

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 will 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.

Megan Farrell:

The school sites are really going to be your first step at conducting an investigation even if you have a centralized Title IX office actually doing investigations, they're going to be the ones that students come to, that learn the rumors, that have to start at least the initial phases of figuring out what's going on.

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My guest this week is Megan Farrell. And let me tell you, she has so much to share and such great information and experience in the K-12 space. Megan is an advisor and consultant to educational institution clients with a focus on Title IX compliance. Her breadth and depth of knowledge in higher education and K-12 compliance is grounded in her service at Palo Alto Unified School District and previously at Notre Dame of Maryland University. In addition, she's developed and delivered Title IX compliance training in person and online addressing the role of Title IX coordinator on campus including conducting investigations and responding to reports of Title IX claims.

She's also audited Title IX practices and policies at universities, colleges and K-12 districts. As you'll hear part of her background is going through an OCR investigation with Palo Alto. She also is an attorney. She holds a Juris Doctor from Delaware Law School and a Masters of Business from University of Maryland. Megan and I met in California when I was there for a conference and we co-presented on a panel. And I'm so excited for you to hear all that she has to say even those of you listening who are Title IX coordinators in the higher ed space will find something to take away from this podcast. Hi Megan, thank you so much for being flexible with me as we have tried to get this podcast recording scheduled and now of course we're in the midst of COVID crisis which is making things even more complex but I'm so excited to have you here to talk to me today.

Megan Farrell:

I'm glad to be here Courtney. Thanks for inviting me.

Courtney Bullard:

So in my intro, I went through kind of your position and your background. So I know you work with and our listeners now know you work at a school district in K-12 and this is a topic I've wanted to cover for a long time and an area that ICS is getting into and assisting school districts with their Title IX obligations. So I really wanted to start with the basics today and that is whether Title IX applies to school districts.

Megan Farrell:

Well, the connection between Title IX and its applicability to schools is really tied to federal funding. So K-12 districts are certainly recipients of that funding and I think you'll find even most private schools are recipients of some kind of federal funding. So yes, Title IX does apply. I would say that the guidance that's been issued from the office for civil rights often emphasizes or focuses on colleges and universities but K-12 are certainly part of that. And our school district of Palo Alto Unified is one that has really felt the heat from office for civil rights in the department of education around these issues. So I can say for certain, it does apply.

Courtney Bullard:

My experience and I don't know about you. Well, I guess two things, number one, that 2001 guidance way back in the day that's still applicable, really was geared towards K-12. Like the language reads mostly for K-12 with very little on higher ed but of course after 2011 and Obama and the change in the enforcement posture of OCR towards institutions of higher education, that kind of became the all-in focus. And we'll talk at the end about kind of what OCR is saying now about K-12. And I know you consult and work with other areas as well, other school districts, I've found that K-12 is really behind in their compliance efforts and compared to higher education, is that your experience as well? And I'm not talking about Palo Alto specifically but in general, has that been your experience?

Megan Farrell:

That has certainly been my experience. I have worked with a number of school districts nationwide that it would have been a surprise for them when I conducted an audit to determine who actually is the Title IX coordinator and what the Title IX coordinator's responsibilities actually are. I think many school districts are stuck in the past thinking that the Title IX coordinators really have responsibility for making sure the athletic programs have parity between male and female programs. And a lot of them aren't thinking of K-12 sexual harassment, sexual misconduct as really fitting under Title IX. Many districts lack policies that address this specifically. If they identify a Title IX coordinator, that Title IX coordinator may not know what responsibilities they have around sexual harassment. So I would say K-12s often are very behind the curve with regard to this.

Courtney Bullard:

Totally agree. And what I've found in my expert witness work and in doing audits and assessments of school districts is really just that first step, having a Title IX coordinator and it's not there or if someone's been identified and again, like you said, have no idea what really their role is supposed to entail. So starting at the most basic level, I think we'd both agree you need to have a Title IX coordinator identified and their roles and responsibilities clearly defined for them. Anything else that you would say... What I found too when I came out to the conference where we got the opportunity to meet and present together is that you have one Title IX coordinator or a huge number of students, an unheard of amount of students. I think one that I met, he was the Title IX coordinator for a school district that had I think, 80,000 students and that doesn't even count the employees.

And that was his job was to be the Title IX coordinator and to do everything which sounds completely unmanageable. So you guys probably have a different structure since you're there and I know you're on top of things but any low hanging fruit that you can give our listeners on where to start with compliance and implementation outside of course, get that Title IX coordinator identified but in higher ed, we've got deputy Title IX coordinators in different divisions and things like that. Is that kind of the structure that school districts should be following or what are your thoughts there?

Megan Farrell:

Well, I think the first step obviously is to name that Title IX coordinator. And the 2015 guidance from OCR talks about what those responsibilities are and people can take a look at that so they understand the full scope of responsibilities of Title IX coordinators. One provision in their talks specifically about this person having the time to really devote to this type of work. So having an overall look at what's happening at the district at the different school levels, elementary, middle and high schools and being able to really oversee and find out if there's issues or trends that exist that you can address in training and things like that. So first obviously identifying a person but making sure the person has the time to devote to this is probably one of the biggest challenges in K-12. I found that most districts, an assistant superintendent who has a whole host of other responsibilities is usually tasked with Title IX coordinator role.

It's pretty unusual for there to be a standalone Title IX coordinator. I was the first one that Palo Alto ever hired. And I have dealt with a few locally, depending upon how large the school district is but it's unusual for there to be a standalone Title IX coordinator unless there's been some challenges that often school districts have to face in the press and the public outcry about how they're dealing with Title IX. One of the things that I found was really helpful and something to jump in on was making sure that the school sites themselves have some training about what is Title IX, what is not Title IX because the school sites are really going to be your first step at conducting an investigation even if you have a centralized Title IX office actually doing investigations, they're going to be the ones that students come to, that learn the rumors, that have to start at least the initial phases of figuring out what's going on.

So I found that most of our administrators at the high schools, the middle schools and the principals at the elementary schools hadn't really had any training in how to conduct an investigation and what to do, what not to do. So we did some very basic training about that kind of thing. Most people at my school district don't want to be a 'deputy' but I've put Title IX point people at each site. So I've designated one assistant principal that's the Title IX point person. And that person gets... We meet monthly, we provide additional training for them. Usually, we develop a pretty close working relationship, my office and those point people so that we communicate frequently if questions come up. We're right there with them if they're conducting an investigation or they're starting an investigation or they're getting ready to reach out to parents, we help and assist with that.

A lot of times schools will get this training though and then nothing happens at the site for say six months, eight months. And so there's a lot of opportunities for refresher. So at the request of a couple of the sites, we put together some really brief online, 10 minute training videos that say something to the effect of, you just found out about a Title IX matter at your site, what are you going to do next? We've also put together a lot of forms that sites can use so that when they immediately learn about a situation, they're thinking, should we put a no contact directive in place, keeping the parties from interacting? Should we have a safety plan in place so that these students walking from this part of campus to that part of campus don't run into each other or where are they going to sit during lunch so that our employees are thinking about that but that they don't have to start from scratch when putting together a document like that.

So they can go online to a Google doc, pull up a form, no contact directive and go through there and kind of populate it with what exactly the situation is and what they need to do. We also have a pretty strict process as far as offering formal investigation process to parents and we often put that in place right away. So within 24 hours, if we hear about an incident, we offer people a formal process which I think is difficult at the K-12 level, most school staff and maybe parents aren't ever really trained about, well, when I learned about something like this, where do I go? Who do I report this to? So we have some of that material available on our website and we also make it available. We actually push it out to parents when we learn about incidents and then just opening the lines of communication and making sure that Title IX coordinator...

One of the things I really felt was important and that people understood was that I was a partner and I was there at the site to really make sure that if they needed something I could help. So I will physically go out to the sites once a week, I'll go to the high schools, the middle schools, maybe not as frequently. And the elementary is only when they need me but really offering my services to help in any way possible. Do you need me to conduct an investigation? Do you need me to interview someone? Do you need me to sit down with the parents so they understand what the Title IX process is? Just because administrators at schools don't really have much time to devote to this.

Courtney Bullard:

Absolutely.

Megan Farrell:

So I'm just trying to make myself a resource that's available at any time.

Courtney Bullard:

I love all these points. I think it is interesting because higher ed has a lot more schools now that have dedicated Title IX coordinators. And you're absolutely right that is not the case for school districts then often it's something that's added on to already full time position. So I love your idea though. I did a big investigation locally and part of that, I came up with recommendations. I recommended deputies at each site but I love your suggestion as a Title IX point person, more palatable for your folks but man, the training is so huge of those administrators on what to do. And I know that that's an area that's seriously lacking.

So those are all great points. And of course I love forums or big on forums that I see us too and trying to get everybody streamlined because that continuity between sites, often you have students, things that happen even between a high school student and a middle school student or two students at two different schools and then the process looks completely different and no one's funneling it to the Title IX coordinator so that you can be tracking those trends, maybe same respondent, multiple complainants and the school district doesn't even know because you got four different things happening at four different sites. We've seen that quite a bit here lately.

So those are some really good points. I know that you mentioned earlier that Palo Alto has had some heat on them with respect to compliance from the office for civil rights and you've gone through an OCR investigation with the school district, what were some lessons learned there? And perhaps you went over a lot of those with your points you just gave us, any other tidbits or lessons learned by going through that investigation, except what I would say, which is don't wait until you're under investigation?

Megan Farrell:

Right.

Courtney Bullard:

So district to start thinking about these things and be more proactive and we'll talk about that more in minute.

Megan Farrell:

The OCR investigation of our Title IX practices was prompted by some individual complaints that went to the local OCR office as well as a lot of press coverage about incidents that had happened. Our high school Palo Alto High School has a very, very developed journalism program. So they publish two separate newspapers at that one school as well as a number of magazines and things like that. So what happened at the high school was they got a couple reports from female students about incidents that had happened at parties over the weekend where two students said that they were sexually assaulted and they refused to give their name, that information made its way to OCR on top of the complaints that had already made their way there which led them to open a very broad investigation. And it concluded in 2017 within a resolution agreement that's a public document that certainly anyone could look up resolution agreement at Palo Alto Unified School District and you could take a look at it and it would give you insight into the type of oversight we've had from OCR over the past three years.

So every six months we provide all of our cases, all of the matters that have resulted in a formal complaint. And when that started, it was actually broader than just Title IX. They were looking at any civil rights complaint that had come to us. So they look through our files to see how we handled investigations, how we handled interim measures, how we handled outcome letters, all of that. And we get that looked at annually. We had OCR come visit our campuses and invited parents and students to come meet with them about particular complaints they had. We also are required to do 100% employee training. So we train every staff member. Every staff member is considered a responsible employee, meaning that if they have notice of an incident that could involve Title IX, it's deemed that the district itself has noticed.

So it's important that our employees all know about what Title IX obligations they have about reporting. So we have a lot of oversight and our resolution agreement concluded at the end of February but the way OCR is working, you have to be released from that monitoring that they're doing. So we have yet to receive any documents and in conversations with OCR, we hope that we will be receiving them but the virus is not keeping anyone on track as far as what they expected to do at different times of the year. So we're just keeping our fingers crossed.

Courtney Bullard:

Yes. Everything is in a standstill.

Megan Farrell:

Yeah. A couple of things though that I would say were lessons learned, number one is documentation. And if I could put that in all caps and exclamation points. School districts and the employees of school districts who are really well intentioned individuals often deal with the situation, resolve it in the time that they meet with students, call the parents and everything is wrapped up before 3:00 o'clock that day but they don't keep really good documentation about that. So making sure that people had been taking notes and keeping them together and keeping them in one specific file about the incident that happened and what communication they was very important. The other point that we received back

from OCR as feedback was the importance of interim measures and really that initial response, I think that at the time that OCR was looking at our files back in 2018, 2019 school year, they were very interested in making sure that we were taking steps to separate the students from each other.

This is very difficult with the 2017 guidance that says, you're trying to allow those students to stay on track in their education programs. The default in the past had been to give the complainant the benefit of the doubt and provide support. When there was a tie, for instance, two students are in one math class, complainant once respondent out, we would have been able to default to getting the respondent out. It became a much more of a challenge in 2017 when we had that guidance. But back to the point about the resolution agreement, OCR really wanted to see you move quickly, make reasonable decisions right there initially and that was something that in almost every matter now we really consider a no contact directive immediately. And I have found that that is usually a very good thing for both students, to protect both students from any further harassment or any potential allegation of retaliation. So we do that quite frequently. And I think OCR really pushed us to say, it's almost a default to say, why wouldn't you offer a no contact directive right now?

So the other thing I think is through OCR review of us, we started keeping much better data on the complaints that we receive. And that's been really helpful in planning for the year. And when we have a few weeks off in the summer, we try and spend some time figuring out what were the types of complaints that we saw this year and how can we address these issues? Is it a site specific issue? Is it something that we're seeing across the board and how can we better plan for the following year? So I would invite anyone who might want to take a look at what kind of complaints happen at our school district. You could take a look at our website, we have a log of the complaints we receive and we update it every other week and it goes back to three years now. So we have that data available. If you wanted to just get a sense of the kind of complaints you see it at K-12 school district.

Courtney Bullard:

And I'll make sure to put your website in our show notes too for the listeners. And I have to say, I mean, over here, I'm just like nodding my head, bigger a slate, everything you're saying just because the webinar we just did this week, which was higher ed but we talked about, I think we had documentation, I felt like on almost every slide. And K-12 really struggles with that support measures we're going to get into my next question. And then data, Betsy, my newest team member who's a consultant and investigator, she is amazing at data and big on... We've done some webinars just on tracking trends and what to do with your data and how you can use it for preventative measures in the future and I think it's something that Title IX coordinators, no matter K-12 or higher ed kind of forget about not intentionally but they just have so much to do.

But that data is or data, depending on how you say it, really can be amazing. I've learned so much from her. It's not something that is my forte or was in the past but I've learned so much just she presented at our conference on that too and ways that that can be so useful. So you bringing that up is just a dovetail or further bolsters, I guess, kind of things that we've seen as well. So I appreciate you sharing your website because I think it'd be interesting for those in K-12 to be able to see what the school district is doing it really well. So those are great.

Megan Farrell:

Well and I would agree now when we put our data tracking system in place, we didn't end up purchasing a system that would probably provide us with some more dynamic opportunities to look at that data. It was a help desk that we kind of retrofitted that software for us. It's not perfect but again, it allows you just to have some information to work with.

Courtney Bullard:

Yeah. Well and Betsy, one of her things that she says all the time, like it's not going to be perfect. It's clunky. It takes time. You've got to make sure you have good data in. Sometimes it is just a spreadsheet. It doesn't have to be fancy software. The point is just do starting. Start and then you can always modify as you go. Okay. So you mentioned support measures. That's something I think we're seeing also as a big push in the NPRM if then when that ever comes out. So let's talk about support measures and interim measures. You already mentioned kind of that automatic no contact order which I completely agree with.

And it's something we've advised clients on as well but in our measures and support measures in K-12 are more challenging or have more challenges in my opinion even then implementation and higher ed. Any thoughts there, advice on tackling those? We always talk about them being individualized and just making the hard decisions sometimes, that's something that you also always talks about but even I talked as we were preparing for this, I know one thing that we've come up with one of our school districts is sometimes the misconduct is occurring between siblings, people that live in the same home. And that can be really tricky and very different than what you see in the higher ed space. So what are some thoughts there? Any other suggestions you have or those in the K-12 world as they're thinking through their interim measures and school measures?

Megan Farrell:

So I do find that interim measures are very difficult in K-12. Number one, I think it's very tough to manage these students because all day long, depending upon what your campus looks like for your high school, for instance, they're passing each other in the hallways, they're having lunch during the same period, they may be going to the prom, they may be going to school dances, to football games and all of these things you want to be taking into account with regard to the interim measures. I think that the immediacy is really important. So in a college and university, you might have a class that meets on Tuesdays and Thursdays and you have a day between Tuesday and Thursday to make some decisions about what you're going to put in place and in K-12 we often don't have that. Students taking the same bus, for instance, is something you have to take into account too.

So I think there's just a lot of things where students touch points, where students really interact and you have to take that into account when you're trying to make some interim measure decisions. Our policies were written and approved by OCR in 2017 or 2016. And we had a default in favor of the complainant and that has made it easier for us. The 2017 guidance that says you have to look at both students make somethings tricky. So even in a large high school, you might have one particular program that the students are both interested in, may only be one class that's associated with that. So if you have AP students, we do offer only one AP math class. You really have to figure out if you have a sophomore in that class and you have a senior in that class and the senior is the person who's been accused of wrongdoing, do you let that senior stay in the class because the sophomore will have the opportunity to take the class junior and senior year but the senior will not.

They are tough decisions. And I found prior to the coronavirus that K-12 teachers were often hesitant to come up with alternative solutions for students completing classes, independent study and things like that seems kind of unusual to them. So that's been kind of a challenge. And I would say also just figuring out all the touch points can be tricky in K-12. So this past year we've had a couple afterschool activities that normally we haven't had any problems with and we had to take them into account. So a class such as band or choir would have a number of afterschool activities associated with it. And sometimes groups like that also have volunteer opportunities where the group is trying to raise

money. So on the weekends they go and they sell concessions at the local college sporting event. And that is a way that they're raising money.

So there's just a lot of different little touch points in high schools I think where students kind of interact with one another that you have to take into account. There's often not alternatives around certain classes. There's maybe one offering of a class or one offering of advanced version of a class that you have to take into account which leads to what I think is very important in the K-12 is making sure that you can conduct investigations in a really timely way. So our policy still says that we will complete our investigations within 60 days and we really stick to that and we try and get it done even quicker because there's so much riding on these interim measures and how long we can remove someone from class and they can still complete class. So I think that there's definitely an urgency in the K-12 area to really get these investigations done quickly.

Speaker 3:

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Courtney Bullard:

So talking a little bit more about the differences with K-12 and some of the unique challenges you all have or maybe not challenge this actually might be helpful. I don't know. But one thing that I experienced is the involvement of school resource officers which are typically police officers placed in the schools can make things sometimes tricky as well. You've got this expectation that, well, the SRO knows and so they're just going to handle it and law enforcement will handle it and then the ball is dropped with the school district not completing their own investigation and waiting perhaps on the criminal investigation to complete. What are your thoughts there and how can schools kind of foster? I mean, we're giving them a lot already I know but I'm trying to just think of different points for those listening to consider kind of foster. I know they already have great relationships with the SROs but sometimes the Title IX coordinator is not actually having those conversations. And we talked about training before, SROs, do they need to be trained as well just like your administrators? How does that relationship look or how should it look?

Megan Farrell:

Well, I think building that relationship and making it as strong as possible is a great goal. Our SROs, we have two of them that they float between the two high schools in the middle school so nobody has a dedicated one all day. They float during the week around the different sites. One of the things that comes up that is sort of tricky is this idea of notice. So particularly this year has been one where I received notice of an alleged sexual misconduct matter specifically sexual assault matter where the person who has given us notice is a friend of the person who is the victim of that sexual assault or the reporter or complainant, whenever your policy calls that person and then the reporter or the

complaining party, the person who would have been the victim of the sexual assault when called into the office says, "No nothing happened."

So we have noticed if something and under Title IX something that's serious would be something we would be instituting a district initiated investigation. We go to the school resource officer who says, we won't begin an investigation until we have a victim come and tell us about it. So in this instance, the victim didn't want to speak to the police, didn't even want to speak to the school. So we had to start our own investigation because we had noticed it's something very serious. We kept the school resource officer engaged. And to the point that we let this potentially complaining party know that she... And it was a she. She could go to the school resource officer and talk to the school resource officer about what options there were in the criminal justice system. A tricky point was if the school resource officer called this person in, that school resource officer would then be obligated to notify the parents.

And that was a real sticking point for this student. This student did not want her parents to know about it all. So it's one of these tricky situations but the school resource officer worked with us and we at least knew where they stood. When things are really working well with the school resource officer and this has happened in just a few of the cases I've had, an investigator will come to the school site and will allow me to sit in on the investigative interview. So that allows us to gather a lot of important information for our investigation without potentially re-traumatizing the person who's providing that information. In really great instances we've had investigators who asked their questions and then even turn and say, do you have any additional questions to ask? So that has been really helpful for us. It only happened in a few instances and it took a while of developing that relationship with the investigator.

So the investigator knew we weren't going to step on anybody's toes and we were going to let them take the complete lead. And we were there almost just as note-taking party. So that's when things really are working well. The other part about working while the school resource officer something that has worked in every investigation I've had, when the police are conducting their active investigation, calling in parties, talking with them that we, as the title IX office, we wait during that time period and we're notified by the school resource officer when they're done. So the school resource officer will say, "We've done our active investigation, you guys can go forward." So we never default and let the police investigation count as our investigation. We always do our own, which we're required to do but that relationship with the school resource officer makes it really easy for us to pick up when they're done and still meet our 60 day requirement with regard to conducting that investigation.

Courtney Bullard:

Great points. I know that can be tricky, great points. So going back to the OCR investigation and the heat on K-12, I think the heat has really been on higher ed. Like I mentioned earlier, after the 2011 dear colleague letter and the enforcement posture by OCR and then the heightened scrutiny in the media of higher ed and how they're managing and addressing sexual misconduct on campuses. But here recently, OCR has come in and made it pretty clear that they're going to be having a renewed focus on K-12 and their compliance efforts. And we've already said don't wait until you're under investigation. Go ahead and start implementing and thinking through what your school district is doing with respect to compliance with Title IX. But what are your thoughts and feelings about this new guidance from OCR?

Megan Farrell:

Well, the new guidance seems to be somewhat focused on the challenges related to employee misconduct in the sexual harassment, sexual misconduct areas. So if a teacher is engaged in some kind of sexual harassment, maybe even sexual interaction with students, that seems to be a bit of where we see the focus at least from the press reports a focus going forward. I'm a little challenged by that and

that's because I think most of the school districts I deal with begin initially saying, "Oh, we had this problem with a teacher doing something wrong. And now we're looking into make sure that none of this bad behavior, none of the grooming activities, none of these individual one-on-one relationships that then can lead to some misconduct are noted. We do want to make sure those things can't happen in our school district." But the bigger number of complaints that I receive, maybe 90% of the complaints I receive involve student to student misconduct.

So the student either at school or away from school has some kind of sexual harassment or sexual misconduct perpetrated against them. And then they don't want to come to school and then they don't want to go to their math class or they don't want to go to their afterschool activity because they might run into this person. And so I see, obviously it's a very serious case when there is an employee taking advantage of a student but it's really a small percentage of the types of misconduct that I see. And the broader bigger concern and the one that I think has come to light in my time at Palo Alto is this idea that there are a lot of things happening at school, either harassment misconduct at school or continued harassment about something that happened away from school that is really impacting the ability of students to continue their education.

So I think that we should always be focused to make sure our employees are acting and behaving properly but to ignore this part of the equation where the reasons that people sometimes are not pursuing their education all because of the conduct of their fellow students is something that I think Title IX coordinators also have to be very focused on. There was one other piece of the guidance that talked about what we were just talking about data and making sure that you are keeping data about things that are happening. So I think as to both of our points, I think that being reinforced by the department of education would be very important in making sure that schools are, as you said, doing anything. It doesn't have to be the most advanced product that's out there but doing anything to make sure that they're capturing this information and using it to plan their risk management efforts.

Courtney Bullard:

Absolutely. I think no one's saying educator sexual misconduct isn't a big deal because it is. But certainly as you've highlighted, the more challenging areas really are the student on student sexual misconduct. And if everybody follows the school districts ramp up their training efforts with their administrators that should help curtail all of it, hopefully and train administrators on how to address those issues. Would you agree?

Megan Farrell:

Absolutely. And making sure that we're not turning a blind eye to any kind of misconduct or harassment. Certainly anything that's coming from the employee is something we would be training against. The student on student types of interactions that are negative are things that are harder to manage because we have less control over students than we do over employees. But again, a really big part of the equation as far as I see preventing sexual harassment on school campuses.

Courtney Bullard:

So talking about training a little bit, training of students and what they should be trained on and how to train them, you and I talked about consent training before we got started on recording this podcast and the complications with teaching about consent. So talk about that a little bit.

Megan Farrell:

Sure. So where I am working currently is California with the Palo Alto Unified School District and in California, we have an affirmative consent law and that applies to college and university students and outlines what affirmative consent, the definition of that here in the state. We also have an age of consent which is 18. So we look at the affirmative consent law and it doesn't actually apply to K-12 students. Then we also look at our consent law and we say, students aren't supposed to be able to give consent to sexual activity until they're 18. So how are we going to teach students about what consent is in an environment where they're actually not supposed to be able to give consent to sexual activity until they're 18? So that's a small percentage of the number of students we have of the age of 18. So it's a really tricky little conundrum but it has not prevented us from taking steps to make sure we are advising students of what consent is. We've been doing work in the schools for the past two to three years in the high schools around consent.

And what is consent? What does consent look like? And the feedback that we've received from students is that we need to actually start this even earlier. So we have started rolling that back a little further into the middle schools where we're talking about body consciousness and making sure people understand what consent looks like, what they have to say yes to, how to manifest consent, how to make sure you receive consent from another party and how to understand if you're not getting the cues that you have consent to engage in certain activities. So it's definitely something that's important. And before I was in the K-12 area, I wasn't working with colleges and universities and it did feel a little bit late to be talking about consent. A lot of ideas around consent and some of the really negative ideas around consent that almost would be labeled rape myths really begin way before students get to colleges. So I'm excited about the opportunity but you can see where it's a little bit confusing when you're trying to think academically about how you're going to educate students about consent

Courtney Bullard:

So tricky but so necessary. And I think I talk about it constantly, I've probably said it in almost every single podcast episode, we've got to fix this. It is not a fair position or educational institutions to be in, higher ed to be in to train people, train their students in a one hour orientation session on consent and then expect them when they're especially if they're traditional students coming onto a campus for the first time, freedom for the first time, alcohol somewhat for the first time and expect them to be able to implement all those life skills. That's just not realistic. I think, K-12 level, we've got to do a better job so that students are more prepared as they go out into the world. I had on my conference a keynote speaker talked about it, learning about consent as a life skill. And I think that's so true. And like you said, reading cues, those they're all life skills that everyone needs to be learning before they get to a college setting.

Megan Farrell:

I have to agree. And I think some of the investigations that we're seeing unfold and we get reports of things that happened a year or two ago from our students, it's because they really didn't understand a year or two ago about what they were consenting to and in regards to behavior and what they maybe felt uncomfortable with. They now look back and look on 2020 hindsight say, "You know what? Actually, I was so uncomfortable because I wasn't giving consent." So I think arming people with an understanding of that as early as possible and in the proper age appropriate way is really important. And we as a school district in Palo Alto are certainly trying to look at opportunities like that. Of course, the dichotomy here and maybe in other school districts is that we have a very strong representation of parents who are very supportive of those activities. We also have a strong representation of parents

who don't feel that this is something that schools should be addressing and then it's really a family parental matter.

Courtney Bullard:

Right. Well and let me tell you down here in the South absolutely. So it's a tricky area to navigate.

Megan Farrell:

Absolutely.

Courtney Bullard:

Okay. So we are in the midst of these COVID crisis. As I'm sitting here recording this podcast to you, my daughter just walked in asking questions about what she can use and do and texts are coming through with rumors of lockdowns for the whole country and everything else. But there's no way to record this right now and not talk about how all school districts are transitioning to virtual learning. And as I told you before and we both talked about doing it really well, K-12 teachers are just killing it in my opinion at least from what I've seen with my four children at being so responsive to this transition in this time. And it's such a difficult time for everybody we know. On the Title IX front, what are your thoughts? What are you seeing and experiencing on trying to transition cases and remain compliant with Title IX as everybody's moving to virtual learning and dealing with all these personal and professional changes and working from home with their children and everything else is happening right now, any words of wisdom there? I know we're only a weekend but anything that you've seen?

Megan Farrell:

I think number one, I have seen what we're doing is really trying to keep moving forward with the investigations that we had pending. I was trying to initiate two new investigations and I've done some outreach to the parents. And because K-12 we always go through the parents particularly when the student's not at school, go through the parents to let them know that we're conducting this investigation and we need to speak to your child. I've been trying to do some outreach but not being any much in the way of response, unfortunately, but this is our first week of this online learning.

And I feel like it's a learning week and we're trying to figure out how things will happen but we are trying to move forward with the investigations that we can handle this way. I've talked to a few other K-12 school districts and Title IX coordinators there and what they're trying to do and some are trying to move forward and some are just saying, "You know what? This type of investigation, we really feel we need to have a sit down face to face interview of the complaining party or the responding party." So some are putting pauses on it.

In our state, the California Department of Education has said any kind of formal complaint, you'll be given extra time to complete during this time period. So we're definitely getting a breather from our state regulation but the other thing that is going on, we're trying to make sure those support measures that we put in place for students are still in place. So making sure that students have access to our wellness folks for telephone support services, making sure that any no contact directive is still in place and will remain in place during this time period. One of my concerns is that this new online environment our students are in classrooms now chatting, there's a certain level of anonymity, even though everyone knows who everyone is, when you're not sitting in the classroom to make an obnoxious or inappropriate comment.

So I'm wondering whether we might see an uptick in those types of complaints. I've read a bit about gaming communities and I have a son who loves his online games and certainly a lot of the language that is bantered about in some of the chat rooms involved in that would be considered inappropriate in a school classroom. So I'm a bit worried that we might see a little bit of uptick in things that happen online and these online classrooms and maybe even in social media. I know my children are aching for social interaction and some of them are studying together or doing homework together and I just worry that we might be seeing some things happen that are inappropriate as everyone's at home doing their schoolwork or sitting around with some idle hands maybe.

Courtney Bullard:

Absolutely. I think very much that's what's going to happen. And there's some households where the supervision folks have to go to work. They're in healthcare and they can't stay home and supervise their children and then people come over and things happen. This is college too.

Megan Farrell:

Yeah, for sure.

Courtney Bullard:

So I do think online for sure that level of anonymity and also just the casualness. When they're online, my daughter, as I've been sitting here recording, my nine year old daughter, she's been on FaceTime with her friends the whole time. I mean, they've done anything from practice to record or to take tours of each other's homes virtually but it's real, they're dying for that contact. And I think those are very valid points. And it's interesting to me what you said about the investigations and maybe holding off. I think that makes sense in the K-12 environment, I think in the higher ed environment, I don't know. We'll see what happens.

The students might be a little bit more equipped to be able to continue virtually with interviews but K-12 is a whole nother ballgame when you're dealing with minors and parents and everything else. And so I think it makes perfect sense. I think that makes sense all over the place to have grace and extend timelines and that things are certainly not going to proceed forward at a rapid pace but in the K-12 world, that was a really interesting distinction you made and one that seems completely to make sense.

Megan Farrell:

And one of the things we're doing, Courtney, is we're starting a little early but we're starting to do our data analysis now and take a look at comparisons between last year and this year and just use some of this time to be proactive in training initiatives for next year.

Courtney Bullard:

Yes, absolutely. I know here, we're trying to put some things together to help the administrators who maybe we're at home and have some time but this is a great time for planning. Now I say that and again, what we said in the webinar yesterday or Wednesday, my days, Monday feels like Friday, day feels like night, I'll have to fight that for you but things are a little backwards right now. But anyways, on Wednesday, one thing that we said a lot of is just like giving yourself grace because everyone's adjusting to trying to work at home and getting their kids set up and caring for loved ones. And there's just a lot

happening. But if you have the space and time, this is a great time to start thinking through what you can do next year with your compliance efforts and training.

Megan Farrell:

Yeah. That's what we're trying to do because we know we have a lot of things we want to do but we want to be thoughtful about them. For instance, one of the things I have planned is to do an online, it was supposed to be a live seminar with our employees and staff around how do you conduct a Title IX investigation, how do you keep documentation, all that kind of stuff. And we may do it online but we may also just put a handbook together and then when we are back and live face to face, go through that handbook. So we're trying to figure out ways to still get the information out there but maybe repackaging it in light of where we are and when we might ever see each other face to face again.

Courtney Bullard:

Yes, I love that. That's a great suggestion. So I think we're coming to the end of all the things we planned to talk about for this episode, although we'd love to have you back because the K-12 space is so different. I think resources are desperately needed for school districts. And this is such an accessible one to be able to just pop in and listen to a podcast. So would definitely love to do another one with you again but as we close out and it is kind of a somber time but wanted to kind of get to maybe a fun factor too about you outside of your professional life. One thing I love to ask people is if they weren't doing what they're doing, if you weren't Title IX coordinator or didn't go and get your law degree and the sky was the limit on what you could be when you grew up, what do you think?

Megan Farrell:

I think money, no object, I would be a high end travel writer who would get to visit the most beautiful spots in the world.

Courtney Bullard:

That's a good one.

Megan Farrell:

And then write about them.

Courtney Bullard:

That's a great one. Of course right now, no one's traveling the world but I think we'll get back there. Have you done a lot of travel in your life?

Megan Farrell:

Yes. I love to travel. It's one of my passions. So I've done quite a bit of travel. I have an 11 and a 12 year old, so we're just kind of getting back into the travel with those guys. But certainly before my children were born, I made a pact with myself when I was about 18 to any opportunity that came my way with regard to travel, I would take it. So I've been trying to live up to that again.

Courtney Bullard:

I love it. So top two spots you visited.

Megan Farrell:

Top two spots. Well, I think sad to say in this time but Italy was one of the most beautiful trips we ever took and I've really enjoyed being in their ski area. We were in Cortina d'Ampezzo and it was just a beautiful, different way of life as far as skiing compared to the United States. I really enjoyed that. And I have been to Ireland, maybe countless times. I used to run a program and I would go to Ireland four times a year. I have family in Ireland. I taught a class in Ireland. I took a class in Ireland and I just really have a fondness for Dublin. So that's the other place that I enjoy very much.

Courtney Bullard:

Where's the place you haven't gone that you want to go that's on your list.

Megan Farrell:

South Africa.

Courtney Bullard:

We are speaking the same language, although I really want to go to Ireland. We're scheduled to go to Italy this summer, it got canceled but we've got good friends there and my father's friends. So trying to keep an eye on them but there's also a great... We can all visualize it for now.

Megan Farrell:

That's right.

Courtney Bullard:

In that go online and do some researching on this area. Well, thank you so much for sharing all of your insight and information. I know it's going to be helpful to listeners. It was helpful for me. We all learn something new and your personal passions as well. I hope that you and your family stay safe and stay well. I know you're in shelter in place at the moment and there's rumors other cities are going that direction as well. So it's interesting to hear about your experience with that when we were preparing but thank you and I hope everybody stays well.

Megan Farrell:

Thank you. And Courtney thank you so much for all the work you do in Title IX. I don't know if you ever sleep but you make so many resources available and so many opportunities for learning for Title IX coordinators. I just want to thank you for all the work you do in this area.

Courtney Bullard:

Well, that's going to make me cry. Thank you. I appreciate that. I've gotten a lot of great feedback in the past couple of days. Maybe people just have more time to slow down but it's great to hear, to get that feedback, that is our mission, to the extent possible to get information out there, the best we can and share it. So I very much appreciate that.

Megan Farrell:

Well, thank you for having me and I would welcome the opportunity to come back and speak with you again.

Courtney Bullard:

We will schedule it. Here at ICS, we know things are challenging and our thoughts are with all of you on the ground who are working to adjust the 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 @chb@icslawyer.com. This podcast does not establish an attorney client relationship which is only formed when you have signed an engagement agreement with ICS. It is also not intended to replace any legal advice provided by your legal counsel. It is for informational purposes only.