

Episode 5: Informational Episode – Know Your Role in Title IX Compliance

Courtney Bullard:

Welcome to the Law and Higher Ed Podcast. My name is Courtney Bullard, CEO of Institutional Compliance Solutions and your host. I am a Tennessee attorney, and I began ICS after serving as campus council for eight years at a university system. In that role, I handled all legal matters affecting the campus, or as I like to say, I did everything but divorces. I bring that on the ground experience with me in working with clients today, and that experience shaped the mission behind ICS, which is to provide legally sound, but also practical, advice to the institutions that we partner with. Today, I specialize in compliance with Title IX and related laws and regulations, as a result of my experience in the area on campus since the Title IX boom in 2011. This podcast provides relevant, tangible information that you can utilize in your professional life right now, and even maybe your personal life. Through interviews with campus leaders, and subject matter experts, and informational episodes, you have access to information at any time, any day that has both legal and practical implications for your career and your campus. So, let's get to it.

Speaker 2:

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

Courtney Bullard:

Thank you for listening to the first of many informational episodes of the Law And Higher Ed Podcast. If you are my client, are an ICS member, have listened to one of my webinars, attended an ICS training, or heard me speak, you already know that the foundation for all of the work that I do is emphasizing that everyone has a role in campus compliance with Title IX and related laws and regulations. The key is knowing yours. In my experience at UTC and my work since that time with institutions across the country, grievances and litigation typically are the result of folks either not knowing they have a role and/or misunderstanding their role in compliance.

When there's an allegation of sexual misconduct, stalking, or relationship violence on a campus, many people outside of the complainant and respondent, that would be the individual that's making the accusation and the one accused, may become involved. This list is by no means exhaustive, but here are a few examples. You will, of course, have your Title IX coordinator and Title IX investigator. You'll have parents, professors, coaches, campus safety, lawyers, advisors or support persons, counselors, Student Affairs professionals, Residence Life, Greek life, witnesses, who may be students, faculty, or staff, institutional leadership, or even public relations. The list goes on. Once a report of sexual misconduct is

made however, it is crucial that all parties involved have a clear understanding of their role in a process. That will greatly impact the experience that individual or those individuals have in going through an investigation.

A couple of examples to consider. A Student Affairs professional, who also serves as a Title IX investigator, typically that person interacts with students and student organizations, and they may even help facilitate matters if a student is struggling. Say they're having a health issue or problems at home that are interfering with their education. Once the investigator hat is put on, however, the role immediately changes. This can be confusing for students in the process who may perceive Student Affairs as an advocate for them, not a neutral. So, explaining your role from the very beginning and reiterating it during the process is crucial. I call it managing expectations.

Another example would be a coach of a student athlete who might be perceived by an athlete as "on their side" and/or want them as their support person, or you might have a coach that receives a report of sexual misconduct, but does not pass it on to the Title IX coordinator, because they want to handle it in house. Both scenarios can be disastrous for the institution, but also for the parties and the process. You could have a member of campus safety who receives a report of sexual misconduct, investigates it solely through the criminal law lens, and then determines there's not enough to move forward. But wait. Perhaps the conduct may not rise to the level of a criminal act, but it still may be sexual misconduct that necessitates reporting it to the Title IX coordinator.

You may have an appeal panel that hears the appeals on your campus, and per policy, the only basis for an appeal is very limited. For example, newly acquired evidence. However, the appeal panel treats it as though it's a re-investigation of the matter and a completely new investigation, rather than reviewing it in that limited or narrow lens. Finally, another example to consider is a faculty or staff member who has a colleague that is accused of sexual misconduct, who inserts themselves in the process inappropriately and/or wants to serve as a support person for individual. That might be entirely appropriate, but what if that individual that's accused is their subordinate? And if the allegations are true, then that subordinate may have to be terminated and/or there might be some other disciplinary action that has to be decided. That might put the supervisor in a tenuous situation if they're also serving as a support person.

I could provide hours of examples of areas where folks stepped out of their lane that resulted in grievances or litigation. My advice to Title IX coordinators is to get a solid handle on who is performing what role in a Title IX matter on your campus. Ensure everyone is educated on their role, and then continue to reevaluate the role of each person involved in every single factual situation or scenario that presents itself. Team exercises and tabletops can be very helpful. When it is clear someone does not understand their role, be sure to nip it as soon as possible, be it during a process or hopefully beforehand it will reveal itself in team exercise or tables tops. In addition, at the outset of a matter the roles of parties should be explained to that party. So, if support person who can not speak on someone's behalf per your policy, make sure you explain their role to them at the very beginning of the process.

I do want to note that everyone knowing their role and staying in their lane will not always avoid disgruntled parties or grievances, but it will certainly make for a much smoother process for those involved, as well as for the institution. Part of the ICS membership includes my Know Your Role Series, a webinar that is dedicated to each area of campus to flush out their role and the unique issues that might arise in compliance in their specific position. I also go to campuses and regularly train really with the

same framework in mind. If I'm asked to go and train a board of trustees, or going to train Student Affairs professionals, or going to train investigators, each one of those trainings is definitely going to look different, just like if I'm going to train Residence Life versus Academic Affairs. What they face individually is going to be different, even though the law and what the institution's required to do is the same.

To recap, in every situation, if you are a campus administrator, number one, you should know what your role is today in campus compliance. Number two, you should reevaluate your role constantly when a situation arises, from beginning to end. Number three, be sure to clearly explain your role to others when appropriate, and again, to reiterate it over and over again and to ensure you're managing expectations. Number four, set ground rules for others and explain their role, such as support persons or advisors where appropriate. Of course, much of what I'm saying in this episode I am tying to Title IX compliance or compliance when there's a matter arising that implicates Title IX or related laws and regulations. However, this can really apply to any area of campus in any area of the law. If you think about NCAA regulations and how they dictate recruiting should go and when coaches can be involved and when they cannot, anything, any area of law you can think of the same principle applies.

I will also say, for those of you listening who are not lawyers or campus administrators that deal with Title IX or maybe more of the legal aspects of campus, it will still apply in your own life. I always have to remind myself when I am not real happy with my children that I am their parent, not their friend, for example. Or when my husband might be facing a particularly difficult issue at work, well, I'm a lawyer, so I want to come in with my lawyer hat on. I have to remember to wear my wife hat. Same with my kids. If something happens at school, I always have to remember I'm going in as mom, not as lawyer. That's a couple of personal examples, but knowing your role is something that I emphasize over and over again in the Title IX world, because I think it is extremely applicable, but certainly can be applicable in a lot of other areas, personally and professionally.

If you're interested in learning more about our services or having me come to your campus and train any aspect of your campus on their role in Title IX compliance, please visit us at www.ICSLawyer.com. You can click on the contact us button, and we will get right back to you. I also have my email in the show notes. Thanks for listening. Until next time. I really hope you found today's episode useful and you got some information that you can use in your professional, or personal life, or both. If you enjoyed this podcast, please do me a favor and subscribe to it, provide a review, and also share it with your colleagues and friends. You can find ICS on social media through Facebook, LinkedIn, or Twitter, so we'd love for you to connect with us there. Thanks again for tuning in to the Law And Higher Ed Podcast. We'll see you next episode.