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Law Firms Tap Tech Companies For Help Amid Title IX Uptick

By **Steven Lerner**

Law360 (October 21, 2021, 3:19 PM EDT) -- About a year and a half ago, an undisclosed academic client of Holland & Knight LLP found itself in a bit of a pickle: it had to comply with and respond to a governmental agency's Title IX request for information.

Philip J. Catanzano, a senior counsel for Holland & Knight who advises schools on Title IX policies and cases, told Law360 Pulse that responding to the governmental request required going through a huge number of documents in a short period of time.

"How do we get through all these documents in an efficient way?" Catanzano said. "The option was using some associates at my firm or using [an outside provider], which could be totally dedicated to it and have the ability to staff it."

The firm reached out to Level Legal, a legal services company that specializes in areas such as e-discovery and managed document review. The company is part of a growing market of service providers — including FTI Consulting, Epiq Global and HBR Consulting — that specialize in assisting law firms on complex cases.

Title IX Trends

Title IX is a federal civil rights law under which gender-based discrimination lawsuits or investigations at schools and other academic institutions typically are filed.

A 2019 analysis by the New York University Journal of Legislation and Public Policy found that the number of Title IX lawsuits against institutions surged since a 2011 guidance expanded the law to include sexual violence.

Andrew T. Miltenberg, a managing partner for Nesenoff & Miltenberg LLP who focuses on Title IX, told Law360 Pulse that his firm saw a steady 50% increase in Title IX cases from September 2019 through March 2020.

This uptick may have been attributed to anticipated changes to Title IX by the Trump administration, according to Miltenberg.

"It felt like schools were increasing pressure with respect to Title IX cases," Miltenberg said.

With campuses shut down during the pandemic, Miltenberg said the number of Title IX cases decreased by 60%-75%.

Since campuses began opening in August 2021, the number of new cases has returned to pre-pandemic levels, according to Miltenberg. The caseload is so busy that the firm has turned to e-discovery provider Haystack ID for document review assistance.

Title IX cases are unique because of the sensitivity of the allegations and privacy concerns, according to Catanzano. Unlike traditional commercial disputes where most of the data might be in business emails and digital files, a Title IX case might involve data from social media, surveillance footage, eyewitness accounts or testimony, and geolocation information.

There is an added risk if a human has to manually input data into a computer system because some of that information could get overlooked, according to Catanzano.

Catanzano said off-the-shelf tools currently on the market can provide a certain level of research for law firms, such as name searching, but they're not the best for privileged and sensitive information. Instead, he said he prefers using a service provider that is equipped with both technology and experts who know what to look for.

Going Outside

A Title IX case that has a smaller workload, usually less than 200 pages of documents, can typically be handled in-house by a law firm, Catanzano said.

But if the Title IX case is more data-intensive, the academic institution is asked by a federal agency to dig up years of data or there are potentially thousands of pages of documents, it makes sense to bring on an e-discovery and managed review provider to help, he said.

"[Managed service providers] are just a huge benefit because they can take a project like that and bring it to scale really quickly so that you have that information to work with the general counsel's office and make those calls," he said.

For example, Catanzano would use a managed service provider in a hypothetical case where an institution is issued a subpoena requesting relevant documents about an individual facing criminal charges, but there is a huge number of documents to go through to determine what is privileged.

"Unless the school wants the law firm to do it, it can really challenge you, especially because our rates are much higher than [a managed service provider's] rates," Catanzano said. "We can do a certain amount of that review, but institutions are looking for efficiency."

Catanzano said it is not impossible for law firms to handle this work independently, but it is more challenging — especially if the institution needs to respond to a subpoena in a certain time period.

Technical Advantage

Experts note that an early case assessment, which can be achieved with the right tools, enables institutions and lawyers to determine their strategy early in a Title IX investigation.

"What we find typically is that outside counsel, corporate legal departments [and] internal stakeholders are very interested in as quickly as possible determining if anything happened," Daniel Bonner, Level Legal's director of client solutions, told Law360 Pulse.

Bonner said Level Legal uses a mixture of data analytics tools from companies such as Brainspace and Relativity to achieve these goals. These tools can conduct tasks such as conceptual clustering, which organizes data by a concept description, and through active learning, which forces users to label new data points.

In the context of being challenged by a government agency or in litigation, doing the work at the last minute could be detrimental, Catanzano noted.

"No one likes to be right at the deadline having to make quick and difficult decisions," he said. "If you make a mistake and you send something that's privileged or if you send a sensitive document, that could really be harmful."

Technology can ensure that data is retrieved early, and it can help institutions fill the gaps during an investigation, according to Catanzano. This includes using both a central database that stores information and working with outside companies that use data analytics.

Level Legal's Bonner said, "These are tools that really let you pull a long lever with a little bit of information to start getting key insights quickly and the ability to report it out along the way to let counsel pivot as needed."

For law firms confronted with a complicated Title IX case, Catanzano suggested developing a strong sense of when to use an external resource, such as a managed services provider, and when to conduct the investigation internally.

"As soon as I see a case coming on the horizon that I think is going to have massive document review, a certain amount of data and analytics that I want conducted to understand where the data's coming from, that's where I think of a Level Legal group because I know that they can do that more efficiently than I can," Catanzano said.

--Editing by Marygrace Murphy.