



# Conducting a Grievance Process Under the 2024 Final Title IX Regulations

Council for Christian Colleges and Universities  
June 6, 2024

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**train** 

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## Agenda

- Determining What Grievance Procedures Apply
- Miscellaneous Process Issues
  - Notice of Allegations
  - Dismissing Complaints
  - Consolidating Complaints
  - Notice of Meetings
  - Advisors
- Recommended Approach to General Grievance Procedure
- Recommended Approach to Heightened Grievance Procedure



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## Effective Date and Application

- Regulations effective August 1, 2024
- Apply 2024 regulations for conduct alleged to have occurred on or after August 1, 2024
- Apply 2020 regulations for conduct alleged to have occurred before August 1, 2024
- When in doubt, provide process with the most procedural protections

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**When an Institution Must Respond**

- Institution with knowledge of conduct that reasonably may constitute sex discrimination
- In its education program or activity
- In the United States

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**Grievance Procedures**

<p><b>Section 106.45</b> General Grievance Procedures (Postsecondary and K-12 institutions) <i>Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment discrimination</i></p> <ul style="list-style-type: none"> <li>• Differential treatment</li> <li>• Failure to provide reasonable modifications for pregnancy and related conditions</li> <li>• Retaliation</li> </ul> <p>Sex-based harassment between employees*</p> <p>Sex-based harassment in K-12</p>	<p><b>Section 106.46</b> Heightened Grievance Procedures (Postsecondary institutions only) <i>Apply to complaints of sex-based harassment involving a student party</i></p> <p>Sex-based harassment at post-secondary institution where at least one party is a student*</p>
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\*VAWA may impose additional requirements in post-secondary environment if sexual assault, dating violence, domestic violence, or stalking

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**Student Employees**

- If individual is both student and employee, fact-specific inquiry considering:
  - Whether party's primary relationship with institution is to receive an education
  - Whether the alleged sex-based harassment occurred while the party was performing employment-related work

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### All Grievance Procedures: Notice of Allegations

- Upon initiation of grievance procedures
- Provide to all known parties
- Required before informal resolution

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Notice of Allegations	General Grievance Procedures <small>(Postsecondary and K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment/discrimination</small>	Heightened Grievance Procedures <small>(Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party</small>
Written	Optional	✓
Grievance Procedures	✓	✓
Informal Resolution (if applicable)	✓	✓
Sufficient information available at the time to allow party to respond: <ul style="list-style-type: none"> <li>• Identities of parties</li> <li>• Conduct alleged to constitute sex discrimination/sex-based harassment</li> <li>• Date(s) and location(s) of alleged incident(s)</li> </ul>	✓	✓
Statement Retaliation is prohibited	✓	✓

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Notice of Allegations	General Grievance Procedures <small>(Postsecondary and K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment/discrimination</small>	Heightened Grievance Procedures <small>(Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party</small>
Statement that parties entitled to equal opportunity to access relevant and not otherwise impermissible evidence or accurate description of evidence	✓	
Statement that parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an investigative report that accurately summarizes this evidence		✓
Statement that if school provides description of evidence/investigative report, parties are entitled to request access to relevant and not otherwise impermissible evidence	✓	✓
Must notify of additional allegations	✓	✓

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Notice of Allegations	General Grievance Procedures <small>(Postsecondary and K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment discrimination</small>	Heightened Grievance Procedures <small>(Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party</small>
Statement that respondent is presumed not responsible until a determination is made at the conclusion of the grievance procedures		✓
Statement that prior to the determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker		✓
Statement that parties may have an advisor of choice and that advisor may be, but is not required to be, an attorney		✓
If applicable, code of conduct prohibits knowingly making false statements or knowingly submitting false information during grievance process		✓

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### Notice of Allegations: Recommendations

- One Notice of Allegations form for both General and Heightened Grievance Procedures
- Consider whether different language is needed to address:
  - Access to evidence
  - Advisors
  - Opportunity to present evidence to decisionmaker

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### All Grievance Procedures: Dismissal of Complaint

- Institution *may* dismiss if:
  - Unable to identify respondent after taking reasonable steps to do so
  - Respondent is not participating in school's education program or activity and is not employed
  - Complainant voluntarily withdraws any or all allegations in complaint and
    - Title IX Coordinator declines to initiate complaint
    - School determines, remaining allegations (if any), would not constitute sex discrimination
  - Conduct alleged in complaint, even if proven, would not constitute sex discrimination
    - Must make reasonable efforts to clarify the allegations with complainant before dismissal

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**Dismissal of Complaint: Additional Considerations**

- “Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein” is no longer a permitted ground for dismissal
- Dismissal is never required

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**All Grievance Procedures: Consolidation of Complaints**

- May consolidate complaints with more than one complainant or respondent, or by one party against another
- When the allegations arise out of the same facts or circumstances
- If some allegations involve post-secondary sex-based harassment involving at least one student, then must use those heightened procedures for all allegations
- Caution – no FERPA exception

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**Consolidation of Complaints & FERPA: Options**

- Obtain written consent from parties *or* redact evidence not relevant to applicable complaint
- If obtaining written consent:
  - Framing of consent is important; there will be a lot of information sharing regardless of written consent
  - Consider whether witness consent is necessary
- If redacting not relevant evidence:
  - Separate investigation reports or single investigation report with redactions
  - Separate notices of determination
- Note: There is no private right of action under FERPA

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**Consolidation of Complaints & FERPA: Recommendations**

- Provide notice of consolidation
  - Offer parties choice between consent to additional information sharing or redactions
  - Regardless of whether there is consent, consistent with regulatory requirements, parties will have right to access all relevant evidence
- Prior to providing access to evidence, consider whether witness consent or redaction is necessary

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**Heightened Grievance Procedures: Notice of Meetings**

- Must provide to a party whose participation is invited or expected, written notice of all meetings or proceedings with sufficient time for the party to prepare to participate
- Notice must include:
  - Date
  - Time
  - Location
  - Participants
  - Purpose

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**Notice of Meetings: Title IX & VAWA**

- General Grievance Procedure: no notice of meetings requirement
- Heightened Grievance Procedure: notice of meetings for parties' own meetings
- VAWA: notice of meetings of the other party's meetings

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Notice of Meetings: Title IX and VAWA	Notice of own meetings (Title IX)	Notice of other party's meetings (VAWA)
Non-harassment sex discrimination		
Hostile environment or quid pro quo harassment with employee parties		
Hostile environment or quid pro quo harassment with at least one student party	✓	
Sexual assault or VAWA crime with employee parties		✓
Sexual assault or VAWA crime with at least one student party	✓	✓

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Heightened Grievance Procedures: Advisors
<ul style="list-style-type: none"> <li>• Must provide parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney</li> <li>• Must not limit the choice or presence of the advisor in any meeting or proceeding</li> <li>• May establish restrictions regarding extent of advisor participation, as long as apply equally</li> <li>• Cannot prohibit party from selecting an advisor who may be a witness in the process</li> </ul>

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Advisors: Title IX and VAWA	Must allow advisors
Non-harassment sex discrimination	
Hostile environment or quid pro quo harassment with employee parties	
Hostile environment or quid pro quo harassment with at least one student party	✓
Sexual assault or VAWA crime with employee parties	✓
Sexual assault or VAWA crime with at least one student party	✓

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**Process Requirements**

- Parties have right to access and respond to all relevant and not impermissible evidence
- If credibility is at issue:
  - Under General Grievance Procedures, decisionmaker must question parties and witnesses
  - Under Heightened Grievance Procedures, parties have right to propose questions to be asked at individual meetings or at a live hearing

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Access to Evidence	General Grievance Procedures <small>(Postsecondary and K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment/discrimination</small>	Heightened Grievance Procedures <small>(Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party</small>
Provide parties with equal opportunity to access relevant and not otherwise impermissible evidence or <u>accurate description of evidence</u> (oral or written)	✓	
Provide each party with equal opportunity to access the relevant and not otherwise impermissible evidence or a <u>written investigative report</u> that accurately summarizes this evidence		✓
If school provides description of evidence/investigative report, parties are entitled to request access to relevant and not otherwise impermissible evidence	✓	✓
Reasonable opportunity to respond	✓	✓

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Access to Evidence	General Grievance Procedures <small>(Postsecondary and K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment/discrimination</small>	Heightened Grievance Procedures <small>(Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party</small>
Reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through grievance procedures	✓	✓
Reasonable steps to prevent and address the advisors' unauthorized disclosure of information and evidence obtained solely through grievance procedures		✓

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**All Grievance Procedures:  
Providing Access to Evidence**

- Must state in policy when school will provide access to description/investigation report vs. all relevant and not impermissible evidence
- Do not have to provide physical or electronic copy of evidence
- Do not have to provide continuous access
- Options: electronic file sharing site; institution's copy for on-site review; other
- Reasonable timeframe for review may vary based on nature and volume of evidence

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Questioning Parties and Witnesses to Aid in Evaluating Allegations and Assessing Credibility	General Grievance Procedures <small>(Postsecondary and K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment discrimination</small>	Heightened Grievance Procedures <small>(Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party</small>
Decisionmaker must ask parties and witnesses questions to adequately assess credibility to the extent credibility is in dispute and relevant	✓	
Investigator or decisionmaker must ask parties and witnesses questions either during individual meetings OR at live hearing		✓
Parties propose questions and follow-up questions for any party/witness to be asked by the investigator or decisionmaker during individual meetings OR at live hearing		✓
If no live hearing, must provide each party with a recording or transcript of interviews/meetings with enough time for reasonable opportunity to propose follow-up questions		✓

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**Recommendations for All Procedures**

- Affirmatively provide access to all relevant and not impermissible evidence
- Draft investigation report (even though not required)
- Provide access to investigation report
- When providing access to all relevant and not impermissible evidence and investigation report:
  - Require nondisclosure agreements for parties and advisors
  - Provide temporary electronic access that prohibits downloads and printing

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**Dual Roles in All Procedures**

- Investigator can also serve as decisionmaker (single investigator model)
- Generally, we recommend keeping the roles separate

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**General Grievance Procedures: Recommended Approach**

- Separate investigator and decisionmaker
  - Investigator interviews parties and witnesses
  - Investigator drafts investigation report and shares with decisionmaker
- Decisionmaker reviews report to determine:
  - Whether credibility is at issue
    - What questions to ask parties and relevant witnesses
  - If credibility is at issue, decisionmaker meets with parties and relevant witnesses
    - Recording strongly recommended
- Investigator/Title IX Coordinator provides parties with access to all relevant and not impermissible evidence and investigation report, including evidence obtained during decisionmaker meetings
- Parties have opportunity to respond to evidence and investigation report
- Investigator/Title IX Coordinator assesses whether any additional investigation is necessary
  - If necessary, investigator/Title IX Coordinator provides access to amended investigation report and additional relevant and not impermissible evidence
- Decisionmaker makes determination

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**General Grievance Procedures: Alternative Approach**

- Single investigator model
  - Investigator interviews parties and witnesses
    - Include questions to assess credibility as needed
  - Investigator drafts investigation report
  - Investigator/Title IX Coordinator provides access to all relevant and not impermissible evidence and investigation report
  - Parties have opportunity to respond to evidence and investigation report
  - Investigator/Title IX Coordinator assesses whether any additional investigation is necessary
    - If necessary, provides access to amended investigation report and additional relevant and not impermissible evidence
  - Investigator makes a determination

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### Heightened Grievance Procedures: When Credibility Is at Issue

- Investigator or decisionmaker must ask parties and witnesses questions either during individual meetings OR at live hearing
- Parties propose questions and follow-up questions for any party/witness to be asked by the investigator or decisionmaker during individual meetings OR at live hearing
- If no live hearing, must provide each party with a recording or transcript of interviews/meetings with enough time for reasonable opportunity to propose follow-up questions

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Heightened Grievance Procedures		No Live Hearing
<b>Pros</b>	<ul style="list-style-type: none"> <li>Avoids live hearing</li> <li>More time for relevancy determination on party questions</li> </ul>	
<b>Cons</b>	<ul style="list-style-type: none"> <li>Number of meetings with parties and witnesses</li> <li>Burden on parties to review transcripts/audio and provide questions at multiples stages</li> <li>May result in longer process</li> <li>Difficult to have separate investigator and decisionmaker</li> <li>More opportunities for procedural missteps</li> <li>Significant change from current process</li> <li>More challenging to administer process for alleged conduct that occurred before August 1, 2024</li> <li>May not satisfy state or jurisdictional requirements</li> </ul>	

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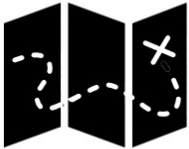
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### Heightened Grievance Procedure: No Live Hearing

- 3 options for process without live hearing
  - Single investigator model
  - Investigator joined by additional decisionmakers for decision-making process
  - Separate investigator and decisionmaker (not recommended)



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**Heightened Grievance Procedures:  
No Live Hearing (Option 1)**

- Single investigator model
  1. Investigator interviews parties and witnesses
    - Include questions to assess credibility as needed
  2. Investigator/Title IX Coordinator provides transcripts or audio to parties
  3. Parties propose questions for parties and witnesses
  4. Investigator reviews questions for relevancy
  5. Investigator explains decision to reject any party questions
  6. Investigator interviews parties and witnesses
    - Include relevant party questions
    - Include questions to assess credibility as needed
  7. Repeat steps 2 – 6 as needed

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**Heightened Grievance Procedures:  
No Live Hearing (Option 1)**

- Single investigator model (cont.)
  8. Investigator drafts investigation report
  9. Investigator/Title IX Coordinator provides access to all relevant and not impermissible evidence and investigation report
  10. Parties have opportunity to respond to evidence and investigation report
  11. Investigator/Title IX Coordinator assesses whether any additional investigation is necessary
    - If necessary, provide access to amended investigation report and additional relevant and not impermissible evidence
  12. Investigator makes a determination

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**Heightened Grievance Procedures:  
No Live Hearing (Option 2)**

- Investigator joined by additional decisionmakers for decision-making process
  1. Investigator interviews parties and witnesses
    - Include questions to assess credibility as needed
  2. Investigator/Title IX Coordinator provides transcripts or audio to parties
  3. Parties propose questions for parties and witnesses
  4. Investigator reviews questions for relevancy
  5. Investigator explains decision to reject any party questions
  6. Investigator interviews parties and witnesses
    - Include relevant party questions
    - Include questions to assess credibility as needed
  7. Repeat steps 2 – 6 as needed

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**Heightened Grievance Procedures:  
No Live Hearing (Option 2)**

- Investigator joined by additional decisionmakers for decision-making process (cont.)
  8. Investigator drafts investigation report
  9. Investigator/Title IX Coordinator provides access to all relevant and not impermissible evidence and investigation report
  10. Parties have opportunity to respond to evidence and investigation report
  11. Investigator/Title IX Coordinator assesses whether any additional investigation is necessary
    - If necessary, provides access to amended investigation report and additional relevant and not impermissible evidence
  12. Additional decisionmakers join investigator and make a determination

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**Heightened Grievance Procedures:  
No Live Hearing (Option 3 – Not Recommended)**

- Separate investigator and decisionmaker
  1. Investigator interviews parties and witnesses
  2. Investigator/Title IX Coordinator provides transcripts or audio to parties
  3. Parties propose questions for parties and witnesses
  4. **Decisionmaker** reviews relevant evidence and determines whether party questions are relevant
  5. **Decisionmaker** explains decision to reject any party questions
  6. Investigator interviews parties and witnesses
    - Include relevant party questions
    - Include decisionmaker questions to assess credibility as needed
  7. Repeat steps 2 – 6 as needed

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**Heightened Grievance Procedures:  
No Live Hearing (Option 3 – Not Recommended)**

- Separate investigator and decisionmaker (cont.)
  8. Investigator drafts investigation report
  9. Investigator/Title IX Coordinator provides access to all relevant and not impermissible evidence and investigation report
  10. Parties have opportunity to respond to evidence and investigation report
  11. Investigator/Title IX Coordinator assesses whether any additional investigation is necessary
    - If necessary, provide access to amended investigation report and additional relevant and not impermissible evidence
  12. Decisionmaker makes a determination

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<b>Heightened Grievance Procedures</b>	<b>Live Hearing</b>
<b>Pros</b>	<ul style="list-style-type: none"> <li>Fewer meetings with parties and witnesses</li> <li>Fewer steps for parties and witnesses</li> <li>May result in faster process</li> <li>More easily allows for separate investigator and decisionmaker</li> <li>Fewer opportunities for procedural missteps</li> <li>More consistency with current procedures</li> <li>Easier to administer cases in which alleged conduct occurred before August 1, 2024</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>Must hold live hearing (although can have questions asked by decisionmaker instead of advisors)</li> <li>Relevancy determinations are made live</li> </ul>
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<b>Heightened Grievance Procedures: Live Hearing (Recommended Approach)</b>	
<ul style="list-style-type: none"> <li>Separate investigator and decisionmaker               <ol style="list-style-type: none"> <li>1. Investigator interviews parties and witnesses</li> <li>2. Investigator conducts follow-up interviews with parties</li> <li>3. Investigator drafts investigation report</li> <li>4. Investigator/Title IX Coordinator provides access to all relevant and not impermissible evidence and investigation report</li> <li>5. Parties have opportunity to respond to evidence and investigation report</li> <li>6. Investigator/Title IX Coordinator assesses whether any additional investigation is necessary                   <ul style="list-style-type: none"> <li>If necessary, provide access to amended investigation report and additional relevant and not impermissible evidence</li> </ul> </li> </ol> </li> </ul>	
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<b>Heightened Grievance Procedures: Live Hearing (Recommended Approach)</b>	
<ul style="list-style-type: none"> <li>Separate investigator and decisionmaker (cont.)               <ol style="list-style-type: none"> <li>7. Decisionmaker reviews investigation report and attachments in preparation for live hearing</li> <li>8. Decisionmaker conducts live hearing                   <ul style="list-style-type: none"> <li>Relevant questions from parties asked by decisionmaker (recommended) or advisor</li> </ul> </li> <li>9. Decisionmaker makes a determination</li> </ol> </li> </ul>	
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**Heightened Grievance Procedures:  
Live Hearing**

- Alternate approaches
  - Single investigator model
  - Additional panel members join investigator at live hearing stage

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**trainED Resources for Compliance with  
2024 Regulations**

- Cost-sharing Title IX policy program
- Unlimited training for individuals with heightened responsibility for flat fee of \$5000 per year with a two-year contract
- Faith-friendly customized training modules for students and employees to satisfy training requirements under VAWA and new requirements under Title IX

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**Upcoming Trainings**

- Annual Training for Advanced Title IX Coordinators and Deputy Coordinators: July 23, 2024
- Title IX/VAWA Investigator and Adjudicator Training: July 24, 2024
- Annual Training for New Title IX Coordinators and Deputy Coordinators: July 30, 2024
- Annual Training for Advanced Title IX Coordinators and Deputy Coordinators: July 31, 2024
- Title IX/VAWA Investigator and Adjudicator Training: August 1, 2024
- Conducting an Informal Resolution Under Title IX/VAWA: TBD
- Conducting a Live Hearing Under Title IX/VAWA: TBD
- Non-Hearing Adjudicator Training Under Title IX/VAWA: TBD
- Title IX/VAWA Appeal Officer Training: TBD
- Confidential Resources, First Responder, and Campus Safety Training: TBD

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Q&A



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