



TITLE IX
Live Hearing Officer
Training

Fall 2023

Training Overview

- **Review Role and Responsibilities**
- **Review Documents**
- **Discuss Common Pitfalls**
- **Question and Answer Session**

Live Hearing Officer's Role

- The Investigation will always be followed by a Live Hearing.
- The Live Hearing Officer serves as the first decision-maker in the Title IX Formal Complaint Resolution Process.
- The Live Hearing Officer will deliberate on the evidence, determine responsibility, and compose a Written Determination of Responsibility.
- The Live Hearing Officer must conduct a **prompt, fair, impartial, unbiased, and equitable** process from the beginning of the Live Hearing to the submission of their Written Determination of Responsibility.
- Title IX Coordinators, Deputy Title IX Coordinators, Informal Resolution Facilitators, Investigators, Removal Challenge Officers, Live Hearing Advisors, and Appeal Decision Makers cannot serve as Live Hearing Officers.

Live Hearing Officer's Role (Cont.)

- Collin College maintains a pool of trained Live Hearing Officers.
- When a Live Hearing Officer is needed to serve on a case, a call will be sent by the appropriate Title IX Coordinator, Deputy Title IX Coordinator, or designee to the entire pool through Collin College email.
- The appropriate Title IX Coordinator, Deputy Title IX Coordinator, or designee will assign a Live Hearing Officer from the individuals who respond stating they are available.
- Please respond to all call to serve emails as soon as possible.

Before the Live Hearing

- The appropriate Title IX Coordinator, Deputy Title IX Coordinator, or designee will notify the Complainant, Respondent, their respective Live Hearing Advisors, any Witnesses, and the Live Hearing Officers of the date, time, and location of the Live Hearing in writing.
- The appropriate Title IX Coordinator, Deputy Title IX Coordinator, or designee will send the following items to the Live Hearing Officer via Collin College email:
 - The final *Investigation Report*,
 - A link to all evidence and documents relevant to the allegation(s),
 - The *Live Hearing Procedures*,
 - The *Title IX Complaint Resolution Process Potential Penalties and Remedies* handout,
 - The *Written Determination of Responsibility* template, and
 - The *Appeal Request Form* template.
- The Live Hearing Officer **must** review all information and evidence provided **prior** to the Live Hearing.

Before the Live Hearing (Cont.)

- If either the Complainant and/or Respondent request it, the Live Hearing Officer can meet with each party and their Live Hearing Advisor separately prior to the Live Hearing. The purpose of this meeting is to:
 - Review the cross-examination questions each party would like to ask during the Live Hearing.
 - Determine relevancy of the proposed questions and respond with an appropriate rationale if a question is denied.
- These meetings must be done in a timely manner so that each party has an opportunity to evaluate the Live Hearing Officer's response and generate new questions, if necessary.

Live Hearing Advisor's Role

- The Live Hearing Advisor's sole purpose is to conduct cross-examination for their party during the Live Hearing.
- The Live Hearing Advisor should:
 - Consult with, discuss, and address issues of concern with their party, as needed.
 - Offer support to their party.
- The Live Hearing Advisor should not:
 - Speak on their party's behalf.
 - Participate in any portion of the Live Hearing other than cross-examination.
 - Delay, disrupt, or interfere with the proceedings.
- If a Live Hearing Advisor does not abide by the restrictions on their participation, the Live Hearing Officer should remind them of their role.
- If they continue to be disruptive, the Live Hearing Officer should stop the proceedings and consult with the appropriate Title IX Coordinator, Deputy Title IX Coordinator, or designee overseeing the case.

Live Hearing Procedures

- The Live Hearing Officer will conduct the Live Hearing on the specified date and time.
- The Live Hearing will be held on a Collin College campus with all parties located in separate rooms.
- Zoom will be used to conference all parties into the meeting so everyone can simultaneously see and hear the proceedings and all questions.
- The Live Hearing Officer **must** record the Live Hearing. This will be done using the recording function in Zoom so there will be both an audio and video recording of the Live Hearing.

Live Hearing Procedures (Cont.)

- **Live Hearing Officer's Opening Remarks (No More Than 10 Minutes)**

1. Prior to starting the Live Hearing, move all of the Witnesses for the Complainant into one (1) breakout room and all of the Witnesses for the Respondent into a separate breakout room. The Witnesses should only be in the main room while they are providing their statements and undergoing cross-examination during the "Cross-Examination and Witnesses" portion of the Live Hearing.
2. Inform all parties the Live Hearing will be audio/video recorded and **start** the Zoom recording.

This Live Hearing is being **audio and video recorded via Zoom**. I will make the recording available to the parties and your respective Live Hearing Advisors for inspection and review after the conclusion of the Live Hearing. Any other audio, electronic, digital media, recording, telecommunication, video, and/or wearable devices not previously approved by me must be completely turned off (not in silent or vibrate mode) during the Live Hearing.

Live Hearing Procedures (Cont.)

- Live Hearing Officer's Opening Remarks (No More Than 10 Minutes)

3. Introduce yourself and state the following.

Today is DAY OF THE WEEK, MONTH DATE, YEAR, and the time is TIME AM/PM. This Live Hearing is being held at the CAMPUS via Zoom with the parties located in separate rooms. The purpose of this Live Hearing is to hear from the Complainant, Respondent, their respective Live Hearing Advisors, and Witnesses regarding the formal *Title IX* complaint of TITLE OF PROHIBITED CONDUCT submitted on DAY OF THE WEEK, MONTH DATE, YEAR, by COMPLAINANT'S NAME.

4. Greet the Complainant, Respondent, and their respective Live Hearing Advisors.

5. Have everyone present for the Live Hearing introduce themselves.

6. Move the Investigators into a breakout room. (Note: The Investigators may be brought back into the main room at any point during the Live Hearing to answer questions and/or provide clarification regarding the Investigation.)

Live Hearing Procedures (Cont.)

- **Live Hearing Officer's Opening Remarks (No More Than 10 Minutes)**

7. Remind the parties of their rights. Read the following verbatim.

In accordance with federal *Title IX* regulations, you have the following rights:

1. The right to a prompt, fair, impartial, unbiased, and equitable process from the beginning of the live hearing to the submission of the Live Hearing Officer's *Written Determination of Responsibility*.
2. The right to inspect and review any evidence obtained as part of the investigation that is directly related to the allegation(s).
3. The right to be assisted by an advisor of your choosing, who may be, but is not required to be, an attorney, during the formal complaint process. Please note that Collin College is only required to provide an advisor during the Live Hearing phase of the formal complaint process. If a party is unable to obtain an advisor for the live hearing, Collin College will provide one (1) free of charge for the purpose of conducting cross-examination for the party. The appropriate Title IX coordinator or designee will assign an appropriate Live Hearing Advisor to the party for the Live Hearing.
4. The right to be informed in writing of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time to prepare to participate.
5. The right to be informed that the Respondent is presumed not responsible until the conclusion of the formal complaint process when a determination is made.
6. The right to voluntarily participate in an informal resolution process. Both parties must provide their voluntary consent in writing to participate in an informal resolution process. Informal resolution is prohibited in any case where an employee is accused of engaging in prohibited conduct against a student. Collin College will not require the parties to waive their rights to a formal process and agree to informal resolution as a condition of enrollment or employment.
7. The right to request separate rooms and the use of appropriate technology so the hearing officer, the parties, and their respective advisors can simultaneously see and hear all questions.
8. The right to refuse to submit to cross-examination. A party or witness may refuse to submit to cross-examination during a live hearing. If a party or witness does not submit to cross-examination during a live hearing, that individual's statements may be relied on by the hearing officer in reaching a determination regarding responsibility. Collin College is not permitted to draw an adverse inference based on the mere fact that an individual refused to submit to cross-examination.
9. The right to inspect and review the audio recording, video recording, or transcript of the Live Hearing that will be made available to the parties and their respective advisors after the conclusion of the Live Hearing.

Live Hearing Procedures (Cont.)

- **Live Hearing Officer's Opening Remarks (No More Than 10 Minutes)**

8. Read the description of the allegation(s).

9. State the following:

As the Live Hearing Officer, I will serve as the first decision-maker in the formal *Title IX* complaint process. After the Live Hearing, I will deliberate on the evidence provided and determine responsibility using the preponderance of the evidence standard (i.e., more likely than not to have occurred). If appropriate, I will impose a proportionate penalty or penalties on the Respondent and implement potential remedies for the Complainant. Additionally, I will compose a *Written Determination of Responsibility* detailing my decision. I will send this document simultaneously to both parties and your respective advisors in electronic format or hard copy along with information about how to file an appeal within 10 College District business days of the Live Hearing.

10. Read the range of penalties that may be imposed on the respondent and the range of potential remedies that may be provided to the complainant.

Live Hearing Procedures (Cont.)

- **Complainant's Statement (No More Than 20 Minutes)**
 - The Complainant presents their statement and evidence.
- **Respondent's Statement (No More Than 20 Minutes)**
 - The Respondent presents their statement and evidence.
- **Complainant's Rebuttal (No More than 10 Minutes)**
 - The Complainant presents their rebuttal statement and evidence.
- **Respondent's Rebuttal (No More Than 10 Minutes)**
 - The Respondent presents their rebuttal statement and evidence.
- **Live Hearing Officer Questions the Complainant and Respondent (No More Than 20 Minutes)**
 - The Live Hearing Officer asks the Complainant and Respondent any relevant questions and follow-up questions, including those bearing on credibility.

Live Hearing Procedures (Cont.)

■ Cross-Examination and Witnesses (No More Than 20 Minutes Per Party)

- **Note: The Complainant and Respondent cannot speak to each other or to the Witnesses at any time during the Live Hearing. All cross-examination will be conducted only by the Complainant's Live Hearing Advisor and Respondent's Live Hearing Advisor, respectively.**
- The Live Hearing Officer calls all Witnesses one (1) at a time to give a statement. Each Witness will be dismissed after they have given a statement and answered any questions.
- The Live Hearing Officer asks all Witnesses relevant questions and follow-up questions, including those bearing on credibility.
- The Live Hearing Officer will permit each party's Live Hearing Advisor to ask the other party and all Witnesses any relevant questions and follow-up questions, including those bearing on credibility.
- Cross-examination will be conducted directly, orally, and in real time by the parties' respective Live Hearing Advisors and never by the parties personally.
- Live Hearing Advisors' roles will not be limited when cross-examination is permitted during the Live Hearing.
 - However, the Live Hearing Officer has the responsibility to determine the relevancy of questions and explain in real time any decision not to permit a question.
 - Questions and evidence concerning a Complainant's sexual predisposition or prior sexual behavior are irrelevant and not permitted, unless these questions are offered to prove that someone other than the respondent committed the alleged misconduct or to prove consent.

Live Hearing Procedures (Cont.)

■ **Cross-Examination and Witnesses (Cont.)**

- A Complainant, Respondent, or Witness may refuse to submit to cross-examination during the Live Hearing.
- If a Complainant, Respondent, or Witness does not submit to cross-examination, that individual's statements (i.e., the information obtained during the Investigation) may still be relied on by the Live Hearing Officer in reaching a determination regarding responsibility.
- Collin College is not permitted to draw an adverse inference based on the mere fact that an individual refused to submit to cross-examination.

■ **Closing Statements and Conclusion of Live Hearing (No More Than 15 Minutes)**

- The Complainant presents their closing statement. (No More Than 5 Minutes)
- The Respondent presents their closing statement. (No More Than 5 Minutes)
- The Live Hearing Officer concludes the Live Hearing and dismisses both parties and their respective Live Hearing Advisors. (No More Than 5 Minutes)

After the Live Hearing

- The Live Hearing Officer sends the Zoom audio and video recordings to the appropriate Title IX Coordinator, Deputy Title IX Coordinator, or designee.
 - The appropriate Title IX Coordinator, Deputy Title IX Coordinator, or designee then sends an email to the Complainant, Respondent, and their respective Live Hearing Advisors containing the link to the recordings.
- The Live Hearing Officer deliberates on the evidence provided and determines responsibility.
 - Collin College uses the preponderance of the evidence standard (i.e., more likely than not to have occurred).
 - Think of this as “50% plus a feather.”
 - It is critically important that the Live Hearing Officer does not use a higher standard of evidence when determining responsibility.

Relevant Evidence

- When determining responsibility, the Live Hearing Officer must consider all information and evidence that is relevant to the allegation(s).
- Inculpatory Evidence: Evidence that can establish an individual's involvement in an act or their guilt.
- Exculpatory Evidence: Evidence that can exonerate an individual.
- For example, in a murder case:
 - Evidence of a prior dispute between the defendant and a next-door neighbor (unrelated to the murder) is not relevant to the case.
 - Evidence of a prior dispute between the defendant and the victim is relevant to the case because it may be related to the motive for the murder.

Determining Credibility

- The Live Hearing Officer must determine the credibility of the evidence as well as the credibility of each party and witness.
- Credibility refers to the process of weighing the accuracy and veracity of evidence.
- Credibility and honesty are **not** the same.
 - Stating that evidence is not credible does not mean you are saying someone is lying.
 - Rather, you are evaluating the source, content, and plausibility of the information and evidence provided.
- Credibility gives weight to the evidence and provides support for the Live Hearing Officer's determination.
- Credible evidence must be used to determine responsibility.
- Credibility determinations may not be based on a person's status as a Complainant, Respondent, or Witness.

Determining Credibility (Cont.)

- When Determining Credibility:
 - Evaluate the source, content, and plausibility of the evidence and information offered in light of other evidence.
 - If the source, content, and plausibility are strong, credibility is strong.
 - The best way to establish credibility is through corroboration (i.e., sufficient, independent evidence that supports the facts at issue).
 - Look for subtle biases of which the parties and witnesses may not be aware (e.g., victim-blaming, defensiveness, fear of getting in trouble).
 - First-hand information, especially direct knowledge or observation of the alleged incident(s), is best.
- Factors to Consider:
 - Is the testimony/evidence believable? Does it make sense?
 - Are there inconsistencies and contradictions in the testimony/evidence?
 - Did the person seem to be telling the truth? Did the person have a reason to lie?
 - Is there other evidence that supports the testimony?
- **Remember:** A responsible determination can be reached when the evidence is credible and sufficient even if there were no witnesses to the alleged incident(s).

Determining Responsibility

- **Must** consider Collin College's jurisdiction:
 - Occurred while participating in or attempting to participate in Collin College's education program or activity, and/or
 - Impacted a person in the United States
- The alleged conduct must be so **severe, pervasive, or objectively offensive** that it limits or denies a party's ability to participate in or benefit from Collin College's educational program or activity.
- Collin College's education program or activity includes:
 - Locations, events, or circumstances over which the institution exercises substantial control over **both** the respondent and the context in which the prohibited conduct occurred.
 - Any building owned or controlled by a student organization that is officially recognized by Collin College.

Determining Responsibility (Cont.)

- Quid pro quo harassment, *Clery Act*, and *VAWA* offenses (i.e., dating violence, domestic violence, sexual assault, and stalking) are **not** evaluated for severity, pervasiveness, or offensiveness, or denial of equal educational access because such misconduct is sufficiently serious to deprive a student of equal access.
- If the allegation does not rise to the level of a *Title IX* violation, but the Live Hearing Officer thinks it still should be addressed through another Collin College process, they can refer it to the appropriate process (e.g., Employee Complaint Process, General Complaint Process, Student Disciplinary Process).

Potential Penalties

- The Live Hearing Officer may impose the following penalties on a student respondent or other penalties, as appropriate:
 - Reprimand
 - Restitution
 - Educational Project Experience (EPE)
 - Conditional Probation for One (1) Calendar Year, Two (2) Calendar Years, or Three (3) Calendar Years
 - Suspension for One (1) Regular Long Semester (i.e., Fall or Spring), One (1) Calendar Year, Two (2) Calendar Years, Three (3) Calendar Years, or Four (4) Calendar Years
 - Recommendation for Expulsion (Note: The Live Hearing Officer can recommend Expulsion. However, the College District President is the only entity at Collin College who can actually expel a student.)

Potential Penalties (Cont.)

- The Live Hearing Officer may impose the following penalties on an employee respondent or other penalties, as appropriate:
 - Coaching and Counseling
 - Written Disciplinary Action
 - Unpaid Administrative Leave
 - Recommendation for Termination (Note: The Live Hearing Officer can recommend Termination. However, the College District President/Board is the only entity at Collin College who can actually terminate an employee.)

Potential Remedies

- If the Live Hearing Officer determines the respondent committed prohibited conduct, Collin College must effectively implement remedies for the complainant.
- Remedies are designed to restore or preserve the complainant's right to equal access to education.
- The Live Hearing Officer has flexibility to recommend remedies they think will best address each incident of prohibited conduct and meet each complainant's needs.
- The appropriate Title IX Coordinator, Deputy Title IX Coordinator, or designee is responsible for ensuring the effective implementation of any remedies.

Potential Remedies (Cont.)

- Remedies the Live Hearing Officer can offer to a **student complainant** include, but are not limited to:

1. Campus Change
2. Class Schedule Change
3. Drop a Course Without an Academic Penalty
4. Increased Security and Staff Monitoring of Certain Areas of the Campus
5. Information Regarding and Referrals to the Appropriate Agency for a No-Contact Order, Order of Protection, Restraining Order, or Similar Lawful Order through a Civil, Criminal, or Tribal Court
6. Late Withdrawal from a Course
7. No Contact Directive Issued by Collin College
8. Referral to Appropriate Medical Facility
9. Referral to Appropriate Off-Campus Resources
10. Referral to Collin College Police Department and/or Local Law Enforcement Agency
11. Referral to Counseling Services
12. Specific Educational Programming for an Individual or Group
13. Student Employment Assignment Change
14. Student Housing Change (If Residing in Collin College Student Housing)

- Remedies the Live Hearing Officer can offer to an **employee complainant** include, but are not limited to:

1. Drop a Course Without an Academic Penalty
2. Increased Security and Staff Monitoring of Certain Areas of the Campus
3. Information Regarding and Referrals to the Appropriate Agency for a No-Contact Order, Order of Protection, Restraining Order, or Similar Lawful Order through a Civil, Criminal, or Tribal Court
4. No Contact Directive Issued by Collin College
5. Referral to Appropriate Medical Facility
6. Referral to Appropriate Off-Campus Resources
7. Referral to Collin College Police Department and/or Local Law Enforcement Agency
8. Referral to Employee Assistance Program (EAP)
9. Specific Educational Programming for an Individual or Group
10. Work Schedule Reassignment

After the Live Hearing (Cont.)

- The Live Hearing Officer composes the *Written Determination of Responsibility*.
- The Live Hearing Officer sends the following documents to the Complainant, Respondent, and their respective Live Hearing Advisors **simultaneously** in electronic format or hard copy within **10 College District business days** of the Live Hearing:
 - *Written Determination of Responsibility*
 - *Appeal Request Form*
 - Any Other Applicable Forms or Documents (e.g., *Permanent No Contact Directive Acknowledgment Form*)
- Make sure the appeal deadline is filled in on **both** the *Written Determination of Responsibility* and *Appeal Request Form*.
 - This deadline will be **4:30 p.m.** on the **tenth College District business day** after the date you send the documents to the parties.

Calculating “College District Business Days”

- College District business days exclude:
 - Weekends (i.e., Saturdays and Sundays),
 - National holidays recognized by Collin College, and
 - College District closures.
- **Do not** count the day you send the documents.
- Examples:
 - If you send the documents on **Monday, October 2, 2023**, the parties will have until **4:30 p.m. on Monday, October 16, 2023**, to submit an appeal.
 - If you send the documents on **Wednesday, December 20, 2023**, the parties will have until **4:30 p.m. on Friday, January 12, 2024**, to submit an appeal due to the Winter Break.

After the Live Hearing (Cont.)

- Either the Complainant or Respondent may appeal the Live Hearing Officer's determination within **10 College District business days** on the following grounds:
 - Procedural irregularity that affected the outcome,
 - New evidence not reasonably available prior to the Live Hearing that could affect the outcome, and/or
 - Conflict of interest or bias by Collin College's participants that affected the outcome.
- The *Written Determination of Responsibility* will become final when:
 - The stated time period to file an appeal has passed for both parties and neither party appeals, or
 - The parties are notified that the Live Hearing Officer's determination was upheld after the appeal process has been exhausted for both parties.
- The Live Hearing Officer's obligation ends once the *Written Determination of Responsibility* becomes final or the Appeal phase is initiated.

Question & Answer Session

