>> I was a very excited when I got an email afterwards and someone said thank you this is the first webinar someone has actually live captioned so in thinking of that one of the things is you might have to slow down your speech a little bit. So thinking about how fast you talk, because someone typing it... You know, let's be kind. The other piece is, you know, think about not speaking over one another. Because again, it is hard to capture multiple voices at one time. I think Christine will put us into broadcast mode. I'm probably going to just not show my video and all that since I'm not a presenter and everything. I'm just going to listen, probably take some notes. If you need me you can use the chat, but I'm going to let, Christina knows the system way better than I do. In fact I had to call her earlier to be like I don't know what I'm doing. So Christine, anything you want to share with them that they need?

>> No. Once I hit broadcast everyone will be able to join in. They will be able to see and hear you, just FYI. And then we should be good to go. I would say give it until one or two minutes just so the people can finish getting logged in before we really kick it off. Shawn, you are manning a Q&A is that what we decided? you are muted, Seann. Jennifer I'm going to go ahead and kick it off and for Kateeka I am going to wait for you to move the slides if I'm not moving them fast enough or if you need me to go back just say it.

>> All right. okay. For these polling questions should I just enter as soon as you switch to the slide that it's going with that says after? on each? So like when the next slide comes up alright cool, there we go.

>> I just want to welcome everybody. We still have a few more folks joining so we are going to give it another minute or so to get everybody kind of in here. All right, well 300 feels like a good place to start. So we are going to jump in. Thank you all so much for attending today. This is product administration overview of the new title IX regulations,
which I know all of you have been reading probably feverishly to try to get through it all by August 14. We are also happy to have you here my name is Martha Compton. I currently serve as the president for ASCA CA and also the Dean of students at the title IX coordinator at Concordia University Texas here in Austin I'm going to let my two colleagues introduce himself. Seann, you want to go first?

SEANN KALAGHER: Sure. Sorry, I was finding my unmute button. Hi everybody my name is Seann Kalagher I'm the chief compliance officer at Manhattanville College in Westchester New York and past president of the ASCA in the board of directors.

KATEEKA HARRIS: Good afternoon everyone, my name is Kateeka Harris on the current President-elect of ASCA and I currently work at Tarrant County College District at Fort Worth Texas and I serve as the district title IX compliance officer.

MARTHA COMPTON: So we are going to make use of some of the zoom tools today like polling and like the Q&A box. So for those of you who haven't used that I know sometimes you ask questions in the chat. We are going to ask that you use the Q&A ... I apologize, my screen is over here what you see as being the most challenging aspect of implementing the new regulations by August 14, 2020? is it changing the policy, educating your campus community, the live hearings or the staffing applications. So if you could go ahead and vote, that would be helpful. You do have to only pick one. Even the more than one may apply. Give everybody just another couple seconds to do that. All right. Somebody said they are not seeing the poll. It is showing up on mine. It should have popped up on your main window. Okay. I think we are good to go here. All right. So moving to the next slide we kind of wanted to go through some general housekeeping.

For today in terms of agenda and what to expect so, today we want to talk about, this is going to be a high-level overview. There is as you all know over 2000 pages of documentation here and even if we had to pull, a full day with you we would not be able to get through all of it in the depth that is really necessary so we are going to focus on discussing critical issues and we are really looking at this from a student conduct lens because that is who we are here at ASCA. We want to acknowledge there are pieces of the final rule that apply to K-12. That apply, that have concerns or conflicts with title VII and employment law. We're going to mention those here and there but the main focus really is on students and student conduct in this conversation. We are going to talk about how we got here for those of us who have been here a little while, the evolution, what the implementation period, What the key changes are to the regulation what does that mean for student conduct, work, what are the state-level considerations for those of you with states with your own specific laws or rules and what to expect next from ASCA and that have time for question and answers and we will be moving through pretty quickly since we figure most of you folks have spent time on it and have been another webinars. This is not going to be brand-new to you, but we do have a designated question-and-answer period at the end and we want to spend as much time as we can getting to those for you. So at this point I'm going to turn the next steps... Oh, I'm sorry
we have one more poll. I forgot about that. We are going to do the next poll if that would work.

Basically we are asking you to answer to us if your institution serves students who are minors. somebody is saying they do not see the new poll. There it is. It just popped up. Give just another second with that. all right, so while we are looking at those answers are going to turn this over to Seann.

SEANN KALAGHER: Thanks Martha. I'm going to go into the next block of slides here to talk a little bit about some of the path here and the scope of what we're dealing with and as Martha set I know a number of you myself included, I can probably speak for Martha and Kateeka, we have all been jumping on two different sessions and hearing folks give different perspectives on this from different associations to [counsel] and other groups out there that are putting out information.

So you will likely hear some things you already have. But as Martha said we are hoping to get to the Q&A maybe drill down a little bit, but a little bit history and how did we get here and the 2011 dear colleague letter is kind of the flashpoint for how we started here and it's surprising that this was nine years ago when the dear colleague letter came out. We could even say going back to 2001, the guidance that we issued then because that is impacted by the regulations that came out a week and a half ago. But the dear colleague letter was further, was further developed by the Q&A document that they released in 2014 the Department of Education and then when the administrations changed then we saw the notice of proposed will making with proposed regulations. It doesn't feel like that long ago that I was sitting on the webinar with our previous president Kathy Cox and Tiffany French and we were doing a similar type of presentation about what the proposed regulations were. so it took time longer than we anticipated to get to where we are now. So the draft published about two weeks ago now and just yesterday actual official publication of the regulations in the Federal Register. So, which is, that publication triggers things from a legal perspective in terms of how the regulations [timing] of different aspects of the process.

So moving forward, our effective date that is in the regulations is that we have to be in compliance by August 14th. I know that's part of the reason why we have so many folks jumping on all these different offerings from us and others is just because it is such a short runway for us to get our campuses aligned in terms of being in compliance with this and making any necessary changes. It is an incredibly short period of time.

That's not even taking into account what we are all dealing with, here the fact that we are watching the three of us that our homes giving us this presentation because of the Covid 19 epidemic and I know the Department of Education put out in their release that well, since everybody, the campuses are mostly empty and everyone is at home, this is a great time to do this, but I think for many of us, probably many of us on this call or on this webinar that that is not really the case right now from both a professional and personal side. There could be some changes in that implementation date. There is
litigation that is either pending or about, filed or about to be filed, ACLU last week announced they were suing along with several advocacy groups. Some states attorneys general have already signaled they are going to be filing suit, Colorado and Washington

I'm sure will jump onto that. So just going through that process may, you have a court that signals we are putting this on hold for a period of time will we hear arguments or something along those lines. So that's a definite possibility but we shouldn't be going into that with the thought that that's going to happen. August 14 is our date until we are told otherwise. But that's definitely a possibility and Congress does have the ability to act too. Although I think with a divided Congress that is very unlikely scenario. Really I mean, the other wildcard of this is the election. Keep in mind, while the election is in 2020 the actual turnover if there is a change doesn't happen until January 2021. So there still could be a full implementation of these regulations, and then a change of administration, we may have a different perspective. But because we are talking about regulations now the process to actually change that is much more involved than just issuing a new dear colleague letter which we were dealing with prior to that. So that is, but again it is becoming a very difficult area to work in in terms of the kind of potential for seesawing regulations and expectations that could happen from administration to administration now that the issue is so politicized.

MARTHA COMPTON: If I can just chime in for a minute we want to let you all know that members that ASCA signed on to a letter with our policy group that's going to the Department of Ed to ask for a delay in the implementation period. I don't know that any of us are super confident that that's going to get the result that we are asking for. But we do want you to know that we are advocating on your behalf and have made that request.

SEANN KALAGHER: thanks, Martha. So moving ahead, before we completely jump in, you know it is important to know, it is important for us to know that all of us are going to kind of dive into the minutia. Because of the work we do on our campuses. But this is providing really what the basis, the floor is for compliance. It is not the absolute most that we can do for students. It also doesn't speak to how we deal with students on an interpersonal level. So keeping that in mind, and how this issue of clarity, I think it was funny before this call I was on a call at my own campus with [a subcommittee] of the board of trustees talking about this issue and I said I think one of the biggest challenges we are all going to have is really effective communication across the community --- and trying to find a way to build a structure that does not confuse the folks on our campus. Because it is confusing for us. We are the ones who work in this and I'm sure many of you on the webinar when you are talking to colleagues and sometimes you are scratching your head like I don't know how we are going to do this or I don't know how this works with the other things we do on our campus. I think aside from procedural pieces one of the biggest things we are going to have to figure out is how do we talk about this in a way that is understandable for the folks on their campus that need to access it, and for the folks who are administering policies, whether they be as decision-
makers, or people working directly with students or investigators or what not. That's going to be a big challenge.

So like Martha already talked about, our focus for today is to talk about student conduct and there was a little quote up there from one of our past presidents Laura Bennett who I think I saw her name on the list here, but it is funny, Laura, you post this a lot, even when we complain on social media about different new regulations or new policies, but you know, we can make good policy out of bad law all the time and it is true. It is focusing on that piece of implementation is different than what it just is in black and white on paper and how can we treat our students and how we treat our colleagues and working through that. But looking just at the scope of title IX you know, one of the things that got a lot of attention is really the limitation of the scope. And the fact that it really is limited to on-campus behavior or off-campus behavior that deals with institutional programs and activities. That does include housing that is off-campus but affiliated with student organizations. The department of education was clear about that. But notably I think for a number of us it does not include the downtown bar district. Or something along those lines where I think a lot of us note that a lot of complaints and reports come from, for not just title IX related issues, but many [indiscernible] come from the on-campus areas and many campuses do have on-campus jurisdiction within the codes of conduct. That limitation is something that is going to me because a split there within our title IX policies for lack of a better term, and our general student policies that we are going to have to reconcile.

>> We had a little issue so I'm just rebooting the screen. Just keep going sorry.

SEANN KALAGHER: all right. So talking about off-campus conduct, conduct that takes place on private property really are not covered by this proposed regulation. It is important to note when you read the comments that the department of education provides they are saying institutions can deal with the behavior as they see fit. I don't know if I believe that fully. But I think that is one of the issues that we are going to have to tackle moving forward. Also does not include conduct that occurs against a person that is not in the US. So, study abroad programs would not be covered by the scope of title IX, or other activities outside the institutional scope. So it is a real limitation that has never existed before. This is new. And again, we can address this behavior. I think one of the implications for student conduct in this is going to be okay, if we don't have, if it is an incident that happens off-campus we don't have to put it under the title IX policy so we put it into regular student conduct. That process does not provide all of the other procedural protections and due process provisions that we will talk about later. How do we reconcile that if the behavior is substantially similar? those are questions institutions are going to have to answer because that's probably one of the first things we may see challenged coming out of this is when a student feels as though they didn't get protections because they were not part of a behavior that was covered by title IX. It is something where you can clearly see a space where some of these procedural protections start getting expanded outward, outside of the title nine realm and into
general student behavior and discipline processes. But that is I think a strong possibility coming out of this. And now we will go to Kateeka for the next group.

KATEEKA HARRIS: so let's talk a little bit more about some of the key changes we are seeing. One substantial key change is the change of the definition for sexual harassment. So, thinking about how sexual harassment is now being defined under title IX we are looking at conduct on the basis of sex that satisfies one or more of the following. So now we have an employee as a recipient who now can be responsible for violating the quid pro quo of sexual harassment. So now that only applies to employees. So before if we had a situation with let's say maybe hazing as an example and the behavior was consistent where there was a power differential we could, we would have addressed it under title IX, now this is something that would be addressed under a conduct policy. That's a substantial difference. Also thinking about unwelcome conduct and the emphasis now that it is not just objectively offensive but it is also severe and pervasive. So all three elements need to exist in order for sexual harassment to be defined under title IX. And then also thinking in terms of the conflict that some of us may be experiencing depending upon where you live in terms of where the federal law is in conflict with the state or local law. And the Department of Ed was very clear that the title IX, it trumps all of those other laws in terms of where you start.

I will say that because again, going back to what Seann has already said is institutions are going to need to decide how they are going to manage these types of in takes. Is it going to be one policy? and if so, how are those things going to be applied? so that is something that we all will be talking more about. I like to think of it as an opportunity rich environment for us to just continue dialogue and release things out. Additionally I found this to be most interesting because I was a very big proponent of moving away from language like complainant. And really in favor of reporting party and responding party. The regs are very clear that a respondent is defined as the individual who has reported to the office and is the perpetrator of misconduct. Whereas now we have a formal complaint, which is also new language. So this formal complaint means that we actually have to have the person who is bringing the complaint sign off on this complaint, whereas before we could deduce an oral complaint to writing and that was sufficient. But now there has to be permissions given from the complainant at the time of the formal complaint. And also when you think about this phrase document filed by the complainant, so that is in reference to the referral and how it is received. So whether it is received orally, verbally, electronically, it has to be, there has to be a signature attached to that.

And the final rules also speak about supportive measures. And they are very clear about wanting to make sure that it is individualized services for the parties. And interestingly enough, we have to be very careful, very cautious of how we employ those inter-measures and making sure there's no punitive implications for the other party to ensure that there is no cost assigned to either party and also if... That might be on the next slide...
If an interim measure is one where you would prohibit or limit an individual's ability to participate, then they have the right to appeal. They have the right to challenge that prior to the interim measure being instituted. Did we switch slides? yes. Okay. Let me see. Again, a lot is not clear. We are so looking forward to hearing are getting more clarity on that or seeing what types of challenges, as a result of our attempt to comply with the new regulations.

Also, the other thing that is interesting is this whole portion of parents having rights to potentially bring a complaint for a student who is a minor. And just go back to our poll what we found was that 84% of you all that are participating today including ourselves actually serve minors on our institutions and 16% did not. That is a combination of I’m sure early high school dual enrollment, camps and conferences. All of that. But it is important to note that although they are not clear, it is kind of ambiguous as to how that will work for parents, but they make a very concerted effort for us to ensure that we are involving parents in that conversation and that they are informed about any accusations involving their students or allegations of harm that students have experienced. So the other thing is just thinking in terms of the non-disciplinary nature. This is where it becomes even more of a challenge because none of the measures, until the investigations or grievance procedures are complete can be determined or they can't even feel like they are disciplinary in nature. We have to have a holistic review of all the measures and be very specific to each situation. They have to talk about mutual no contact restrictions in the new regulations and again, this is fair I think that we don't unreasonably burden either party. But again it is that tightrope dance that we are familiar with, but how are we going to do it in a way in which we are complying with the new regulations and also again, I am in Texas, so the state regulations as well. It's going to be an interesting balance. Also making sure that we are not... Also making sure that we are not charging anyone or you know, creating any type of challenge for them financially as it relates to whatever measures we come up with. And I know for the most part we have all worked very hard to make sure we were allowing individuals to continue when they could but now we are going to be looking more at this whole assessing for danger and harm and before we actually remove anyone. So, making sure that if there is an interim removal or suspension that we have done the appropriate assessments to determine whether there is a health or safety risk. So an analysis to determine whether the respondent should, are posing an immediate threat to health and safety at large. Should they be removed. And then also does the threat arise from the particular allegations of sexual harassment? so all of those things are going to need to be considered and also determined prior to removal and then if your institution does not currently have a process in place for challenging any type of interim measure, that is something that we need to consider soon.

MARTHA COMPTON: we have a poll question here.

KATEEKA HARRIS: okay thanks.
MARTHA COMPTON: does your institution currently have a single nondescript nation policy for both employees and students. Answer yes or no. Thanks so much. So the next part that we want to talk about our changes to the grievance process. The final rule goes into some pretty significant detail about what a grievance process needs to contain. For folks who, I know we have a number of people on the webinar who probably are title IX folks and maybe have been using a civil rights investigator model and maybe don't have conduct backgrounds, so some of this might be a big shift, for those of us who have done student conduct work particularly at public institutions some of this is going to seem like well, yeah we would do that. So it's pretty straightforward. So we need to treat [indiscernible] equally provide remedies and this is where they make a difference between remedies and supportive measure, this is where language is important, remedy is really disciplinary action in terms of some of that. But once there's a termination of responsibility we can do that. We need to make sure that we are objectively evaluating evidence and they are very clear to say here both inculpatory and exculpatory I hope I said that right. I'm not an attorney. But basically the things that prove that somebody did something or indicate that somebody might have done something and the things that indicate that they might not have. And that we appropriately assess the credibility of the parties. It requires training on a bunch of different areas. Pacifically for the folks involved... In the decision-making process. And then, but it speaks less to some of the other things like training for students about what sexual-harassment is and things like that. And this is where we have had comments in the chat... About if something happens off campus can we still address it under title IX.

This is where the rubber meets the road of being really specific. So what the regulations say is that you can still address it and you can still address it in a process that looks exactly exactly like what your title and process looks like or something different, but it cannot be addressed under title IX. I know that that sounds like it doesn't make a lot of sense. Especially where we as a field and education use title IX as shorthand a lot to mean sexual conduct or personal violence or gender-based harassment or discrimination, we still have the opportunity as institutions to address that. It just is not required at the same level from the Department of Ed. We will get into a little bit more of some of the administrative oversight pieces at the end the kind of explain that Nuance a little bit. We do have the off action... Sorry I should say... We also are required to dismiss a complaint if it does not meet that. If somebody makes a complaint under title IX about an event that happened off campus, not at a university owned or university recognized student organization house between two private individuals, not as part of an educational program or activity we are required to dismiss it under title IX. There's nothing saying you cannot immediately boot that over to another process and accept the complaint there. So, just some pieces there.

But it does require written notice with that dismissal along with rationale to both parties. It does include a formal, informal option. Process option. It is an option. So the way that I read the regs it is not required. I think a lot of schools will choose to have something in place. But it is an option. We have to publicly state in writing that there is a presumption
of innocence on the part of the respondent, that we are not, this process will determine an outcome and we are going into this presuming the person did not do what they are accused of. It includes reasonably prompt time frames for resolution. They add a certain day count to some things that potentially could make some processes significantly longer. And so on the plus side they didn't give us a window. They didn't say it has to be within 60 days, 90 days whatever. They said reasonably prompt. The downside of that is who knows what reasonably prompt really means.

So when we get into the grievance process they also explicitly stated that we may consolidate formal complaints. So if you have multiple or cross-complaint between a complainant and respondent, if you have got multiple complainants for one respondent. If you have got multiple respondents for one complainant it exquisitely says you are permitted to consolidate those into one investigation and process, as long as they arise out of the same facts or circumstances.

It does identify that we have to have a clear standard of evidence and we have to state that. And that that standard of evidence we are able to pick between preponderance of the evidence and clear and convincing, must be consistent across all your title IX processes. So that includes for employees and faculty and staff. That can be challenging in some situations where you have collective-bargaining agreements, where you have tenure. Those things, you could have a different standard of proof listed in there so you want to have those conversations if you are not already with your HR and general counsel. Appeals must be offered to both parties. They must be offered equally. And we will get into that later but we give specific criteria under which an appeal must be offered, and we need to create and disseminate an investigative report and provide 10 days for both parties to respond. For a lot of peoples this is different. This is a new part to the process people may have had opportunities to look at notes and respond but we have to have a draft investigative report and the parties have to have the abilities to review it for 10 days and respond potentially is new. I should also add, that I think we get into this at some point too the investigator must take into account those students responses in finalizing the report they have to review those and consider that before they finalize the report. They are very clear on what notice is. So, notice, the parties who are known, so they do make some idea that you may not know who a party is who you are getting a report about needs to be provided written notice and upon receipt. Allegations including sufficient details on at the time, and sufficient time to prepare the response and they are clear about what sufficient details. Identities of the parties involved in the incident if they are known, description of the contract that allegedly constitute sexual harassment under title IX and date and location of the incident if known. Also needs to include right off the bat that the respondent is presumed not responsible for the alleged conduct and the determination is only made at the conclusion of the process. This is important to note that this goes to both parties.

Both parties are receiving them. The notice that the parties havea right to an advisor of their choice but who may be but is not required to be an attorney. Also with the notice
there needs to be notice that both parties may inspect and review all of the evidence and notice of any provision in the Institute code of conduct that prevents knowingly making a false statement or submitting false information. If at a point in the investigation there's a decision to investigate additional allegations ---, The investor has the ability to do that but the institution must provide additional notice of the additional allegations to both parties to proceed. So some key changes in the investigation, the burden of proof and the burden of gathering information is on the institution. Given that we don't have subpoena power that can be challenging so we are still reliant on other people to give us information that we may not have otherwise. Investigators may not access consider disclose or otherwise use medical or mental health records without the parties voluntary written consent to do so. So if a complainant were to supply, let's say for example same exam records as part of the process, they would have to give written consent at least as I am reading it, written consent for the other party to be able to view that. If they don't do that like we said, can't consider it in the investigation.

All parties have the ability to present evidence and also we come back to this inculpatory and exculpatory... I really hope I'm saying that right... And witnesses including expert witnesses and so they may bring in someone they consider to be expert to talk about consent or what incapacitation is. I have been in situations before where people wanted to bring in a lie detector or operator of a polygraph test. The institution specifically must not restrict the ability of either party to discuss the allegations or to gather and present evidence so they need to be able to talk to parties again unless there has been an individual assessment done and at the supportive measure mutual no contact order has been put in place. Then they need to provide parties equal opportunity to have others president any meetings related to investigation including an advisor. They are clear to say that restrictions on what an advisor involvement could look like are okay. With the exception of the live hearing, --- They need to provide notice to the other party, but those need to apply equally to [have advisors] they must provide to parties anticipated or expected. I love when we invite people, written notice of the date, time location participants and the purpose of all hearings investigation [indiscernible] meetings with sufficient time to prepare and participate. So the question you're going to have to wrestle with on your campus is what does sufficient time look like?

And this does potentially take a little bit of a tool out of our toolbelt. Typically we don't give a ton of information in an investigation because we don't want to taint that conversation we have with the student. So this potentially you know, gives them a much more significant heads-up of what we want to talk with them about and why. Again providing both opportunities to inspect and review any evidence obtained, and this includes evidence the institution does not plan to use in reaching a determination. And so if there is something in your records even if you think it is not relevant the parties have a right to view that. And this is where we come back to the investigators must draft a report and send it to parties and their advisors. So this is a new one for some of us
too, where typically they sampling to communicate with the student and the student is responsible for sharing that with anybody else.

We have to communicate with the advisor if any, that it must fairly summarize [indiscernible] evidence they have 10 days to submit a response and the investigator has to consider that response part of the formal completion of the role. I'm going to kick this back over to Seann to talk about the live hearing.

SEANN KALAGHER: sorry my screen went blank and just like because we are all at home FedEx came to my door and I had to run inside for a package. The way things are. So in terms of looking at the key changes to our live hearing process, the one thing that I think we all need to prepare for is that particularly the decision-makers that are in the hearings are going to need to be able to be and have the training and confidence really to make decisions in the moment. Because that is what is being asked of them. And the hearing here is something where your decision-maker or hearing panel cannot include your title IX coordinator and obviously are investigator cannot be part of your decision-making process. So they are really just a fact collector. Not somebody who is there to opine, for lack of a better term, on what they have collected. So they are not making a finding anymore.

We have to provide a live hearing and at the request of either of the parties we have to provide a hearing that allows both parties to not be in the same space. So that is not something new for most of us that something that most institutions at least that I am aware of has provided and we have used the technology to do that in a lot of ways. And physical barriers even if parties are comfortable with that but it is something that should not necessarily be a new thing that most of us are dealing with. But also it is one thing we have been talking about for 18 months now, if you are a person in the Sixth Circuit you have been dealing with it for a longer if you are in that area of the country is the issue of cross-examination. And each parties advisor is permitted to ask the other party any witnesses questions that are relevant and follow-up questions. So including questions that challenge credibility.

So that's really the big challenging thing for most of us. Because even in some ways we have seem to some court cases related to cross-examination it has not been this explicit. Sometimes it has been through utilizing a board chair or something along those lines, but this is very explicit in that it is not that you can choose to have your advisor. It is that your advisor is the person that can do the cross-examination. It is prescriptive that way. The party can't ask those questions.

So there's no option for either party to be involved in that. If the party does not have an advisor at the hearing and the institution has to provide one for the purpose of cross-examination you could have a student who says I don't want an advisor. I don't want to talk to anybody and that's fine. They have the right to do that. But for that purpose they need to have a person there to ask questions. And that raises a lot of questions for us within our processes, within our staffing because if we provide them with somebody I
think most of us here think we want to provide them with someone who can do that job and that means training them to do that job and really you're asking someone to train someone to take a role that attorneys do. And that is not a skill that kind of falls off the trees in law school. It is acquired. It takes a long time to be good at that. So it is a difficult piece of staffing we have to come up with.

And also questions of equity. If a student has, if one student has an attorney and the other student doesn't, do we have to provide them with an attorney or can we say here's the assistant director of so-and-so who went through a four hour training who will be [indiscernible] I think it appeases if you have students who [are resistant] to an advisor if they do not accept the person they lose the right to cross-examine because they can't do it themselves. It is not permitted as part of the --- it half if they want any kind of cross-examination it may be someone [indiscernible] excited to have but it leaves open the possibility of cross-examination by friends, by family members. You could have a student parent being the advisor to cross-examine, you could have a team member remade, and also keep in mind, a lot of institutions also have this weird gray area about what if you are also a witness? now the person who is the advisor can also be a witness.

So institutions can say no, you are part of the case. You are not allowed to be an advisor. That is not permitted. You have to make sure that person, they can choose any but even if they are involved. All right next slide. So going back to, I apologize before I got my slides mixed up on my screen here, your decision-maker has to make decisions on relevancy of questions and these things have to be submitted ahead of time and in the moment making a decision okay is this a relevant question in this and that's a big responsibility. And to some extent in current hearing structures we have seen some of that, some institution have more of that factor than others. So for some institutions this may not be a heavy lift to get to this point, but for others it may be a big seachange in terms of what you are asking maybe a staff or faculty member to be doing. Really when you are evaluating who is part of the pools to be part of these type of decision-making bodies that skill set is going to be an important one or an important want to train up to find the right way to do that. If the party misses another one of the more controversial pieces of this, if a party does not submit the cross-examination at the hearing, the decision-maker has two, cannot rely on any of the statements made prior to that hearing. During the investigation. That may be the initial complaint. In making a decision. So the ability, the necessity of being at the hearing cannot be overstated. Because not making yourself present pretty much everything you said beforehand is not admissible. To use that legal term. Within the course of your hearing. So it is difficult. We don't know what submit
names. If someone shows up physically and says I'm not going to talk... I'm not quite sure where... What the ruling is on that. If you just say and keep in mind, too, we are going to have students who may have possible, current criminal matters. Pending. So if a student shows up at the hearing and says well I'm taking the Fifth Amendment, I'm not, I'm present but not submitting the questions, these are all kind of in the weeds things that we are going to have to see played out.

And you may see institutions kind of come up with some different ways of dealing with this. This also, this is an interesting point, applies to what other people are testifying as to what that individual said. So if you have for instance an outcry witness, somebody who says well after the alleged incident happened the person came and told me about it, you cannot rely on what they said the person said. So it is not just of their own direct statements. It kind of is as a transitive property goes on to other statements that reference things the person may have said. The logic being that they can't be cross-examined on their own statements, they cannot be cross-examined on the other ones either. But again that is a very broad prohibition they are putting in there. It also applies to records that contain statements by the parties that include things like electronic messages, text messages, things along those lines. Those are statements. So imagine really if you have two parties who have text messages and you have the paper in front of you, one submits, one [indiscernible] and the other doesn't, you are only reading half of the page as being admissible. But that is the effect of what the regulations state. And also it applies to records but does not apply to records that do not contain a person's statement. So for instance, the example of that would be photographic or video. You know, if there is surveillance camera of an area, that would not be covered under this. That is something that would still be missing. A photograph that is not containing a statement that they are making. Those are things that would still be permitted. But it is really in terms of the written or verbal statements made by somebody that is either recorded by someone at the institution or by somebody else. And that is even if you record your interviews and things along those lines it would still apply.

MARTHA COMPTON: can I chime in for a second? I really want to stress how important this is because I think all of us with the short implementation period are tempted to just jump to the regulations themselves and use those on the face to make these decisions. All the things that Seann just went through or not actually in the regulations themselves but in the commentary. So they are very clear in the commentary how they intend that to be played out, but if you are just reading the regulations you are going to miss that. And so that's part of the reason why this is so complicated is because it is continually self-referential to other parts of the document that you have to kind of read to get through that. So I want to push that out because I know a lot of people have been pushed that they just focus on the right and don't focus on the commentary but the commentary is crucial.

SEANN KALAGHER: thanks, Martha absolutely you are right. The more important languages in the comments. The problem is that's the meat of the 2000 pages. Finding
these kinds of kernels and nuggets within the 2000 page document that we got a couple weeks ago. And just lastly, there has to be a record kept audio or audiovisual recording or transcript of your hearing. I think many institutions do this already in some fashion but if you don't do this, this is something that you do need to start doing. Obviously an audio recording is probably the least resource heavy way of doing that. You know, but whether that is video or whatnot, you do need to keep that and it must be made available to all parties. So similar to any information collected before the hearing, this becomes part of the record that's accessible to everybody afterwards and provided to them. So in terms of the life hearing again, the decision-maker [indiscernible] this is, it's funny, a number of years ago we talked about I think Martha and I presented this several years back talking about rationales. And how we run our decisions and this is by far the most explicit direction we've received in terms of what decision needs to include. We have to issue written determinations of responsibility. Includes identifying obviously specified codes, and that is what we typically would do anyway. But it also talks about, your decision has to go through almost [indiscernible] the case talking about these are the procedural steps we took from the receipt all the way through the determination, so keeping that, and mostly of particularly using certain conduct management systems they may have a log for some of these things which is good but that has to be included in your decision letter. You have to show what the findings of fact were that supported the determination.

So what is your decision-makers, what are they evaluating and what are they putting their emphasis on in terms of the facts that led them to their decision. What other conclusions, how do those facts apply to the specific codes of conduct? I think one of the things in terms of a training element with our staff members is learning what your codes, not just like in a general sense, but do your codes have specific elements to them that have to be met? and so applying those facts to the specific codes to make sure they match up. Also in terms of a statement and rationale that discusses regarding each allegation. So it includes who is responsible, determination regarding responsibility, any sanctions and also other remedies provided to the complainant. So those all have to be, the way they worded it out you almost can section out a decision letter in terms of here's this here's this here's this, because they are being very explicit in terms of what you need to share with the parties. And also a discussion of appeal. I think that is boilerplate language and a lot of our letters already in terms of what the appeal process looks like and what the grounds are. And we will cover that in a few minutes. And also the written determination must be provided to both parties simultaneously. This really hasn't changed either from existing guidance at the federal and state level. So simultaneous... Notice to both parties of the decision. So it is interesting in that one of the early polls we saw the first poll what were the biggest concerns and it was actually quite almost everybody it was like a quarter for each one. But one of those was staffing. And staffing is, I know just thinking about my own campus that's probably my biggest concern is at a time now when institutions, we are getting this regulation at a time when everybody is a bit in flux to be gentle about it. And we don't know what our staffing is going to look like next month, or in a few months. When we
open it up for the fall 2020 semester. So, really getting a sense, it's going to make it difficult for all of us to get a sense of who can actually be part of your processes when you have to implement these new provisions. But in terms of within a hearing, you are looking at at least [indiscernible] possibly being in there and their role in terms of how you define the process with the caveat that they can't be the person making a decision. They can't be an appellate person. You may have an investigator there or more than one, I know many institutions do have multiple investigators. You may have providers---cross examiners at the lease or maybe serving more robust roles with people they are working with. We have at least one hearing officer or decision-maker likely more. A lot of us do multiperson panels but there's no prohibition on having a single hearing officer. The big prohibition is you can't have a single investigator hearing officer everything. The single administrator officer is no longer permissible and then having at least one appeal officer. Some of these to our requirements at the state level as well so some of the states have also implemented different requests or different mandates at different levels of the process. So just to make sure, it's funny, you know making sure you have enough people to handle this process is important particularly because of conflicts and biases you will notice we talk about appeals is a very big element in this and something I think the department is particularly sensitive to because I think there's maybe an impression that folks are serving in the roles that we work in may have some sort of imperceptible bias against certain students in the process. So that is something that we really need to guard ourselves against. And even when it relates to that, just even thinking about how we represent ourselves on campus and what you do and don't talk about or present or don't present on. If you are in a role as a title IX coordinator or hearing board member these are things that I think will become important moving forward and the Department of Education is asking us to be truly neutral arbiters here and to do that to the absolute maximum extent possible. Sorry. My home phone is ringing. [Laughter] I can't win. So have enough people that can do this work and if you are worried that you can't, now is the time to start talking with the appropriate folks in your institution as to what altered models are available to you. If you need to look at external investigation, if you need to look at models like that now is the time if you are concerned that you can't appropriately staff For a hearing like this. And Kateeka.

KATEEKA HARRIS: thanks Seann let's talk a little bit about some of the key changes as they relate to appeals. So appeals again must be offered to both parties. Related to determination responsibility or dismissal of a formal complaint. The Department of Ed gave specific grounds for those appeals. So a procedural irregularity that affected the outcome of the matter is one of the reasons that was stated, as well as new evidence that was not reasonably available at the time and could have affected the outcome of the matter. There is a scene here. It's all that could have affected the outcome of the matter and the third is bias or conflict of interest for or against complainant or the respondent generally that would have or could have affected the outcome. So we always knew that we could offer appeals. We also knew that we
needed to do that equitably. So that is not much of a change as much as it is when you think about...

We can go to the next slide, but when you think about communication, so the non-appealing party must be notified in writing when the appeal is filed. That is a practice that I think we started a while ago. The interesting piece of this for me is that, you know when all of the transition came out in 2011 and we kind of transitioned from handling some of these types of situations and conduct and split off into individual title IX offices, and so now I feel like it is... Now I feel like it is the reverse. We are going back to best practices that conduct officers have always used. So our folks in the title IX offices exclusively... Some of that stuff, both parties have reasonable equal opportunity to submit written statements support or challenging the outcome. And then decision-makers for the appeal needs to be someone other than the investigator. The going back to what Seann said about the number of parties that are involved in the single incident. It can't be this person who conducted the investigation. And it can be the decision-maker who served as the hearing report he had it can't be the title IX coordinator. And so so language is going to matter about how we employ some of the practices in the institution and what rules are. So depending on whether you are looking to bring investigators in order to train individuals internally, language is really going to matter because the new regs appear to be language specific. Written decisions must include resulting appeal and rationale that result. And that was always you know, a good practice for conduct officers anyway making sure you have a solid rationale for decision and solid rationale for your sanction but this is all now consistent within this auspice of title IX. So the cases that will be narrow enough to fit into that category. Written decisions must be provided simultaneously. That has not changed. To both parties. That is still consistent with what we have been doing. You can go to the next slide.

Finally, when we talk about the final decision, determination becomes final either upon notice of the appeal results to the parties appeal or the date on which the appeal was no longer being considered timely. So again, the timing of all of that matters in terms of when the decision becomes final.

The other thing that these new regs have outlined very clearly for us is retaliation. And defining retaliation as you know, complaints alleging retaliation may be filed and result under title IX grievance procedure, which depending upon how your institution had your processes written that may have been something that you are addressing that way as well or maybe not. But if not, then it is something new. And it also specifies that exercise of rights protected under the First Amendment does not constitute retaliation. So, thinking about that, those implications, how they might play into the process specifics the charging someone for making materially false statement in bad faith does not constitute retaliation. So they were good about really mapping out, what is a little bit more clear anyway about what is retaliation and what [indiscernible]. Let's talk a little about informal resolution. This is interesting just because it looks, it can look very different depending upon your institution and what procedures or processes you all decide upon. But it is an option. Again, look at language. It is a may, it may be offered
by the institution, except in instances of alleged employee sexual harassment against a student. Which makes sense. When you think about the power dynamic. However I would argue that when you have individuals involved in interpersonal violence there is still a power dynamic there.

Nevertheless here we are. So, it may not be offered and this is the other caveat. It cannot be offered, informal resolution cannot be offered until there is a formal complaint filed. So it's kind of counterintuitive in that you are going to have to have a formal complaint in hand, meaning it is signed by a complainant, before you can actually get to talking about potential resolutions. So it is kind of... It sounds awkward just thinking about it, but it is a way in which we are going to need to, will fit under this narrow definition of sexual harassment. Informal resolution processes can be entered into at any time prior to the determination regarding responsibility, which is not really different. We have always allowed individuals to have some autonomy in the process, primarily the complainant as to the direction. But it will be interesting to see how this plays out. Especially with the live hearing components. All parties must agree to participate in informal resolution processes which is required. The allegations need to be included in the notice, the requirements for the informal process. So that's why it is going to be important to have conversations with your folks on your campus is to determine what is that informal resolution process going to look like? is it a range? and if so, what falls within that range? rights of the parties to withdraw from the informal process, that information also needs to be provided. At the time that individuals are being informed about the informal resolution process. And any consequences of participation in the informal resolution process including records that may be maintained or could be shared. So all of that information needs to be included prior to entering into any type of formal or informal resolution process. And I think we have a polling question. Here's the next poll before we turn it over to Martha and the question we are inquiring about is do you now offer or do you now envision [indiscernible] under the new title and regulations we are curious to see who is doing this and to see what your thoughts are moving forward. So take a moment and answer that. Thank you.

MARTHA COMPTON: While you all are answering that I'm going to get started. We are going to move through the next bit of this quickly. You all are asking some awesome questions in the Q&A and I want to encourage you if you haven't looked at the Q&A box because you didn't have a question we have been answering some as we can in writing. So want to encourage you to take a look at those. So you can get that information as well.

So moving forward, talking about training, so title IX coordinators they are very clear. Anybody basically who is involved in the decision-making process including folks who facilitate informal resolution process have to receive specific training on a number of things that are kind of listed here. Some of them are kind of how to be impartial what the definition of sexual harassment is especially to this reg the final one, how to conduct grievance procedure in accordance with these regulations, and this is, I think I actually
appreciate them throwing them out there like you actually need to train hearing officers on how to use the technology they are going to use before a hearing. We are all much more familiar now with zoom in teams and blackboard collaborate and things than we were before but you don't want to be fumbling with those in that situation. And then this is kind of the big thing that Seann was talking about the kind of issues that are relevant when decision-makers are making decisions on questions, evidence and writing a report kind of really being trained specifically on what is relevant and how to make those decisions. All training materials for coordinators investigators and decision-makers must not rely on set stereotypes and must be maintained for a period of seven years and must be publicly made available on the institution's website and if there is no website they must be made available upon request for review by the public. I want to speak to that real quick because DOE put out a blog post I believe either yesterday or Monday clarifying this because there have been some questions about the training I went to the folks who do that have --- DOE said the tough luck you have to put it on the website and risk potentially problems with the persons who did that training, or you have to, and I apologize because this was already submitted before we found this, you have to obtain or create materials that can be shared publicly. So ASCA is here to assist you with that starting with this. So after this presentation today we are going to make these materials available. This is considered to some extent, it's not going to fulfill all your training but will fulfill pieces about explaining what a complaint is, explaining some of these pieces and you will have our permission to post those on your website. Moving forward we will be creating additional training materials because I'm just going to be honest with you, ain't nobody got time while we are trying to do this to also create new training materials that comply with this thing we haven't figured out yet how to implement. ASCA is going to do that for you. We are going to put a training together and offer that to you all to assist with that. We want to make sure our members have what they need to, also want to make sure you have what you need to make a decision. This is a very new development for us we had this conversation yesterday in our board meeting. Kateeka is going to talk about other things that will be coming related to title IX but I wanted to make sure that you all know this. We have your back and we will get you what you need to move forward. Additionally, again we have to maintain records for seven years. It kind of talks about this. It's pretty straightforward. Any action taken, each investigation, any appeal, any informal resolution all need to have records kept and available. And I'm going to turn this over to Seann to talk about some administrative oversight.

SEANN KALAGHER: sorry I was muted. I didn't want you all hearing my typing while I was answering questions. In terms of the oversight I think one of the interesting part about this is while they are ramping up requirements for us to do on campus the Department of Education is really limiting in terms of what they are going to say when somebody is in violation of this. The standards and enforcement seems to be they are indicating will be reduced.

So one clear thing they have said is at least they said this is the way they are going to enforce it is if the assistant secretary eating the official that runs OCR doesn't agree with
the decision that the institution makes that doesn't necessarily mean they would be considered [deliberate indifference] on the part of the institution which is good that just because they disagree with a finding who would mean [they were] in violation of the title IX regulations.

They also stated that OCR will not be any kind of remedial action against institutions for violations will not include an assessment of damages for monetary damages. The obligations that we have for this are not prohibited by FERPA. So institutions cannot use FERPA as a way to say I can't abide by the regulation because it may violate my institutions interpretation of FERPA or how we manage it at our campus. That is not something that's going to fly with OCR.

Also, it does not apply to institutions. So the title IX doesn't apply to institutions controlled by religious organizations if the application of these regulations doesn't line up with the tenets of the religious organization. So religious exemption to title IX is a completely kind of different subject. We are not going to do a deep dive into that but that is something if your institution falls into the bucket and wants to explore that that is something you should look at institutionally, as to how you apply that. All right. Next slide. For ourselves and our institutions I think we just need to look at, I think one of our biggest questions that I don't know if there are a ton of answers for it yet is how we are going to structure the processes that we have. Are we going to expand what these regulations are calling for us to do across behaviors that aren't covered under these regulations, for instance the on off-campus dichotomy that we have do we just say that everything is dealt with under the new regime? do we come up with different subsets of this? I think your state laws fall under this too. One thing I have been working in the state of New York. For our sexual harassment in the workplace we have a reasonable person standard for workplace harassment that is much lower than the severe and pervasive standard under title IX that Kateeka talked about so we may have certain things that go to HR and certain things that stay within a title IX process. So, figuring that out on your campus and communicating that in an effective way is going to be very important. Some institutions are going to question whether they keep off-campus jurisdiction. When you address behavior it is not about where you are physically --- is about the institutional but I think institutional you will see some institutions grapple with the question, and how do you model your reporting requirements? you keep them very broad. Everyone is a mandatory reporter even with, you still have the right to do that, you can still do that if you choose but you can also limit that if you like. So I think the thing is the people who are making, the folks making these decisions aren't just going to be those of us doing the conduct and title IX work. It will be your risk managers, counsel and other leaders at your institutions that are going to have opinions on the so I think engaging those is important. And how do you respond to those allegations made by those not affiliated with the institution? no requirements on this. There are elements where you may see some changes this may be one where you see more institutions jumping on this and saying well you withdrew from the institution. So that is not something that the institution is... Bound to move forward with. But then again you may
not be, you may have state laws in place that don't allow you to do that too. So again, these are all very institutional you know, locally based decisions you may have to make. You can go ahead.

KATEEKA HARRIS: Can I add really quick the other part of that is thinking about what your policies currently say and how you are defining who is a student because that could also conflict potentially with whether or not you are moving forward with a complaint for someone who withdrew recently or is not yet enrolled maybe they are in the admissions process so be familiar and aware of what your policy say and how you are defining a student is also going to be important.

SEANN KALAGHER: I agree and all the elements in terms of do you have, where do you physically have these hearings, do you have the technology resources that may be less of a question now since so many institutions now are investing in video technology that it may be less of a problem than it was six or 12 months ago. But these are all things that you have to make sure you have the ability to do it make sure you have the hearings and the whole process is accessible.

And just generally, remember what is going on in your states. We have already had for several years many states that already permit attorney representation within the conduct process. So you see that list there. We also have a number of states that have their own often very robust requirements under state law. In terms of college sexual misconduct, things that would be under title IX federally you know, I have worked in two of those states in New York now I know there are some New York folks on this webinar and enough is enough is its own regime of things that we need to make sure we are abiding by. I used to work in Connecticut and Connecticut in statute required a preponderance standard to be used for these processes if you are in Connecticut all of a sudden you are saying how does this reconcile with the fact that what if our faculty process does not require preponderance but the state law says we have to do this but the federal law will not let us have two different standards but I don't have an answer for you. I don't really know what the answer is now. It is talking cure counsel in trying to make an individual decision for your campus.

KATEEKA HARRIS: quickly to talk about what is next for ACA I think Martha alluded to, we are all diligently working to pull this information together and share it as broadly as we can with our membership. But preparing comprehensive documents regarding regulations, that is forthcoming as well as a series of webinars and trainings on specific topics and pieces of the regulations that will be developed and they will be rolling out over the summer and again the whole purpose of that is so you all can take that information and use it for training material as broadly as you need to. And we are also interested in hearing about specific topics that you want to get more in-depth about and have more conversation about so that we can develop collaborative results. Because it is going to be a group effort to comply. Especially by August 14. But we are going to do as much as we can from ASCA. Christine Simone's email is on the slide so if you have Pacific topics or questions or thoughts you want to share Christine is going to receive
those from you. And I want to get to the questions because there are so many good ones and we don't have a lot of time.

MARTHA COMPTON: Let's hop into the questions but there are quite a few. There's a question I want to share with everybody the central office is keeping a record of what is being asked in the Q&A. We will not get to everything for sure. But know that we are going to use these questions to continue to develop the training topics moving forward. I'm going to randomly pick one, and it pretty much is random. And so I will, this one was actually answered in writing but I think it is really important, so I want to say it out loud and then I'm going to let Seann and Kateeka grab one so feel free to scroll through and pick your favorite. But in the process of examination does the state apply to interview testimony summarized by the investigator? and the answer to that is yes. The cross-examination as OCR or DOE has written this, really is the parties first opportunity to contest credibility, to contest all of those things. And so they are basically saying even if an investigator is saying I sat in a room with Jimmy and heard Jimmy say this, if Jimmy is not going to submit the cross-examination the investigators summary is not going to be relevant. This also potentially looks like it could apply to [St. exam] and to the police records with the nurse is not going to be present to answer questions you will not potentially to use that document. And if the police officer who took the document as part of the evidence packet is not present you likely are not going to be able to use that statement, so you want if you have not already to start the process of having a conversation about what MOUS you need to have in place for that situation. Seann, did you find one

SEANN KALAGHER: I'm typing some answers to some questions here... One of the... One of the questions I flagged to respond to was a question about how this impacts your other processes about physical violence and other types of behavior and I think one of the ways we may see in the future given that we may have institutions now where you get, here's the process for title IX sexual misconduct where you could be expelled for sexual misconduct. Here is the regular conduct process where you could still be expelled but for drug distribution I think that... I'm not saying it's important to change all the processes right now, but our hand may be forced down the line with this when we see... With institutional somebody who [indiscernible] in a very quick way because they were selling drugs they say why don't I get the procedural protections that the student who was accused of procedural misconduct gets and where is my investigation and where's my copies of all the materials. If the institution does not provide that in the process. So I think that is coming and we shouldn't just think of these relations as impacting title IX. It is going to impact the field. Because this is setting a bar for what institutional disciplinary process should look like, so sayeth the federal government. And we need to be prepared for the real possibility that these things could soon be ported out into all of our processes. So we need to get real familiar with this and be prepared but also prepared to justify if we use different processes exactly why. It can't just be because this is how we have always done it, or it is more convenient for us. That maybe your argument. If you do, just make it but you have to have an argument as
to why you will have different processes for things that could end up in the exact same sanction which could be suspension or expulsion so I need to be prepared for that.

KATEEKA HARRIS: there is another question that talks about with having parents being able to report on the child's behalf without violating the students FERPA right, that's a great question and it's not really clear. Doesn't really say much about the role of parents, or at least what I have read thus far, I didn't see where it talks about the role of parents in the process. It just mentions that in fact they should be considered and potentially may have a role. I think that is going to depend upon how again our institutions develop a process for receiving complaints for parents. But it is definitely something that is new. Because previously most of us prescribed to the rule that the student regardless of their age were enrolled in the institutions they were the keeper of their record. So that's definitely a conversation you want to have with counsel and other team members on your campus to ensure that you our conveying that properly across the board of your institution.

MARTHA COMPTON: I'm going to use a point of personal privilege and answer to because I think there are two quick ones I can answer. So one question from Nick Winkler is [indiscernible] investigators if they are not --- a party versus having separate investigators that is actually a strategy and I was [indiscernible] we had a pool of hearing officers and investigators that circled around. Not everybody was the hearing officer all the time that everybody was the investigator all the time. But that was also one way to ensure you had a really well-trained group. Who understood your process up and down. It does require a little bit of a deeper bench. Smaller schools may struggle with that, but that's one of the things you absolutely can do. The other question from Anne, iiso-agree with this, what options are there other than passing off campus cases to be handled by a student conduct health. This is one of the ones where I think language is super important.

What we traditionally referred to as the title IX office, or the title IX process may need to be renamed. So there's nothing saying that your folks who do title IX work can't still continue to do off-campus title IX work. Or off-campus... See I just did it, off-campus sexual assault work in that way your process could still funnel that to them. You just want to make sure you're having really intentional thoughtful conversations about what you call things.

You know, one of the bigger questions is whether or not... A lot of people have one policy right now, we saw that, one big institutional policy that applies to everybody. That may or may not continue here. I know at my institution our policy right now covers all protected class harassment and discrimination. We are looking at potentially breaking this down into three different policies even though the procedures for some of them may be identical. Just for clarity. To very specifically say this was not handled through title IX this was handled through the sexual misconduct =-- process. Seann you have got one ready to go?
SEANN KALAGHER: Kateeka, if you have one go ahead.

KATEEKA HARRIS: there is a question about I thought I understood that all processes needed to use the same standard of evidence, not just title IX, if you want to use the preponderance, but not clear and convincing. And the example that is given is if there is a clear and convincing standard for integrity, academic integrity issues, does it have to be clear and convincing for... The title IX process? and again, I would say that institutionally, we want to be consistent. If we are going to have a clear and convincing standard for one process, then as much as we may not agree with it, we would need to have that for all. Because eventually what will happen is someone is going to challenge that. Someone is going to come back later on and say well why is it the preponderance for title IX but clear and convincing for academic integrity? It just wouldn't be equitable. So that’s again another question you are going to want to post your legal counsel and folks need to kind of make a decision moving forward on that.

MARTHA COMPTON: yeah.

SEANN KALAGHER: there was a question post about appeals I just wrote a quick answer to it, but there was a question about what if you appoint a student advisor and they feel this person does not do a good job. It is interesting because as Kateeka referenced it's the first time we are being prescribed as to what the appeal grounds are. It is not an institutional decision. We are allowed to add more if we choose to, but they gave us three. That we have to provide. One of those is bias amongst somebody who is involved in the case. Again, this is a big focus for most [indiscernible] eliminating bias in the process. And I think a student can certainly claim in an appeal that there appointed advisor was biased against them. I don't know if there is a lot of leeway to say that they just weren't good at their job. There may be less room for that. It doesn't mean they could not sue the school about it, but may not be an actual appeal within your process. Certainly they felt that some student was appointed somebody they felt was hostile to them and believe them, whether they were of respondent or complainant and did not ask questions in a way that reflected well upon them because of that, then surely that is absolutely, false within the claim that you could make of a biased, a biased member of the process that impacted your decision.

MARTHA COMPTON: Okay we are running up on time so I'm going to answer to last ones about advisors and then we are going to wrap it up, and while I'm talking I'm going to put just some general kind of resources that already exist on the site for you. So one question was, we did this in writing and I want to answer it again because another person asked, what if a person refuses their advisor? can the hearing proceed? if a student does not want an advisor they don't have to utilize one, but we have to provide it. So there has to be somebody there ready to ask questions on that person's behalf if they choose to do that. I think it is important to know that the ---- only talk about the institution having to provide an advisor for the hearing. There is nothing that I have read that indicates that says you have to
have an advisor to go through the process with them. So then Anne James asked a
good question about I heard Seann say that if a student could have an advisor of their
choice. What if that person is also a witness? right. And so... This is where I think the
dissension between an advisor and the process and the advisor at the hearing asking
questions, a little bit different. They could have a witness with them through the entire
process as their advisor of choice. At the hearing, and I think Anne also made an
excellent point how could they cross-examine themselves? They could not. So I think
that is a reasonable response that the hearing witness really can't be advisors. Again,

SEANN KALAGHER: they don't say that explicitly.

MARTHA COMPTON: they don't say that explicitly. This might be something where
clarification comes. This might be something where you make an institutional decision
because you want to go one way because you feel like you can defend it but these are
the meaty details that we all need to spend some time getting into.

SEANN KALAGHER: keep in mind the answer may eventually be from the department
let him become else in and cross-examine them and they are the cross examiner for the
one witness. That could be the answer to.

MARTHA COMPTON: it very well could be, so on that murky note which I feel sums up
what we have been working on the past several weeks I want to thank you all for your
time I want to thank Seann and Kateeka, for doing this with us I want to thank Jennifer
and Christine in the central office behind the scenes for making all this work I want to do
special right out to Brian Glick who is on the board and chair of the PPLI committee who
spent a lot of time helping us prep this presentation. We will be collecting the Q&A. We
will share that. We are working on getting all of these things to you. We know there are
good questions in here that are going to cause people to keep thinking so thank you
thank you thank you we will send you more things and we hope to see you in another
webinar really soon.

>> Bye everyone.