Thank you for joining us. The webinar will begin soon.
Introductions

Ben Brodbeck
*Marketing Manager, Higher Education*

Morgane Williams
*Regional Sales Director, Higher Education*
Exciting Updates to Our Programs

• **COVID-19 Re-Entry Solutions** – SafeColleges.com/COVID-19

• **LiveSafe Partnership** – SafeColleges.com/LiveSafe
Before We Get Started

• All attendees are in listen-only mode. If you run into any audio issues during the webinar, please try another method of listening in, such as computer audio or calling in by phone.

• All registrants and attendees will receive a link to the recorded version of this webinar in a follow up email.

• If you have questions during the presentation, please let us know by typing your question into the panel. We will answer these during the Q&A period after the presentation.
Presenter Introduction

• Alison is a nationally recognized subject-matter expert in Title IX and the Clery Act. Her work has focused on training, planning, and organizational development for colleges, universities, and schools.

• She was selected to serve on the United States Department of Education’s Negotiated Rule-making to assist in drafting the regulations for the Violence Against Women Act amendments to the Clery Act.

• Prior to her work at Widener, Alison served as Executive Director of the national non-profit Clery Center; Director of Drug, Alcohol, and Wellness Counseling for faculty, students, and staff at Saint Joseph’s University; and Director of Outreach and Education for the Domestic Abuse Project.

Alison Kiss Dougherty
Associate Vice President of Human Resources and Title IX Coordinator at Widener University
New Title IX Regulations: Nine Key Takeaways for Fall Planning

Hosted by: SafeColleges and Vector Solutions
Learning Outcomes

- Highlight Nine Key Takeaways of the New Title IX Regulations
- Assist Institutions with Developing Action Plans
- Provide Team Framework and Process Strategies for Policy Revisions
- Address Implementation Planning for August
- Provide a Comprehensive and Collaborative Approach to Compliance
A Brief History of Title IX

1972: Title IX of the Educational Amendments Passed
1990: Title IX Guidance
2001: Dear Colleague Letter (DCL) Published
2011: VAWA Amendments to the Clery Act
2013: OCR Q&A Document
2014: OCR Q&A Document
2017: OCR Q&A Document
2018: OCR Q&A Document
2020: New Title IX Regulations Released (Compliance by August)

The Jeanne Clery Act Passed
Dear Colleague Letter (DCL) Published
OCR Q&A Document
OCR Q&A Document
OCR Q&A Document
New Title IX Regulations Released (Compliance by August)
Takeaway #1: Actual Knowledge

- Notice to the Title IX Coordinator or any official of the institution who has the authority to institute corrective measures on behalf of the institution, or to any employee of an elementary or secondary school.

- Actual knowledge can come from personal observation, hearing about it from a reporting party or third-party, receiving a written or oral complaint, or by any other means.

- Direct shift from work specific to responsible employees.
## Considerations for Implementation

<table>
<thead>
<tr>
<th>Topic</th>
<th>Current Process</th>
<th>Changes Needed</th>
<th>Departments Impacted</th>
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</thead>
<tbody>
<tr>
<td>Option &amp; flexibility to continue to designate responsible employees and require reporting</td>
<td>Responsible employees-all designated except counselors</td>
<td>Planning for Fall- who is appointed</td>
<td>Faculty, Coaches, All staff</td>
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<td>Training &amp; Setting New Procedures</td>
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<td>Confidential Employees</td>
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</table>
• Regulations cite “education program or activity.”

• Any building owned or controlled by a student organization that is officially recognized by the institution.

• Applies only to sex discrimination occurring against a person in the United States in an education program or activity
  • No distinction between “on” and “off” campus
  • No distinction between in-person and online

Takeaway #2: Jurisdiction

Title IX Regulations issued May 6, 2020; § 106.44(a); § 106.8(d); Preamble at 649
## Considerations for Implementation

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<td>Determination of locations, events, or circumstances over which the institution exercised substantial control over responding party &amp; context</td>
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<tr>
<td>Addressing conduct that falls outside of Title IX</td>
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Takeaway #3: Live Hearing

- For institutions of higher education, the grievance process must provide for a live hearing.
- At the request of either party, the institution must provide for the live hearing to occur with parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party of the witnesses answering questions.

Title IX Regulations issued May 6, 2020; § 106.45(b)(6)(i)
## Considerations for Implementation

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<tr>
<td>Live hearings with all parties present</td>
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<td>Separate rooms with technology</td>
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<td>Transcript or recording</td>
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<td>Rape shield protections for complainants</td>
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Probing the credibility and reliability of statements asserted by witnesses contained in such evidence requires the parties to have the opportunity to cross-examine the witnesses making the statements.

Takeaway #4: Cross Examination

Title IX Regulations issued May 6, 2020; Preamble 1181, § 106.45(b)(6)(i)
Takeaway #4: Cross Examination (cont.)

- If a party or witness does not submit to cross examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party’s or witness’ absence from the live hearing or refusal to answer cross-examination or other questions.
Takeaway #5: Advisor

- If a party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that party, an advisor of the recipient’s choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

- The party’s advisor may appear and conduct cross examination even when the party whom they are advising does not appear.

Title IX Regulations issued May 6, 2020; Preamble 1171, § 106.45(b)(6)(i)
Where one party does not appear and that party’s advisor of choice does not appear, a recipient provided advisor must still cross-examine the other, appearing party “on behalf of” the non-appearing party, resulting in consideration of the appearing party’s statements but not the non-appearing party’s statements (without any inference being drawn based on the nonappearance).

Title IX Regulations issued May 6, 2020; Preamble 1171, § 106.45(b)(6)(i)
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<tr>
<td>Role of Advisor</td>
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<td>Institution-appointed Advisor</td>
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<td>Training for Advisor</td>
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Takeaway #6: Definitions

- A school employee conditioning an educational benefit or service upon a person’s participation in unwelcome sexual conduct (often called quid pro quo harassment);
- Consistent with U.S. Supreme Court precedent, unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school’s education program or activity; or
Takeaway #6: Definitions (cont.)

- Sexual assault, as the Clery Act defines that crime in 34 CFR 668.46(a), or dating violence, domestic violence, and stalking defined through the VAWA amendments to the Clery Act.
# Considerations for Implementation

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<td>Definitions</td>
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<td>Education</td>
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Takeaway #7: Training

• Decision-makers must receive training on:
  • Any technology used in a live hearing.
  • Issues of relevance of questions and evidence, including when questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant.

• Investigators must receive training on:
  • Issues of relevance to create an investigative report that fairly summarizes the evidence.

Title IX Regulations issued May 6, 2020; § 106.45(b)(1)(iii)
Takeaway #7: Training

- Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process on:
  - The definition of sexual harassment and how to apply definitions with respect to consent (or absence/negotiation of) consistently, impartially, and in accordance with § 106.45.
  - The scope of the institution’s education program or activity.
  - Conducting an investigation and grievance process including hearings, appeals, and informal resolution.
  - Issues if relevance of questions and evidence.
  - Issues of relevance to create an investigative report that fairly summarizes relevant evidence.
  - Serving impartially, by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
  - Technology used at live hearings.

Title IX Regulations issued May 6, 2020; § 106.45(b)(1)(iii)
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<td>Decision Maker Training</td>
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<td>Training Materials</td>
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Takeaway #8: Standard of Proof & Evidence

- Choose either preponderance of the evidence standard or clear and convincing standard and apply uniformly for all formal complaints of sexual harassment against students and employees, including faculty.

- In the postsecondary context, only statements that have been tested for credibility will be considered by the decision-maker in reaching a determination regarding responsibility.

Title IX Regulations issued May 6, 2020; Preamble at 1168, 1181
The prohibition on reliance on "statements" applies not only to statements made during the hearing, but also to any statement of the party or witness who does not submit to cross-examination.

Title IX Regulations issued May 6, 2020; Preamble at 1168, 1181
## Considerations for Implementation

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<td>Select Evidentiary Standard</td>
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<td>Education around Evidence</td>
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*Note: The table continues with more rows for topics such as Brainstorming, Organizations, Resources, etc.*
Takeaway #9: Rethinking the Team

- Who is on the Title IX Team?

- How are you educating campus leadership?

- What is the role of the Deputy Title IX Coordinator?

- Are there other institutions to partner with?
# Nine Key Takeaways

1. **Actual Knowledge**
2. **Jurisdiction**
3. **Live Hearing**
4. **Cross Examination**
5. **Advisor**
6. **Definitions**
7. **Training**
8. **Standard of Proof & Evidence**
9. **Rethinking the Team**
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Q&A Discussion

Note: If your question doesn’t get answered during the allotted time, we will follow up by email.
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Thank You!