

# 2020 Annual Title IX Investigator Training at Columbia University:

## Agenda and Required Readings

July 8<sup>th</sup>, 2020

Hosted by:

**Columbia University Title IX Coordinator Marjory Fisher, J.D.**

Presented by:

**Jeffrey J. Nolan, J.D., Senior Counsel, Holland & Knight LLP**

**Chantelle Cleary, Senior Title IX Consultant, Grand River Solutions, J.D.**

*Morning Session: 9:30am-12:30pm*

*Jeffrey J. Nolan, J.D., Senior Counsel, Holland & Knight LLP (Admitted to Practice in New York, MA, TX, VA and VT)*

*9:30-10:00*

### **What Investigators Need to Know about their Obligations under the New Title IX regulations**

*This portion of the presentation will focus on orienting participants to the new substantive and procedural requirements of the May 2020 Title IX regulations, with a focus on those aspects of most relevance to investigators.*

*10:00-11:30:*

### **Training Requirements for Investigators that are Outlined in the New Regulations**

*This portion of the presentation will focus on the topics that investigators need to be trained on as required by the new Title IX regulations, such as how to serve impartially without bias or conflict of interest, how to determine what evidence is directly related to the matter and what evidence is relevant, and how to apply special evidentiary rules imposed by the new Title IX regulations. This portion of the presentation will also focus on lessons learned from Title IX-related federal court decisions.*

- Training Requirements in the Final Title IX Regulations, Joshua Bleisch, National Association of College and University Attorneys, May 29, 2020 [https://www.nacua.org/docs/default-source/legacy-doc/resource-pages/sexual-misconduct-other-campus-violence/title-ix-training-requirements-final.pdf?sfvrsn=bcb87ebe\\_0](https://www.nacua.org/docs/default-source/legacy-doc/resource-pages/sexual-misconduct-other-campus-violence/title-ix-training-requirements-final.pdf?sfvrsn=bcb87ebe_0)

- National Association of College and University Attorneys “The Title IX Regulations Grid,” May 18, 2020 [https://www.nacua.org/docs/default-source/legacy-doc/resource-pages/sexual-misconduct-other-campus-violence/200517-nacua-title-ix-final-regulations-grid-with-preamble-final.pdf?sfvrsn=64707ebe\\_2](https://www.nacua.org/docs/default-source/legacy-doc/resource-pages/sexual-misconduct-other-campus-violence/200517-nacua-title-ix-final-regulations-grid-with-preamble-final.pdf?sfvrsn=64707ebe_2)

*11:30-12:30:*

**Trauma-informed Investigation Approaches in a Manner that is Fair and Impartial, as Required by the New Regulations**

*This portion of the presentation will focus on how trauma-informed interview techniques can be applied in investigations in a manner that is neutral and fair to all parties, as required by the new Title IX regulations.*

**Required Readings for Morning Session:**

1. Promoting Fairness in Trauma-Informed Investigation Training, Jeffrey J. Nolan, J.D., NACUA Notes, National Association of College and University Attorneys, February 8<sup>th</sup>, 2018, Vol. 16 No. 5.
2. Fair, Equitable Trauma-Informed Investigation Training, Jeffrey J. Nolan, J.D., White Paper, Holland & Knight, July 2019.
3. Joint Guidance on Federal Title IX Regulations: Focus on Trauma-Informed Training, June 18, 2020 <https://system.suny.edu/media/suny/content-assets/documents/sci/tix2020/Training-on-Trauma-Informed-Practices.pdf>
4. ATIXA, “Trauma-informed Training and The Neurobiology of Trauma,” August, 2019 <https://cdn.atixa.org/website-media/atixa.org/wp-content/uploads/2019/08/20123741/2019-ATIXA-Trauma-Position-Statement-Final-Version.pdf>
5. *Nungesser v. Columbia University*, 169 F.Supp.3d 353, 2016 WL 1049024.
6. *Nungesser v. Columbia University*, 244 F.Supp.3d 345, 2017 WL 1135647.
7. *Doe v. Columbia College Chicago*, 299 F.Supp.3d 939, 2017 WL 4804982.
8. *Doe v. Univ. of Chicago*, 2017 WL 4163960 (N.D. Ill. Sep. 20, 2017).
9. *Doe v. Brown University*, 166 F.Supp.3d 177 (D.R.I. 2016).
10. *Doe v. University of Pennsylvania*, 2017 WL 4049033 (E.D. Pa. Sept. 13, 2017).
11. *Haidak v. Univ. of Massachusetts-Amherst*, 933 F.3d 56 (1st Cir. 2019).
12. *Doe v. Trustees of Boston College*, 942 F.3d 527 (1st Cir. 2019).
13. New Title IX Regulations (May 2020) Preamble and Final Regs (at the end) file:///Users/allieberdon/Downloads/titleix-regs-unofficial%20(1)preamble.pdf.

*Afternoon Session: 1:30pm-4:30pm*

*Chantelle Cleary, Senior Title IX Consultant, Grand River Solutions, J.D. (Admitted to Practice in New York)*

1:30-2:30:

### **Best Practices for Conducting Title IX Hearings: Fairness, Impartiality, Thoroughness, and Compliance on the State and Federal level and Including the Final Title IX Regulations**

*This section will provide an overview of the procedural requirements for hearings in the May 19, 2020 final Title IX Regulations. The discussion will focus on required changes, potential conflicts with New York law, and policy development.*

#### **Required readings:**

The Final Title IX Regulations New Title IX Regulations (May 2020) Preamble and Final Regs (at the end) file:///Users/allieberdon/Downloads/titleix-regs-unofficial%20(1)preamble.pdf.

- SUNY Joint Guidance on Federal Title IX Regulations, Joint Guidance on Federal Title IX Regulations: Analysis of Section 106.45: Investigative Report, May 21, 2020  
<https://system.suny.edu/media/suny/content-assets/documents/sci/tix2020/Investigative-Reports.pdf>

Title IX Regulations, May 19, 2020

2:30-3:30:

### **The Critical Role of the Hearing Chair**

*As a result of the Federal Title IX Regulations published on May 19, 2020, Title IX hearings are now required in all campus sexual misconduct cases falling within Title IX's jurisdiction. These hearings are procedurally heavy and potentially adversarial. An experienced, well trained, and knowledgeable hearing chair is essential to ensuring that the hearings are conducted effectively, efficiently, and respectfully. This section will explore this important role.*

#### **Required readings:**

- Fair, Equitable Trauma-Informed Investigation Training, Jeffrey J. Nolan, J.D., White Paper, Holland & Knight, July 2019.
- Promoting Fairness in Trauma-Informed Investigation Training, Jeffrey J. Nolan, J.D., NACUA Notes, National Association of College and University Attorneys, February 8<sup>th</sup>, 2018, Vol. 16 No. 5.

3:30-4:30

### **Advisor Examination and Cross Examination and Evidentiary Considerations**

*This section will explore the cross examination requirement in Title IX Hearings, the role of the advisor and the party, and the impact of a party's choice not to testify or to submit to cross examination on a decisions maker's ability to consider evidence of that party's statements.*

- New Title IX Regulations (May 2020) Preamble and Final Regs (at the end) file:///Users/allieberdon/Downloads/titleix-regs-unofficial%20(1)preamble.pdf.
- *Doe v. Colgate Univ.*, 760 F. App'x 22, 33 (2d Cir. 2019)
- *Doe v. Allee*, 242 Cal. Rptr. 3d 109 (Ct App. 2019)
- *Doe v. Loh*, No. CV PX-16-3314, 2018 WL 1535495, at \*7 (D. Md. Mar. 29, 2018), *aff'd*. 767 F. App'x 489, 491 (4th Cir. 2019)
- *Doe v. Univ. of Sciences*, No. 19-2966, 2020 WL 2786840, at \*9 (3d Cir. May 29, 2020)
- *Doe v. Baum*. 903 F.3d 575, 579 (6th Cir. 2018)

- “Conducting a Live Hearing with Cross-Examination Under the New Title IX Rules,” *The National Law Review*, Vol. X, No. 147, May 26, 2020 <https://www.natlawreview.com/article/conducting-live-hearing-cross-examination-under-new-title-ix-rule>
- Cross-Examination on Trial: New Developments in the Courts (Posted May 21, 2019; Updated June 9, 2020) <https://system.suny.edu/sci/news/6-9-20-cross-examination/index.html>
- Joint Guidance on Federal Title IX Regulations: Analysis of Section 106.45: Live Hearings, Cross-Examination, and Access to Advisors, May 22, 2020 <https://system.suny.edu/media/suny/content-assets/documents/sci/tix2020/Live-Hearings,-Cross-Examination-and-Advisors-of-Choice.pdf>

### Other readings of Interest:

- Lauren Bizier, “Maintaining the Delicate Balance Between Due Process and Protecting Reporting Students from Re-traumatization During Cross-Examination: Title IX Investigations in the Wake of the Trump Administration’s Proposed Regulations,” *Roger Williams University Law Review*, Vol. 25, No. 2 (Spring 2020): 242-264 [https://docs.rwu.edu/cgi/viewcontent.cgi?article=1698&context=rwu\\_LR](https://docs.rwu.edu/cgi/viewcontent.cgi?article=1698&context=rwu_LR)
- Hunter Davis, “Symbolism Over Substance: The Role of Adversarial Cross-Examination in Campus Sexual Assault Adjudications and the Legality of the Proposed Rulemaking on Title IX,” *Michigan Journal of Gender and Law*, Vol. 27, No. 1 (2020): 213-245 <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1276&context=mjgl>

### Information Regarding New York CLE Credits:

Columbia Law School has been certified by the New York State Continuing Legal Education (CLE) Board as an Accredited Provider of CLE programs. Under New York State CLE regulations, this live simultaneous transmission non-transitional CLE Program will provide 7.0 credit hours that can be applied toward the Areas of Professional Practice Requirement. This CLE credit is awarded only to New York attorneys for full attendance of the Program in its entirety. Attorneys attending only part of the program are not eligible for partial credit. Attendance is determined by an attorney's submission of their attendance verification with appropriate course codes noted. On submission of the attendance verification, attorneys should also submit their completed Evaluation Form, provided at the Conference. Please note the NYS Certificates of Attendance will be sent to the email address as it appears in the register unless otherwise noted there.