

Courtney Bullard...: Hello, and welcome back to The Law and Education Podcast. My name is Courtney Bullard, and I'm your host. If you want to learn more about myself, you can go all the way back to episode one and learn more about me and the origin story for ICS. But I'm a lawyer and owner and CEO and founder of Institutional Compliance Solutions, and Institutional Compliance Solutions is a legal and consulting company that provides support to school districts and institutions and their compliance efforts with Title IX and other related laws and regulations. Again, you can learn a lot more about us on our website.

For this episode, I'm going to share with you one of our three webinars that we put out on webinar Wednesday a few months ago. We had three different topics. We had a topic for K-12 on 504, IEP, and the overlap with Title IX. We had the faith-based webinar that I'm going to share with you here today. And then we had one on pregnancy discrimination and accommodations under Title IX. That was for both K-12 and higher ed. They were all free. So if you want a copy of any of the webinars or the materials shared in the webinar that's going to be within this episode, just reach out to me at chb@icslawyer.com, and I will be happy to get that information to you.

This particular webinar was specific for higher education, and it was put on by Brittany Gates, one of our Title IX and equity specialists and co-hosted with Betsy Smith, our director of Title IX Services. I'm going to take a minute to brag on my team at ICS. I have to say that I'm extremely intentional on who we hire, and it is why we have hired very slowly, even though we have enough work to probably hire 10 or 15 more Title IX and equity specialists on our team.

The folks that I have on the team from operations to client development to our services side of the house, which is our Title IX and equity specialist and our two directors, Celeste and Betsy, are incredible. If you're a client or a community partner and you have had the opportunity to be supported by Betsy, Celeste, Brittany, Stephanie, or Amy, they are just some of the best. And you will hear that in this webinar today with Brittany, who brings a really unique perspective to the work. And she'll talk about her background in this webinar. So you're going to hear it, so I'm not going to repeat it.

I am going to say that we have more faith-based institutions than we have state public institutions as client and community partners here at ICS. And so, we thought this topic was important, given some of the questions that we get. And of course, with the new regulations proposed in participation in athletics, we've gotten a lot more questions, and Stephanie and I are going to talk about that in a future episode. And as you're going to hear, we don't have answers to all the questions, but I loved this webinar because of the approach taken by Brittany and Betsy as you hear her chiming in with putting out different polls to our audience. But it's talking about the culture around the conversations that are happening at faith-based institutions in order to really look at any barriers that might exist to reporting as well as, of course, how to claim religious exemptions and the foundational questions that we get.

So as you listen in, even if you're not a faith-based institution, maybe you have a child who attends a faith-based institution, or a relative, perhaps, you're considering going to work at a faith-based institution, or, of course, you do already, just some really interesting points that I thought you all would benefit from.

We may share the other two webinars in a podcast episode as well later on, but I wanted to get this one in front of you, not only to give you some content in this area, but also to let you get to know Brittany on our team a little bit better. As I mentioned in the last episode, you're going to get to know Stephanie and Amy Buck on the team here in the future episodes, and I've already had podcast episodes with Celeste and Betsy.

Lastly, just want to highlight that we are hiring, at ICS, a Title IX and equity specialist, so if you're interested, please reach out, and I can get you the job description, which we're working on now. We also have a lot of upcoming trainings. I'd love to see you at the beach in St. Simon's. If you're in K-12, we've got a training coming up there. Or, in one of our virtual trainings in the fall, we have some for higher ed and for K-12. We're planning a conference in November for higher ed, so be on the lookout for that. And, again, I hope you're having a phenomenal summer.

When you receive this podcast, I believe Betsy Smith will be at the Utah Department of Education providing training for them. I'm headed to NACUA with Celeste. We have a training at Chicago Public Schools coming up. I'm going to be at the Arkansas Department of Education speaking. And we are all over the place. I mentioned some of them in our last episode. I forgot about Alabama and South Carolina, missed some of the other areas we're going to. We're doing a lot of in-person training to get everybody ramped up for the upcoming year. So if that's something you're interested in, we do them virtual, but live, or we do them in person. Please reach out to us. I think we are almost at capacity, if not at capacity, for this summer through about August.

But as you prepare for the fall and going forward, we would love to support you in your training efforts as well as any other compliance efforts. We've been retained by several new institutions just this past week. And really, what we're helping them do is just take a view of their Title IX offices and their policies and procedures and their organization of the office before they go into this new academic year. So if we can help you out or support you, that is our mission here at ICS, to support you on the ground so that you can provide a safe and healthy campus or school environment for teachers, students, and staff and faculty. So, without further ado, I'm going to turn you over to the webinar.

Betsy Smith:

We are here today to talk about Title IX and faith-based institutions and faith-based schools. So, we are going to spend this time with you today really diving into what the exemption looks like and, really, how to deal with situations on your campus or in your district. Brittany already moved off that slide that is

about her, but Brittany Gates is our newest team member at ICS, our newest expert in this area, and she is going to provide you with all this information after her experience working at a faith-based institution, and she can tell you a little bit more about that and about herself as we go forward. I'm going to get through the housekeeping items. Brittany, make sure you talk about yourself, okay-

Brittany Gates: Okay.

Betsy Smith: ... when you start.

Brittany Gates: I moved past that slide quickly, but I will linger. I will go back.

Betsy Smith: Okay. Thank you. The first thing is the chat bar. We have talked about that. You are able to use that and communicate with each other and communicate with me, as I will be manning it as we go through the training today. I said I'm Betsy Smith. For those who don't know us, I am the director of Title IX Services for Institutional Compliance Solutions, so I do Title IX work all day every day and advise institutions and school districts from both legal advice to consulting to serving as a Title IX coordinator, interim lead for a school district and an institution or multiple at the same time, as well as providing these trainings to you. So that's who I am. I'm going to be the behind-the-scenes person today.

We are recording. You got a reminder of that as you hopped on today. So this will be recorded, and you will get that recording about a day, maybe 24 to 48 hours after this session, so be looking for that if you need to hop off early or if something happens, there's a technical difficulty, all of that. Also, we want you... If you happen to lose volume or anything that nature, just hop off and come back on. Usually, that works to solve the issue with Zoom, but again, reminder, you will get a recording.

And then, as a disclaimer, I told you that I'm an attorney. I'm a practicing attorney. A lot of our team, our attorneys, we are not providing any type of legal advice today. We are consulting with you. We are providing lots of training and information, but it is not legal advice. So I want to make sure you know that.

I think I'm about done, but... Oh, hey Alex. I just saw you pop in from lead, cheering Brittany on here. She's going to tell you why that's so important in just a minute. In the chat bar, right now, you can grab the Google Drive and all of these slides as well. So, thank you, Jess, for posting that as we're going. I'm going to stop talking, and Brittany, let's roll.

Brittany Gates: Okay. Well, I appreciate you guys joining. I've been really excited putting together this webinar and waiting for this day to come. As Betsy mentioned, I worked at a faith-based institution for 10 years, actually, before joining the ICS team. A lot of my background is in mental health. I was a licensed professional counselor for a number of years, so I have some good years under my belt at

our college counseling center. But the last three years of my employment at the faith-based school, I was the Title IX coordinator and worked with our care teams as well. So I have a passion for seeing faith-based schools do this really well, and I believe faith-based schools have a lot of tools in their pockets to be really successful at building a healthy culture around Title IX. So, as always, in the classroom, I teach adjunct still as part-time faculty, and I typically overplan an agenda. So we have a lot to cover, so we're going to hit the ground running pretty quickly, but I want to give you an overview of what we're going to try to achieve.

So, as Betsy mentioned, we are going to talk briefly about the religious exemption. It's important. We want you to understand what it might look like for you and your school, but I want to move fairly quickly from there into looking at some other key areas that impact faith-based schools. We want to talk about where we might see Title IX and student conduct overlap and how we can navigate that overlap. I want to talk about reporting and specifically, how do we remove barriers to reporting that may be unique to faith-based schools? How do we really enhance our efforts at garnering more reports and responding when we get those? Additionally, I have a passion in my heart for good prevention programming, and I want to talk through how we can achieve that well within the context of our faith values.

And so ultimately, I'm trying to get us to this point, understanding a mindset shift, and not just considering what we don't have to do as faith-based schools or what we can exempt ourselves from, but what we can do and what we are responsible moving forward. So, that's what I hope to achieve in our time. And I know if there are questions, Betsy's going to flag me on those and interrupt or jump in as she needs to. So we will just watch for her cues there. But we will get started.

Okay, so, let's talk a little bit about the religious exemption. So, ultimately, what that says, if we look at the definition of Title IX, or understanding Title IX, right, we are familiar with this for those who've worked in Title IX, but I don't know what schools you're from, how long you've been in the field. So let's just start from square one.

So Title IX says that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance, except... So we're going to talk about that exception, but I want to highlight this. A lot of faith-based schools say, "Does this apply to me?" Well, if you receive federal financial funding, it does apply to you. But there is an exception that is provided to us, and it's called the religious exemption.

So, schools may be exempt from Title IX in two ways. So first, if they are controlled by a religious organization, we're going to talk about what that looks like, and if enforcing Title IX would be inconsistent with the religious tenets of

the organization. So we're going to break that down a little bit, because not all areas of Title IX are going to be inconsistent with someone's religious tenets. So, let's look at these two pieces a bit more specifically.

So for one, who might be eligible for a religious exemption? So schools must demonstrate, again, that they're controlled by some sort of religious organization. So there's a few ways that a school can do that, and here are some examples. So, the institution is a school or department of divinity, right? If the faculty, staff, and students are required to engage in a personal belief or religion. A lot of schools, a lot of faith-based schools actually don't have this as a requirement. A statement of faith is not a requirement to be admitted into the university. So you'll want to look at whether that's a requirement. If the institution's charter catalog or other publication explicitly states that it is controlled by a religious organization or doctrine, if the institution has a statement of religious practices and members of that institution must engage in the religious practices outlined in the statement, if the institution has a published institutional mission that refers to religious tenets or beliefs, or if there is sufficient evidence that the institution is controlled by a religious organization. So, there's about six different ways in which a school can decide whether they are eligible or whether they can demonstrate that they are controlled by a religious institution.

So, as you're sitting there, I want you to be thinking through, "Okay, of those six things, which one or two or three might apply to me? What questions do I have or do I need to look into to determine whether we can demonstrate that we're controlled by a religious institution?" So, what we do know, this is from the 2020 regulations, which we're all operating under now, what we know is that with the new regulations, which we anticipate at an unknown timeframe, right, we don't know when they're coming, but we do see very similar information about the religious exemption being proposed in these new regs. So, because they're not out yet, we don't know for sure. Things may change. But based on what we've seen, we anticipate this to look very similar.

How to utilize the exemption, a school is not required to seek assurance of the religious exemption as it stands now. A school can simply rely on it. And Betsy, you can chime in. I don't know if you're chiming in or just moving close to the mute button. But a school can simply rely on and look at a situation and say, "Based upon this particular report, it seems inconsistent with our religious tenets, and so, we're going to rely on an exemption. We don't have to seek assurance of that. We feel like, in our review of our institution, we can rely on that exemption, and that's what we're going to do."

Now, some schools want more assurance than that, and so you can follow the instructions on this slide. You can reach out and try to submit to get assurance that the exemption would apply in certain scenarios at your institution that you are controlled by a religious institution. Betsy, do you have thoughts to add on that?

Betsy Smith: No. Actually, I'm just going to pop a poll in, Brittany, if you're okay with that.

Brittany Gates: Sure. Topical.

Betsy Smith: [inaudible] doing was creating that, and I'm going to launch it real fast. Hopefully you all can see it. But my question is, do you believe that your school would qualify as exempt from Title IX in some capacity based on those tenets that Brittany talked about in the last slide? I'm curious about who we have on here today and how we can continue to talk about it with you.

Okay, so we're seeing kind of a mix. Most of you are saying yes in some capacity. Okay, great. That was really helpful for us as presenters for you to know what it is that you all are thinking, like where you might qualify and where you might not and based on what those tenets are. And I know Brittany's going to talk about some of this as we go forward, but really understanding those tenets is the most important thing that you can do when looking at whether you might qualify for an exemption, either on the front end or on the back end, because those tenets may not say something clearly that you are trying to enforce very strictly and so, as it relates to sexual orientation, gender identity, as well as any other types of sexual relationships and things like that.

So, just throwing that out there. This is helpful for us. It looks like we have a mix. I don't know if you all can see the results, but about 62% of you said yes, you believe you would qualify, and 38% said no. I got a note that said that a school has a partial Title IX exemption on file with DOE as it relates to gender identity and transgender issues, and that's great to know that on the front end. I appreciate you sharing that with me. I think what we want to make sure is that we're clear about what the parameters of that exemption look like, and Brittany's going to talk a whole lot more on that.

But absolutely, knowing on the front end can be helpful, but the way that it's set up right now, we also have the ability to ask for forgiveness on the back end later. And that's not the best way of saying it, the most legal way of saying it, but that's kind of what it is, and you get to ask or say, "We believe this is what our exemption would be on the back end." For me, I think it's helpful to know on the front end. So, following those instructions that Brittany just gave you is great. All right, Brit. I'm going to stop. I'm going to end this poll, and you keep going.

Brittany Gates: Okay, awesome. So, I think some questions we've already seen when it comes to the religious exemption, if you followed ICS in any of our recent posts, we know there was a new NPRM released on athletics participation, transgender participation in athletics. That's separate from the regulations we're referencing when we talk about the sexual harassment regulations, which we're anticipating to see soon.

And we've gotten questions already, "Does the religious exemption apply to this?" And the answer is not as clear as some of you are going to want today, but ultimately, we don't know yet. The NPRM doesn't mention it specifically. It's in a comment period. So this is the NPRM specific to athletics eligibility. It's in a comment period. It's already seen 70,000-plus comments, and that was two or three days ago when I looked. I know questions have been asked in that comment period about the religious exemption. So, as we know more, we think it's possible it could apply in some form or fashion, but we just don't know enough yet. So, as we know more, we will keep you apprised on what that might look like for our faith-based schools in that regard.

But a note to what Betsy said, when it comes to understanding and clarifying your religious tenets, it's something we're going to wrap with today, but I do think that's very important, because I think at times, we identify as a broader faith-based school, but may not be sure of what specific tenets guide our institution's religious values. And so knowing those and reading those is valuable, because a lot of those tenets were written a very long time ago and don't apply specifically to the scenarios we're looking at and the very specific ways we want to look at them. So, understanding that is a very, very valuable piece. So, this is one area that faith-based schools need to look at and begin conversations with their leadership about. For 62% of you all, you felt very confident this would apply to us based on our religious tenets. The other 38%, you don't believe you would. Whether that's because you're not sure or because you know, I think these are good conversations to begin having.

So I'm going to move on from this topic. I know we could spend a whole training on this, but I want to dig in a little bit more to these other unique areas that impact us at faith-based schools. So Betsy, I'm going to try to get that poll. There it goes. Okay. So, one of the areas that I want to spend a little bit of time on, so when we look at code of conduct, and this could be a poll that you put out, Betsy, I don't know, we don't want to be poll-heavy, but that was fun, but a lot of faith-based schools tend to have lifestyle expectations or codes of conduct that guide certain behavior expectations or lifestyle expectations based on the school's faith values. And so, we know that to be pretty common. Now, I know not everybody's faith orientation is the same, and so, where that might look different as far as policies around sex, policies around substance use, those may look different at certain schools. But in general, there are often lifestyle expectations that guide behavior at faith-based schools.

So, in working at a faith-based school, some areas of potential risk that I think this poses for us is two key areas. So one is inconsistent application of code of conduct violations that could overlap Title IX, and specifically processing code of conduct violations that are connected to a Title IX matter through a separate process, either before or after the Title IX grievance process. So let's dig into both of those so we understand them a little bit more specifically.

So when it comes to enforcing lifestyle policies, we want to make sure, and this is a bit off the Title IX stage, but it'll come back to it. Consistency is really important, particularly in these areas of substance use or sexual behavior that may a lot of times overlap into Title IX reports. We just want to make sure that we're applying consistent policy through our conduct office. So this is where building a relationship with your conduct office is so, so important, because our conduct office needs to understand when matters do and do not get processed through conduct and when they do get referred to Title IX in lieu of the conduct process. And this can feel a little clunky and a little confusing, because on one hand, through someone's perception, it could be that sexual behavior occurred and the students reported that alcohol was consumed at that particular event, and so, those are violations of our student handbook and need to be disciplined. So it can get a little bit fuzzy.

So we want to make sure that, one, we're consistently applying policy outside of the Title IX realm, so that when it applies to Title IX, we have a consistent framework that we're working from, but we really want to make sure that our conduct office, or whoever enforces those lifestyle expectations, it may not be a conduct office, I don't know, it may be a dean of students or a different type of role, whatever office is responsible for that, that they understand if a matter is potentially falling under sexual harassment, even if conduct violations may have occurred, that that matter gets processed through the Title IX grievance process. So that was a lot to take in, but I want to look at that a bit more specifically.

So, if the allegations or if the report falls under Title IX and meets the definition and jurisdiction in your Title IX policy, it must be investigated as Title IX. It must go through the Title IX grievance process, even if you would say, "Well, alcohol use was involved," or there's a potential code of conduct violation. If it meets those definitions, if it meets that jurisdiction, it has to be processed there. It is not our recommendation that conduct violations that are potentially connected to a formal complaint are sent to another office for additional investigation after a finding of responsibility or not responsibility in a Title IX grievance process. So, what we want you to do instead is add those violations into the notice of allegations for the Title IX matter. So you can do that, and I think a lot of schools aren't sure about that. You can do that.

So, if you're going to send out a notice of allegation related to Title IX sexual assault, but also, you want to include that in the student handbook, there is a violation of your substance abuse policy, there is a violation of your standard of living policy, you can include those allegations that will be sent out in the notice of allegations so that as the investigative process is happening, all of that can be investigated, and it's only what is included in a notice of allegations where a finding of responsibility can occur. So if it's in the notice of allegations, finding of responsibility can occur, and, if appropriate, disciplinary sanctions can be issued at the end of that process. Okay, that was a lot. Betsy, do you have thoughts, or is there any questions we need to respond to there?

Betsy Smith: No questions that we have that have come in. I think that is really helpful, so I'm going to ask a question about an amnesty policy. Are we okay if I ask that question?

Brittany Gates: Oh, sure, because we're coming upon that very quickly.

Betsy Smith: Okay. So that you have an idea about talking with that, I would like to know on the front end, does your school have amnesty policy related to Title IX sexual harassment? So related to other types of behaviors that might occur, like drinking or after reporting sex... or reporting a rape or a sexual assault, that they would potentially have an amnesty policy to prevent a finding of responsibility for the sex itself?

Brittany Gates: You want me to wait on that to come in, or just keep going?

Betsy Smith: You keep going, and I'll let us know the results as they go.

Brittany Gates: Okay, wonderful. So as we're thinking through that, I think it really does bring me to my next slide, which is really a question slide for us. I know we can't talk openly in this forum. I love to have good discussions. Betsy and I are very similar in that. But I do want to get your feedback, and if you want to pop it in the chat bar, you can if you just want to reflect on your own as we move into this next phase.

So, part one of this little webinar, I wanted to focus on some very practical things that you can consider, some steps you may want to actively take as it relates to policy and procedure. But I want to talk more broadly about culture and how do we build a foundation, a safe and healthy culture to respond to Title IX matters on our faith-based campuses.

So, couple of questions for you, what does your culture regarding Title IX look like? What's the story that people tell? What's the story that your community members tell, whether it's students or employees, about Title IX, about how things are responded to? What is that story? And you may not want to put that in the chat bar, but I want you to think about it. If you had to answer that question, how would you answer that? And then also, what does your reporting pattern look like? Are you getting reports? Are you not getting reports? Do you get them at certain times of year? Are they isolated to certain topics? What does that look like for you when it comes to reporting? So, I want you to be thinking about that as we move into these next slides.

Betsy Smith: My poll is done, but I'm going to go ahead before we get there, and I'm going to answer some questions that are coming in the question and answer. "Does our Title IX policy need to state that we can investigate code of conduct issues at the same time?" So that's a great question that came with the last slide that you asked. So, usually, it'd be our recommendation that it does say if there are other violations outside of Title IX, whether it be code of conduct or employee

conduct or things like that, that they can be investigated under the Title IX process. If you don't have that included, it doesn't mean you're completely prohibited from it. I think what you would need to do is make sure that you're really clear with the parties about why you're doing that and then document it in writing for them to understand.

So we are including this as one investigation instead of potentially multiple investigations, which is a trauma-informed practice, so that we're only interviewing people one time and not multiple times. I explained that there is the amnesty policy, explained how that would be applied, if you have one, and then also explained that the Title IX process does give both parties more due process. So we're not taking away any rights with the Title IX process. We're actually just adding rights on, which is a benefit to both parties from a due process standpoint. So that's why we feel like it's the best option, and explaining that well and being really clear. Transparency is kindness. We talk about that a lot. So being transparent about what that is going to look like for the parties is the most important part.

All right. So there's a couple of other questions. Okay, I'm going to answer this one, and then, Dana, we're going to come back to your question as we transition towards the end. I'll make sure to come back to it. So, a person asked, "Can a Title IX incident be processed separately and then followed by conduct? You briefly mentioned you don't recommend that. Can you explain a bit more why?" So if there is a Title IX violation, or potential Title IX violation, we cannot use our discipline process or conduct process outside of Title IX. Like we cannot use that separately from Title IX to discipline for the same thing. So it would always be our recommendation that if we're going to discipline for anything directly related to that Title IX allegation, that we are referring to Title IX, Title IX is leading the way, and that anything else may come after. So what I have seen some schools do is have a Title IX investigation and then include other types of allegations, but proceed with a student conduct investigation after the Title IX matter concludes.

So I don't like to do it on the front end, and that is because the Department of Education has told us that it is retaliation, and deliberate indifference, to discipline for Title-IX-related behaviors outside of the Title IX process. So, I want to be clear. We've got lots of trainings on that. And you can always email me off offline, and we can talk more about that. I don't want to go too far down that path. But you are absolutely doing great. I'm going to come back to the question that Dana asked. And we are good to keep going, Brittany.

Brittany Gates:

Wonderful. And, in that, a person could be found not responsible for the Title IX allegations and found responsible for some of the code of conduct violations as part of that same investigation. So, good thoughts there. If you have questions, please let Betsy and I know. But let's dig in. Let's talk a little bit about reporting barriers. So, I think this is a really important conversation for us to have at faith-based schools to understand... I didn't see the chat bar. I didn't see the feedback

on how many reports you're getting, do you feel like you're getting reports. What we know to be true is sexual harassment is occurring at our faith-based schools. At what frequency? That's different depending on your school, but it is happening. So if you're getting no reports, I want you to really think about what might be barriers that are keeping people from coming forward and making reports.

Some of the barriers may be not knowing the process, not being familiar with how to make a report or whom to contact, but there may be some other barriers as well that we can really dig into. So, some of these barriers that you see on the screen are not unique to faith-based schools. We know there are reporting barriers that have been identified in research to people choosing to move forward. Whether that's with reporting sexual harassment to their schools or to law enforcement, we know there are barriers to reporting. But specifically, some that I have interacted with when I was Title IX coordinator, there is sometimes a belief that someone won't be believed, and not only that, but maybe they'll be blamed in some spaces. Or that nothing will be done, I don't know if your culture is a sweep-it-under-the-rug culture or if that's the cultural narrative that came to mind, but I think that's often a narrative at schools in general, and sometimes at faith-based schools as well.

A big one that we're going to talk about, you've already brought up amnesty, Betsy did the survey, is someone being afraid of getting in trouble. So if I were to come forward and report sexual harassment, that's a risk to me, because I know in disclosing that I'm also disclosing that I have been previously sexually active or I was using alcohol at the time, and so, those are violations that may get me in trouble. So, I don't know if I can go forward and talk about my sexual assault because of these particular disciplinary actions that may come my way. So, that can be a barrier as well.

And then there's also layers that I really want us to think through when it comes to the emotional impact that a student might be going through or that an employee would be going through if they have had a sexual harassment experience as it pertains to their specific faith values. What does this mean in their connection and integration of their spiritual walk? What does that look like with shame or embarrassment or guilt that they may be carrying? So these could all be reasons why people choose not to report.

And one of our jobs in the Title IX coordinator role, or whatever role you might serve at your school, is to try to remove barriers to reporting. And we know in the new regs, specifically, that's going to increase, or we think. We don't know. We think. We feel pretty confident that Title IX coordinator's going to have to continue to remove barriers to reporting. So I think a key to that, initially, is to understand, what are the barriers at my school, what are the things that I have observed that are reporting barriers, and how do I think of proactive steps to respond to those barriers to demonstrate that I'm aware and that I'm taking steps to increase reporting? What you got, Betsy?

Betsy Smith: Yeah, great. Question or a comment came in that sometimes, there are barriers because of the face-to-face live hearing requirement. And, absolutely, this is something that a lot of schools and institutions were not doing, and K-12s aren't having to do it right now, but our higher eds are having to do this and hadn't had to do it prior to 2020, and that absolutely can be a barrier.

What I want to highlight right here is that our support and the way that we support the individuals coming forward and the way that we explain the process is really important as well. So we can help to mitigate those barriers by the way we respond when the reports are coming to us. But 100%, there are some schools who are still going to have to... Even if the regulations change, they will still have to have potentially some sort of live hearing requirement because of the circuit that they live in, where they're located geographically and the political and judicial rulings in those areas. Others, we think, under those regulations are not going to have that as significant of a barrier with regard to live hearings. So, awesome. Thanks for bringing that up. And Brittany, you're good to keep going. Thank you. Your poll is right there if you're ready to... I think you can see it.

Brittany Gates: Oh, I can see it. So it says that about 81% of you said that you do have an amnesty policy related to Title IX sexual harassment. About 8% said no, and about 11% said, "I don't know." So I appreciate the honest answers there. But let's talk a little bit about amnesty and amnesty policy and how it could be beneficial. So, I have it in the category of ways to remove barriers, because I do believe, in talking with students on the ground and employees on the ground and thinking through what might keep you reporting, this idea of, "I'm going to get in trouble." It really comes up a lot, or it did for me in my experience, "I don't want to get in trouble." So the amnesty policy, Betsy's already mentioned it, but it permits you to not discipline for other types of conduct violations that might come up in the disclosure or investigation of a Title IX report.

I want you to think about a few things. I want you to think about, who does it apply to? Does it apply to the complainant in a matter? Does it apply to witnesses? Does it apply to the respondent? Who does it apply to? And how am I communicating it? What is the language used to describe it in our policy? One, we want it in your policy. I would recommend you put it in your policy so that it's clear to use.

And then, how do you talk about it? So, for me, the amnesty policy was not something I kept secret. If one of my goals is to remove barriers, then I had to talk pretty proactively about it existing, because students needed to know about it, employees needed to know about it in order to feel safe coming forward. And so, what language? Is the language that it can be applied? Is the language that it will be applied? And what works best for your school? So, I want you to think about the way that you phrase it and how do you get people bought in on it.

So, I mean, I think a lot of times, we can have the amnesty policy, but we're not applying it as it's written. So my encouragement is to understand the language in your amnesty policy, understand its application, and apply it consistently. Again, consistency doesn't stop out of... We mentioned it in the conduct process, it applies here as well. Are we consistently applying the amnesty policy? And when I met with students, when I did student training, this was a particular barrier area that I had to address. And so, how I would approach it in trying to build trust and trying to increase transparency, particularly with the student body, was to talk openly about the policy and acknowledge that it existed and explain what it meant, and to acknowledge that just because I said it doesn't mean that they're going to inherently trust me. So, in application, they had to see it be consistently applied. So, be open and honest in your dialogue.

That kind of brings me to the second point. So, I highly encourage you to think about if an amnesty policy would be beneficial to remove reporting barriers, particularly if you have a lifestyle policy that it might create fear for students in coming forward with matters of sexual harassment. Ultimately, are you more motivated to receive reports of sexual harassment than you are to respond to an alcohol violation? That's for you and your school to figure out, but I want you to think about that in your particular position. But I think critical to removing barriers is an open communication. And I know this is... And this can get really dicey and feel really dicey at faith-based schools, but I want to demystify that process a little bit, make it feel a little bit more accessible to you.

Sometimes, open communication looks like what we just described. It looks like saying, "Hey, we do have this amnesty policy, and here's what it means. And it's not a secret, because it's in our policies. Our policies are published. Here's what you can hold us to in that regard." But ultimately, how else are we talking about Title IX? Do our students believe that nothing of this sort would ever, ever happen on our campus, or do they feel comfortable enough knowing that we know things like this are happening and it's our job to prevent them and take care of anyone if this happens on our campus?

So, how are we communicating about Title IX? Do people know where to find the Title IX office? Do they know who the Title IX coordinator is? Do they know how to make a report? Have you went back and tested all your reporting forms in the last couple of months and just make sure they work? One time, we had a website merger, and you don't realize it, but it changes your form location. And so, just being mindful of all of those things. Do our communication channels work? And then, what communication channels are we facilitating ourselves to make this a more common conversation on our campus? So, that is an area we could spend a whole training on. How do we open up lines of communication? And I'm going to give you a few more ideas as we go.

But I think another piece to remove barriers to reporting is clarity on the religious exemption. And this is really interesting. So a lot of schools I know were trying to figure out, in that SOGI realm, that sexual orientation, gender

identity realm, what does this look like specifically for them? And I would get a lot of questions, and I don't know whether you're getting a lot of questions. "What does that look like? What does this mean our school does or doesn't do?" But we got a lot of questions about that. And maybe your school has specific policy that brings clarity to that, or maybe it's a little bit more broad and a little bit more vague. And so, I think it will be a hard task to provide clarity if you think you could rely on a religious exemption, or if you know you can, to say, "These are all the specific reports in which we would rely on a religious exemption." It's very nuanced and specific. That might be really hard for you to achieve.

But what I don't think would be as hard to achieve is to clarify what it isn't and what it doesn't apply to. So, our religious exemption only applies when enforcing Title IX would be inconsistent with our religious tenets, and on our campus, we don't believe... for wherever you are. Let's use an example. So, if someone were to come forward and report a sexual assault or rape, it does not matter, that person's sexual orientation or gender identity, because responding to a sexual assault is not inconsistent with our values. It's consistent with what we're going to do here, and our religious exemption is never going to apply in that particular scenario.

So that might be an example of, I may not be able to say all the times specifically when we are going to rely on that exemption, but I can relieve and provide peace of mind by explaining times in which we wouldn't. So clarity in that direction I think can be really important, because there are students on your campus who identify in the SOGI community, or in that realm, and they are asking those questions internally, and these are important conversations to have. So, again, that's a separate training, but I think that's a small thing you can do that would provide peace of mind so that things are still being reported when they're happening on your campus.

Here's another landmine. How do we have healthy conversations, broadly speaking, on the topic of sexuality? I don't know what this looks like on your campus, and I cannot predict all of the people sitting in the chat bar or participants on this screen what that might look like for you. But I think in big and small ways, it's worth considering, what does the dialogue look like on our campus about sex and sexuality in general? How would people rate the health of our climate and talking about these matters? Because the health of those conversations is going to be a factor in understanding sexual harassment or these particular areas of sexuality as well. So even if it's just you doing a loose evaluation, what is the health on our campus of this or how can we infuse healthy conversation? I think that can be a way to remove barriers as well.

And I'm sure there are others. These were just a few things from personal experience that came to mind that I saw be incredibly helpful in thinking through, what are the cultural narratives that I have been given, what are the things that I'm working against, what do I need to focus on? So, for me, it was

trust and transparency. I needed to increase those things. By doing some of these things, I was able to achieve that in some ways.

So, this is a big passion area for me, but I want to talk a little bit about this. What does building a healthy culture look like on our campuses? For me, prevention leads the charge, but I also know when we think about doing good prevention programming on faith-based campuses, sometimes, we feel met with boundaries and barriers. So I want to talk about how we can navigate those a little bit. And I know getting buy-in from key administrators and leadership, you're all probably there like, "Yes, that would be great," or, "Yes, I have it," right? I don't know. You probably all fall on a range with how your administration is responding to your office, to the work you do, the support you get.

But I think either way, having key meetings and trying to get them bought in to this understanding that Title IX isn't just about understanding this religious exemption. It isn't just about these policies that we need to put in place, but it's also about, how do we make our campus safer and healthier for our students, employees, and all those who visit us by engaging prevention work?

So, I want you to think through it again. These may feel like, "Oh my gosh, Brittany, I don't know how to even get my policy supported. How am I going to get this supported?" Any small step you can take is a big step, and I want to not minimize any effort that comes in this area. And maybe a way that you start is to think through, what are our university values? When students leave our campus, how do we want them to be different? How do we want them to have been impacted by this place? Do we want them to be kind citizens of whatever communities they're in? Do we want them to be critical thinkers? What do we want them to garner from their time with us? What is our mission as a school, as a university, in impacting our students?

And maybe those are the things that can impact how we get buy-in for good prevention training. If we want students to be critical thinkers, then having a healthier dialogue about sexuality in general fosters that. If we want students to be kind and invested in their communities, then good bystander intervention training is going to foster that. So, don't step away from your university values to get prevention work done, but lean into them more fully.

And I think this is where it gets a little bit more complicated. So what does your education look like now? Is it kind of no education in general on sexuality? Is it abstinence-based education? Are we just saying, "This is what we think you can do and can't do?" Or do we have a holistic education that we're trying to work with our student body and employee body on? Oh, Betsy, you threw a poll in.

Betsy Smith:

I did. You're doing such a great job on this. I wanted to make sure that we were figuring out what our schools are feeling on the ground with hindrance in their prevention efforts. And it looks like we have a mixed bag there. We're almost at

50/50 with some other I don't know in there, but can be such a challenging area. And your prevention efforts are so important. And figuring out how to address it with your campus leadership, whether that's employees and/or students, student leadership, and making sure that you're able to work this prevention aspect is so important. So I'm glad to see that some of you don't feel hindered, but I know that a whole lot of you out there do feel that way. So, we hope that after this, you're going to come away with some ideas about how to talk about it in ways that allow you to be seen and heard and work in that prevention area.

Brittany Gates:

Thanks, Betsy, and appreciate you guys for interacting on the poll. And I don't know without knowing your school and knowing some of these specific types of hindrance that you're feeling. It could be beneficial. Sometimes, certain key administrators need to see data. They need to see numbers. They need to understand that reports are coming in. And if we want to respond to those reports other than just procedurally, we do have some work to do when it comes to prevention. So that could be an avenue or a pathway in. Also, your values, like we talked about, that could be a pathway in to say, "How does this office help build holistic, well-rounded people who are entering into the world to live out their lives through their calling and their faith? How do we help do that? How can my office assist with that as we move forward?"

So, I don't know your administrators, but think through who they are as people and what kind of information they might need to get on board. And just begin the dialogue, help them understand what your office is going through and facing, and we can talk through more specific ideas if you need, Betsy and I, moving forward.

But I do want to think through, okay, so if prevention leads the charge, and if I had no hindrances, one, I've got to figure out how to move past that, but if I could do some work, what would I do? So here's some areas I'd love you to consider for effective prevention programming. So, this idea of discussing consent, and this may be one where you're like, "Brittany, I'd love to do it, but there's no way I'm going to be permitted to do trainings on consent, because our lifestyle policy says that we don't support consensual sexual relationships outside of a marriage relationship. So there's just no way that I'm going to get to do it."

So I want you to think a little bit bigger about consent. Why I think it's a good starting point is it's not just about sexual behavior, right? Consent is something that we can train on and talk about broader than that. We can talk about it just in general interactions with people. We consent to things all day long in big or small ways. And so, consent can be broadened beyond just sexual behavior. But also, if you're a faith-based school, I would challenge that you do need to talk about consent, because even in the marital relationship, consent still applies, consent still matters.

So, if we can build this healthy framework where everyone's on the same page and we understand what is consent, I do think that it would be helpful in preventing sexual harassment on our campus, because, even though we have codes of conduct that say, "You can't have sex outside of marriage," students are still having sex on your campus. Even though it says they can't use substances, they're still using substances on your campus. I don't know all of your campuses. That's just my gut sense that that's probably still going on.

So again, it takes us back to more of these fundamental issues. Do we want our students to be holistic critical thinkers? Do we want to talk about these topics in ways that help them make informed decisions so someone could say, "I haven't been part of healthy conversations around sex and sexuality. I didn't understand that that's what consent looked like, and now I do. So when I choose to engage in a sexual relationship, I know boundaries that I need to establish and the things I need to look for"? So, again, I think consent's one of those areas that if you just look at it as, "Well, we don't support sex outside of marriage, and so therefore, we can't talk about consent," I really challenge you to think through that in a broader lens.

Another area that I think is a beneficial training point, and one that I've seen great success in when I was a Title IX coordinator, is talking about bystander intervention. Bystander intervention, there's lots of models, there's lots of ways that you can train on it. I used to use a pretty basic five Ds of being a good bystander. But ultimately, bystander intervention is saying, "Hey, if I see something that's not okay, I'm going to do something to positively impact that situation and maybe help and change the course of what it's going to look like."

So, I think you can walk through with students specific scenarios in which, if they come upon a situation and they're not sure the parties are consensually wanting to be interacting in the ways that they are, they can do something small to maybe change the trajectory for someone and to give them an exit path or to check on them later. So bystander intervention is, typically, pretty consistent with many faith values as far as looking out for those in our community and stepping in and standing up for someone when they need us. So that tends to be an area that would be well-received by faith-based schools.

Another area for good prevention, honestly, is just talking about your policy. We've talked about this already, but being open and honest and transparent about what happens when a Title IX report is made, what that might look like, in a sense, could provide education on what is sexual harassment and things like that through different avenues. So, those are some areas that I tried to target when I was serving in this role at a faith-based school and I thought might be helpful for you.

Betsy Smith:

And Brittany, we're getting some questions that are coming in. Some of them, I'm trying to answer. Others, I've put my email in there. If you have questions, you can email me after, and I'll either connect you with Brittany or answer

myself, or someone else on the team. The recommendation about training for students, or for student prevention training, we will absolutely work on that and put it in the hot bar. That's a really important aspect. So, thank you for that. Just as we only have about 10 minutes left, I want to make sure that we are answering what I can, and then we'll get to some at the end, and we'll hang on for some extra questions as we go.

Brittany Gates:

Okay, awesome. So, I'm going to keep moving. And we're really wrapping up, and so, I want to bring it to a close and really focus on this concept of our mindset. And I know... Well, I don't know, but I know from experience at a faith-based school and working with ICS and getting to interact with several different schools, a lot of us end up in our positions in Title IX because we applied for that role and that's what we wanted, or sometimes, because we were volunteered to serve our campus in that way. And so, I'm not sure our mindset heading into this particular role, but I do want to encourage you in it.

And I think a lot of times, at faith-based schools, again, like I said in the very beginning, we can often get stuck in wanting to do the right thing. So it's not stuck for the wrong reasons. It's stuck for reasons that really matter. We want to do the right thing. We want to understand how to walk that line with our university policies and our faith values and what the federal government asks of us to do and all of those things. So a lot of times, we can feel really boxed in by what I can't do or what this religious exemption says that I won't do or that I can't do based on my university policy, and it can feel really boxing in. And I know that feeling.

But I want to spend a minute and just talk about how we can shift our focus to think about what we can do. What can we do? What are we responsible for? What is within our reach to make a positive impact on? And so I want to think about that, because I do think it can all happen at once. It's complicated, and it sometimes feels like you're constantly juggling, I know that feeling, to try to hold all of these stakeholders' perspectives in one, but I think you can do it. And some of it starts with just an intentional effort to say, "Okay, I know the barriers and the boundaries of what I can't do, but let me start moving into what I can do so that I feel like I'm taking proactive steps to help build a safe community where I am."

So I want to encourage you in that for a minute and talk about what you can do. You can, and must, have a published Title IX grievance process. You can respond to the reports you're getting, and how you interact with people when you're getting those reports is something that you can do with a trauma-informed approach. And that's something that's really important to me and many of us here at ICS. We want you to be thinking about that as you're responding to reports. You can appropriately train your key role players and make sure the people on your team feel confident and ready if you need them. You can remove reporting barriers as best you can. You can try. You can take active steps forward. You can track trends and try to understand your culture.

And a lot of times, that may look like big, broad surveys and polls, or it might look like one-on-one conversations. I would typically end trainings on campus and say, "Hey, if you've heard otherwise about how this works here or if you don't buy what I'm selling, if you don't believe what I'm saying, let's grab coffee, and let's talk." And so sometimes, assessing culture is one conversation with one person. Sometimes it's a different approach.

But you can do those things, and I know, in all your free time, but maybe for 15 minutes, it would be good for you to step out of your office and have coffee. And in doing those things, I think you are creating healthy and safe spaces for reporting. So whatever you feel like you're hindered from doing, there are things that I think you can do that will make a big difference, because at the end of the day, kindness and care are not exempt categories. And our faith values are usually very consistent on this, that how we treat people is within our scope of control. And those with a faith background are often very good at this, or have the potential to be very good at this. How we treat people matters.

I got an email not too long ago from a student that I had worked with in a Title IX process, and quite candidly, it was a pretty clunky process. But the email said, "Your kindness got me through one of the hardest journeys I've been on." And I don't say that for any sort of reaction other than to say it really does make a difference how we treat people. And sometimes, that's what they remember. And I'm glad Betsy's on here, because Betsy's motto is true, "Support always and support first."

And so, if your institution plans to rely on an exemption, okay, you have the right to do that if you've checked it out and you know that it's going to work out for you in that regard, but it doesn't mean that you don't offer some support and kindly help somebody get the support and assistance they might need. If you're not going to rely on a religious exemption, okay, it doesn't mean we don't still lean on support and offer support first and support always. And if you're doing that, if you're offering support, and if you're being kind, I promise you, sometimes that clarity and that kindness can go a long way in preventing certain litigation. The beautiful thing about that is those things are within your scope of control always. And so I really wanted to encourage you there.

Sometimes I think, at least, Title IX coordinator confessions, it can feel really hard to manage all of this, especially when you're fighting for support at times, or even when you have the support. So just remembering that something as simple as being kind to someone in a meeting or an investigative interview might go a really long way. So I want to encourage you in that.

And as we come to a close, here's our final to-do list. Like I said, I'm a mental health provider by trade, and so, Brené Brown is a shame researcher, and I love reading some of her work, but she says, "Clear is kind." And I know when it comes to Title IX, sometimes it's not clear to us. And so, we don't know how to

make it clear to others. But in areas where we do and when we are confident on how to be clear, that is the kindest thing we can do for people.

So how do we do that? We want to encourage you to, again, think about those religious tenets, clarify those for yourself. You as the Title IX coordinator, if somebody asked you, "Hey, where do I find our religious tenets? What are those exactly? What do they speak to?" I want you to know how to find those. Begin thinking about when do you meet with leadership, and when you meet with them, what are the things you're trying to accomplish?

Maybe for you, it is simply support in policy. Maybe it's, "I'm ready, and I feel good and ready to do some prevention work." Think about where you're at as you request meetings with leadership. But review your documents, review your policies. See if you have an amnesty policy or if you'd like to add one. See if there are other policies that overlap your code of conduct. Be pretty familiar with it and where it might overlap with Title IX. But get familiar with your documents. And then, when you can, provide clarity through communication, through training, and through policy. And then of course, please stay connected to us as the new regulations are released so that we can keep you apprised and help you through this, especially if anything changes.

Betsy Smith:

That was awesome. I'm going to do a few housekeeping things, and then we're going to pop into some additional questions. Apparently, we are really tech-savvy and have QR codes. So, you can click on that QR code. And, I know, it's like 10 years later, but we got it. You can click on that QR code to find our upcoming training, so do have a new one on pregnancy discrimination, and that is a super hot topic, especially as the new regulations are going to put a whole lot of emphasis on that area. So, please come and join that training with us next Wednesday, I believe. So, have a look, and we're excited for you to come on that next webinar Wednesday.

If you are not a community partner with us... We haven't talked a lot about community partners today, so if you're not a community partner with us, we would love to have you join us in that. If you want to reach out to any of us, you can reach out to me, bbs@icslawyer.com or jared@icslawyer.com, believe he is on here as well. And, let's see if there's anybody else. I think that's it for who is on here with us that you could maybe reach out to there. Really, any of us. We want to partner with you. We want to help you to navigate this really tough water.

We also are working really hard to connect some of our faith-based institutions and districts so that you can really have those conversations about what you're experiencing. And that's something that we do as a part of our community access, is not only provide you with trainings that you can use at any time, but also provide those connections so that you can have really hard conversations with colleagues who are doing the really hard work alongside you. So, please consider that. You can connect with all of us in the ways that are up there on

your screen right now. And I am going to stop talking, because I am not great at the sales part, but I am in that connections part.

But I am going to talk with you a little bit about some of the questions that have come in. So, I saw a question about, "I'm looking for some good examples of an amnesty policy." If you want to email us, we can work through that. I know that Brittany had a really great one that she was using, and it seems to work in a way that was positive. There were some questions about employee amnesty, and I think we do need to have employee amnesty in the same way that we have student amnesty, because the last thing that I want to happen is someone to feel like they can't report a rape or choose not to report a rape or a sexual assault or harassment because they have engaged in sex or engaged in the consumption of alcohol or drugs. So, it is really important for me that we are putting that in place.

They are always discretionary, so it's not just a carte blanche, "This is absolutely no one is ever going to be punished for these things," but it is certainly something that can be taken into consideration and evaluated based on the circumstances. And it's a really important piece to have in your policy. So shoot us an email there. We'll work with you as we're creating new policies as well.

"Any predictions on when the new regs will be published?" So, that's the question of the hour, of the year, of the month, of the week, of all the things. The department has still told us May. So we haven't heard otherwise. They aren't moving exceptionally quickly, and we're checking every day to see what's happening next. And there's kind of a stall and a bit of a lull, but they have told us May. So we are prepared to receive them this month. We shall see. If it is not this month, it could be any time between this May and the next May, in our predictions. I firmly believe that they're amping up to try to get these through sooner rather than later. So, we shall see any recommendations. But we don't have any insight. And, to be honest, I don't think anyone does. So if they're telling you that, I'm not going to say they're lying, but I'm just going to say they're telling you something that they probably don't know is true.

And then, suggestions, Brittany, I think this will be an important question for you to answer, recommendations or suggestions and regarding how to bring up to speed a new VP for student life or assistant VP or individuals who haven't experienced higher ed before, or Title IX, but maybe they're coming from that faith-based sector and not having this full perspective of either Title IX and/or higher ed at all.

Brittany Gates: That is not a short answer, probably. So Betsy, will you send that person my email address? I'd love to talk offline a little bit about that, because I think if you're bringing someone up to speed, it's a very different world. And if they're familiar with even the HR world or the conduct world, it looks very different, and Title IX feels a bit clunky. So, I think there's a few different conversations that could be beneficial, some of which is just showing your complaint log and

getting a sense of, "Here's what our institutional culture is," and kind of walking through your university's grievance process, things of that sort. So, yeah, feel free. I've experienced that. I know what that's like. And so I'd love to chat offline about that a little bit.

The amnesty piece that you mentioned, as well, I think a good amnesty policy will probably have a clause in there not just that they wouldn't be subject to disciplinary action, but that the university could provide educational opportunities in lieu of that. So that's a good piece that could be added to a amnesty policy that might be helpful or more well-received.

Betsy Smith: Yeah, so I'm going to go back, one more thing about the VP and AVP question. I would make sure that you're providing them with these types of free opportunities as well. So let your VPs and your AVPs come to these opportunities. Share the recordings with them. Let them know what is happening. If you're a community partner with us, connect with some other institutions at the VP or AVP level that we might be able to help you connect with to make sure that you're able to see where it's going well, where the challenges might exist. So those connections are super helpful.

We are so glad that you all have been with us today. This has been awesome. Thank you, Brittany, for doing this awesome training for us. And we're going to continue in this world. We have a lot of faith-based clients, and we want to make sure that we're providing you with that kind of nuanced and intricate expectation in this world. We're going to be here. We appreciate you. And you know how to get us if you need us. Hopefully, we'll see you next week at the pregnancy discrimination webinar. Awesome.

Brittany Gates: Have a great end of semester.

Betsy Smith: Finish strong, y'all. You got this.

Courtney Bullar...: I hope you enjoyed this episode and getting to listen to the webinar and the conversations between Brittany and Betsy and some of our participants in that webinar. As I mentioned before, we had over 1,000 attendees at our webinar Wednesday, which kind of blows my mind to this day. And this one was really well-attended. We had several new community partners come on board directly after this episode who are specific to working in faith-based institutions and looking for that different lens in the work. So, if you are one of those and want to learn more about becoming a community partner with ICS, we would love to share that information with you. Thanks again for tuning in and listening. Look forward to seeing you in a future episode.

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