

Joe Storch: So right now there are three agencies that have promulgated rules on this NASA, the NIH, and the NSF, and there are some significant differences between them. There's definitional differences, there's timing differences, there's coverage differences, there's all the differences you would anticipate, and so that is the state that we are in.

Courtney Bullar...: Hello and welcome to the Law and Education podcast. My name is Courtney Bullard and I'm your host. As usual, I'm a little behind in getting out another episode. Our last one was in January, and the episode that I'm going to share with you today or the conversation I'm going to share with you today with Andrea Stagg and Joe Storage. We recorded several months ago, but it is still very much relevant. Before I get into my introductions of Andrea and Joe and the topic that we're going to discuss, I wanted to give you a little bit of information on what we've been busy doing at ics. First and foremost, we hosted a K-12 conference in conjunction with D-Prep with Brian Van Burnt and it was fantastic. That was just a few weeks ago. We had a packed house, lots of interaction and discussion, had our current community partners as well as new faces, and it was just a really great conference in person talking about the overlap of Title IX and mental health and threat assessment in the K-12 space.

Be on the lookout because we are about to launch our fall calendar, which includes a higher education conference, which will be in October, so those dates will be out soon and as soon as they are, you'll get blasts from ICS on all that is to come. Before that though, I invite you to join us for one of our virtual trainings from now until the end of this academic year. You can find those on our website under register now and find the ones for K-12 or higher education. We're also going to have a webinar Wednesday series three Wednesdays in a row starting April 26th. They're all complimentary and the first one on the 26th is going to be specific for faith-based schools and institutions. Then we'll have one on May the third on the IEP 504 and Title IX overlap, and one on May the 10th on pregnancy discrimination and accommodations under Title IX, where we are now and where things are probably going with the new regs and how to get prepared. So those hopefully will be up on the website by the time this episode launches.

Lastly, and what I want to make sure I highlight of course, because I am so thrilled about it and it has been really fun to get feedback from our community partners who are using it, is that we have launched two interactive tools. The first is the Report triage tool, which we launched last month, and it's an interactive online tool that allows and helps a Title IX coordinator to take a report that comes in and triage it to determine whether or not it falls under the 2020 Title IX regulations or perhaps some other pathway. It is a tool to be used in conjunction with your policies and procedures, but it has been wildly popular with our community partners. All community partners have access to it. It's also a way to record that you went through the process and document it for your records.

And then we have an individualized safety assessment tool that is also launching in conjunction with D-Prep and Brian Van Brunt that should be released in April. And it is a tool to help both with making those determinations for emergency removal, but also those deeper analysis that your threaded assessment team often has to make. So both of those are included for our community partners and I truly believe the report triage tool is a game changer for coordinators and just another way to help ease the burden and the work of the coordinator in that all important task, which is triaging reports that come in. So if you're not a community partner, now is the time to become one. We've got so much on the horizon with practical tools to help you out in the job that you're doing every single day.

All right. Without further ado, I want to introduce our guests for this episode. Both Joe and Andrea work for Grand River Solutions and Joe has been a guest on the podcast, if not twice, I think at least twice, so it's great to have him back. He's the senior Director of Compliance and Innovation Solutions at Grand River, and in that role he advises clients on best practices in Cleary and Title IX compliance and works to develop new products, trainings and resources to assist clients in their compliance response and prevention efforts. You can find more on his background and bio will put it in the show notes.

And then joining us on the podcast for the first time is Andrea Stagg, which was super fun. She is the director of consulting services with extensive experience in higher education, in-house legal settings at public and private colleges and universities. In her role with Grand River, she oversees the consulting services that includes Title IX and equity support audits and compliance reviews, athletics consulting, accessibility and disability compliance, DEI Initiatives and Clear Act Compliance Solutions. Again, you can read much, much more about her extensive bio through our show notes and through the links that we'll provide you in our show notes.

In this episode, we are going to talk about chips and dip or chips and guacamole and I only kid, but it's a topic that is actually really interesting when that impacts Title IX. Joe and Andrea do a great job of explaining what it is and how it might impact you and when it might go into effect through our conversation. So I'm not going to do a spoiler alert in this intro except to say I always enjoy my time with Joe and had a great time getting to know Andrea. We also finish up with some predictions on when the new regulations might be released here. We are already in March slash April and the Department of Education is indicating that the new regs will come out in May. So you're going to hear us talk about whether or not we think that's a possibility. And of course, we recorded this back in December. Joe and Andrea's positions may have changed since then, but still interesting to listen to nonetheless. So without further ado, here's the episode.

Hi everyone. Hi Andrea and Joe. It's so great to have you all on today. I think I stayed at the beginning of every single podcast. Thank you for your patience

and getting this scheduled. I've had to reschedule 50 times. The podcast is a laborer of love, and I do so love doing the episodes, but life gets in the way. So thank you all and it's great to finally meet you, Andrea. Joe has been on a couple of times. I'm sure I'll have Andrea on again after getting to be together today. So welcome.

Joe Storch: Thank you so much for having us.

Andrea Stagg: Looking forward to it.

Courtney Bullar...: Yes, this is so good despite all the little issues we had getting on with Tech, as always. So awesome to get started. So we've talking in the "green room" before we started recording that. The main purpose of our podcast today is for you all to educate me on the CHIPS Act of 2022, what it means, not just what it stands for and all that, but what it means for folks on the ground at institutions, what they should be thinking about. But we also plan just for the listeners so they know to talk a little bit about the regs and some forecasting there as well at the end of our time together. So that's the plan.

I was saying as we were getting on the Chips and Guacamole Act, Joe has his own thoughts there, and we're talking about it's early in the morning or earlier in the morning as we're recording this that it would've been a fun if we were all eating our own favorite version of chips and dip. FYI, potato chips are my kryptonite in life. People are either sweets or salty. I'm definitely salty. So the minute we start talking about this morning, I was like, "I would love to have some sour cream and onion Pringles chips." So if anybody out there ever wants to send me a gift, that's my gift. I love it.

Joe Storch: I am a huge fan of that tin of sour cream and onion Pringles. When my kids get it, they come home and they, "Where's the Pringles?" They say, "I don't know, you must have eaten it. I don't know."

Courtney Bullar...: Me too. And my kids are obsessed with Pringles too. Unfortunately, my girls have my same tension for carbs, so it's a bad combination at my household. Anyways, sorry, I digress. Okay. So let's get down into the substantive conversation, which is this CHIPS Act of 2022. So the first time time I learned about this full disclosure and I'm in the field working was from Joe Storch on social media posting about it and Andrea posting about it and saying, "Hey, this is important and something everyone should be paying attention to." So I went and read the article that Joe wrote, did a little bit of Googling myself, FYI will make sure that article or the link to it is in the show notes, but let's just start with the basics and that is what is the CHIPS Act? What does CHIPS even stand for before we get into its implications. So Joe, do you want to start us off with just what does CHIPS even stand for?

Joe Storch: Absolutely. So in 2022, Congress passed a gigantic law, multi-billions of dollars of funding to resuscitate the semiconductor industry in the United States. And

that was the news headline, the creating helpful incentives to produce Semiconductors and Science Act or CHIPS Act as we were talking about. I wish it was creating helpful incentives to produce semiconductors and develop intellectual property, which would've been chips and dip, which I think would've sold far better on the campaign trail, but I'm not a political expert was really aimed at bringing factories on shore about bringing billions of dollars into the United States economy and making sure that we could shore up supply chains.

We all saw during COVID that vehicles had to go offline because they couldn't get chips and you couldn't get your favorite X, Y, Z electronics because there was a lack of chips. But today aren't concentrating on 99.9% of the CHIPS and Science Act. What we are talking about today is a tiny little portion right in the middle of it, which addresses sexual harassment in the STEM fields in higher education, which talks about prevention as a possibility, which includes potentially funding that still has to be appropriated, but it has been set aside that there should be funding and it includes requirements for reporting up and taking some action. And that was a really, really interesting part of the law, I think for Andrea and me.

Courtney Bullar...: Okay. That's really helpful. So subtitled D, I think is where that's contained. Am I right? Sorry, everybody. We're on video so we can see each other shaking our heads, which is combating sexual harassment in science, and this is all outlined in this great article. One thing I want to point out really quickly that when I was reviewing all this for this podcast, and I don't know if Andrea has some thoughts, here was the statistic that you put in your article about those that are students or employees in the science, technology, engineering and math, which is what STEM stands for and how many of them are exposed to sexual misconduct in their work and congress saying that harassment's pervasive in higher education and found that 58% of individuals in the academic workplace experience sexual harassment, which we're all in the work.

We've read a million statistics, but it was just right in my face again of how prevalent it is in a world where I feel like it should be less prevalent with how much we talk about it and we see it in the news, and yet it's still happening and especially the challenges in the STEM field. So Andrea, I don't know if there's anything you want to note on that or Joe specifically and just how specifically in that field we're still seeing it being so prevalent and maybe why this is a part of the CHIPS Act.

Andrea Stagg: That statistic is staggering and almost incredible, almost unbelievable, but when you think about some of these fields, they're so insular. It's small people know each other, they know about each other, it's hard to break in. There's only so many people who are "big in the field." So when you're looking for a mentorship, there's a lot of power dynamic issues there because it's so small. How many scientists have you heard of? And then within those fields, who's got the name recognition, who's the best published, all of that. So it is small and I think that that creates those that are challenging to navigate. People stay in the

fields for a really long time as well. So as culture shifts, people who are remaining in the same work for a long time maybe haven't been shifting their culture, understanding and behavior. So I think that's really hard.

So one of the things that's really significant about what CHIPS and Science Act is trying to do is standardizing the way that the different funding agencies are addressing and thinking about addressing sexual harassment in the field by how institutions that are recipients of federal funds and how the actual PIs, the principal investigators getting the funds and using the funds, how they behave, and how allegations against them would impact their funding, if it would impact their funding and everything like that. Currently and before CHIPS Act, it was really agency by agency and even grant by grant. So okay, NSF has these rules and NIH has those rules and they're going to ask you these questions. So it was interesting.

You think about people who work in sponsored research and program sponsored programs on campuses. They're not necessarily experts in all that's happening in the Title IX office. What are our policies? What is the training? I'm not sure if they're trying to fill out these grant applications or these check-ins along the way with continued funding or renewal applications. That's not what they're doing. They're familiar with all the research misconduct training and those policies and ethics trainings, all the stuff that's been required by agencies for years. But so agency by agency, there's different questions. They're asking different expectations. That's really hard to keep up with, especially because you only care as an institution and a sponsored research sponsored programs person if you're getting funding from an agency.

So all of a sudden you get funding from an agency you haven't had funding for. I'm thinking about some small colleges, obviously big research institutions are going to have funding from all kinds of agencies. But a smaller school might not have funding from a certain agency for years, and then all of a sudden they do, they've got all these rules about sexual harassment prevention and what certain things we have to have in place. And it's just you're following existing federal law, it's something else and different questions you have to answer and things that you might need to know about the actual people involved with and related to the grant funding.

So it's hard when there's that inconsistency, especially because you think federal government is federal government. Well, no, the agencies were all doing it differently. So for me, as a compliance risk management person, I'm thinking, "Great, now we'll have some consistency because to have it all be different is just exhausting." Especially because one, you could have one person who gets funding from multiple sources and you have these different webs of rules. So Joe, I know you and I have talked a ton about this, if there's stuff you want to add.

Joe Storch: Well, agreeing with all of that, I think one of the interesting differences between the work that Congress is addressing here and say our experiences, the three of us all went to law school. And when you apply to law school, you apply to the university, you apply to the law school, you may or may not have even heard of any of the faculty members, and you're going to take classes with a dozen, two dozen faculty members over your time there. My cousin, who's an amazing genius psych grad student, she didn't apply to the universities, she applied to the professors. She has a one-on-one relationship with this professor, and for her it happens to be going great. They've published together, they're doing all of that. But that professor has enormous power over their grad student in a way that the three of us just didn't have that power dynamic with a professor.

Maybe in law school, if you were a research associate for one of your professors, maybe they would have more of a power. But in stem, that's de gure. That is what you should expect. So it is really, really interesting. And building on what Andrea said, yeah, Congress was stepping in where agencies had all and many of them had taken different approaches for a standardized approach. And from the compliance end, we love standards. We love bright line rules and clarity that we can share with clients and we can say, this is what you do, and I think this law is moving us in that direction.

Courtney Bullar...: Yeah, I love it. And everything you're highlighting is what I was thinking, especially when I saw the statistic and I start thinking about stem. It's interesting. I was on a call with a client yesterday at a STEM college and she was talking about the fact that until not that long ago, there were no women there. And it's a school of, I don't know, 10,000 students and we're not talking like a couple of years. I mean, we're not talking 20 years ago. We're talking a couple of years ago that we're starting to see more women in stem. And then that imbalance of power is so huge and something you're right, I really can't fully relate to because we didn't have to have a relationship like that. You see it in medicine for sure. You see it in any of these STEM fields with that one-on-one relationship and that possibility for an imbalance of power that lends itself to these unfortunate situations.

So agree with everything that both of you said. Question. And that is, so what do institutions need to do? So what is the required reporting? And Andrea touched on that disconnect between the person applying for the grant and needing to do all of the reporting and the Title IX office and trying to bridge that gap. So we know Title IX offices are working really hard to, I call it grassroots efforts, but to ensure that the institution knows who they are, what they do, what Title IX is, but that message certainly can get lost in academia. So I guess that was really two questions. So one, what's required to be reported, and then two, how do we bridge that gap and educate on the ground? So let's start with what the act is requiring.

Joe Storch: Yeah. I can start with what's required and Andrea has done a lot of thinking about getting those groups together. So right now there are three agencies that

have promulgated rules on this NASA, the NIH and the NSF. And there are some significant differences between them. There's definitional differences, there's timing differences, there's coverage differences, there's all the differences you would anticipate. So that is the state that we are in. The Office of Science and Technology Policy, the NSF and Working group are going to get together and come out with standardized reporting for all federal agencies that allot grants and funding to higher education institutions. And in theory, we should be pretty far along. All of that has to happen in three quarters of the year, a year under the timeline laid out by Congress. Whether the White House will meet that timeline or not is clear.

They have not been public about it. But once that happens, anytime there are certain accusations, and that's mostly in the area of sexual harassment, but it bleeds out a little bit to some other areas against grant personnel. So right now, most of the rules right now are around principal investigators, who is the person who is the head of the grant, the person whose name is on the line. And the grant is called the principal investigator or maybe principal investigators and co-PIs or maybe principal investigators and key grant personnel. This would cover all grant personnel. So at some institutions that's dozens or hundreds of people. And when an accusation is made and when you have a certain trigger for that, that would have to be reported up through the research department to the grant agency. And there's going to be a single portal. Ideally that information will be shared among agencies. They'll all be able to look at it. I think the we're we're waiting for details on that, but that would be the reporting requirement.

The challenge is that at many institutions, they don't have a huge grant portfolio. They're not doing billions of dollars a year. They're not doing hundreds of millions of dollars a year. They're doing hundreds of thousands or millions of dollars. They have a very, very small number of people, maybe single digits or double digits folks. And we know that A, this activity does not occur in every grant. Not everybody is subjected to harassment or violence or the other violations. When it does occur, the three of us know as well as anyone that the reporting levels are fairly low. So it may be that at many institutions, this doesn't happen every month. It doesn't happen every year. It might not even happen every decade.

And when I say it, I don't mean that sexual harassment might not happen. I mean a reportable triggered incident for the purpose of federal reporting under the CHIPS and Science Act may happen so rarely that when it does happen, the institution and the office is responsible, don't remember what it is that they have to do. So I'll turn it over to Andrea, who's done some thinking about how to align that

Courtney Bullar...: Really quickly before we go to Andrea. And I'm going into the depths of your brain, Joseph, if you don't remember, it's okay. But I did notice that part of the reporting requirements, you said sexual harassment or sex based and sexual harassment and other things, but I couldn't help but note that bullying and

retaliation piece. I'm just curious, does it define bullying and retaliation? Because honestly, we've got some cases right now where retaliation is like we're all scratching our heads based on a policy definition versus the regs definition versus this or that. And bullying, especially in the K-12 space, it's just like this term that's out there. But we hear it so much in academia now when the imbalance of power comes up where maybe it's a civility issue, not necessarily a sexual harassment issue. So curious about that before we change it. Or maybe Andrea has thoughts on that too?

Joe Storch: I mean, so they didn't define it in the statute. My sense is that the federal government will have to define it. This is what I mean by it's bleeding out a little bit beyond sexual harassment, sexual and interpersonal violence. And as we'll probably also talk about, and as Andrea could talk about as well, you have a lot of different definitions here we've got the 2020 Title IX final rule definitions. You've got state definitions, you've got other definitions, Title VII mostly when we think about HR type reporting, we're thinking about the Title VII world. You might have incidents here that a student is married to be found. So it happens at a higher education institution, but it's between employees. Most institutions would think first, Title VII, you've got your state and city definitions. So no, there's no definition. And that lack of definition is something that scares us, I think from as compliance thinkers, because you want to have some clarity, some bright line rules and some ability to tell folks yes for this, no for that.

Courtney Bullar...: Yeah, it's so challenging. We were saying as earlier, I can't remember which one of you, about just the different agencies and you think that they're talking to each other, but they're not. And then we have competing definitions and as you said, with state law as well. So I just look at it as so challenging, practically speaking on the ground as folks try to understand what they're responsible for reporting, not just with sex-based harassment or sexual misconduct, but beyond that based on what's required from this law.

So turning it over to Andrea, because again, I'm looking at and thinking about 2023 and recently have been doing a lot of thinking about the coordinators on the ground and other administrators on the ground responsible for Title IX compliance. They're already feeling a lot of overwhelm and then they're staring down potential new regs. That's overwhelming. And they're all out there trying to get the good word out. And I can imagine them listening to this and thinking, "Oh my gosh. Here's another thing I need to be concerning myself with at my institution." So interested to hear, Andrea, some thoughts that you have on what coordinators can do to help with this on the ground in implementation.

Andrea Stagg: Okay. So first, going back to what Joe was saying, I'm not worried about what is the definition of bullying, what is the definition of retaliation, because I know that's going to be coming in the guidance. So the guidance will say, "I don't think..." I wouldn't predict that it's going to be a broad definition of bullying because this is really aimed at curbing and responding appropriately and promptly the sexual harassment. So I don't think they want to talk about, he

used all the paper and the printer and he knew I was going to be printing my thing that I'm mailing and that was retaliation for me, something, taking his desk. I think that's not what it's about. So I think the definition will be tailored to, for the goal of addressing sexual harassment in STEM.

There's a interagency work group, obviously there's always a work group, a task force, a commission, a council, something. So there's a interagency working group and they're going to issue guidance with a consistent set of policy guidelines that's going to include the definitions and I'm hoping for a Q&A style piece of guidance at some point will, are they going to talk to some stakeholder or recipients who can ask questions, what do you mean by that? Probably not. I wish they would because then I would be able to give feedback on some of the Q&A and maybe add a couple more cues. But I don't know that they'll do that. But of course it would be helpful. So I think we'll see some information in those guidelines about the definitions and what we're actually talking about.

But for me, if I was talking to a Title IX coordinator today, and hopefully I'm talking to a lot of Title IX coordinators right now who are listening, I would just say reach out to your sponsored programs office. At the last institution I worked with there, that was two people. So I would make sure that them and just say, "Hey, I've heard about this. I'm sure you have." And they've probably been seeing it from NASA, from NIH, from NSF, I know I was. That our sponsored research people would come to council and say, "Hey, do you know the answer to these questions?" And just figure out how you're going to address that.

If you have in-house council, include them. So I see it as a conversation between Title IX coordinator and I say that broadly because we might be talking about issues that fall outside of Title IX as we know it from the 2020 regs. So as long as that same person is in charge of both policies, both your Title IX prohibited conduct and your non-Title IX prohibited sexual harassment conduct or sex-based discrimination conduct, that person, whoever that is, it might be more than one person. Just want to acknowledge that it could be more than one person. And then get your sponsored research people and in-house counsel if you have them and just meet and have a conversation. Hey, this is a thing. We're watching it. It's coming. When you get these questions sponsored research person, here's who you call. Do you want to do it through counsel? Do you want them to go straight to telex coordinator or a deputy coordinator? Do you want just designate, who's going to be the person?

But the Title IX coordinator just needs to know that this exists and just make that link and that way the sponsored programs, people know who to call, but it's really on them. They're used to being in charge of really complicated, important, ethics and compliance issues. So it's not new for them to have that obligation. These sponsored programs and these grants folks, they already have a lot of responsibility and it's really important and it's could be hundreds of thousands, millions of dollars. So it's just another thing on them and they just need to know who to call.

So I think it's really more on them to understand the obligation, but also as far as the portal, I don't know how that's all going to be related. How are they going to be pinged to fill that out? They already have a lot of paperwork that they're doing along with these grants, so it's really on them. It's not like your Title IX coordinator's going to be going into this portal. I don't think that's going to be the case. I think it's going to be your grants folks who are already doing all kinds of stuff like this.

Courtney Bullar...: Okay, that's great. And very soothing. I listened to that and I was like, okay, take the temperature down. This is going to be fine. And yes, it's something else to be aware of, but just make those connections. And you brought up in-house counsel, which I appreciate because lately I've been on a kick. We partner with so many in-house counsel who are fantastic, but obviously you're thinking about risk management and the legal component and sometimes missing the practical component because they're not the ones actually having to do the day-to-day work. But we do have a lot of counsel that listens to the podcast.

So same for them when they hear about this among other 4,000 areas of the law they're supposed to be familiar with as council at an institution, as we all know, takes the temperature down a little bit, get those relationships going, consider that and great point, Andrea, about the fact that these folks already are so used to the mountains of paperwork and hoops they have to go through in order to get grant funding and this will just be another layer to that. Very, very helpful. You mentioned when it comes, so that would be my last question specific to chips, unless there's something else that we want to talk about in this specific space, but what does the timeline look like or do we know?

Joe Storch: So it's should be about three quarters of a year to a year after the bill was passed. Now 90 days have passed and I can't find if they've already met the 90 day requirement, it's not clear whether they'll be publishing this or not. And from what I hear from folks, OSTP sometimes runs behind because OSTP, the Office of Science and Technology Policy has to do all sorts of things so they don't always meet the deadlines that Congress lays out for them. They may find them to be impossible. So I am hopeful that we will see things in 2023. Ideally we would get something in the spring that would be effective for the fall 2023 semester.

I really don't enjoy. I know the three of us don't enjoy when things come out in the middle of a semester and they're effective immediately or they're effective within a very short time because there is a policymaking aspect to this. There's a training aspect, a ramping up some technical guidance training of the folks, not just who would have to do the reporting, but the folks who should bring this information forward. So Rome wasn't built in a day, my hope is that they will put it out in a way, maybe early spring, mid-spring for effective in the fall, but they have not given us a sense of that. But in theory it should be done sometime in the spring, early summer to meet the deadline set by Congress.

Courtney Bullar...: Okay, great. Andrea.

Andrea Stagg: There was a press release that we can share because you can share links and folks with people who end up listening, I'm sure you have show notes. There was a readout round table about preventing sexual harassment and they mentioned chips and there was this convening on November 1st and the White House put out a summary of it. And you can see the panelists, which I think is always interesting looking at what subjects were represented and what institutions of higher ed were represented there and some agencies as well. And they talk about some of their strategies and recommendations. I think it gives us a little bit of foreshadowing about what they're trying to address specifically sexual harassments really broad and they talk about a bunch of things that won't surprise us, like bystander training and doing bystander training, stuff like that. So I'd want to share that link with folks.

Courtney Bullar...: Perfect. If you'll send that to me, we will make sure that is in the show notes as well as the article that Joe wrote as well as of course Andrea and Joe's bios and how to get in touch with them, which we'll talk more about too as we finish out. Anything else on chips and dip that we want to talk about before I turn us to our predictions and a little bit of a conversation on the new Title IX regs as I like to call them sometimes that are, they're coming out in the sometime future.

Joe Storch: Well, the only thing I would mention about chips is the carrot of potentially 30 plus million in real funds addressed towards prevention in this area. The creation of a national center. It seems to me that would be at an institution of higher education and what could possibly come from that. I think there's some exciting things. \$32 million will not address sexual harassment in STEM, at colleges or really in a meaningful way, but it's a down payment on really addressing this permanently and in a positive way. So I thought that was an exciting piece of the legislation.

Andrea Stagg: I thought it was timely that one of the alongside chips coming out this past summer, a bestselling novel on the New York Times bestseller list is Bonnie Garment's Lessons in Chemistry, which is going to become a TV show as well. And it is about a woman in science, in chemistry in the fifties and sixties and sexual harassment is pervasive throughout the book in her life and career and the women around her. And when you read it, you think about how much has changed and also how little has changed at the same time.

Courtney Bullar...: Yes, full circle to a little bit of what we were talking about at the beginning with that percentage, and I need to read that book. I have this list and so I'm really glad you brought that up. It pinged me. We're recording this at the end of 2022 and I always think I'm going to have all this time over the holidays that usually I don't have the way I think I want to, but part of it's catching up on things I want to read and I'm going to make sure to grab a copy of that and check it out. So thank you so much for bringing that up.

So 2023, we might be looking at some new regulations. So as we finish out our time together, I wanted to spend a little bit of time talking about these new regs because I know we get a lot of questions. I'm sure you all all get a lot of questions on what can be expected, when's it going to happen, all that good stuff. Any general thoughts you want to... I mean, I'm sure there's a million thoughts, we could have a whole episode on this, but before we get into our predictions, any bigger thoughts that you want to share about these proposed regulations in general that are just on your heart or mind or you've been talking about as a team with your other colleagues that you want to get out there into the universe or those that might be listening? Very broad question I know.

Andrea Stagg:

So we've talked about this before that we think it'd be really cute if the regs came out on April 4th just because the full circle from that fateful day in 2011, but I don't know if that will happen. I think the Department of Education and the Biden administration would love to get the regulations out this spring, like no doubt they would love to, but it's a really big lift. So even though I would love to see final regs this spring just logistically to not have them in limbo hanging over our head and to have folks enforcing regulations they don't believe in and maybe slightly changing the way they see them, even though they're pretty clear, I would love to see final regs. I would love to see implementation this coming fall. So people have the end of spring and summer to get their act together and change policies and procedures, but at the same time, it's just an enormous lift to think about 240,000 comments that need to be read and addressed to think about the preamble.

And we know that the preamble to the proposed regulations was mountains more than the preamble to the last proposed in 2018. I don't even know what this preamble will look like. So reading the 240,000 comments, so you have twice as many comments and you had a much longer preamble to begin with, and you're going to have thousands of footnotes. It's just an enormous lift and thinking about the human people who work in the department, I just don't see how they can do it, and if it does happen, I'm going to be astounded. Totally astounded.

Joe Storch:

I would agree with that. Of course, my hope is that the department gives us a more normalized schedule, and so in my hope, which is not the same as my prediction, the department would actually finalize the regs in say, September or October, issue final rules in September or October that are effective July 1st, 2024. Really give institutions the ability to do their policy making homework, train folks, and really hit the ground running in 2024. My prediction is essentially the same as Andreas, but that would be the difference between hope and reality. I think substantively, and Andrea has a lot more thoughts on this. One of the things that was very clear to me is that the department did not go as far as it might have done in other ways. Our colleague and friend Josh Richards talked about slowing the swing of the pendulum, and I thought that was a pretty apt description.

I think the department did work to take weight off the pendulum and maybe slow the swing of it. So we saw regulations that were maybe more towards the middle. I think if you had asked a conservative person in 2013, '14 what they thought about what the future Biden regulations, you somehow had them and you could show it to them, that would've been something they really would've liked. It would've felt like a good middle ground. Of course, the Trump era regulations maybe went a bit further, so maybe the middle ground shifted, but substantively, I thought that the department did a nice job there.

My hope is that this is the last round. We love coming on the podcast with you, but I don't want to be coming on the 2026 ICS podcast to talk about the new regulations and what they're going to mean and the 2030 ICS podcast to talk about the new regulations and what they're going to mean. How can we take weight off this pendulum and slow it down because our students are just whipsaw back and forth.

Courtney Bullar...: I 100% agree and I would love to having those podcasts, but talking about things like prevention instead of new regs and then new regs and then new regs. For a multitude of reasons, I love how you put that. So prediction wise, do you both feel like we are going to have regulations in 2023? What do you think? Or do you think they will actually be released in 2023? Do you think they'll make it? Andrea's shaking her head yes.

Andrea Stagg: Yeah. I think they will be released in 2023. Again, I think the goal is absolutely this spring. I just don't know if they can do it and if not this spring, it's got to be 2023. And I think the Trump administration would've loved to get the final regs out before 2020, May, 2020, but they just couldn't get it together.

Courtney Bullar...: And I agree with both of your predictions and wishes. I think spring is a very aggressive timeline, like you said, just a really heavy lift. We're all about transparency at ICS, so I'll just say it. My fear personally, because I have two children graduating high school next year, is that it's going to release exactly what Joe said in the fall with some implementation deadline right in the middle of my kids graduating. I mean, that's my own personal. Keeps me up at night, but I agree it would be reasonable if they would release it at the end of the year, but an implementation deadline of fall of 2024, wouldn't that be amazing with more than however long, it was 100 days that we had before, that would make a lot of sense and be really clean. Whether or not that's realistic, I don't know.

But I do agree it's a heavy lift and my gut tells me it's going to be sometimes towards the end of the year, like fall or even this time of next year when I start really looking at the math. But would you all agree with me the reality is nobody knows?

Joe Storch: 100%. Nobody knows. The department has been appropriately and not leaking about this, and anyone who says that they have insider knowledge, I would not buy the bridge that they are selling. I think the other thing to think about is the

political calendar, Of course. January 20th, 2025, we will either have a second term for the current president or we will have a new president. If we have a different president and a House and Senate that are in the other party or in the party with that new president, of course they could use the Congressional Review Act and they could potentially take back these regulations even if finalized and promulgated. So you want to think about that 90 day calendar looking back.

So my guess is that the Biden administration does not want this to be part of the political conversation. It was a part of the political conversation in 2019, 2020. Of course, COVID came and dominated the political conversation and the Black Lives Matter movement and a number of other items that came to national attention maybe took away some of the primacy of this as a political issue. But my guess is that the Biden administration does not want this to be part of the political conversation in 2024. So they will want it to be out the door done with a bow, and people think it's old news by the time we're talking about primaries and a general election. So that is, even though we are not under that calendar, my sense is that the administration might feel it has to think about that calendar as well.

Courtney Bullar...: Absolutely. Unfortunately politics is a part of it and I wish it wasn't, but it is just a reality. Anything else you all want to cover or talk about before we officially close out? Either on the regs, on chips, on life in general, on Title IX work? I know we are fortunate at ICS to partner with Grand River serving in different roles and love getting information from both of you. It's been great, Andrea, to actually, finally... Did I meet you at NACUA? Am I forgetting that I met you at NACUA or is this the first time we're officially meeting? This is the first time?

Andrea Stagg: I'm sure we've been at NACUA the same time, but we didn't get to really hang out like this. This is fun.

Courtney Bullar...: Yeah. I love it. And I know we have much more to talk about with climate and things like that, so we'll be recording another podcast. I have no doubt about. Anything else you all want to say in closing out this podcast, thoughts that we haven't covered?

Joe Storch: I think I would just say how great it is to be with you, how much incredible respect there is between our organizations and the great missions of our organizations. And I hope that the folks who are listening to this are in good health and that we keep moving forward in a positive way in that area.

Courtney Bullar...: Andrea, any parting words?

Andrea Stagg: Yes. Partying words. If you're going to see Courtney soon, bring her some sour cream onion chips. Okay.

Courtney Bullar...: No, just this is important or really don't. I'm trying be good, but it is hard, and we're recording this of course, around the holidays. It's been terrible this week. My husband's out of town and I've lost my mind.

Andrea Stagg: But that's the thing is like skip the cookies, bring the chips. It's good to know. There's going to be one. You'd prefer the chips, and so would Joe. Now I am happy-

Courtney Bullar...: The important stuff, although Joe is eating a cookie, so I'm confused because we're having cookies for breakfast over there at the storage house, and I was like, "That looks pretty delicious as well."

Joe Storch: I think it's in the afternoon somewhere over the Atlantic, so it's five o'clock somewhere, so I was having a cookie. But yeah, we will be toasting sour cream and onion, Pringles potato chips to you and the CHIPS Act and to great holidays and another great podcast.

Courtney Bullar...: Yes. And when everything's launched and ready to go, we'll definitely put some updates on our website tag in with Grand River. If we think it's necessary, we'll have a brief podcast to talk about any changes or other ideas that we can give to folks on the ground. Well, Andrea and Joe, thank you again so much. It's always a joy and it actually reinvigorates me to talk to others in the field who are so impressive. So thank you, and I hope you have a great holiday season.

Joe Storch: You as well. Thank you.

Courtney Bullar...: I hope you enjoyed that episode with Andrea and Joe as much as I did in learning about a little bit of a nuanced area in Title IX that is certainly going to be applicable in the future. Since the recording the episode, we are still waiting on when these proposed regs will be released as final. And you heard us talk about our predictions, and since that time, my prediction has not changed. But I will tell you that those on my team really do think that they are going to hit in May. If you're a district or an institution out there that is yet to come into compliance with the 2020 regulations, I encourage you to reach out to us or others of our colleagues in this space to help to get you on track because when the new regs come out, it will only be more difficult to come into compliance. And at the end of the day, these regs are here and with us for the foreseeable future. So you want to be in compliance with them today. If we can help, we would love to.

Next episode up, we'll be one on administrative leave and emergency removals under Title IX and informational by me. And then we should have a few more out by the end of this academic school year with my team and with other colleagues in the area and in this space. I look forward to seeing you in another episode and hopefully in one of our trainings soon. This podcast does not establish an attorney-client relationship, which is only formed when you have

This transcript was exported on Mar 31, 2023 - view latest version [here](#).

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.