



SafeColleges

New Title IX Regulations: Nine Key Takeaways for Fall Planning

Hosted by: SafeColleges and Vector Solutions

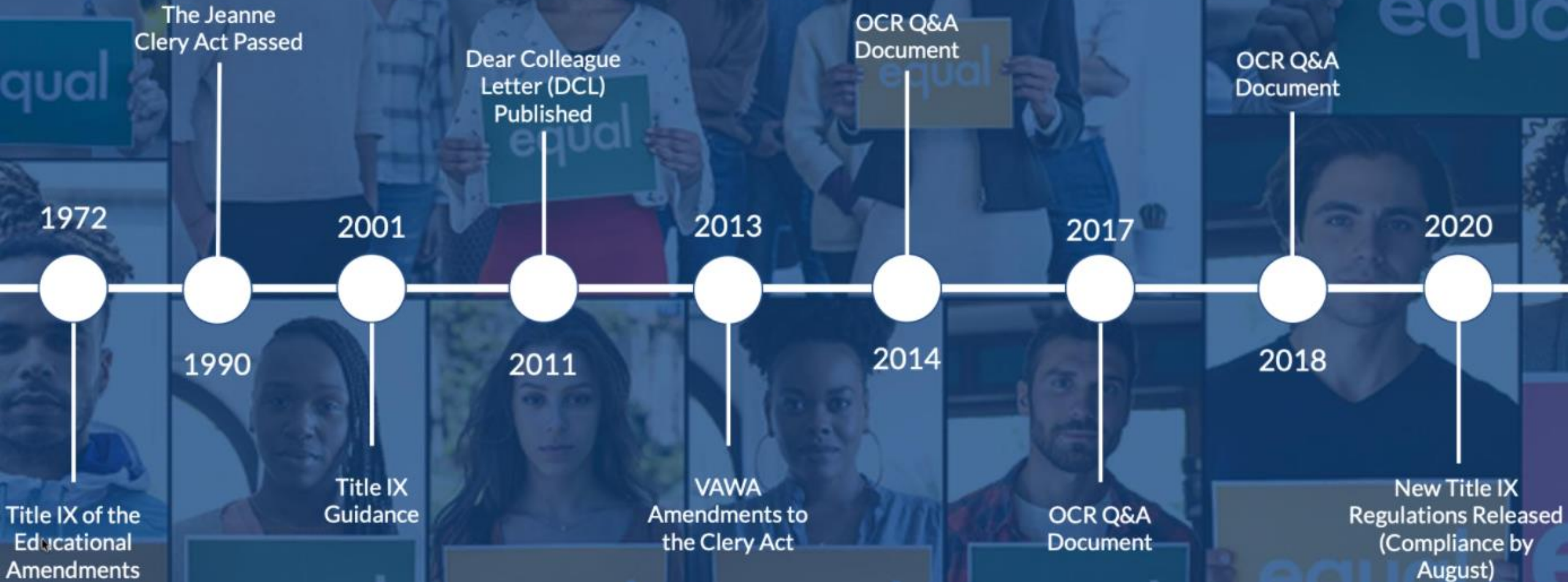




Learning Outcomes

- 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



- 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.



Takeaway #1: Actual Knowledge

Considerations for Implementation

Topic	Current Process	Changes Needed	Departments Impacted
Option & flexibility to continue to designate responsible employees and require reporting	<i>Responsible employees- all designated except counselors</i>	<i>Planning for Fall- who is appointed</i>	<i>Faculty, Coaches, All staff</i>
Training & Setting New Procedures			
Confidential Employees			



Takeaway #2: Jurisdiction

- 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 on-line

Considerations for Implementation

Topic	Current Process	Changes Needed	Departments Impacted
Determination of locations, events, or circumstances over which the institution exercised substantial control over responding party & context			
Addressing conduct that falls outside of Title IX			

- 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.

Takeaway #3: Live Hearing

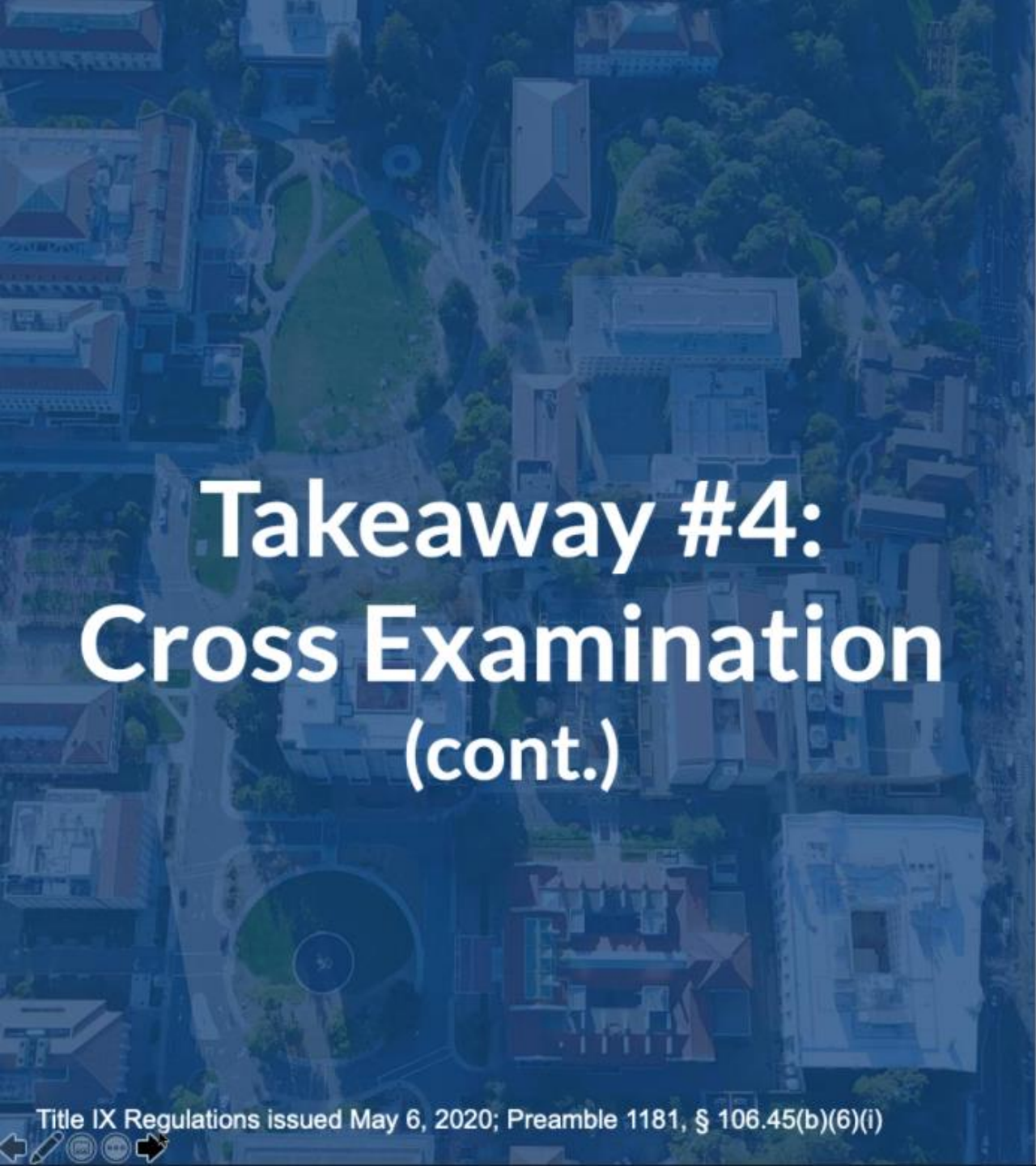
Considerations for Implementation

Topic	Current Process	Changes Needed	Departments Impacted
Live hearings with all parties present			
Separate rooms with technology			
Transcript or recording			
Rape shield protections for complainants			



Takeaway #4: Cross Examination

- 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 (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.

- 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)

Takeaway #5: Advisor

Considerations for Implementation

Topic	Current Process	Changes Needed	Departments Impacted
Role of Advisor			
Institution-appointed Advisor			
Training for Advisor			

A student with dark hair, wearing a plaid shirt and light blue jeans, is sitting on the floor against a wooden wall. They have a backpack next to them and are looking down with a sad expression. The scene is dimly lit, suggesting an outdoor or semi-outdoor setting like a school hallway or courtyard.

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

Topic	Current Process	Changes Needed	Departments Impacted
Definitions			
Education			

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.

Considerations for Implementation

Topic	Current Process	Changes Needed	Departments Impacted
Title IX Coordinator Training			
Investigator Training			
Decision Maker Training			
Training Materials			

- 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.

Takeaway #8: Standard of Proof & Evidence

- 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.

Takeaway #8: Standard of Proof & Evidence (cont.)

- 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?



Takeaway #9: Rethinking the Team

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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