sense. That is a very clean way to do things.

Elizabeth Conklin:

Yeah, and I agree about the medical centers. So I oversee UConn Health and the academic medical center, and right before this podcast, I was actually at a meeting over there, and we certainly see the complexities there. There are certain accreditation requirements for medical schools, but there, again,

the policy outlines was prohibited. The procedures may look a little different when we get to the [inaudible 00:20:53]. Physician cases, certainly, there can be overlaps with various medical ethics and other medical boards that oversee physician conduct. But I think the heart remains the same, whether it's sociology or medicine or everything in between, there's a set of prescribed behaviors that are outlined in the policy, there's conduct expectations for everyone. If there are allegations that those aren't being met, there's a clear process.

Courtney Bullard:

So what do you find to be some of the main differences ... I mean, there's a lot, I know. Between student on student cases and then when you get into the realm of having a faculty or staff member accused of sexual misconduct? Of course, they can be complainants as well. Anything that comes to mind as far as some of the big differences?

Elizabeth Conklin:

For students, the university is their entire world and a classic four year undergraduate institution. It's where they're studying, but it's also where they're sleeping and eating and hanging out and engaged in activities, and so I think there's a lot of wraparound support that is required for students. Certainly, faculty and staff who are, let's say, accused or filing complaints require support as well. But, typically, they are not staying on campus. So certain staff do, but ignoring those, the majority of your staff and faculty have home lives and a different core group that wraps support around them in their personal lives.

I feel like the student experience is so deeply tied to the institution that when we're thinking about provision of resources and support and also, when we're thinking about any sort of interim actions or sanctions, the impact is really significant. And that is not at all to diminish the impact on staff or faculty for interim measures, support needed or discipline, but it's different. And having overseen processes involving both, the student ... The ramifications on particularly the residential students are very significant. For me, I think about being really intentional about what support is wrapping around any and all students or employees impacted during the investigation, regardless of whether they're a complainant or respondent, ensuring that we're providing appropriate supports.

Courtney Bullard:

Mm-hmm (affirmative). And certainly, interim measures, to me, for faculty and staff, there are times when those interim measures look like leave without pay and that can be extremely impactful. And you hear ... I mean, I run into all the time, "This is going to be crippling on my career." There are cases that warrant it and sometimes they don't, and that has to be a really thoughtful, I guess, discussion. Who do you think should be involved in those conversations, and who do you think should be the decision-maker when it comes to determining interim measures when you're dealing with an allegation against a faculty or staff member?

Elizabeth Conklin:

That is such a good question, and I think that that is a question, especially who is a decision-maker, that a lot of institutions struggle with. I'm going to provide my perspective, but it's just mine and is not-

Courtney Bullard:

Sure. Absolutely.

Elizabeth Conklin:

Yeah, that other ways are wrong because I think there are a lot of ways to do this. But my perspective is that in faculty and staff cases, the office that is managing the investigation, on my campus, we do that, should be providing a lot of relevant information to management, whether that's a dean or a VP, but high enough level management in consultation with the investigative office and HR, that's a separate office. But that ultimately, it really is a decision that has to be made by management in consultation with either HR or labor relations, depending on the union status of your employees. I like to see a system where the investigating office gives appropriate levels of information and can certainly provide some thoughts on the appropriateness of that.

But ultimately, in my view, the role of the investigating office is to conduct the investigation. And certainly, suggesting that interim measures may be appropriate is absolutely a piece of that, but I'm not sure the investigating office wants to be in the position of being the decision-maker on those because the very interim measures could come under scrutiny by either of the parties and become part of the inquiry. So, again, I think there are a lot of ways to do this and I'm not suggesting that investigating offices that are making the determination are doing something wrong.

Courtney Bullard:

Yeah, absolutely.

Elizabeth Conklin:

Personal preference is that the investigating office or the leader of that office has a lot of credibility with management, but ultimately, it is a management decision.

Courtney Bullard:

Yeah. I think it helps for there to be that arms length, I guess, for lack of a better word, between those who are doing the investigation and those who are facilitating the process and making those decisions because I think it can get really complex without it. And I also would say, typically, if some type of decision like that is needed to be made, then your council should be involved as well.

Elizabeth Conklin:

Sure.

Courtney Bullard:

If you have in-house council or external council.

Elizabeth Conklin:

Right. I think that can be really helpful. And then some HR, labor relations areas, there are council embedded, they're in. So on my campus, many of the people we'd have that discussion with are themselves attorneys.

Courtney Bullard:

Right. Right.

Elizabeth Conklin:

It depends on the structure. But I do think that with respect to interim actions and sanctions, ultimately, management in the area is going to need to be very involved in dealing with the ramifications of those.

Courtney Bullard:

Absolutely.

Elizabeth Conklin:

So if you pull out a faculty member mid-semester, they need to determine how to ensure the classroom gets the coverage it requires and the messaging to the students is appropriate. So I think it's difficult for, let's say, a department head or a dean to feel like a determination is just being thrust on them. I think it is better to have that as a collaborative discussion where you can determine the best path forward. No-one likes to feel like they're just being told to do something. One of my common themes when I think about this is thinking about how can we do this in a way that's appropriate and protective and also collaborative, ideally? Right? I mean, there are case-

Courtney Bullard:

Yes.

Elizabeth Conklin:

Somebody is telling someone, "No, this has to happen," but I think in an ideal scenario, it is and feels like a dialogue where after appropriate consultation, a mutual agreement is reached. I think that's the ideal.

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:

I'm all about collaboration, but I also think there's a delicate balance. There are times when a department head or supervisor or dean may not need to know what's going on during an investigation.

Elizabeth Conklin:

Sure.

Courtney Bullard:

And there's that balance of they feel like they need to know and sort of confidentiality, I guess. And when you're dealing with especially faculty, who are respondents, it just gets really complex. There's a lot of people that need to be in the loop, but maybe only to a certain degree. And so that collaboration and having that relationship beforehand is something I talk about a lot.

Elizabeth Conklin:

Yeah.

Courtney Bullard:

The Title IX coordinators really need to be in front of faculty, specifically, and make sure there is that relationship before something happens.

Elizabeth Conklin:

I couldn't agree with that more. If the first time this leader is hearing from that person, the Title IX coordinator or the institution equity folks, is the case, I think it's a challenge.

Courtney Bullard:

Yes, for sure.

Elizabeth Conklin:

And this is hard on large campuses, particularly if you're a newer administrator, but I do think one of the most important things that people in these roles can do is be very intentional about having a plan to ensure that you know who the leaders are and they know you and that you have gotten some foundation of mutual understanding in place before a case develops. And assume that one could develop any day with any major leader on campus, so to build those relationships, and that takes time, but-

Courtney Bullard:

Yes.

Elizabeth Conklin:

It pays dividends when there is something that comes up.

Courtney Bullard:

I agree. And I feel like we're kind of in a space on most campuses where the student on student cases are rolling along, there's been a lot of work done on training and prevention efforts and tweaking processes and all those good things. I mean, there's still work to be done. But from my perspective and what I've seen, I'm not so sure that the same level of commitment has been made on the faculty staff side yet because everyone was scrambling for the student on student and, of course, you've got the alcohol and consent and things that come up in that space that are typically different than what you see in the faculty staff space. But what are your thoughts on training and reaching that area? And also, just help for Title IX coordinators who do need to be paying attention to all of this, but maybe have been more focused on the student on student, what is your recommendation or thoughts on what they should be trying to do? Obviously, collaboration is one.

Elizabeth Conklin:

Yeah. So with respect to training particularly, this is probably one of my greatest areas of passion in the work that we do because I do think that there are ways to provide education and awareness to employees that has an impact, not only in helping them know what do you have to report and when, but

beginning to change the culture. I love training, particularly department heads and managers, because I think that in the era of Me Too, following all the attention on Title IX, in my experience, leadership at all levels at universities are thirsty for this information and they're worried about it. Something could come up any time and they want to do the right thing, by and large. I really believe that this is a scenario where we need to empower individuals with the right information, not only to report the issue, but to create a culture where this stuff is not happening. And I think it's incumbent upon all employers of all industries, including higher education, to take that more seriously.

And so I do have a range of suggestions around training for faculty and staff, but I think that in person is really best and I know that's hard and I know that's a big ask. But while there are some products out there that do online training, I think that consistent feedback, if you ask a community about that, is that it's not as impactful. And sometimes it's the right thing to do and we've used online training in various settings, so I get that sometimes it's necessary. These topics require conversation, so what I often suggest is that when you think about training, and this dovetails with the 2016 EEOC Task Force on the Study of Harassment in the Workplace, but when you think about training, to really think about training that is in person and interactive, ideally somewhat small group, holistic. So, I am a huge fan of pairing the concepts of civility and power dynamics with discrimination and harassment. So here at UConn-

Courtney Bullard:

Yes.

Elizabeth Conklin:

We do a three hour training. The first hour is actually a great colleague of mine in human resources talking about civility. Because we know, from the 2018 National Academies of Sciences and Medicine study, incivility is one of the biggest generalized risk factors for sexual harassment. And so managers want to know how do I deal with the incivil bullying conduct before even getting into the conversation of what do I do if there's a sexist joke? So, I think we really need to be thinking about meeting our managers where they're at. They want to know how to deal with incivility more broadly, and then talking about the linkages to sexual and other forms of harassment. We know that training needs to be modern and relevant, so if it's outdated, using outdated videos, the audience tunes out. Various reports have suggested that it actually does more damage than good. It can cause people who are already hostile to the issues to become even more so.

And we want to increase participant self-awareness. So we all have implicit biases, that doesn't make you bad, it's just important to be aware of them and counter them. And then I'm a fan of providing really specific response skills and specific institutional resources, so this stuff can't be generic. Call this office, it's located in this building, this is what our process looks like. And then I think bystander intervention concepts that we're all learning at the undergraduate level work very well with employees. And so we playacted a scene, like a hypothetical case example, of a brand new staff member who's making a quote, unquote, joke, with racist and sexist undertones and we challenge our audiences, what do you do in that moment?

Courtney Bullard:

Yes.

Elizabeth Conklin:

Reporting later in the investigation, what do you do? And folks need to be ready for those moments.

Courtney Bullard:

Yes. I think adults are just as susceptible as young adults to freezing in a moment and then later being like, "I wish I had stepped in. I wish I had said something." And also, being concerned because whereas the young folks have the concern of I'm going to look stupid, whatever it's going to be. With adults, especially in the workplace, you're concerned about losing your job, going against a supervisor, you name it, being somebody who's a complainer, whatever it is. And so those skills need to be practiced just as much in the workplace as they do for students. I could not agree more, I'm huge on bystander intervention. And I also agree with you on the in person training. I have an online product that we're still developing and putting out there because I think there are some folks that just ... It's just harder for them as a campus or it can be a refresher or a baseline, but I think in person is always preferred and the most impactful, so I completely agree with you.

Elizabeth Conklin:

Yeah. And I think when I'm talking to campuses with limited resources or staffing, they just need to do online to hit all their employees and there are certain laws Connecticut has that requires that. I get it. Prioritize your managers, get face time with your managers, even if the person in the role like mine just goes to one department a month for 30 minutes. I imagine most schools like mine occasionally gather deans as a group, ask for 20 minutes every year. There are opportunities where folks are gathered anyway and I find that works better than asking people to come to something you have planned.

Courtney Bullard:

Yes. Go to that dean or department head meeting.

Elizabeth Conklin:

Yeah.

Courtney Bullard:

Absolutely.

Elizabeth Conklin:

Yes.

Courtney Bullard:

Absolutely.

Elizabeth Conklin:

It may take a couple years, but one thing that we've done that's been really effective is we just go to individual departments, department by department. They often have lunch and learns once a month, at least on my campus, I think that's a pretty frequent thing nationally. Graduate students of who, by the way, are interesting because depending on whether they're teaching assistants or research assistants, they wear both learner and employee hats. And in many ways, I think, are the most vulnerable population on our campuses. And so these lunch and learns can often get in front of not only faculty and staff, but graduate students. So, that's another practice tip I would offer to folks in these roles. It feels

overwhelming to go to 100 departments, but if you just do one lunch and learn a month with some case studies and dialogue within their group, that can be really impactful. And over the course of a few years, you've hit hundreds or thousands of people.

Courtney Bullard:

Yeah, I completely agree. I run into Title IX coordinators who part of their job is to oversee training and they're like, "This is not my forte. I'm good at keeping up with this and keeping up with that and doing investigations, but I don't think I'm equipped to go and teach bystander intervention," for example, or train on it. And as you said, you've teamed up with other colleagues and their strong suits, and so I always encourage folks ... On a college campus, you've got a ton of resources you probably don't even realize you have, with professors or someone in human resources or what have you, and maybe you can't hire an outside person to come in and do that work on a regular basis with you. But any tips or organizations that you've worked with that you find helpful if that's a route that they need to go, or anything else I'm not thinking of for those who are struggling with limited resources?

Elizabeth Conklin:

I think that's such a great point and I'm glad you asked that question because when I'm making these comments, assuming the existence of a team. And I think one of the things, particularly that I've observed on smaller campuses, which hasn't been my personal experience, but I've worked with a lot of colleagues across the state of Connecticut, we actually ... A few of us co-founded a Connecticut Title IX coordinator coalition that gets together a few times a year because we felt like the Connecticut Title IX coordinators, we have specific state law, we all come from different institutions, but we can learn a lot from each other. So, I've learned a lot from those colleagues. And I think one of the things I've observed in some of my consulting work is that on a small school, the Title IX coordinator is supposed to lead from counselor to investigator to passion trainer to you name it, plus they have three other titles on the side, and I don't think that that's realistic or effective.

So, maybe you have a Title IX coordinator that's really skilled in training and wants to do that and has the capacity to do that, but maybe you don't. So you need to think about is the Title IX coordinator more in the background helping create content that HR is delivering, or do you somehow resource a role devoted to training and education? So we have a role in my office ... I have about 15 people in my team, many of them trained, but I have one or two in particular that that is the core function of their job is training. They're skilled, skilled trainers, they like doing it, that is what they do, they design and develop a lot of in person trainings as well as some custom homegrown online trainings. I can't do all that, it's not possible for one person to do it all. And so I think that teaming up with those who already have training in their portfolio is important, and then also potentially asking for that resource can be something that is worth its weight in gold. Because I think really meaningful, holistic training done well absolutely can prevent cases and it can ultimately save a lot of resources for the institution in a preventative way.

Courtney Bullard:

Totally agree. I know there's been some research out there about effectiveness of training, but definitely not a ton, and so it's highly debated still on litigation, at least the litigation that I am a part of as an expert witness. But I agree, at its core, it can be a lifesaver. I say all the time, an ounce of prevention is worth a pound of cure, so-

Elizabeth Conklin:

Absolutely.

Courtney Bullard:

Training, training, training. And not forgetting your faculty and staff is, to me, critical.

Elizabeth Conklin:

And it's hard to prove a negative, right? So-

Courtney Bullard:

Yes.

Elizabeth Conklin:

I don't know the cases I've never heard about because they were stopped or didn't happen.

Courtney Bullard:

Right, exactly.

Elizabeth Conklin:

I'll never know that. What I can gauge is how effective the training is and increasing calls to our office. So what I know is once we really, a few years ago, started pretty dramatically enhancing the robustness of our training for managers on these topics, calls to our office skyrocketed, which was great because the vast majority of those were us providing resources, support and advice on things that didn't blossom into a full complaint because they were a few steps before that and they were able to be resolved. So maybe it's a new employee who's telling that joke in the example I gave earlier. Well, maybe they've been here a week and the manager, with guidance and support, called us and sat down with the employee and wrote a letter of direction and monitored them and worked with the whole workforce to establish norms and it never happened again. That's a success story.

Courtney Bullard:

Absolutely. Yeah. I love that point because so often, it's highlighted, at least with media approaches and things like that, where they've got increased complaints and they've got increased calls and it's not really a bad thing, it means that you're getting out there, you're able to mitigate matters and create a more healthy environment and support a more healthy environment, so I think that's such a great point that you just made.

Elizabeth Conklin:

We look at where are calls coming from, where are cases coming from, and you would think that you'd pay some attention to places where a lot of cases are coming from. And while that's certainly true if they're an excess of the population, I also pay attention to where have we not heard from at all? Because that tells me maybe there's a lack of knowledge or understanding about reporting obligations or resources. So, I expect to hear from departments. So, certainly, if you're hearing a lot from a particular area, that tells you something, but I think it also tells you something if you're not. And maybe everything is going awesome there, but I think that's an area for ... I know we're all really busy, but when looking at your numbers and trending, looking at where things are coming from and where they're not can be, ideally, if you have the capacity to do that, can be a really interesting exercise.

Courtney Bullard:

Such great advice, I love it. So we are running up into about 45 minutes, so I was going to switch gears, unless there's anything else, but you've made some great points, so I think everyone that listens is going to benefit from so much. As I like to do, I wanted to really end on a couple fun facts about you, if you're willing to share. And the main one I love to ask people, and I'm always surprised every single episode, is if you were not doing what you're doing as a profession, what would you be doing?

Elizabeth Conklin:

Okay. So I love that. Okay, so well, the first thing is I would travel and become a yoga instructor and a vegan chef. These are my passions. But if I still had a job, something I'm really interested in the more that I am in this work is actually thinking through more basic conflict dispute resolution. So my dream, and it's not just a dream, I think it could happen, but would be on my campus and other campuses to help found and support a conflict dispute resolution center that would teach some basic communication and mediation skills to the entire campus community.

Courtney Bullard:

I love that. Conflict resolution, I think, is the core of everything these days.

Elizabeth Conklin:

All of it.

Courtney Bullard:

Especially in the society we live in.

Elizabeth Conklin:

And especially in the employee cases, but even the student cases. Think about a roommate dispute, where, ultimately, it escalates and escalates and people are harmed just emotionally, not necessarily physically. But I think often, people blame social media and phones, but I think we all have not really known how to resolve conflict for a long time.

Courtney Bullard:

Yeah, I agree.

Elizabeth Conklin:

Social media's a new layer, but I think blaming that is too simplistic. So, the love for me in both law school and post-practice is mediation, and I think if we could get that in front of our entire employee and student population, the concepts of resolving conflict on your own and empowering people to do that, that's really a passion of mine and it's consistent with my more personal interest and passion around things like yoga and mindfulness. Something in that realm.

Courtney Bullard:

You're not my first yogi, but I figured that's what you were going to say based on when we were at the conference and you were like, "I'm going to head out and go do a hot yoga class."

Elizabeth Conklin:

Yeah.

Courtney Bullard:

So in my head, I thought that was probably what you were going to say.

Elizabeth Conklin:

Awesome.

Courtney Bullard:

The vegan chef, I didn't know. And actually, one of my good friends here, her sister is a vegan chef, like, has made it pretty big time. I'll have to find her name and get it to you. But I love it. I want to do an episode on self-care.

Elizabeth Conklin:

Yes.

Courtney Bullard:

And I'm still exploring who exactly I want to interview for that, but I think it's so crucial in this work and so I've asked some folks about that too and yoga's one that has popped up quite a bit, so ... I love it.

Elizabeth Conklin:

Yeah. And I think about that a lot for my staff too, but, certainly ... I think all the Title IX coordinators in the nation, myself included, have had some pretty difficult years. And so that, for me, mindfulness was really important for balancing all that. And also, I had a really new baby when I agreed to the Tennessee project, which is a fun fact that some people might not know. In fact, when I took the phone call from the president about the possibility of doing it, I was still on maternity leave and my mother came over to hold the baby-

Courtney Bullard:

I've been there.

Elizabeth Conklin:

While I was on that phone call. And I actually was holding him in the beginning because he was asleep on me and woke up.

Courtney Bullard:

Aw.

Elizabeth Conklin:

I know you're a mom too. I had a fertility journey, balancing that with work and then being a parent and dealing with issues with sexual assault and sexual misconduct while dealing with those things in your personal life, it can be tough, even if you have really good boundaries and self-care. And I think that we know that Title IX coordinators tend to have one and a half year tenures before [inaudible 00:46:46].

The burnout is real, this work is hard, folks can feel personally attacked, so I think it's really important that as a field, we enhance our attention to that.

We brought in a self-care expert to my team a couple years back and did some exercise with us, but she said, "I feel like Title IX coordinators are in a position similar to a department of children and families workers, where there's enormous scrutiny and there's enormous criticism no matter what you do, but that most of the people who are in the work are really committed to helping children and they do the right thing." And I think you've done a lot more consulting than me. When you interview people in this work, they believe in civil rights and equity, they want to help people. And so I think that wellness needs to be paid attention to because there are people that are hurting who really want to do this work well and the turnover is not good for anyone.

Courtney Bullard:

No, it is not. It's not good at all. And so yeah, I'm with you 100%. I need to get the name of that self-care expert.

Elizabeth Conklin:

Sure. Yeah.

Courtney Bullard:

But I agree, it's kind of my ... You say conflict resolution's your passion and that is actually something in the back of my mind as well, the self-care is another one. I mean, it's really for a lot of positions, but this one in particular, especially because it's such a new profession still. I mean, it really is still in infancy and so we're really now just realizing that there is that attrition right and what the impact is on individuals who are doing this work. So, all right. Well, I really so appreciate your time, I know you have a ton going on. And loved talking to you about all these different issues that I know my listeners are going to get some great takeaways from, so thank you so much for recording this with me.

Elizabeth Conklin:

Thanks. It was fun, I appreciate it.

Courtney Bullard:

Here at ICS, we know things are challenging and our thoughts are with all of you on the ground who are working to adjust to these significant transitions on campus. Stay connected with us on LinkedIn, Twitter, Instagram and Facebook. We have a Title IX Facebook group as well, please ask to join that group, where we talk about all kinds of things, but specifically we'll be providing some real time updates as we navigate the COVID challenge. Be safe and be well and as always, if you need anything, you can reach out to us through our website or email me directly at CHB@ICSLawyer.com.

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