

Courtney Bullard:

Hello and welcome to the Law and Education Podcast. My name is Courtney Bullard, and I am your host. I'm the founder and CEO of Institutional Compliance Solutions, a 20 plus year education lawyer, mom, wife, all the things you can learn more about me and the company by going all the way back to episode one of this podcast or by visiting our website at www.icslawyer.com. I've made a lot of promises in this intro to the podcast about the direction it is going, which includes a revamp of the podcast that we will launch in January of 2024. That revamp will come alongside a revamp of our logo and our website, which I'm really excited about. But all in all, this podcast is a compilation of conversations with subject matter experts and other colleagues who work in the Title IX and equity space, or work in other areas that often overlap with Title IX, as well as informational episodes that I create in order to share updates that are pertinent in this area. And that's what we're going to do today.

Before I dive into the content of this episode, I wanted to highlight a few things that have been going on at ICS and that are coming up for 2024. We're in the final quarter of 2023, which is crazy. We've just added a new specialist, Michaela Bland to our team. And for this last quarter, we've added two new virtual training options and one in-person option. The virtual trainings are a civil rights investigator training and a trauma-informed training, and the in-person is at our training center here at our headquarters in Chattanooga, Tennessee, which is a civil rights investigator training. I think we have one spot left for the in-person. We also just wrapped up an in-person regional training for our K-12 folks in St. Simon's Island, Georgia. The ICS team on the ground did a fantastic job. I know that everyone had a great time. It was, of course, a fantastic location at the beach. And we will be, in the spring, adding another regional training, as well as one in June, so be on the lookout for that.

That schedule will be coming out probably in the next few weeks. If you are a Title IX professional or work in the space, such as an attorney, we hope that you will join us in 2024 or as we close out this year in one of our trainings. As soon as everything is released for the next year, you will hear from us via email, and I'm sure on this podcast. A lot more to share on the ICS front, but let's turn to the information for today. So here we are. It's October. Where are the new Title IX regulations? That's what I want to talk about today. And some of this will get a little in the weeds from a procedural or legal standpoint, so bear with me if you're a non-lawyer listener. In May of 2023, the Department of Education and Office for Civil Rights noted that we can expect the new Title IX regulations in October.

It's now October, and I do not foresee that happening. I wanted to take us back a little bit on what's happening and where we might be going with these regulations. You'll recall that the Department of Education is empowered to draft and release regulations to fulfill Congress's mandate for sex equity under Title IX. And the department, through its office for Civil Rights, published draft rules in July of 2022, that amend the 2020 Title IX regulations. We've been under those 2020 Title IX regs for four academic years, and those dictate how a university or school district must respond to and address sexual harassment that falls under its education program or activity. All of those terms, sexual harassment, education program, or activity are specifically defined in the 2020 regs. And if you've been to our trainings, you've heard us talk about that a lot. So way back in July of 2022, the notice of proposed rulemaking, or NPRM, was released through the Office for Civil Rights, and that publication initiated a public comment period under the Administrative Procedures Act.

The Administrative Procedures Act, or the APA, requires public comment when an agency puts forth rulemaking. As a result of the NPRM, there were 244,000 comments submitted, and the Office for Civil Rights is tasked with responding to all of those comments within what's called the preamble to the regulations when it publishes its final rule. The preamble, for those of you who were doing Title IX work in 2020 to the 2020 Title IX regulations was the majority of the document. The preamble to the NPRM released last July was the majority of the NPRM, so thousands of pages and only a few pages are the

actual regulations. There's a preamble that is before it that explains why the department is publishing these regulations in the manner that it is. There's case law cited, information it received from the public, and so on and so forth. In that preamble, the department must respond to the over 200,000 comments that came in. It doesn't have to be individually, it can be collectively, but it has to respond to all of them.

Once it's done, it will publish that final rule and take into consideration all of the comments submitted. Normally, and what we saw in 2020, is that the actual regulation that's released is modified somewhat as a result of the public comments. From its publication date, the Office for Civil Rights will provide a 60 to 90 day range for compliance and implementation by schools, and then it will begin its enforcement. The Office for Civil Rights completed its draft, and is now working on that new final regulation, the preamble to that regulation and responses to the over 200,000 comments, and it announced in October, 2023, revised deadline. Again, initially, they stated it would be released in May of 2023. They let us know the Friday before Memorial Day weekend, that it was going to be moved to October, and they noted that in October they would be releasing two different regulations. One is the athletics regulation on participation in sports, and the other is on sexual harassment or sexual misconduct. But here we are, October. I do not anticipate either of those regulations will be released this month.

That is because the Department of Education has not sent the regulations for what's called OIRA review. Quick note, OIRA stands for the Office of Information and Regulatory Affairs, which is a statutory part of the Office of Management and Budget within the executive office of the president. It is the United States Government's central authority for the review of executive branch regulations, approval of government information collections, establishment of government statistical practices, and coordination of federal privacy policy, amongst other things. So again, those regulations have to be sent to OIRA for review. From the date of my recording this to the date it is released, it is possible that will have happened, but I doubt it.

At this time, the regulations have not been sent to OIRA for review, and there are no OIRA meetings with stakeholders that have been held. Previously, OIRA held over 100 meetings with stakeholders between November of 2019 and March of 2020 before publishing the 2020 Title IX regulations. While it's possible that there might be a shorter timeline here, it's fairly likely that the new regulations will follow a similar path. Our best guess is that we will not receive or have new regulations until spring, with an implementation deadline of fall of 2024. All that to say, we're still waiting on those final regs. As always, we will let you know, and so will our other colleagues at other organizations, when they are released, and there will be a lot of flurry after that, including updates to all of our certified Title IX University trainings that are virtual and in person, all of our compliance aides for our community partners. There will be a lot of work to be done, but the ICS team is prepared to do it.

In the meantime, while we wait, I encourage you to continue your compliance efforts with the 2020 regulations now that we're well into this academic year. That includes training all members of your Title IX team. We have an on-demand product, as I just mentioned, through Title IX University. We have virtual courses. A lot of our colleagues are offering trainings. Just be sure that you're getting training in compliance with those regs. Ensure your policies and procedures are, of course, compliant with the regs as well, and I really encourage you to evaluate your team depth for responsiveness to reports. At ICS, we serve as external coordinators, interim Title IX coordinators, external Title IX and civil rights investigators, decision makers, informal resolution facilitators, appellate decision makers, and advisors for institutions and K-12.

We recently posted a blog about the benefits of interim coordinator services, and we posted another one about external Title IX investigative services. If you want to get more information from us on how we can provide that support, please reach out to us on our contact us form on our website. We would love to provide you with additional information on those services. For our K 12 friends out there, I also

highly encourage you to train your staff on their obligations to report matters that fall under Title IX to you as the Title IX coordinator. We call that responsible employee training. Right now, it is not mandated under the regs, but the proposed regs have a mandate in them, both for K-12 and higher education, that we think is going to stay. We have responsible employee training that we license to school districts and charter schools that's tailored to your district or school, and we'd be happy to do that for you, or you can do it yourself as the Title IX coordinator for your district or school.

Either way, it is extremely important that you start to think about how you're going to make that happen when these final regs come out in the spring, so that you're ready to go in the fall of next year, if the implementation deadline is that far out, which we hope it will be. We appreciate you listening to the podcast. We're here to support your compliance and equity efforts, so please lean on us for assistance. We have several podcast episodes that will be released before the end of the year under this old format that I'm really excited about with our team members. I know I've been promising that for a while, but we're getting to work on those. Be on the lookout for those, and continue to tune into our podcast. If you're enjoying it, please subscribe to it, like it, share it, provide a review. We'd really appreciate that as we ramp up our efforts in getting more podcast episodes to you. Until then, I hope you're doing well on the ground in this academic year, and we will see you next episode.

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