

Courtney Bullard:

Welcome to The Law and Higher Ed Podcast. My name is Courtney Bullard and I'm your host. If you want to learn more about myself and my background, please go all the way back to episode one of this podcast. In short, I'm an education attorney, specializing in Title IX compliance. There's no question that these are unprecedented times for everyone, including school districts and institutions of higher education. COVID, killer bees, natural disasters, and now the new Title IX regulations issued by the Department of Education with the implementation deadline of August.

My team has been hard at work with resources to address the virtual world. Now, of course, we're also working on assisting you with coming in to compliance with the new regs. Here at ICS, we have a lot of different offerings. First, we have a lot of summer courses, virtual of course, including investigator, adjudicator, and hearing officer training. All of which will be compliant with the new regulations.

We're also part of what I call a Title IX Think Tank. It is 50+ lawyers from across the country who are contributing to a joint guidance on the new regulations, and that's hosted on SUNY's website. SUNY is standing for the State University of New York.

Finally, we're partnering with school districts and institutions of higher education on policy revision and review and implementation to get them in compliance with the new regs by the current stated deadline. You can find out about our events, including the free webinars on www.icslawyer.com/ics-events. If you're interested in working with us to help your institution or school district come in to compliance, you can always email me at chb@icslawyer.com or use the Contact Us button on our website.

Joe Storch:

Prevention is an olive tree, and institutions are getting into a cycle of wanting to plant annual flowers that come up right away, and response is quick, right? So, your response is immediate and this semester and the like. I know with archeologists that look at ancient societies, they see how steady a society is by looking at olive trees because it takes years and years and years for olive trees to provide fruit. So, you're only going to invest in planting olive trees if you think you're going to be stable in an area for a while. Prevention is, indeed, an olive tree on our campuses, and colleges have to be willing to invest in it in the short term in order to see bear fruit in the longterm.

Courtney Bullard:

It's always a pleasure to talk with Joe Storch, and I was so excited to have him back as a guest for this episode. While we do, of course, cover some of the updates with the new Title IX regulations and the litigation challenges, there's so much more in this episode. I hope you enjoy it.

Hi, Joe, and welcome back. Thanks for being willing to come back on and submit to my torture and all my questions.

Joe Storch:

Thanks so much, Courtney. Happy weekend. Nice way to spend the morning. So glad to be back on.

Courtney Bullard:

Well, happy to have you and, yes, it is the weekend. We're recording this on a Saturday about, what? Two weeks away, two and a half, three, I haven't counted, from the new regs implementation deadline

that's been set by the Department of Education of August 14th. So, thought it would be helpful to have you on to talk about any upcoming things or things that have occurred with respect to challenges to the regs and litigation, and then whatever else we feel like talking about. Sound good?

Joe Storch:

That sounds great.

Courtney Bullard:

So, I know you've been busy. I've been busy. It's like everyone's running around with their hair on fire in this area that you, in particular, have been busy because of some of the participation in the litigation challenges to the new regs. So, I want to start with that and where we are. What's happened in the last couple of weeks with respect to request for injunctive relief, and these different lawsuits? What's going on?

Joe Storch:

Right. So, as you know well and you've been covering really, really well on your podcast, there are four lawsuits out there. Two of them have gotten to the request for a preliminary injunction stage, and that would be the lawsuit of the District of Columbia filed by 17 states and the District of Columbia and the lawsuit filed by our State of New York in the Southern District of New York.

As we are recording this on Saturday, yesterday, Friday the 24th, there was a hearing in front of Judge Nichols in the District of Columbia case and attorneys for the State of Pennsylvania and attorneys for the government and attorneys for fire, which is an intervener, as a defendant in that case made their cases about whether or not the judge should engage in some temporary relief of a preliminary injunction while the cases were being heard on the merits.

In the State of New York, the judge will hear oral argument this week, this coming Friday. Just so folks know, that oral argument is open to the public. There are two different phone lines, one for the lawyers who are actually arguing, and another listen-only line. You could find that online. Courtney, maybe if you want to share that in the show notes, if folks are interested in listening to the New York, it's free and open to the public.

Courtney Bullard:

What is that date again?

Joe Storch:

That would be on this coming Friday, which is the 31st.

Courtney Bullard:

31st.

Joe Storch:

So, the judge in that case, Judge Cottle in the Southern District will hear arguments and then we anticipate, although nobody knows, we anticipate that a decision would come out in fairly short order in both the District of Columbia and the Southern District because the judges are well-aware of the timeline, the implementation timeline.

Judge Nichols asked on the record the attorneys from the Department of Justice, "Why the short timeline? Why won't you consent to a couple of months while I look at the merits?" They are very insistent on this deadline, and they give a couple of arguments that I think the judge, at least it sounded, and nobody knows, but it sounded like he treated skeptically.

One of their arguments was, "Well, we could have only given 60 days or maybe even 30 days, but we gave 87 days. So, that's so much more to account for the pandemic," and the State of Pennsylvania said, "Well, they didn't even account for the pandemic. It was one sentence or two sentences in the preamble and it came out at a time that the pandemic was actually not as bad as it is now."

The other argument was colleges have known that we're working on this for three years. K12 has known we're working on this for three years. So, they should be surprised and it shouldn't be so hard to implement it.

The State of Pennsylvania said, "Well, okay. It took you three years to write it, and then everybody should implement it in less than three months."

So, that's the state of litigation, and it may be that by the time folks are tuning in to this podcast that we have at least a decision on a preliminary injunction and I have no predictions or idea as to whether one will be issued in either or both of those cases or neither.

Courtney Bullard:

We don't know. That would be an injunction that is national or only for those specific states or jurisdictions.

Joe Storch:

Yeah. So, both cases have requested a national injunction. I think there's a very interesting argument here, and one that's made. Again, this is on the public record in the New York case, which is that students in New York don't only go to SUNY, CUNY, and private colleges in New York, K12 in New York, but they go all over the country. We send students from New York to colleges in every state. We send them to high schools and preparatory schools in many, many states.

So, because it's not a college bringing the litigation, because it's the State of New York or the 17 states in D.C. bringing the litigation on behalf of the residents of their states, there is a good argument to be made about why a national injunction is there. That being said, there's some skepticism in some quarters about national injunctions and some folks feel that injunction should be limited to the parties of interest, and I don't have any sense or insider information at all about whether either or both judges would issue a national injunction.

For the cases brought in D.C., we've got nearly half the states or certainly between a third and half the states requesting an injunction. We've got another 14 or so states saying, "Nothing to see here. No problem here." So, there is some discrepancy. I'm not so sure that the 14 states that filed an amicus brief opposing the preliminary injunction have been speaking to the colleges and K12 in their states, but maybe they have, maybe they-

Courtney Bullard:

I know for my state they have not.

Joe Storch:

Yeah. I'm not surprised because they're all like, "What problem would burden? What's the problem implementing? This seems so easy." I'm just not so sure that that's representative of the institutions in their states, but there is some disagreement there, but in some cases, courts have issued national injunctions, including in Title IX cases.

We've seen national injunctions including one issued by a court I believe in the State of Texas during the tail end of the Obama administration addressing gender identity equity. So, there is some precedent for that. We'll look to see.

Courtney Bullard:

So, we had the argument yesterday. I don't know if you had the chance to look at it or listen to it. I know I was looking at the Twitter feed last night of folks that listened to it and all that. Am I correct that the judge is expected to rule on August 3rd or did I make that data up in my mind?

Joe Storch:

So, I couldn't say exactly what date the judge would rule. The judge did end up asking for some additional briefing on one issue, and those briefs are meant to be short, and they're to be submitted quickly. The states brief will be due in just a few days, frankly, and the government's reply brief would be August 3rd. So, folks have read into that that we would not hear a decision on the motion until August 3rd-4th, but it could be the 13th or it could be the 20th or it could be September or any other date.

Courtney Bullard:

So, the August 3rd is not a definite date. It's a predicted date.

Joe Storch:

Yeah. I don't have any insider information as to when we would see that.

Courtney Bullard:

Well, that's helpful to know just because people like me who didn't have a chance to listen and then just scrolled through to get an update could certainly misconstrue it and then expect, "Oh, we're going to know something on that date," and all that good stuff. Okay.

So, one thing that struck as you're talking about the AGs who have brought the lawsuits, the AGs who are saying as you said, "This is no big deal. Nothing to see here," I don't think it's completely on party lines, but it's probably pretty close to party lines for each state with respect to blue, red, what have you. I'm sure there's some that are not, and it seems to me and I think we've talked about this beforehand, it doesn't seem to me. It is. This is sexual misconduct. Sexual harassment is becoming such a political issue.

So, one question people keep asking me is, well, even if there's no injunctions and things are just rocking along and then we hit the election in November, and Trump is not reelected, then won't all this just go away? So, what's your response to that or what are your thoughts on that?

Joe Storch:

Yeah. I don't know. I've certainly don't insider information as to what potential President Biden would do, Former Vice President Biden, if he indeed the nominee and wins the election, but he has said on the public record, he said very quickly after the regulations came out that he would be rolling them back in

short order if elected. I think that there are aspects of the regulations that could be part of a middle of the road approach, certainly the noticed aspects. You got to put out information about how to access the Title IX coordinator.

I don't think anyone is against the supportive measures, providing supportive measures to victims and survivors, although some of the weird restrictions that have put in place by this regulatory scheme are a challenge. I think there's quite a bit in the VAWA Amendments to Clery that could be used to find a middle of the road approach. So, we can get out of the pendulum. You and I have talked about this. I am afraid that you and I, and we're just about contemporaries in terms of years of experience, that we're going to spend the next 20 or so years of our career in red Title IX and blue Title IX, where every four years or eight years like with the National Labor Relations Act because of different appointees, things are going to turn on a dime, and I regret that.

I don't think that that serves our students. I don't think that it serves our society. It's very different from what some of the states are doing. You look at red states like Texas, and their approach is very different from red states like Georgia. Certainly, New York is well-regarded for having taken a middle of the road approach because although New York as a whole is a blue state, at the time that New York State Education Law 129-B was passed, the assembly was controlled by Democrats, the state senate was controlled by Republicans.

So, it was a real middle of the road best practices approach. It was not just one party taking one approach. It was actually a fairly apolitical expert run approach. What you're seeing is some of those state approaches are having more staying power. Some of them clearly are political, but from a federal approach, I am unhappy about swinging wildly in a pendulum between blue Title IX and red Title IX. My hope is that the next administration, whether it's next year or five years from now, would try to take that middle of the road approach, bring all the parties together, do something the way that Democratic and Republican congress together worked on the VAWA Amendments to Clery, which are not without some controversy, but comparably, nothing even close to that because all voices were heard and it was a middle of the road approach.

Courtney Bullard:

Yeah, and what's unfortunate about it if things swing as you're saying is that it's just not only for the people doing the work. Now, of course, with the attrition cycle of Title IX coordinators, the burnout rate is so high and folks are changing and leaving in such a short amount of time that they might not even cycle through a blue and a red Title IX, but if they did and they do, then that alone is extra work and extra burden on school districts and institutions to keep changing what they have to do in response to allegations of sexual harassment, but even more importantly, it's like for those ground, like you said, it doesn't serve the society well. For those going through the process and managing expectations and more importantly, making sure you have a safe environment for living, working, learning, it's just unfortunate. Sexual harassment should not be a political issue. Unfortunately, that's where we are.

Joe Storch:

I spend some time doing research on the prevention side. One statistic that I saw that was particularly meaningful was let's say a female student who goes in to college to be a scientist on the natural science side, a biologist, a chemist, and because of sexual harassment by a faculty member, by a fellow student, what have you, she ends up leaving college, graduating as a science teacher. Certainly, that is a great profession, but that's about a million dollars difference in salary over the course of a career.

At a time where we have major challenges that need to be addressed through the STEM education area, challenges in the climate, challenges in COVID-19, other challenges that really need that, the fact that we have some individuals who are exiting that pipeline to go into other fields because of sexual harassment, not because they couldn't do the work, not because they didn't get good grades, and not because there wasn't room in the class and they didn't get admitted. They met all of those requirements, but for sexual harassment, sexual assault, sexual and interpersonal violence, they would have graduated in the STEM fields. What a tremendous waste for our nation. What a tremendous damage not only to that individual, but to society as a whole.

Courtney Bullard:

Yeah. Let's talk about prevention for a moment, if you don't mind, especially because I think it dovetails with another topic we're going to talk about. So, the new regulations don't really have anything about prevention outside of just supportive measures, but that's really not a preventative effort or educational effort for school districts or institutions.

The prior guidance documents from OCR, especially that 2011 one that first came out and started the Title IX boom as I like to say definitely talk about education and prevention efforts. I still take the position. When we train Title IX coordinators on their roles, we train them on the new regs, of course, but we talk a lot about the fact that it's more than that. It's more than just doing an investigation. You need to be thinking about that prevention piece still.

So, any words of wisdom or thoughts on that, and just the importance of that continuing going forward and things that you've seen and believe to be very successful in helping institutions on the preventative side?

Joe Storch:

So, I believe strongly in prevention. SUNY believes strongly in prevention. We invest in it. We develop materials and trainings in it. We could not believe in it more. Indeed, the prior Title IX guidance said gently on prevention. They said, "Address the harassment and prevent its recurrence." It was really in the VAWA Amendments to Clery that we saw a real emphasis on prevention as a minimal compliance element.

So, prevention before that was a good idea and something to strive for, and all of a sudden for people like me, we had the hook of, "Oh, no. This is something you must do." It's not something that's a good idea. It's something you must do. That was a huge help for us who do prevention work.

What I will say about prevention is that it's a real challenge, and many institutions hope that they could do an hour of training and become an expert in prevention, and that is no better than doing an hour of training than doing open heart surgery. You want folks who are really steeped in it.

So, what I would say about prevention is the best way to do prevention is to really invest in prevention. That's a hard thing to say during COVID-19 when folks are tightening the belt, but I see prevention as an investment, not an expense because our-

Courtney Bullard:

Absolutely.

Joe Storch:

... best response is to not have to respond. The federal government thinks it's hundreds of thousands of dollars of cost of damage for one sexual assault. They are right, but that's the narrow cost. It doesn't look at the societal cost. It doesn't look at the potential loss that we have of what that person could have done if undisturbed in their education, of what that person could have done if not having to deal with this trauma.

So, there is tremendous loss and they are coming online effective ways. Unfortunately, most of the research on effectiveness in prevention has really concentrated on bystander intervention, which is a piece of the puzzle for sure, and we've done, at SUNY, we've done trainings with Green Dot. We've done a lot of trainings with bringing in the bystander, and we've done a lot of trainings with the One Love Foundation, and not taking anything away from their excellent, excellent programs at all. Culture of respect, the same thing, but what we want to emphasize is that we don't have great evidence of a primary prevention, and we don't have great evidence of things outside of bystander intervention.

There is a program that is promising there, very promising. The challenge is that it is very expensive. So, prevention is not going to be a switch that is flipped. It is not going to be a 30-minute session during orientation or now during your e-orientation, where you say, "Well, we just told students not to do bad things, and so they're not going to do that."

We really need to, as a nation, invest in prevention, in real prevention, in research around prevention. There are great scholars and researchers that are doing this work. There are great organizations that are doing it, but the resources that are devoted to it are nowhere near the scope of the problem.

Courtney Bullard:

Yeah, I totally agree. I love that you brought this up only because we talk about it. I think sometimes, too, with institutions, where is the prevention responsibility, for lack of a better word lie? What department? Is it the Title IX coordinator's responsibility? I mean, we say yes. They need to be actively involved in that, but so often, it's like siloed. The counseling center will support the Green Dot program, and then you'll have HR that does something on preventing sexual harassment in the workplace, and then it's all completely siloed, and it's like not every institution can have a really robust center that focuses on preventative efforts.

So, where should that reside? How do you start? How do you make sure it's more of an institutional investment as you say versus just a one-off that schools are trying to couple together? Do you have any thoughts there?

Joe Storch:

Well, prevention is an olive tree, and institutions are getting into a cycle of wanting to plant annual flowers that come up right away, and response is quick, right? So, your response is immediate and this semester and the like. I know with archeologists that look at ancient societies, they see how steady a society is by looking at olive trees because it takes years and years and years for olive trees to provide fruit. So, you're only going to invest in planting olive trees if you think you're going to be stable in an area for a while, and prevention is, indeed, an olive tree on our campuses.

Colleges have to be willing to invest in it in the short term in order to see bear fruit in the longterm, and that is not an easy thing. So, compliance and response is immediate. It's for the semester, and I am the last person to take anything away from the importance of that.

As you and I have discussed, one of the reasons we do so many of our programs at SUNY for free or low cost is to try to carve out some money to do real longterm investment in prevention because

there are some folks who think, "Well, we did this Green Dot. How come we're still having sexual assault? Why hasn't it cured sexual assault? We brought in culture of respect. Why haven't we stopped sexual harassment?" It takes years.

We know that reducing smoking took decades. Reducing drunk driving deaths took decades, but we have an expectation that we bring on a rape crisis counselor to speak to our first year students and we will have no more assault or harassment, and that's just not realistic. Prevention is really, indeed, and I've never before this conversation called it this, but it really is an olive tree. You have to be willing to invest time and resources and people's time now in order to bear fruit years down the line because you have to change the entire culture. That's more than just one half hour session. That's more than just doing some video or something like that and calling it a day. It's an institution-wide approach that is needed.

Courtney Bullard:

I love that. I love the olive tree, and that you came up with it on my podcast because it's a great example, and it's a great visual, and makes a lot of sense. I think sometimes prevention, everyone's scrambling and, of course, saying this in the middle of COVID and reopening schools just sounds ridiculous, but at the end of the day, the reality is everyone's scrambling right now just to get in compliance and figure out the responsiveness to an allegation, for example.

So, I'm afraid some of the preventative work is going to fall by the wayside just by natural like, "This is what's going on right now." They don't have time to deal with it. I think prevention, obviously, it's so important.

Joe Storch:

To echo your point on who does it, I had had an article published in Inside Higher Ed a number of years ago, where I talked about one of what I thought a challenge was that when an institution adds prevention, they often give it to the same people who are responsible for response.

As an institution gets better at notifying students about what their response resources are, the number of reports come in skyrockets or at least increases and you give that person the additional obligation of prevention. They're just never going to have time to do it because if you do a good job with prevention, it will lead to more reports, and those reports will need to be responded to because part of prevention is folks understanding that they have rights and that they can bring information forward. So, it will definitely result in an increase in reports.

If you give it to the same people or person in some institutions who have to address those reports and do those investigations, you're never going to be able to have a real prevention that really reduces the numbers. I had a graph that talked about how reports can shoot up like what they call a hockey stick curve in economics, but in order to get numbers down through prevention, that takes semesters and years and decades, and that has to be something that we invest in year after year after year, decade after decade in order to see longterm results.

Courtney Bullard:

Absolutely. I was going to say is that Betsy, my colleague, she's big on tracking patterns and trends, and has developed that as a method for prevention if you're seeing patterns on your campus that are all coming from the same off-campus bar where they're serving underaged minors, then you go and you literally talk to that establishment about the issues that are having. I mean, that's a very small piece of

prevention, but something that I just learned from her and had never really thought about, but that was something that she's a deputy Title IX coordinator who started working on and developing.

Again, that takes time. That takes training. That takes time to look at the patterns, and be able to couple it together. So, the folks that are doing the work on top of it a lot of times it's just not going to happen. So, I like what you're saying.

Joe Storch:

Here's the challenge. Liz Lopez in Arizona is doing incredible research on bars and educating bars. We should have national investments in that to the extent that she's finding that those work. There's no reason that that program shouldn't be implemented all across the country, but we often see piecemeal investments. To the extent that bystander intervention programs work, we should have national investment. To the extent the primary prevention programs work, we should have national investments, but those are very expensive.

So, what instead we see is compliance approaches and response approaches because those are less expensive, but the federal government, if they really want to be serious, whether it's in this administration or in a future administration, I would hope that they understand that what we need is a multi-year, multi-decade real investment in prevention, not so we can quibble back and forth red and blue on how we respond, but so we have fewer incidents to have to respond to. That's going to take a comprehensive approach, K12 and higher ed across states looking at research, looking at what works, real investment to the tune of big dollars the way we invest in preventing other types of public health challenges and crisis.

Courtney Bullard:

Feeling overwhelmed in this current virtual environment and pressure to comply with the new federal mandates by the end of summer? Check out all that ICS has to offer to assist you through these challenging times. ICS community access provides your institution with trainings, compliance aids, Zoom meetings, newsletters and more, including significant discounts on ICS services. All of these items are designed to help your institution with its compliance efforts, which is more important now than ever.

ICS also offers complementary webinars and resources, as well as live interactive certified virtual trainings for Title IX investigators, decision makers, advisers, and informal resolution facilitators. You can learn more about all of these offerings at www.icslawyer.com.

Finally, we partner with institutions and school districts to formulate an implementation strategy for compliance with the new regulations. As always, this service is provided to our community partners at a deeply discounted rate. Contact us today for more information on how we can serve you through this transition.

We are talking before we started recording. You have Spectrum coming up that SUNY is putting on. Talk to me about your upcoming conference, the dates and all that, but also, in general, that program that you guys do because it is a unique one. You don't see any other school putting on a conference like Spectrum and how it came to be, and then what impact you're trying to make by having that conference, and what it is.

Joe Storch:

Well, how it came to be is a story that I love because it shows real innovation with a challenge. When I got our first grant at SUNY, I was not very sophisticated in prevention by any means. I was trying to create programs that were as wide in their application as possible. We hired a professional, Elizabeth

Brady, who I think you know, who's our prevention director, and she really shifted the ground towards saying, "Instead of let's look at what could be most effective for a model victim, let's look at the groups that are being impacted at the highest level, and let's work on research specifically to address violence against them."

It was a real fundamental shift for our program. We had some funding leftover. You know how these grant cycles work. It was getting to the end of September, and we had made some considerable savings through efficiencies. She said, "I want to put together ..." what we ended up calling the impact team on the experiences of transgender students.

So, we put together that impact team. We brought together experts from around New York State and around the country. Our chancellor at the time came and spoke at it. Out of that came the idea of, "Let's do a conference, and not a conference that has a track on LGBTQI or a conference that has a session on LGBTQI. Let's do a conference that is solely devoted to reducing the impact of violence on members of the LGBTQI+ community." That's where the idea of Spectrum came from.

We hosted it in 2018, and out of nowhere, with no marketing budget, nothing, we had 620 people come to Albany, New York. In our second year in 2019, we had 826. Although we had to cancel the live Spectrum for 2020 because of COVID-19, I'm pleased to say that we'll be hosting a digital Spectrum on August 24th through 28th because we've been able to reduce our cost. We've reduced the cost of attendance to only \$25 per person. We have incredible speakers from across the country and who have very different expertise. We're really looking forward to that conference.

So, that's a bit of the history of how Spectrum came about. We have great leadership for the program, both within our program at SUNY and we have four presidents at SUNY who co-chair it, who give us a tremendous amount of their time and wisdom and experience. It's going to be a great conference in August 24th through 28th.

Courtney Bullard:

I definitely need to get that on my calendar. I know I can't do all of it, but I want to hear anything that I can. So, along those lines, one thing that the new regs have done is incorporate relationship violence, domestic violence from VAWA Clery definitions into Title IX. While I think most institutions were already starting to focus on that some, of course, because of VAWA, school districts certainly were not, but in that vein, there's so much we could talk about specifically with respect to interpersonal violence and relationship violence, but it definitely has different types of impacts and unique impacts on LGBTQ plus. So, talk to me about that.

Joe Storch:

Yeah. It's a triple challenge for members of marginalized communities, especially students who are members of multiple marginalized communities, so a Black trans person, a Latinx trans person, a trans person who's the first in their family to go to college, who is an immigrant. There are yet additional impacts.

So, first is the challenge of even getting to the college environment because they might have been kicked out of their home. They might have been kicked out of their religious group, and they might have had significant challenges in schools. They might have been homeless or lived on the street for part of their time. Certainly, this is not everybody, but there are some people from this community who, unfortunately, had these experiences.

Then they get to college and the data says that they are at a higher risk of being a victim of sexual and interpersonal violence. There's nothing about them that makes them at a higher risk. You

can't look at their cells under a microscope and see, "Oh, this is the reason that they're at a higher risk." It's everyone else. It's society that puts them at a higher risk.

So, there's nothing about them or what they do or anything like that. It's everything else that puts them at the higher risk. The third part of that, that triple challenge is that they might find they have less resources or less ability to come forward. They might be believed less in certain situations. They might be valued less by certain groups who are charged with response. They are then maybe, in certain cases, more likely to drop out of education.

So, what we see is a terrible life cycle, a terrible challenge of violence as it affects LGBTQI+ individuals, especially those who are members of other marginalized groups. Colleges and universities and I'm sure it's the same in K12, I don't have as much experience there by any means, but colleges and universities are really wanting to become a place of belonging for these students.

What I think folks have to realize is these students are seeing challenges before they get to our campus. They're seeing challenges on our campus, a higher risk of violence, and potentially a feeling that they have fewer resources to turn to or maybe that those resources don't understand them and their needs as much. Then they are potentially more likely to leave education or not be able to continue or not be able to fulfill their educational goals, which, of course, has longterm generational impacts on those students and their children and the like.

So, we believe it's an imperative, and I am so privileged to have colleagues at SUNY who have placed this at the highest emphasis. We're so privileged to have leadership both in SUNY and in the governor's office and other offices in New York State, which have been incredibly generous. Our New York State Office of Victim Services has been deeply generous. The Division of Criminal Justice Services has been deeply generous both with time and with money to put this conference on.

I could not be more grateful, but I am most grateful to the folks who show up and say, "I didn't even know this was an issue. My department chair asked me to come. The VP asked me to come. I wasn't even aware that our students were impacted this way." I've had the opportunity at this conference because I'm always at a table as folks are leaving, and people are coming up to me and they're saying ... I remember one person said, "I didn't even know this was a thing. I didn't even know this was a thing, but here's what I'm doing," and they started rattling off things, a faculty member. They started rattling off things that they were going to do to make their classroom more inclusive, to change their [crosstalk 00:38:36] You just want to bottle up those moments.

So, we're so proud of that conference, but by no means do we believe that by putting on a conference we have solved this issue. We've got real litigation issues going on. We've got incredible differences between states and how they are addressing and treating LGBTQI+ individuals. There are a lot of things that are upstream of the violence, right? Can you go in to a cake shop and buy a cake for your wedding? Right? Will you be harassed and sexually harassed that are upstream of violence, that make people maybe normalized violence?

So, we have a tremendous amount of work to do. Spectrum is a small part of it, and I just hope that when we host what will be in my career the last Spectrum, whenever that is, years down the line, I hope that we can see a marked change, and that our students are experiencing something very different to what they're experiencing today.

Courtney Bullard:

I love it. I love that you all have been able to come up with this platform, really, to open the door to those conversations because we think about inclusivity and accessibility, and I think so often that's thought about from a disability resource standpoint, and it's really so much more than that. Reaching

those marginalized populations in this space is so important. So, I really appreciate that and the work that you all have done. Quite frankly, for me, I don't know that I didn't know it was a thing, but I've seen Spectrum promoted over the years, thought that would be really cool to attend, and I know it's a very important area and I could learn so much from it, but I guess over time, seeing it all, I'm like, "Okay. I really need to get to know this area more and more."

So, I guess while you're out there marketing and pushing it to try to get folks to come to the conference, which, obviously, has worked really well, it's opening other people's eyes, too, in ways that we don't even realize yet like, "Oh, what's the Spectrum? Let me go look at it," and then it trickles from there.

K12 is a whole another thing. It's just a difficult space in a lot of ways. When it comes to LGBTQI+, reaching marginalized populations are just additional layers of complexities that are basically what develops there is what you all deal with in colleges and universities, trying to make sure those folks are reached.

Joe Storch:

I couldn't agree with you more. We would welcome folks from K12 to come to the conference because every one of our students has done K12 before they come to college, whether it's here or in another country. That has significant downstream effects. One of the things I love about Spectrum is we have some sessions that are deeply challenging, and 4.0 level, graduate level programs, but then we place an emphasis with our speakers on practical things folks could take back.

I'll give you two examples of real success stories. We work with a physician at the University of Rochester, Dr. Ky Lynch. Ky has spent a lot of time teaching OB-GYNs. One of the sessions that I went to, Ky made the point that for a trans male to go to an OB office, it is a real challenge. Now, a trans male may still have biological parts that they need to go to an OB-GYN for medical services, but for somebody who presents as male sitting by themselves in an OB office, that can be a challenge.

So, they may say, "Well, I'm not going to go," and so they may contract cervical cancer or other things that are really treatable, and would not be life-threatening, but if they don't go for annual exams, don't get caught and the like.

So, some of the physicians who were in that session said, "Well, what do we do? How do we change the waiting room?" The idea came about of just, well, have a second waiting. Have a second set of just a couple of chairs that are near the checkout, where you put your 1997 People Magazine or whatever it was. You don't have to knock down walls. You don't have to do major construction. Physicians were like, "Oh, yeah. This is a simple thing we could do to make our offices more welcoming." It was opening the door to much more complex things that those physicians need to do to make their offices more welcoming, but I loved that.

Courtney Bullard:

That's awesome.

Joe Storch:

Yeah. A second example in the residents hall, we have a lot of RAs, who the students come back during regular non-COVID times, and they put the door tags on. So, female door tags will be pink and it will say their name and their room number and male door tags will be blue. So, for a gender non-binary person, they say, "Oh, well, I guess where's my door tag?"

Is there any advantages of pink and blue? No. It's just two different colors. So, why not go with red and white or green and gold or whatever your sports team colors are, and put them up in colors that aren't gender binary? There's no disadvantage for the people. It's not that the male students who present as male and their identity as male they look and say, "Oh, indeed. There's my blue tag."

Courtney Bullard:

Yeah, nobody cares.

Joe Storch:

Nobody cares. They don't get anything out of it. So, just use your green and gold or red and white or purple and yellow or whatever your school colors are, and maybe make them random. There's no loss to students, but for those students who are gender non-binary, they don't get yet one more reminder.

So, it's just such a simple thing. So, some of our hall directors who were living there were like, "Oh, yeah. Simple thing to implement." That simple thing to implement then opens the door to conversations about more complex things to implement, and it's just one of the things we love about this community, this higher ed community, and we love about the folks who come to Spectrum, a real emphasis and interest in doing the right thing. Let's start with the simple things, and let's move to the more complex things that give our students the best chance for a very successful educational experience.

Courtney Bullard:

Those are amazing and truly inspiring examples. You're right. Some of it is very simple, but for those of us like myself who identify as female, I would never think about that. It's like, "Well, why do we have to do this? Why do we have to do that?" You don't even think about that until you get in an environment like the one you guys are creating to have those conversations, and then you realize, "Oh, if I were in their shoes, that is how I would feel and how can we make this a more welcoming environment for everybody no matter?"

So, that's amazing. So, now, I'm even more inspired. I need to go and register, so that I can listen to some of the speakers between everything else that's going on, but I think that would be beneficial.

I say all the time, if you do this work and, of course, we specialize in Title IX, but we certainly do other investigations and things like that that implicate all kinds of things, including gender identity cases, but if you do this work at all, whether you're a lawyer or a consultant or your boots on the ground, the more you can learn and educate yourself the better. Spectrum, I think, that's a really great foundation for folks to start those conversations if they know nothing. Period. Don't even think this is a thing, so to speak, like you said.

You need somewhere to go to get that information. The Google, as I call it, can be helpful, and when I had Stephanie Lott from Arkansas State on and we talked about some of these issues, she said, "Get on Google. Learn some things. Some people don't want to ask those questions or don't know where to look, and that can definitely help." I think those conversations and hearing from people that are members of that community about their experiences directly and the research and everything else can be vastly helpful. So, appreciate that, and appreciate you all.

Joe Storch:

Yeah. It's an incredible conference, and there's so much work to do. We've had incredible speakers. We had Jim Jim Obergefell, who is, of course, the lead plaintiff in Obergefell versus Hodges. Last year, we

had Charlie and David who call themselves The Cake Guys. They were the two men who tried to buy cake at the Masterpiece Cake Shop. They gave at Spectrum their first ever national keynote. We had our Attorney General Tish James introduced them.

We were all sitting around. It was during a lunch, and everybody looked around the room. People, their mouths were open, their eyes. Like they say, their jaw dropped. People were just in trance. It was incredible. We had an incredible lineup of live speakers for live Spectrum, and we will have that again in the future post-COVID, but in the meantime, for the digital environment, what my colleagues have put together in terms of a lineup and real deep dive education mixed with excellent survey sessions, I'm so proud of them. To be able to offer it for \$25 for a week conference, I mean, that's-

Courtney Bullard:

That's incredible.

Joe Storch:

It's incredible, and it's not all day everyday. We're also very intentional. Elizabeth and the group are ... We're in higher education as well, right? So, we get it. We know folks are preparing PPE and they're trying to reopen. So, it's two hours here and then a two-hour break, and then another two hours, and then a break. Some of the sessions are in the evening. It's meant to be that you can do while doing your other jobs. So, instead of doing it over two days, it's spread over the course of a week. It's going to be incredible. I hope a lot of folks join us.

As we were talking about, prevention is an olive tree. I hope that some of these trainings are going to really help in putting down some of those seeds.

Courtney Bullard:

Yes. Well, it's like in the midst of all that's going on, everyone is running around with their hair on fire like I said earlier, but I think this is such a great light and something to look forward to, frankly. I know that you're hard at work. I'm hard at work. Everyone that's listening to this, if they work in the Title IX space at all, is probably extremely busy and the countdown is on. We're almost to August, but I really love sitting down and just talking with you on a Saturday morning about not only the regs, but more than the regs because there's so much going on that needs to be done in the world and in this space with prevention, and reaching those marginalized populations with respect to prevention and everything else that was nice and refreshing to talk about something other than just the regs the whole time.

So, I really appreciate that and I'm glad we didn't even talk about before this talking about the prevention piece, but I'm really glad that it went into that because I, too, I think it's so important and it's not something that I'm an expert in, but I'm always trying to incorporate into our training so people don't forget that's still very much a part of all of this, not just because some of it falls under VAWA, but because it's just vitally important to our society.

I look forward to listening in to some of these Spectrum speakers. That's pretty exciting, too. So, I really appreciate you being willing to talk to me on a weekend, and talk to me about things outside of the regs, but also catch us up on what's going on as of today. Of course, this week, who knows what else is going to come down the pipe. The next couple of weeks I think should be pretty interesting, but I thank you for your time. You always have such great words of wisdom and ways to put things and visualizations. I just listen to you and I'm like ... I can't even talk straight right now. I'm so tired from just

everything that's been going on and you're spouting out everything eloquently in a way that I know our listeners are going to really appreciate. So, thanks for being awesome.

Joe Storch:

Well, Courtney, I can't thank you enough for putting this together. Something you said struck me and something I've been thinking about lately. You worked in house. I've been working in house. You know the quality of the work and the commitment of our colleagues in student affairs and Title IX and health promotions and conduct, and the like. One of the things I know you've been seeing because you have been on calls everyday with colleges and K12 across the country. My colleague, Gemma Ryanford, who's our SEI director yesterday was saying on a call that she's been having these calls with folks across the country, and we could not be more hopeful about the future of higher education because of the quality of our colleagues.

It's just so amazing to be in higher education. It's terrible to be in higher education right now. Let's be honest. COVID and students and mental health challenges, and PPE, and for some states that have hospitals acquiring extra more materials and refrigerated for body storage and just horrific things, none of us would have thought about in 2019. It's a terrible time to be in higher education, but as we look across our colleagues, and I am privileged to get to talk to colleagues across the country and in some of the programs that we do, I could not be more hopeful about the future of higher education because of the deep commitment and the high quality and the real heart that every single one of them put out every day.

I can't think of a single higher education colleague who could not make more money doing other thing, going into private practice, doing ... I joke with friends of mine like, "Why am I not doing real estate law, where it's much less stressful and anything?" You could put it off by a day. It's not going to be-

Courtney Bullard:

Exactly.

Joe Storch:

I just cannot overemphasize how privileged and proud I am to be a small part of a large group of people who put everything they have into this work and do tremendous work for the next generation. Most of whom will never know their name. Most of whom will never thank them for the work that they're doing. If you do really good job in Title IX or conduct, you get no thank you and no complaints, right?

Courtney Bullard:

Absolutely. Yup.

Joe Storch:

It's not that kind of thing. It is not a program that everything always ends up happy. I just could not be more privileged to be a part of higher education right now.

Courtney Bullard:

Yeah, I agree 1,000%. For those of us all doing the work, myself included, but even more so for the boots on the ground, I get so frustrated when I hear criticisms of, "What school districts and higher ed have to do?" or "They're not in compliance yet," or "They are not even thinking about it." I'm like, "I promise you

we know firsthand." You know firsthand, I know firsthand. The professionals in all the areas you just went over are deeply committed to trying to get it right and to do the right thing and to get in compliance or what have you, but they are stretched so thin, but you're right.

I mean, everyone we talk to, no one's like, "I just don't care. I don't want to do it." They're like, "Help me. What do we need to do?" In the midst of exactly what you said, life and death decisions for COVID and reopening and everything else going on there, thankless job, absolutely thankless jobs. Being in house council is a thankless job.

I always tell the story and I talk about being a really good HR manager. The HR person at UTC when I was in house council one day just set up a meeting with me. As usual, my paralegal sets up the meeting. I'm like, "What's this about?" I'm expecting just the typical stuff. I get in the meeting with her and she brings me a smoothie. This was my last six months at the school. Brings me a smoothie and she's like, "Hey, I just wanted to check on you and just see how you're doing."

I burst into tears. I was like, "No one has ever asked me as in house council about me." I just go around and help figure out all these, put out fires and deal with everything else. So, I know as in house council, they're overwhelmed. We work hand-in-hand with a lot of in house council or even general councils who serve externally, who are very overwhelmed with everything going on, and they're working tirelessly to address every single legal issue that's coming up in addition to the Title IX regs. Everyone's working really, really hard and trying to do the best that they can.

I agree with you. We love our virtual trainings. I love talking to other folks. I love helping them feel better. A lot of it is just like, "It's going to be okay. Everything doesn't have to be done by the 14th. I mean, do everything you can and do the best you can, but we know this is a lot." So, I go what you're saying, I guess. It's like a Scott Schneider would say a PDA moment for all the boots on the ground doing the work. I'm honored. I feel so passionately about the work we do. If I could do it for free, I would. It's literally the truth.

I know the colleagues you brought together for the joint guidance, it's been amazing getting to know all of them as well. They're all over the country. We're spitballing issues that are coming up with each other. So, it's pretty crazy. It's pretty amazing. The folks that are out there doing the work are all in that joint guidance are top notch, and it's been a privilege to work on that as well and get to know more folks that work in this area. So, all around, it's a crappy time, but at the end of the day, I still see so many things that inspire me everyday, and I know you do, too.

Joe Storch:

Yeah, and we didn't even talk about the joint guidance, which is now all but finished. I think we have one more section that we're going to be putting in. I am blown away by the joint guidance because that, for me, was a random idea that I started circulating to a couple of folks by text and thinking that I maybe get two, three people who would be interested. As I started reaching out to the folks that I respect most in the country, everybody was interested in being a part of it. Zero people said no, said, "This is a bad idea," said, "No, I'd rather do something else," because I get to see. I'm the last person who sees each document before it goes up, but I also get to see what Abby and Adam, who I know you've been working with them, and they have just been incredible.

Courtney Bullard:

They're amazing.

Joe Storch:

They're, I guess, the managing editors. I get to see the engagement that they're having with folks. What an absolute privilege. It's like bringing together 50 law professors to talk about this area where I think the folks who are engaged in the joint guidance are really the experts. Between Abby and Adam and me, we're the last eyes that get to see it. I feel a sense of privilege. Every single one of them that goes in and by the time I'm doing it, I'm just changing double space to single space, and I'm changing commas and semi-colons.

The work that everybody is doing together and the collegiality of it-

Courtney Bullard:

Yes, it's been awesome.

Joe Storch:

Yeah.

Courtney Bullard:

Yeah. Everybody is. I've had people call me for advice. I've called them for advice. It's just like we're all in this together. I call it the Title IX Think Tank as you know, but everybody is completely willing to talk with each other. It's not a, "Well, this is my client. I'm not sharing anything, and we're not going to talk at all." The exact opposite.

Your team has been incredible. I don't even know how they've kept up with it at all. When I look at the Google doc, shared Google doc with all the red lines, it's a complete stressor for me. I'm like, "Oh, my God! I don't know how they're doing this." It's been pretty amazing, and it's been amazing product coming out. Yeah. Everybody on there, they've all ... I mean, everyone's very busy. I wish I carried more weight than I have, but everyone on there is trying their best to contribute and the product is incredible.

Joe Storch:

I like to say at SUNY we have 50 staff members who are working on this product in the bodies of 14 people. They are just so incredible. Both our folks who work on SUNY's got your back and the student conduct institute. Both groups are incredible and they're collegial, and they support each other, and they support colleagues in higher ed. The partnerships we have with folks like you and folks who are doing prevention work, I just could not be more privilege to be where I am and working with the folks I do.

Courtney Bullard:

Yeah, I agree. Well, I really appreciate you doing the work you do, having the thoughts and actually going forward with them, thinking about doing the joint guidance, Spectrum. You've had those ideas and actually followed through with them and developed an amazing team around you to help facilitate and come up with some really great stuff. So, we love you having you in the world, Joe Storch, and I really appreciate your time and energy that you put into this everyday. I know we'll be talking again soon. I know you'll be back on for round three, I have no doubt. I know you and I will be catching up soon as well. So, thank you for everything.

Joe Storch:

Thank you so much, and be well.

Courtney Bullard:

You, too. Please stay in contact with us through all of our social media sites. We're on LinkedIn. We have an ICS page, but we also have my page, as well as one for Betsy Smith, Instagram, Twitter, and Facebook. We have a Facebook page for Title IX coordinators. We'd love to have you join. One also specifically for K12 Title IX coordinators, so look for that.

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