



TITLE IX LIVE HEARING ADVISOR TRAINING

FALL 2024



AGENDA

Review Role and Responsibilities

2020 Title IX Final Rule: Live Hearing Procedures

2024 Title IX Final Rule: Determination Procedures

Review Documents

Discuss Common Pitfalls

Q&A



2020 TITLE IX FINAL RULE: LIVE HEARING PROCEDURES

LIVE HEARING ADVISOR'S ROLE

- The Investigation will always be followed by a Live Hearing.
- The Live Hearing Advisor will assist either the Complainant or Respondent during the Live Hearing.
- The Live Hearing Advisor's **sole purpose** is to conduct **cross-examination** for the party during the Live Hearing.
- The Live Hearing Advisor is **not** the party's attorney, and they are not there to "win" the case for their party.
- Title IX Coordinators, Deputy Title IX Coordinators, Informal Resolution Facilitators, Investigators, Removal Challenge Officers, Live Hearing Officers, and Appeal Decision Makers cannot serve as Live Hearing Advisors.

LIVE HEARING ADVISOR'S ROLE (CONT.)

- Collin College maintains a pool of trained Live Hearing Advisors.
- When a Live Hearing Advisor 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 Advisor from the individuals who respond stating they are available.
- Please respond to **all** call to serve emails **as soon as possible**.

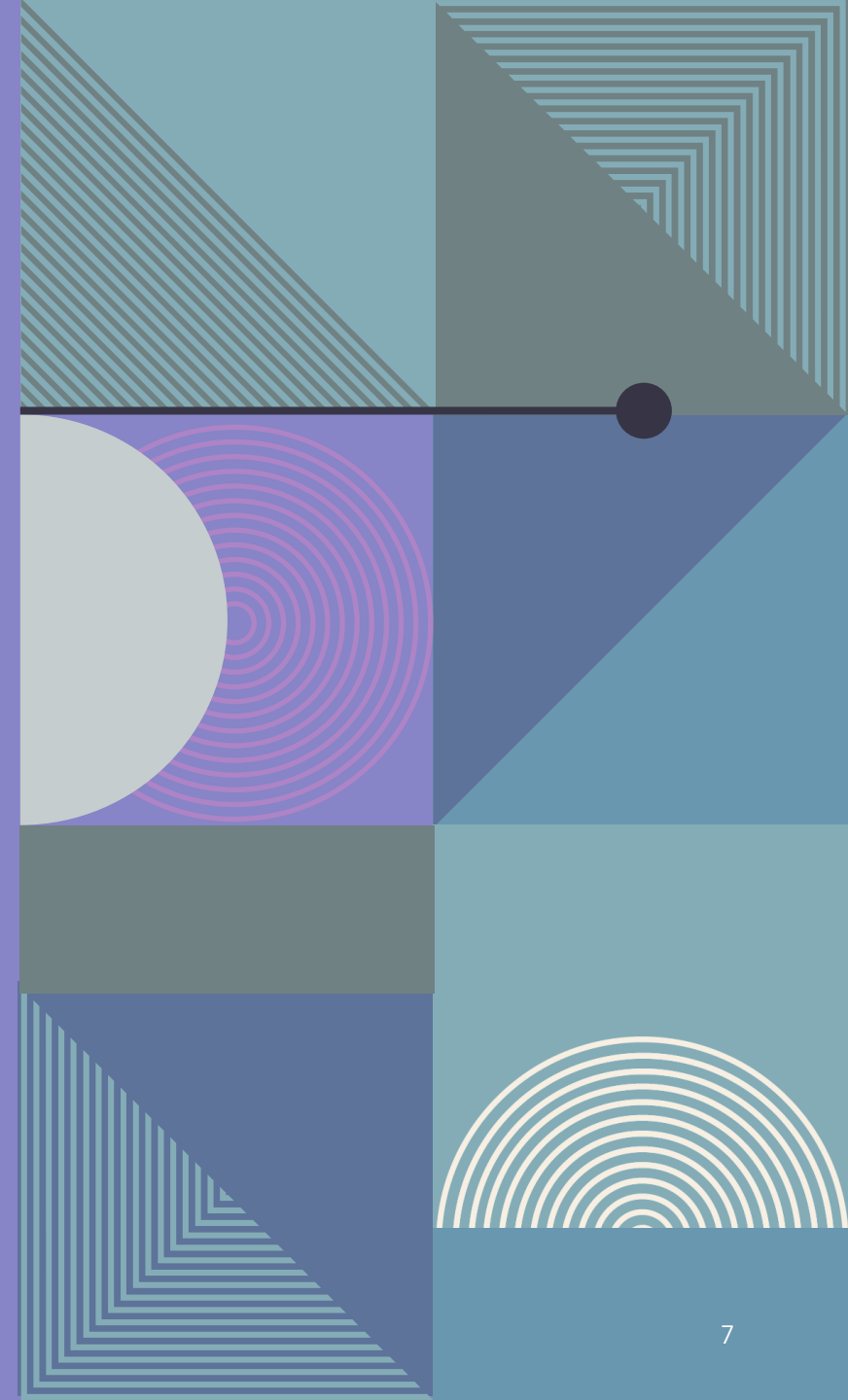
DURING THE INVESTIGATION

- Collin College **will not** provide an Advisor for either party during the Investigation phase. If a party does not provide or is unable to obtain their own Advisor, Collin College will assign them a Live Hearing Advisor for the Live Hearing **only**.
- In accordance with Title IX, both parties will have equal right to be accompanied by an Advisor of their choice to interviews, meetings, and hearings with the Investigator(s).
- If either party elects to provide their own Advisor during this phase, the Investigators will send written notice of any investigative interviews, meetings, or hearings to both the party and their Advisor and will afford them sufficient time to prepare for these events.
- Collin College retains the right to limit the role of both parties' Advisors in interviews, meetings, and hearings with the Investigator(s).

INVESTIGATION REPORT

- At the conclusion of the Investigation, the Investigator(s) will write an *Investigation Report* that fairly summarizes the Investigation and includes all evidence directly related to the allegation(s).
- The Investigator(s) will simultaneously send the parties and their respective Live Hearing Advisors the preliminary *Investigation Report* in electronic format or hard copy and will give them 10 College District business days* to inspect, review, and respond to the document prior to finalizing it.
- The Live Hearing Advisor's role begins when the preliminary *Investigation Report* is sent to both parties.

*"College District business days" exclude weekends (i.e., Saturdays and Sundays), national holidays recognized by Collin College, and College District closures.



INVESTIGATION REPORT (CONT.)

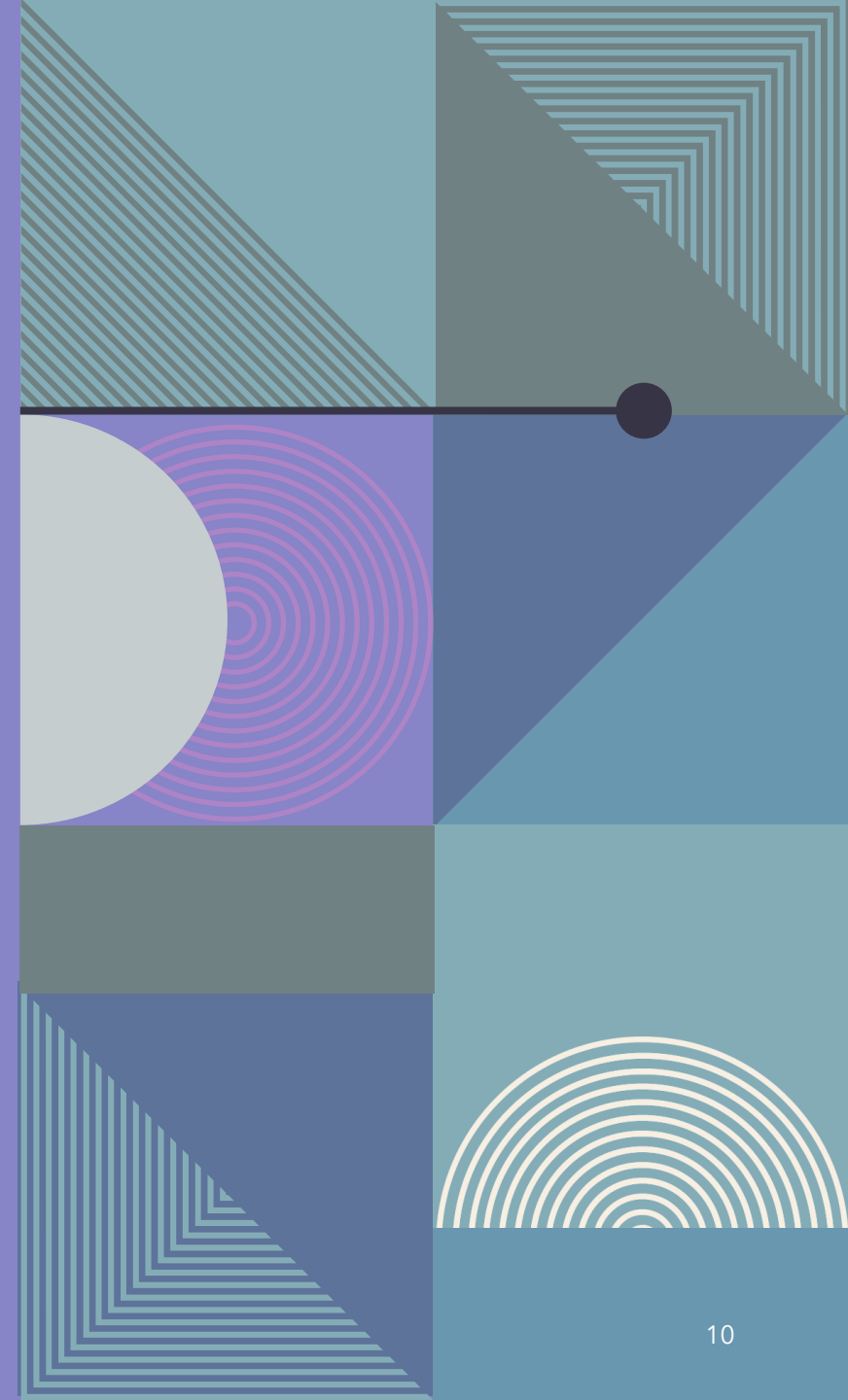
- The Live Hearing Advisor should meet with their party to review the preliminary *Investigation Report*. During this time, the Live Hearing Advisor should assist their party with:
 - Writing their response to the preliminary *Investigation Report*, if necessary.
 - Developing the questions they would like to have the Live Hearing Advisor ask the Complainant, Witnesses, and/or Investigator(s) during cross-examination.
 - Understanding the Live Hearing procedures.
- The Investigator(s) will complete the finalized *Investigation Report* and will send it simultaneously to the parties and their respective Live Hearing Advisors in electronic format or hard copy at least 10 College District business days prior to the Live Hearing.

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.
- 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.

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.
- Collin College reserves the right to take appropriate action regarding any Live Hearing Advisor who disrupts the process or does not abide by the restrictions on their participation.



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.

AFTER THE LIVE HEARING (CONT.)

- The Live Hearing Officer composes the *Written Determination of Responsibility* which:
 - Identifies the allegation(s) at issue;
 - Describes the procedural steps taken throughout the case;
 - Details the findings of fact supporting the Live Hearing Officer's determination;
 - Enumerates the conclusions regarding application of Collin College's Title IX policy (i.e., Board policy DIAA (LOCAL) or FFDA (LOCAL))
 - Contains a **detailed** statement and **rationale** as to the determination for **each allegation**;
 - **Clearly states** any **disciplinary sanctions** being imposed (or recommended in the case of Expulsion of a student or Termination of an employee) on the Respondent **and** any **remedies** that must be provided to the Complainant; and
 - Describes the procedures and permissible grounds for appeal.

AFTER THE LIVE HEARING (CONT.)

- The Live Hearing Officer or appropriate Title IX Coordinator, Deputy Title IX Coordinator, or designee 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*)
- The Live Hearing Advisor's obligation ends once they receive these documents from the Live Hearing Officer.

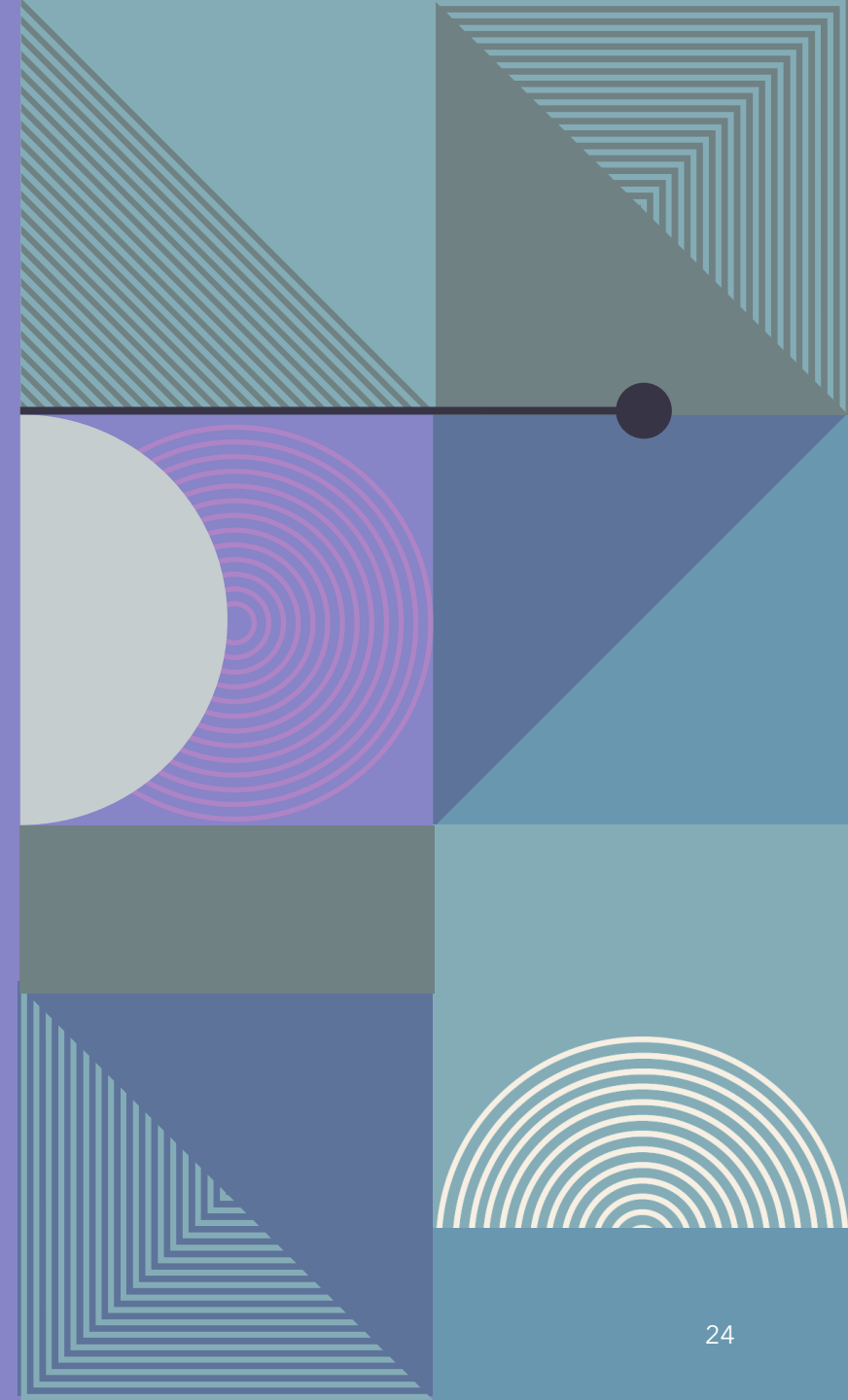
AFTER THE LIVE HEARING (CONT.)

- 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.



2024 TITLE IX FINAL RULE: DETERMINATION PROCEDURES

- At this time, the 2024 Title IX Final Rule has been enjoined and cannot be enforced in the state of Texas.
- If this changes and we are required to utilize a portion or all of the 2024 Title IX Final Rule, Collin College will not be conducting Live Hearings during the applicable grievance procedures.
- Therefore, Live Hearing Advisors will not have a role during the 2024 Title IX Final Rule grievance procedures.
- If this happens, we will reach out to each of you individually to find out whether you would like to serve in another capacity under the 2024 Title IX Final Rule grievance procedures.
- Roles available under the 2024 Title IX Final Rule grievance procedures include:
 - Informal Resolution Facilitator
 - Challenge Officer
 - Decision-Maker
 - Level I Appellate Officer: Deans and Directors
 - Level II Appellate Officer: Associate Vice Presidents, Vice Presidents, or Designees



QUESTION & ANSWER SESSION

