

Training for Hearing Officers

COURSE MATERIAL
January 18 - 21, 2022



Presented by T9 Mastered, LLC
a joint venture of Public Interest Investigations, Inc. and
Sue Ann Van Dermynen, Esq. and Deborah Maddux, Esq.



T9 Mastered: Training for Hearing Officers Course Materials

January 18-21, 2022

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Biographies

Liz Paris is a Partner with Van Dermyden Maddux. She is licensed to practice law in the State of California, and is certified as a Senior Professional in Human Resources (SPHR).

Prior to joining Van Dermyden Maddux, Liz was employed at UC Davis where she routinely provided policy and contract interpretation to management and staff, responded to grievances and complaints, acted as the University Advocate for administrative hearings, and negotiated contracts with labor unions. Additionally, she conducted investigations and fact-findings and served as a Hearing Officer in student discipline hearings. Prior to law school, Liz worked in Human Resources for various companies, providing advice and assistance with recruitment, hiring, termination, and performance management.



Liz is also an experienced investigator in Title IX sexual misconduct claims. She has investigated cases involving underage Complainants, multiple Respondents, and allegations involving incapacitation and inability to consent. Liz understands best practices in the Title IX arena, and the challenges facing schools and parties when sexual violence allegations surface.

Liz frequently serves as an Appeal Hearing Officer for Title IX cases. In this role, Liz reviews campus responses to Title IX allegations within the framework of the individual school's appeal process. In her deliberations, she considers whether the administration's response to claims of sexual misconduct were compliant with policies meant to provide a safe campus for students. Liz has overseen cases involving dating violence, drug abuse, sexual assault, and incapacitation. She has experience questioning parties using trauma-informed techniques, making admissibility and relevance decisions, and issuing well-reasoned, thorough decisions.

Additionally, Liz has investigated matters at K-12 Districts, including allegations involving discrimination and compliance. Her investigations have included interviews of administration, classified staff, as well as paraeducators.

Liz graduated from McGeorge School of Law in 2012 and earned an undergraduate degree from UC Davis.

Dr. Chris Wilson is a licensed psychologist from Portland, Oregon. For the past twenty years he's worked with victims and survivors of trauma. He currently runs Being Trauma Informed (BTI), an organization dedicated to making the science of trauma accessible to all. Prior to starting BTI, Dr. Wilson had a private practice conducting evaluations, psychotherapy, and providing training, with a focus on domestic violence and sexual assault.



Dr. Wilson is a guest faculty member at the US Army's Special Victim Capabilities Course, where he teaches military criminal investigators about the neurobiology of trauma. He formerly served as a curriculum consultant for The National Center for Campus Public Safety. He is also the co-author of the article "Understanding The Neurobiology of Trauma and Implications for Interviewing" (an abbreviated version of which was provided for Danish law enforcement in 2017) and "Judges' and Juries' Common Misperceptions About Domestic Violence Victims' Behaviors."

He's provided training, plenary, keynote, and breakout sessions for conferences and organizations across the United States, Canada, Italy, and Denmark, including the National District Attorney's Association, US Department of Justice, the US Department of the Interior, the US Navy, Marine Corps, Army, and Air Force, the US Office for Victims of Crime, End Violence Against Women International, the National Organization for Victim Assistance, the National Crime Victim Law Institute, and the New York Police Department.

Dr. Wilson received his doctoral degree in clinical psychology from Pacific University in 2002. He was licensed as a psychologist in the state of Oregon in 2005 and for six years served on the Board of the Oregon Psychological Association. He is also a member of the American Psychological Association.

Lexi Zuidema is an Associate Attorney with Van Dermyden Makus Law Corporation. Her practice focuses on discrimination and harassment complaints in both private and public- sector employment contexts and Title IX campus investigations. Lexi also serves as a Hearing Officer in Title IX and student conduct cases.



Trained in Trauma Informed Forensic Interviewing, Lexi is an experienced investigator in Title IX sexual misconduct and harassment claims. She has conducted investigations at the K-12 and university level. Lexi has experience in investigating University faculty and administrators, underage complainants, multiple respondents, and complex issues involving incapacitation and consent.

Prior to joining Van Dermyden Makus, Lexi completed an externship with Chief Justice Tani Cantil-Sakauye at the California Supreme Court. While completing her undergraduate degree, she worked for her school's legal counsel researching requirements and applications of Title VII and Title IX. She also worked as an intern for the Santa Barbara District Attorney's Office and the Kern County District Attorney's Office, aiding in the investigation of numerous sexual violence cases.

Lexi graduated from UC Davis School of Law in 2019 with business law and tax law certificates. She received her Bachelor of Arts from Westmont College in 2016 with a double major in Political Science and Economics & Business.

Barbara Dalton is vice president of Public Interest Investigations, Inc. (PII), a Los Angeles-based legal investigations firm that has served public-sector employers, educational institutions, corporations, and the legal community since 1984.



Both an attorney and a licensed private investigator, Barbara has conducted third-party investigations into allegations of discrimination based on race, gender, disability, age, and sexual orientation for public- and private-sector employers. Her work has included numerous investigations at schools, colleges, and universities, including investigations into allegations of sexual misconduct and discrimination brought pursuant to Title IX, and complaints brought under Uniform Complaint Procedures.

Barbara has investigated student allegations of sexual assault and/or harassment made by students against other students, faculty and coaches.

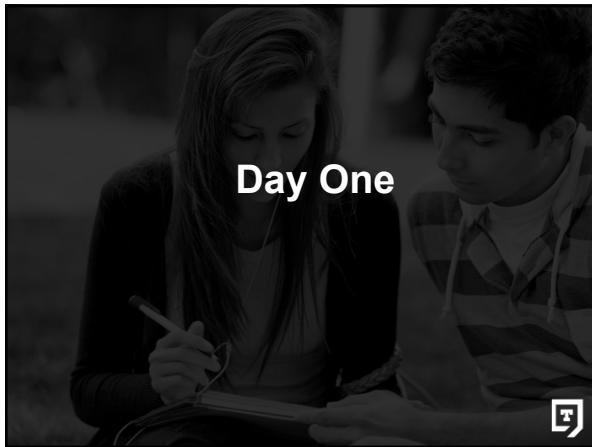
Additionally, Barbara was the lead investigator for a nationwide series of lawsuits designed to reform the manner in which the military prosecutes rape and sexual assaults.

Barbara has conducted and supervised investigations of employee misconduct, wage and hour violations, wrongful termination claims, public corruption allegations, and whistle-blower complaints. She has trained and managed investigative staff and has taught “Fact Investigation” at Loyola Law School.

Prior to joining PII, Barbara worked with several large organizations confronting complex problems. She was part of the team of attorneys who monitored Denny’s restaurants for customer-based discrimination complaints as part of the settlement of civil rights litigation against that company. Denny’s ultimately adopted the investigative model that Barbara and her colleagues designed and used during the monitoring period. Barbara also played an integral part in the creation and direction of an independently administered system of arbitration for Kaiser Permanente members throughout California. She served as an attorney with the HIV and AIDS Legal Services Alliance, where she assisted clients with matters involving discrimination, confidentiality, and health care access, and conducted trainings on those topics.

She is a graduate of the University of California, Berkeley, and of Loyola Law School.





Overview of Hearing Officer Training

Day One: Laying the Foundation	Day Two: The Hearing
<ul style="list-style-type: none"> • Foundational Issues • New Regulations • Deep Dive Into Policies 	<ul style="list-style-type: none"> • Important Considerations: Before and During the Hearing

Overview of Hearing Officer Training

Day Three: The Hearing	Day Four: Hearing and Beyond
<ul style="list-style-type: none">• Conducting a Trauma Informed Hearing• Questioning During a Hearing	<ul style="list-style-type: none">• Mock Hearing• Challenges of Running a Hearing• Credibility and Decision Writing





Practical Exercise:
**Getting Comfortable
With The Uncomfortable**





**Foundational
Considerations**

Due Process and Fairness in the
Hearing Context



Title IX

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.





No person shall...be deprived of life, liberty, or property, without due process of law...

— *Fourteenth Amendment of the U.S Constitution*



Due Process for Students

Supreme Court held that public school had violated due process by suspending students without a hearing.

A 10-day suspension was not a *de minimis* deprivation of property. Suspending students had the potential of seriously harming reputation and affecting future employment and education.

In short, the school had no authority to deprive students of their property interest in educational benefits or their liberty interest in reputation, without due process.

Goss v. Lopez, 419 U.S. 565 (1975)



What Process is Due? In Criminal Law:

When life and liberty are at stake the greatest procedural protection is required

Procedural Rights of Criminal Defendants

- Public trial
- To counsel
- To confront witnesses
- Impartial jury



What Process is Due? In Student Conduct Cases:

Due Process—A Flexible Concept that Considers Three Factors:

1. The student's interests that will be affected;
2. The risk of an erroneous deprivation of such interests through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and
3. The university's interests, including the burden that additional procedures would entail.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976)



Enforcing Title IX

Department of Education, Office for Civil Rights

- Complaint investigations and compliance reviews resulting in voluntary resolution agreements
- Issues regulations and guidance
- Possible sanction—removal of federal funding

Private Right of Action

- Court cases brought by complainants and respondents

Cannon v. University of Chicago (1979)



Enforcing Title IX, cont.

Private Right of Action

- Institutions are required to address sexual harassment by both the institution's personnel and other students.
- Students who experience harassment can bring actions against the institution for failing to address harassment and pursue corrective steps from the institution along with compensation as a remedy.

Gebser v. Lago Vista Independent School District (1998)

Davis v. Monroe County Board of Education (1999)

These individual cases result in guidance from the courts.



Different Types of OCR Guidance

Non-Binding Guidance

Issued and withdrawn by OCR without a required formal process e.g. Dear Colleague Letters.

Binding Regulations

Requires formal rulemaking process. e.g. 2020 Regulations



1997 OCR Guidance

- Institutions must have well-publicized and effective grievance procedures in place to handle complaints of sex discrimination, including sexual harassment complaints.
- Determinations regarding harassment should be made based on the "totality of the circumstances."



2001 OCR Guidance

- Title IX rights must be interpreted consistent with any federally guaranteed due process rights.
- Schools should ensure that steps to afford due process rights do not restrict or unnecessarily delay the protections provided by Title IX to the complainant.



OCR Guidance to Enhance Campus Response to Sexual Violence

- April 4, 2011 Dear Colleague Letter on Sexual Misconduct.
- April 29, 2014 Questions and Answers on Title IX and Sexual Violence.



Student Conduct Decisions Pre-2011 Dear Colleague Letter

- Most universities handled any sexual assault allegations through student conduct proceedings, some referred them to the police
- Student conduct proceedings were designed to address allegations like academic misconduct.



Origin of the “single investigator” model

Guidance regarding due process for the investigator:

Before reaching a final conclusion or issuing a final investigation report, the Investigator shall have:

- advised the Parties, or have offered to do so, verbally or in writing, of any evidence upon which the findings will be based; and,
- given the Parties an opportunity to respond to the evidence, including presenting further relevant evidence, information or arguments that could affect the outcome



More guidance for the Investigator

The Investigator will not reach a final conclusion or issue an investigation report until giving careful consideration to any such relevant evidence, information or arguments provided by the Parties.



Criticism from Within Campuses

Twenty-one Law Professors from across the country criticized 2011 DCL and other guidance.

- “As a result, free speech and due process on campus are now imperiled.”

Four female Harvard Law School professors wrote letter in opposition to 2011 DCL:

- “These policies have meant that accused students have, on many occasions, been subjected to a process that really does not give them a fair chance to establish what the real facts of the incident were.”



Respondent Litigation

From 2011-2013, an estimated **32%** of Title IX lawsuits against institutions filed by respondents / accused.

United Educators Report, Confronting Campus Sexual Assault (Jan. 2015).

From 2013-2014, estimated **76%** of Title IX lawsuits filed by respondents / accused.

NACUA Notes, V.1, No. 4 (May 18, 2016).



Notice Insufficient and Respondent Denied Fair Hearing

- The respondent must be given notice of charges —notice charges must match adjudicated charges.
- Insufficient to offer to let respondent review evidence—must provide evidence.
- Respondent was not given a sufficient opportunity to rebut the evidence.

Doe v. USC (April 2016)



Fair Process Considerations

- Assertion that panel members were school employees insufficient to show bias or conflict of interest (policy had process for bias/conflict objections).
- Student conduct hearing need not include all the safeguards and formalities of a criminal trial.
- Fair process requires a process by which the respondent may question, if even indirectly, the complainant.
- Hearing Officer must explain reasons for omitting or revising questions.
- Lack of interview notes to respondent does not violate due process but is a “concern” to the court.



Sept. 2017 OCR Interim Guidance

- OCR issued DCL withdrawing 2011 DCL and 2014 Q&A. *Cited concerns that these led to “deprivation of rights” for students and that the Department had not followed a formal public notice and comment process before issuing.*
- OCR issued interim guidance and expressed intent to initiate rulemaking process leading to new Title IX regulations.



Hearing and Cross-Examination Required *John Doe v. Allee (January 2019)*

- A hearing and cross examination required when a **student** accused of **sexual misconduct** faces **severe disciplinary sanctions**, and the **credibility** of witnesses, whether the accusing student, other witnesses, or both is central to the adjudication of the allegation.
- The accused may cross-examine witnesses, directly or indirectly.
- Hearing must be before a neutral adjudicator with the power to independently find facts and make credibility assessments.
- The factfinder cannot be a single individual with divided and inconsistent roles.



Boiling it Down: Fundamental Due Process Requirements

Notice

The specific policy/rule at issue
The who, what, where, when and how of the alleged incident
The institution follows policy and procedures in resolving the complaint

An Opportunity to be Heard


Timely access to evidence
Opportunity to tell their side of the story
Opportunity to challenge witnesses and other evidence
Opportunity to present evidence
Absence of bias and conflicts of interest by the individuals investigating and adjudicating the complaint






The 2020 Regulations






2020 Regulations Current Application


- Effective: August 14, 2020
- Applicable to **conduct** occurring on/after August 14, 2020
- Applicable to students, staff, and faculty





What changed?

- Mandatory hearings
- Advisor involvement
- Definition of Sexual Harassment
- School jurisdiction over conduct
- Direct questioning of the parties



What has not changed?

- Duty to provide a fair process
- Duty to provide a safe environment
- School determines the definition of consent
- Impact on the involved parties



Key Changes Overview

- “Sexual Harassment” definition
- Jurisdiction
- Grievance Process

Intersection of Title IX and Code of Conduct



Sexual Harassment Definition



Sexual Harassment per the New Regulations

Conduct on the **basis of sex** that satisfies one or more of the following:

- Quid pro quo (employee Respondents only);
- Unwelcome conduct (full definition follows); or
- Specific defined acts (full definition follows)



Sexual Harassment: Unwelcome Conduct

Conduct on the **basis of sex** that is determined by a **reasonable person** to be so:

- Severe;
- Pervasive; **and**
- Objectively offensive
- That it effectively denies a person equal access



Sexual Harassment: Specific Acts

Conduct on the **basis of sex** that constitutes one or more of the following:

- Sexual Assault**, as defined by Clery Act;
- Dating Violence**, as defined by VAWA;
- Domestic Violence**, as defined by VAWA;
- or
- Stalking**, as defined by VAWA






When does the Title IX process apply?

- Locations, events, or circumstances;
- Over which the school exercised **substantial control** over both the Respondent and the context in which the Sexual Harassment occurs.

Includes: any buildings owned or controlled by a student organization officially recognized by the school.





Grievance Process per the New Regulations

Basic Requirements

- Treat parties equitably
- Objective evaluation of all evidence
- No credibility determinations based solely on a person's status
- No one involved in the process may have a conflict of interest or bias



Grievance Process per the New Regulations (cont'd)

- Training required for all involved staff and/or outside contractors
- Investigator and decision-maker cannot be:
 - The Title IX Coordinator
 - The same person
- Live Hearings required



Grievance Process per the New Regulations (cont'd)

- Presumption that Respondent is not responsible
- Establish a reasonably prompt timeframe for resolution
- Range of possible disciplinary sanctions and remedies
- Standard of Evidence
- Appeal Procedures



Grievance Process: Hearings per the New Regulations

- Live Hearings required
- Can be conducted remotely and/or with parties in separate rooms
- Parties must be able to see and hear anyone testifying
- Advisors must be permitted
- School must provide advisor for the hearing if student comes alone



Grievance Process: Hearings per the New Regulations (cont'd)

Questioning

- Hearing Officer permitted to question
- Advisors **must** be permitted to question the other party and all witnesses:
Questioning conducted directly, orally, and in real time.
- Must be relevant questions—up to the Hearing Officer to decide



Grievance Process: Hearings per the New Regulations (cont'd)

- Permitted to exclude parties misbehaving
- Written decision must include:
 - Allegations;
 - Procedural steps;
 - Factual Findings;
 - Policy Findings;
 - Analysis for each;
 - Sanctions;
 - Appeal process.



Grievance Process: Appeals per the New Regulations

- Must be offered to both parties
- Bases for appeal:
 - Procedural irregularity;
 - New evidence not reasonably available at the time of determination; or
 - Bias or conflict of interest.

*****All bases include requirement that the outcome was affected*****



2021 Administration Review

- March 8, 2021 Executive Order to review the 2020 regulations.
- April 6, 2021 DOE Press Release outlining review in response to EO.
- Fall 2021 Unified Agenda and Regulatory Plan to issue a notice of proposed rule-making in April 2022.



OCR July 2021 Q&A

- Encourages institutions to address conduct outside of the 2020 regulations' definition of sexual harassment with their own conduct policy
- Emphasizes the timeline of when 2020 regulations apply



2021 Case Interpretations

- Section 106.45(b)(6)(i)'s prohibition on all statements not subject to cross-examination is arbitrary and capricious. *Victim Rights Law Center et al. v. Cardona* (2021)
- August 24, 2021 OCR issued Letter stating it will no longer enforce the section.



Deep Dive Into Policies

Reading, Interpreting, and
Applying Various Hearing
Policies



Exercise:

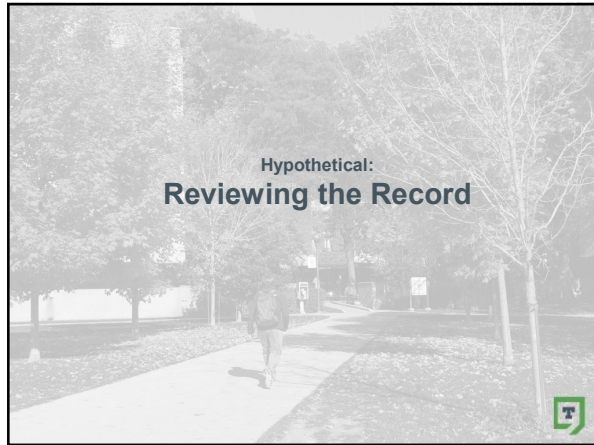
Policy Review

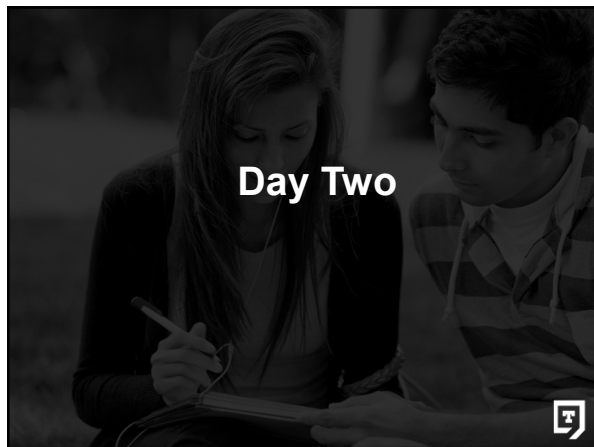


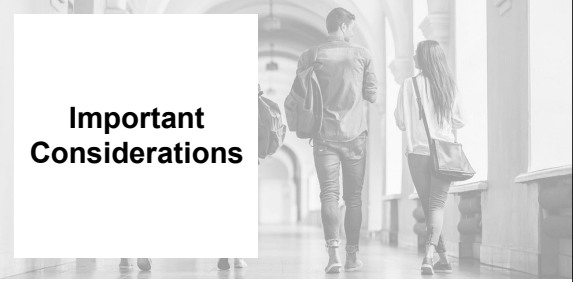
Exercise: What type of claim?

- Review the Complaint by student Monique Resendez in your folder:
 - What type of claim has Monique raised?
 - What factual findings must be made in order to determine whether a policy violation has occurred?










Important Considerations


Establishing Expectations for Everyone






Pre-Hearing Considerations





Pre-Hearing Considerations

- Challenges to the Hearing Officer Assignment
- Scope
- Witness list
- Pre-hearing meeting/conferences
- Logistics of the hearing day(s)



Challenges to Your Assignment

- Conflicts of interest
 - Personal relationship with one of the parties or witnesses?
 - Previous service as Hearing Officer typically insufficient to constitute a COI
- Actual or perceived bias
 - Demonstrated bias (consider public statements)?

Know what policy says about responsibility of evaluating and responding to challenges



Reviewing the Record to Establish Scope

- Complaint
- Any written statements
- Notice to the Parties
- Investigative Report/Summary
- Recommended Findings



Establishing Scope

- Depends on policy
- First-Level Hearing:
 - Complaint, Notice, Report, and Hearing Requests are key
 - If Report did not clearly establish scope, you still need to
 - Focus on disputed/undisputed facts
- Appeal Hearing:
 - Policy, policy, policy



Scope: First-Level Hearing

- Always consider the witness list
- Are there Allee-type issues that require some level of cross-examination?
 - What role did/does credibility play?
- Are there undisputed facts?
- Are there undisputed witness statements?
- Any new information being proposed by the parties?



First-Level Hearing: Sample Scope

Complainant alleged that on April 24, 2019, Respondent engaged in the following actions without Complainant's consent:

- Respondent digitally penetrated Complainant's vagina;
- Respondent touched Complainant's bare buttocks; and,
- Respondent performed oral sex on Complainant.

If sustained, such actions would violate Meadow College's Policy prohibiting Sexual Misconduct.



Scope: Appeal Hearing

- Heavily dependent on policy
- Even if open parameters, articulate a general scope/overview – this will be useful at every step of the process
- Consider clarifying with the appealing party
- Challenges of dual appeals



Appeal Hearing: Sample Scope

Respondent may make the following arguments:

- The record does not support a finding of “sexual assault – contact”;
- The fact-finder failed to interview a key witness with information material to the findings; and,
- Dismissal is inappropriate, given the factual background of the case.



Scope: Our Hypothetical



Pre-Hearing Conferences: What are they?

- Meetings between each party, their advisors, the Hearing Officer, and the Hearing Coordinator
- A chance to review next steps and what the hearing will look like, including:
 - What information can be considered;
 - How questioning works; and,
 - Critical timelines.

Appendix: Pre-Hearing Review Checklist



Pre-Hearing Conferences: Pros and Cons

Pros

- Comfort
- Establish rapport
- Identify issues early
- Makes hearing day faster and more predictable

Cons

- “Ex-parte communications”
- Difficulty in ensuring consistent communications
- One party participates and one does not?



Hearing Day Logistics

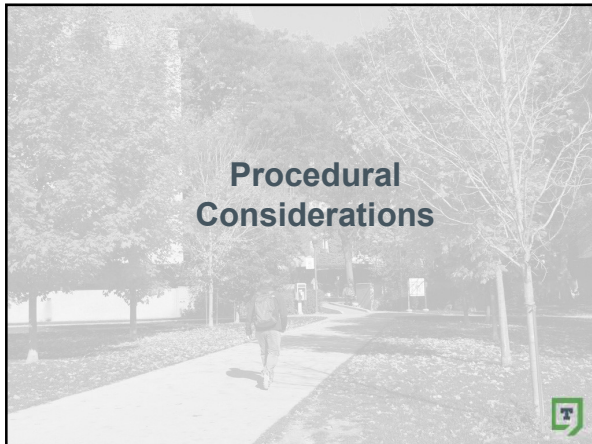
- Who is in charge of arranging?
- Breakout rooms
- Visual and/or physical separation
 - What about with the witnesses?
- Recording
- Copies of the record to all parties
- Technology: computers, tablets, phones
- Arrivals and departures



Technology: Friend or Foe?

- Cell phones allowed in the hearing room?
 - Communicating with outside parties
 - Recording concerns
- Social media considerations
- Setting up video conferencing






Procedural Considerations


Challenges That Arise

- Proposed document list from the parties
- Proposed witness list from the parties (and securing witness participation)
- Late requests for additional document and witness consideration
- Challenges to the process and your role as Hearing Officer
- Accommodation requests
- Managing technology snafus



Proposed Documents

- **Relevance**
 - Content: is it addressing a contested issue?
 - Critical to the scope?
 - Repetitive/duplicative?
- **Availability**
 - Does the party have possession of the document?
 - When are copies provided to the other party?
 - Confidentiality considerations



Proposed Documents

- “Expert Witness” Declarations
- Forensic test results
- Photographs
- Redaction pros and cons
- Objections by the other party
 - Consider articulated objection
 - Written opportunity for objecting party to respond?



Proposed Witnesses

- Relevance
 - What is the proposed testimony?
 - Critical to the scope?
 - Any challenge to information already presented to the Investigator?
- Availability
 - Will testimony be in-person or remote?
 - Sworn written statement?
 - Should hearing be rescheduled to accommodate their schedule?



Submissions After Deadlines

- No bright-line rule.
- Ultimately, comes down to:
 - **Relevance**
 - **Fairness**



Submissions After Deadlines: Points to Consider

- Does it speak, even slightly, to issues in dispute?
- Why was it not presented by the deadline?
- What are pros and cons of admission?
- Is there sufficient time for the other party to review and respond?
- Should the hearing be postponed to accommodate the new submission?



Challenges to the Policy/Process

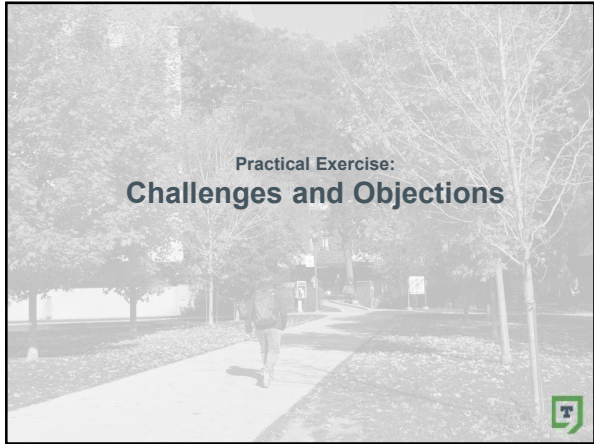
- You are there as a Hearing Officer
- You are there to **interpret** and **apply** policy
- You are not there to evaluate policy
- When responding to the challenges:
 - Articulate your role
 - Note parties' opportunities to present facts and evidence



Requests for Accommodation

- Translation
 - Certified translator is key
- Write answers instead of speaking answers
- Disability-related requests
- No bright-line rule. It ultimately comes down to:
 - **Necessity**
 - **Fairness**

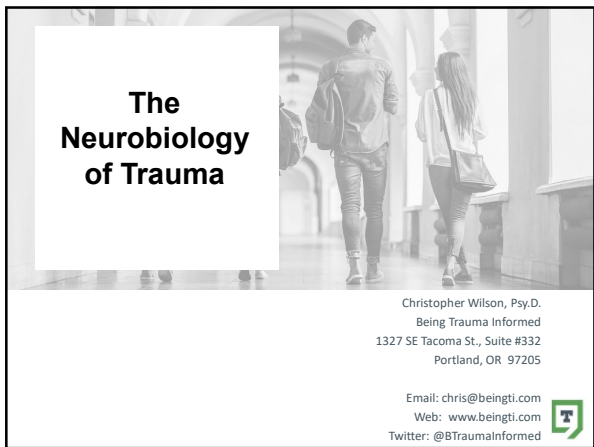




Practical Exercise:
Challenges and Objections



Day Three




**The
Neurobiology
of Trauma**

Christopher Wilson, Psy.D.
Being Trauma Informed
1327 SE Tacoma St., Suite #332
Portland, OR 97205

Email: chris@beingti.com
Web: www.beingti.com
Twitter: @BTraumaInformed




Who am I?




Translator

My job is to translate the neuroscience

82




What are we about today?




To be trauma informed!


83



Assume everyone has a trauma history



84



Defining Trauma



PLUS



EQUALS

Extreme threat/terror/horror

Lack of control/perceived lack of control



Very real changes in the brain at the time of the incident AND after the incident

85





Threat to status = Threat to self!



Overview of the Session

Brain basics

Attachment vs defense circuitry

Neuroception

Brain based reactions to threat

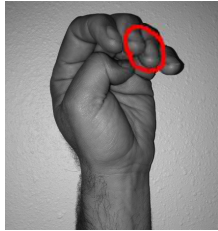
Memory and trauma



87



Your Prefrontal Cortex:

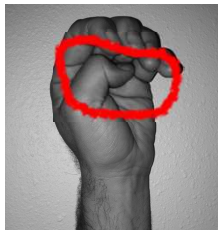


- Logical thinking/decisions
- Control focus of attention
- Integrate memory data
- Emotion regulation
- Behavior regulation

88



Trauma is mainly a SUBCORTICAL EXPERIENCE



- Reactive instinct**
- NO logic
- NO rationale
- Emotional dysregulation
- Behavioral dysregulation

89



In a hearing we want people operating from their PFC



90



Overview of the Session

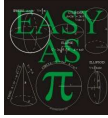
Brain Basics

Attachment vs defense circuitry

Neuroception

Brain based reactions to threat

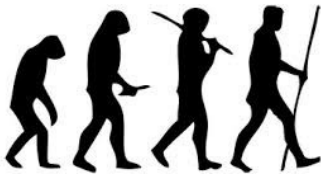
Memory and trauma



91



**Circuitry =
Baked in to your brain**



92





**Social Engagement
or attachment
circuitry**



**Defense
circuitry**

Porges, S. W. (2011) The Polyvagal Theory: neurophysiological foundations of emotion, attachment, communication and self-regulation. W.W. Norton & Company Inc, New York, NY

93





lower resting heart rate
calm demeanor
allows for optimal prefrontal function

CONNECT!

94





**elevated heart rate
anxious demeanor
eyes darting**

FLY/DEFEND!

95





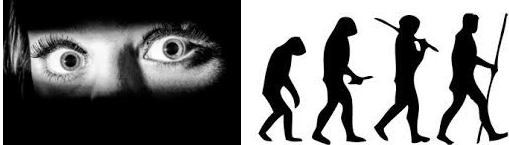
**Reduction in:
ability to move/speak
emotional expressiveness**

SHUT DOWN!


96




A single trauma
will sensitize the
DEFENSE CIRCUITRY




97






98




Activation of defense circuitry



can impair your Prefrontal Cortex!

Adapted from Arnsten 1998, Science, 280, 1711-1712; Arnsten 2009, Nature Reviews Neuroscience, 10, 410-422

99





100



Activation of attachment circuitry



inhibits defense circuitry...



Forgas, 2011, The Polyvagal Theory: Neurophysiological Foundations of Emotions, Attachment, Communication, and Self-regulation.

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In a hearing we want people operating from their PFC



Attachment Circuitry!

102



Overview of the Session

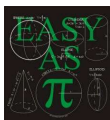
Brain Basics

Attachment vs defense circuitry

Neuroception

Brain based reactions to threat

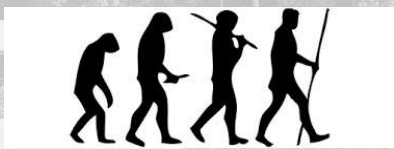
Memory and trauma



103



You can't wish away or
logically think away
DEFENSE CIRCUITRY!



104



Defense circuitry Keeps you safe



105



Neuroception



Subcortical surveillance for survival

Porges, S. W. (2013) The Polyvagal Theory: neurophysiological foundations of emotion, attachment, communication and self-regulation. W.W. Norton & Company Inc., New York, NY

106



Neuroceptive mapping



Map of safety? Map of threat?

Porges, S. W. (2011) The Polyvagal Theory: neurophysiological foundations of emotion, attachment, communication and self-regulation. W.W. Norton & Company Inc., New York, NY

107



We generalize our maps



BOTH map to:



108



Map of safety or threat?



Your history influences how you map!

109



Map of safety or threat?



Your history influences how you map!

110



Map of safety/threat?



How can you represent map of safety?

111



POWER OF CHOICE & The power of transparency.

112


113

Consider having

Safe eyes!


Tone
+
Attitude
=
Compassion

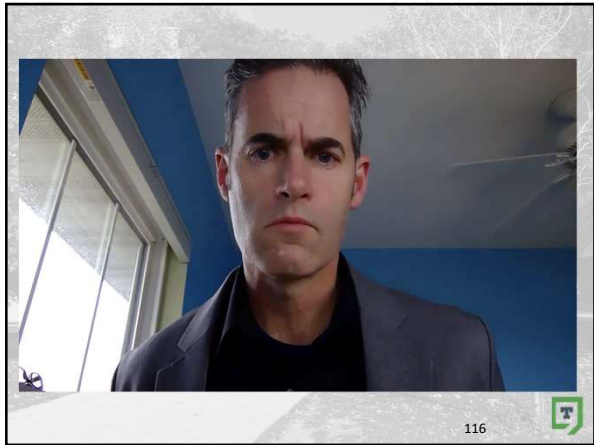
114




**Safe eyes = I honor your
experience and humanity**

**Hard eyes = I have a job to do
and this is serious**

115 



116 

**Being trauma informed
requires**

SAFE EYES



117 

Vigilance



Influenced by neuroceptive mapping

118





Level of vigilance
is **subjective** and contextual

119






Level of vigilance
is subjective and **contextual**


120





Level of vigilance
is subjective and **contextual**

121





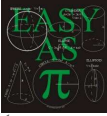
Level of vigilance
is subjective and **contextual**

122




Overview of the Session

- Brain Basics
- Attachment vs defense circuitry
- Neuroception
- Brain based reactions to threat**
- Memory and trauma



123



Assess/“Freeze?”



***Ready to suddenly
burst into action***

124



Are we predators
or prey?

125



**We evolved
as prey!**



126



Fight or flight?



We've evolved to **assess first**,
then **flee** if possible.

127



Fight or flight?



Fighting is in service of FLEEING!

About defending and not dominating!

128



ASSESS → FLEE → DEFEND!



It's not a CHOICE!

129



ASSESS → FLEE → DEFEND!



And that's not all!

Kozlowski, et al. Fear and the Defense Cascade: Clinical Implications and Management. Harv Rev Psychiatry. 2015 Jul; 23(4):130-41



**So why do some people
neither flee nor fight?**



131



**If there is a friendly contact,
there is activation of
attachment circuitry**



132



Your attachment circuitry



inhibits your defense circuitry...



Forgas, 2011, The Polyvagal Theory: Neurophysiological Foundations of Emotions, Attachment, Communication, and Self-Regulation. 133



What if the person maps to safety



but the behavior maps to threat?



134



Experience

loss

of control

When you realize
OMG this is
happening to me!

When the FEAR
kicks in



135




Circuitry + fear/realization
conflict it's not stopping
= *mental defeat...*



136

When the brain is overwhelmed...



Drastic survival **reflexes...**

137

Dissociation



138

Described as...

Blanked/Spaced Out
Disconnected from my body
Like I was on autopilot



139



Dissociation

It's adaptive
It's about tolerating/surviving



140



Immobility response

- Tonic or collapsed
- Correlated with mental defeat
- **UNABLE TO MOVE OR SPEAK!**
- Can occur in sexual and non-sexual assault

Marx et al. 2008, *Clin Psychol Sci Practice*, 74; Bovin et al. 2008, *J Trauma Stress*, 402; Brickman & Briere 1984, *Int J Women's Studies*, 195; Fuse et al. 2007, *J Anx Disord*, 265

141



So when does the brain get to the “fight” response?



142



We can plan to punch



a shark in the face!

143



You don't punch



dolphins in the face!

144



IF the brain initially maps “dolphin”



It likely will not remap to shark
in a single encounter

145



Overview of the Session

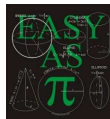
Brain Basics

Attachment vs defense circuitry

Neuroception

Brain based reactions to threat

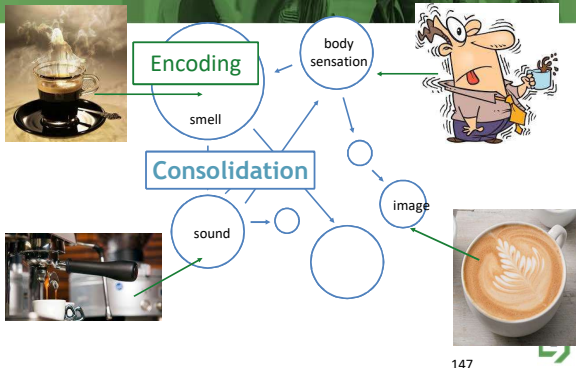
Memory and trauma



146

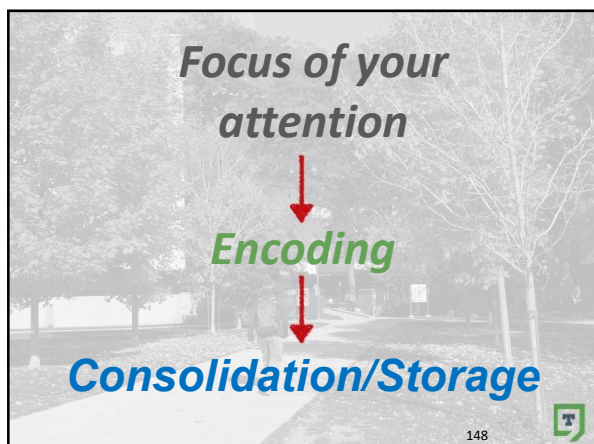


How memory works



147





You focus on surviving or coping and it's not a CHOICE!

149

Bottom-Up Attention and Memory

Central Details are the details focused on by the victim - central to survival and coping

Central Details get encoded/consolidated!

150

Bottom-Up Attention and Memory

Peripheral details are the details NOT focused on by the victim

Peripheral details have a lower rate of getting encoded/consolidated!

151



Vulnerability to change?

Central Details = Very Low Vulnerability

Peripheral Details = High Vulnerability

152



The hippocampus & memory

If you saw a hippo on campus you'd remember!



153



The hippocampus & memory

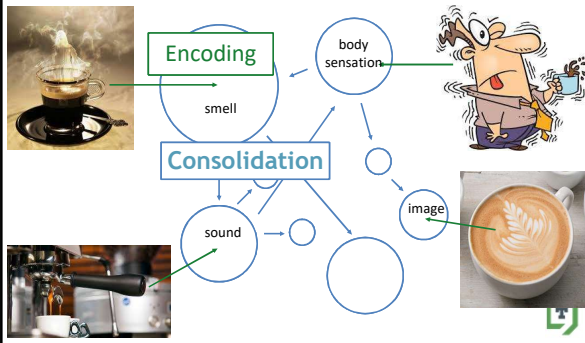
Plays a role in “date stamping” memory



154



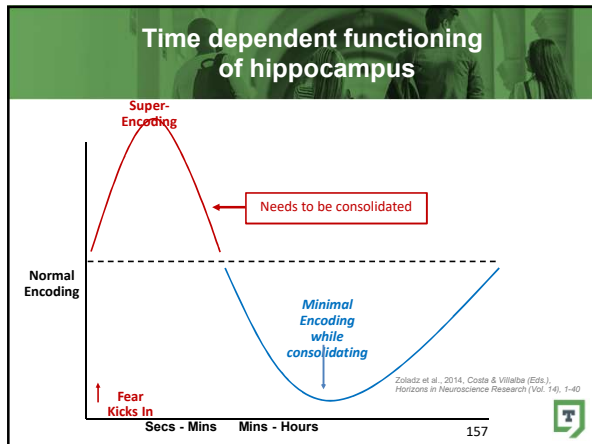
How memory works



The hippocampus & trauma =



156





One last thought...

"As part of its legacy, trauma leaves its victims with fear networks etched into the amygdala, networks that can be triggered by a multitude of cues that would ordinarily not evoke fear. Trauma also leaves its victims with fragmented and discontinuous memories of what happened to them. As a consequence of these legacies, the...victim faces enormous challenges in the judicial process. To participate in that process - to endlessly recount their trauma, to appear in the court room where the [perpetrator] sits - is equivalent to the zebra consciously choosing to return to the water hole where the lion attacked." (Lisak, 2002)

T

Contact Chris Wilson:

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Being Trauma Informed
1327 SE Tacoma St., Suite #332
Portland, OR 97205

Email: chris@beingti.com
Web: www.beingti.com
Twitter: @BTraumaInformed



Questioning



Questioning Practice Tips

- Generate your own ahead of time
 - You control the tone
- Approach parties the same way
 - “Help me understand” versus “Why?”
 - “What else happened” versus “What happened next?”
- Make sure you understand terms/phrases being used: ask, do not assume.



Trauma-Informed Tone

- Applies to both parties and sometimes witnesses
- Empathy
- Compassion
- Dignity
- Patience

**Fairness and trauma-informed
can and do coexist!**



Remember: Hearings Differ From Investigations

- Witnessed by the other party
- Already have Report or at least some information gathered
- Areas in dispute may be narrowed
- Timing: less opportunity for narratives
- Rapport more difficult to build
- Questioning by the other person's advisor live and in real time



Who Generates Questions?

- You, the Hearing Officer
- The parties, asked directly by their advisor
- A school representative (not as common)



Handling the Questioning Process

- You should question first – you are the one who has to make a final determination
- Consider reminding everyone of the hearing rules/expectations
- Remind individuals of need to pause before answering

***Remember – you are in charge.
You set the tone for the hearing.***



Standards for All Questions

- Relevance
 - Comes back to the scope
 - Does it help you decide the ultimate issue?
- Appropriate tone
 - Not harassing, not argumentative
- Not repetitive
- Consider optics



Rephrasing Questions

- What does policy say?
- Minimize rephrasing to the extent possible
- Consider:
 - Offer your own suggestion?
 - Leave it to the party & advisor to revise?
- Explain your rationale



Rejecting Questions

- Know the policy standards for question rejection:
 - Repetitive
 - Irrelevant
 - Argumentative
 - Harassing
- Document, document, document!
- Optics



Exercise: Question Evaluation



Day Four





Running the Hearing

Managing parties, advisors,
and witnesses





Conducting the Hearing





Beginnings Matter

- Greet all parties – Complainant, Respondent, support people, advisors
- Be organized and professional
 - Put yourself in their shoes
- Project the appropriate manner
 - Warm yet professional
 - Ready to listen
 - Perfect your poker face



Room Layout

- Often outside your control
- Consider ensuring the room has:
 - Comfortable chairs
 - Accessible outlets
 - Access to water
 - Tissues and fidget objects
 - Comfortable temperature



Opening Remarks

- Prepare a script (see Appendix for sample)
- Outline your process and then **follow it!**
 - Predictability/reliability increases comfort
- Give them estimated decision date
- Opportunities for breaks



Managing the Parties

- Anticipate tension and angst
- Striking the right balance:
 - Letting parties be heard/tell their story
 - Maintain professionalism and respect for everyone present
- Why pre-hearing meetings might be helpful



Managing the Parties: How to Respond?

- Complainant begins crying loudly
- Support person begins crying loudly
- An advisor asks a question about a party's past sexual history
- Complainant slams hands on table and shouts "You are scum!"
- An advisor objects to one of your determinations
- Respondent audibly says "this is crap" after one of your determinations



Closing the Hearing

- Be mindful of breaks and end time.
- Communicate plan to parties throughout the day. Ask for input if appropriate.
- Parameters around closing statements.
- Prepare and deliver closing "script," notifying parties of next steps.
- Ensure appropriate exits for all parties.



Mock Hearing



Credibility and Decision Writing

Preserving your process for perpetuity



Credibility: What Is It and What Is It Not?

- An assessment of the facts using credibility factors
- Factual and credibility analysis = one and the same?
- Credibility includes a party's believability
- Does a credibility analysis make someone a "liar?"
- Are we seeking the truth?



Credibility Factor Overview

- Inherent Plausibility
- Direct Corroboration
- Indirect Corroboration
- Lack of Corroboration
- Material Omission
- Motive to Falsify
- Past Record
- Consistent Statements
- Inconsistent Statements
- Reputation
- Demeanor
- Comparators, Statistics



Inherent Plausibility

- Is the testimony believable on its face?
- Could it have occurred as reported?
- What is the extent of the witness' opportunity to perceive any matter about which he or she testifies?
- What is the extent of the witness' capacity to perceive, to recollect, or to communicate?



Corroboration

Direct Corroboration

- Does the party have actual knowledge?
- Is there witness testimony or physical evidence that corroborates the party's testimony?
- What is the extent of interviewee's opportunity to perceive matters about which he or she testified?

Indirect Corroboration

- Is there witness testimony or documentary evidence that demonstrates contemporaneous reporting of events?



Lack of Corroboration

- Is there witness testimony that is inconsistent with other party statements?
- Is the information at issue something that is likely to have corroboration?
- Is there a reasonable explanation for the lack of corroboration?



Material Omission

Did the person omit material information?

- In narrative? (Recall trauma-informed considerations)
- In response to inquiry? (Quality of answers depends on quality of questions)



Motive to Falsify

- Did the person have a reason to lie?
- Does the person have a bias, interest, or other motive?
 - Examine relationships
 - Explore potential biases
 - Consider reasons for self-protection
 - Carelessness of expression vs. "lying"
 - Give weight to admissions against interest / admissions of untruthfulness(?)
 - Mistaken belief vs. untruthfulness



Consistent/Inconsistent Statements

- Did the parties tell the same version of events to others, in writing in all material respects?
- Recall Trauma Effects (memory impacts, non-linear stories, lack of detailed information), but do not end the inquiry there.



Past Record

- Does the Respondent have a history of similar behavior in the past?
- Does the Complainant have a relevant history?
- What weight do we give this in the present matter?
- Best predictor of future behavior is past behavior
- Consider:
 - Cumulative behavior
 - In scope behavior
 - Out of scope behavior



Proceed With Caution

- Reputation. Does the interviewee have a reputation for honesty or veracity, or their opposites?
- Attitude. Did the person cooperate when participating in the interview and/or providing information?
- Demeanor. Did the person seem to be telling the truth or not (and why)?



Writing Your Decision: Know Your Audience

- Put yourself in the shoes of the reader:
 - Complainant
 - Respondent
 - Administrator
 - Attorneys
 - Judge
- Ask yourself:
 - What do these parties need to see?



Hearing Summary

- Basics: dates, recording, etc.
- Parties present and their roles
- Documents considered
- Summary of witness testimony
- Questions rejected and rationale for rejection



Analysis and Findings

- Factual findings
- Policy findings
- Articulate evidentiary standard again
- NO legal determinations



Analysis and Findings

- Sustained: An allegation is sustained when a preponderance of the evidence supports the allegation.
- Not Sustained: An allegation is not sustained when a preponderance of the evidence does not support the allegation.



Analysis and Findings

- Clearly articulate your findings (consider bullet points)
- Explain your credibility assessments
- Show how you weighed the evidence
 - “on the one hand, on the other hand...”
 - “Considered factors that weighed against this finding...”
- Neutral versus advocacy writing
 - Acknowledge evidence against your conclusion



Sanctions?

- Know policy expectations ahead of time
- Pros and cons
- Parties given an opportunity to submit additional information?
- Consider guidelines/campus practices
- Mitigating and aggravating factors



Panel Considerations

- Who writes the decision?
 - Know policy expectations ahead of time
 - Build in panel review time
 - What if panel members disagree?





Sample Documents

Hearing Notice Letter

NOTICE OF FORMAL HEARING

Dear PARTY:

This letter serves as notice of a formal hearing to resolve the DATE complaint filed by NAME. This notice also provides information regarding your rights and the procedures that will be followed at the hearing.

Date and Location

The hearing is tentatively scheduled for DATE, beginning at TIME, and is scheduled to be held in LOCATION.

Nature and Scope of Hearing:

COMPLAINANT alleges RESPONDENT engaged in the following conduct: LIST ALLEGATIONS/HEARING SCOPE. If substantiated, such behavior would violate SECTION of UNIVERSITY POLICY.

Documents

At this time, the Hearing Officer has identified the following documents to be considered at the hearing:

- Complaint filed on DATE
- The University Investigation Report, dated DATE and completed by INVESTIGATOR NAME
- Notice of Allegations, dated DATE
- This notice
- ANY OTHER IDENTIFIED DOCUMENTS

Witnesses

At this time, the Hearing Officer has identified the following witnesses to provide testimony at the hearing:

- COMPLAINANT
- RESPONDENT
- INVESTIGATOR
- ANY OTHER IDENTIFIED WITNESSES

Hearing Procedures:

1. The Investigation Report and attachments will be admitted at the hearing.
2. All proposed documents and/or proposed witnesses must be submitted to the University no later than DEADLINE. The Hearing Officer has authority without cause to grant or deny the inclusion of materials that are submitted after the deadline.
3. At least two business days prior to the hearing, Hearing Coordinator NAME will send you copies of the evidence and names of proposed witnesses admissible at the hearing. You are responsible for ensuring the presence of your approved witnesses at the hearing.
4. At least two business days prior to the hearing, please let the Hearing Coordinator know who will be serving as your advisor during the hearing. This advisor can be an attorney. If you will not have an advisor, please let the Hearing Coordinator know as soon as possible. INSTITUTION will provide you with an advisor to assist you with questioning during the hearing.
5. At all stages of this process, you have the right to be accompanied by an advisor and/or a support person of your own choosing. A support person's primary role is emotional support. Please inform the Hearing Coordinator if you plan to have an advisor and/or support person attend the pre-hearing conference and/or hearing with you.

Hearing Procedures:

1. You have the right to hear testimony of all individuals who testify at the hearing.
2. The Hearing Officer will ask questions during the hearing. The Hearing Officer may ask you questions. The Hearing Officer will determine the order of questioning.
3. The advisors of both parties will have the opportunity to question any individual who provides testimony. The Hearing Officer will evaluate each question asked. The Hearing Officer will direct a Party/witness not to answer questions that are unduly repetitive, not relevant, unduly time consuming, argumentative or harassing. The Parties are not permitted to ask questions of other Parties or witnesses directly.
4. Aside from their role during questioning, Advisors are not permitted to speak during the Hearing.
5. If requested, the University will arrange for you and the other party to be physically separated during the hearing. To assess credibility, the Hearing Officer must be able to see you, the other party, and any witnesses that testify.
6. The Hearing Officer will decide any procedural issues at the hearing.
7. The Hearing will be closed and the proceeding will be audio-recorded.
8. Formal rules of evidence are not used and do not apply in the Hearing Process. The Hearing is not a court proceeding; the court procedures used in civil or criminal trials, motions, or other proceedings before a court or administrative agency do not apply. For example, discovery procedures, requirements for pleadings, and the hearsay rule do not apply.

Post- Hearing Procedures:

- 1. After the hearing, the Hearing Officer deliberates in private.**
- 2. The Hearing Officer will consider the record developed by the Investigator and the evidence presented at the hearing. The Hearing Officer will reach findings and credibility determinations.**
- 3. The Hearing Officer will summarize the decision in a written report.**
- 4. The Hearing Coordinator will send you a copy of the decision. The Hearing Officer will also inform you of any appeal rights.**

Hearing Script

Today's Hearing is being audio recorded, and we are now on the record. I am NAME and I will serve as the Hearing Officer today. Today is DATE.

This is a Hearing regarding University students COMPLAINANT and RESPONDENT. This Hearing is a closed hearing, which means it is private and not open to the public.

I would like to confirm the individuals present today:

- COMPLAINANT
- COMPLAINANT'S ADVISOR
- COMPLAINANT'S SUPPORT PERSON

- RESPONDENT
- RESPONDENT'S ADVISOR
- RESPONDENT'S SUPPORT PERSON

- HEARING COORDINATOR

The following individuals will be available to provide testimony/information today:

- INVESTIGATOR
- WITNESSES

[IF PARTIES ARE SEPARATED]: The Complainant will be physically separated from Respondent during the hearing. The Complainant will appear by Skype. Myself and the parties will be able to see all individuals who testify.

The purpose of this hearing is to consider COMPLAINANT'S DATE complaint and the information gathered by INVESTIGATOR in a Report dated DATE.

The scope of this hearing is as follows:

- SCOPE

I will admit and consider the following documents at today's hearing:

- A. The University's XX-page Investigation Report, including XX pages of attachments.
- B. Written complaint by COMPLAINANT, dated DATE
- C. RESPONDENT'S written rebuttal to Investigation Report, dated DATE
- D. The University's Notices of Hearing, dated DATE
- E. ANY OTHER DOCUMENTS

I will determine the order of the questioning during the hearing, and I may exclude information and/or witness testimony that is irrelevant regarding the ground(s) for appeal, not in dispute, or unduly repetitive. I will decide any procedural issues for the hearing and make any other determinations necessary to ensure an orderly, productive, and procedurally proper hearing.

After the hearing is completed, I will dismiss the remaining participants, and deliberate in private and reach a decision based on a preponderance of the evidence standard.

I will summarize my decision in a written report. I will forward my decision to the Hearing Coordinator who will send the written decision to COMPLAINANT and RESPONDENT.

I would like to remind those present that anyone who testifies today must be truthful, and that by testifying the witness agrees to be questioned by the Hearing Officer and the parties' advisors. Dishonesty in testimony is considered a violation of University policy.

Are there any questions before we begin?



Pre-Hearing Conference Checklist: Topics to Review With the Parties

- Hearing Logistics:
 - Date
 - Time
 - Location
 - Audio recorded
- Party Separation
 - Physical/visual
 - Designated arrival times to ensure parties do not see each other
- Review deadlines for the parties to:
 - Submit proposed witnesses
 - **Parties are responsible for ensuring the presence of their approved witnesses at the hearing (if applicable)**
 - Submit proposed documents
- Hearing Process
 - Questioning
 - Parties have right to hear all individuals who testify
 - Parties will not directly question each other or any other person testifying
 - Advisors can directly question any individual providing testimony. All questions will be evaluated by the Hearing Officer
 - Breaks
 - Breaks will be permitted during the hearing, if requested.
 - Individuals Present
 - Review parties that will be present on the hearing day

- Scope
 - Review already-determined hearing scope
- Documents the Hearing Officer can consider
 - Investigation Report
 - Complaint
 - Any other identified document
- Role of Support Person and/or Advisor
- Structure/order of the hearing
- Authority of the Hearing Officer
 - Determine order of questioning
 - May ask own questions of any party providing information at the hearing
 - Can exclude information, questions, and/or witness testimony that is irrelevant, not in dispute, or unduly repetitive. Formal rules of evidence do not apply.
- Opening and Closing Statements
 - If allowed
 - Any time limitations
- Decision
 - If deliberation done in private or immediately following argument
 - Approximate timeframe of completion
 - How decision will be distributed
- Sanctioning
 - Process
 - Responsible parties
 - Approximate timeframe
- Appeal Rights (if any)



Hearing Officer Checklist – Items to Review With Campus

- ✓ Deadlines:
 - Proposed Witnesses
 - Proposed Documents
 - Distribution of witness list and accepted documents to the parties
- ✓ Location of hearing
- ✓ Layout of hearing room
- ✓ Time reserved for hearing
- ✓ Advisors – have they already been identified? If not, does the campus have someone ready to step into that role?
- ✓ Will parties be separated?
- ✓ Will Zoom, Skype, or any telephonic participation be used?
 - Technical support on-site for any issues that arise?
- ✓ How will witnesses provide testimony?
- ✓ Accommodation requests
- ✓ Method of recording
- ✓ Custodian of the recording
- ✓ Campus practice in addressing disruptive participants
- ✓ Communication with parties after the hearing
- ✓ “Life line” contact on hearing day
- ✓ Deadline for decision
- ✓ Role (if any) in sanctioning

Question Types for Hearing Officers

Helpful Question Types	
Evaluation	<ul style="list-style-type: none"> • “Why do you say that?” • “How do you know that to be true?” • “On what do you base that information?”
Clarification	<ul style="list-style-type: none"> • “To which Sam are you referring?” • “Tell me again what time you left the bar.” • “Is it possible you were there longer?”
Exploration	<ul style="list-style-type: none"> • “I need to understand your position. Tell me what happened.” • “What else?” • “Tell me more.” • “Help me understand.” • “I don’t understand.” • “What haven’t I asked you that you think I should know about that might be a concern?” • “Is there anything else I should know?”
Assessing Other Perspectives	<ul style="list-style-type: none"> • “Is there any reason that...” questions. E.g., “Is there any reason that your fraternity brothers will say they saw you do x?” • “If we were to ask your roommates, is there any reason they would say they saw you sitting at her computer that day?”
Presumptive questions	<p>Presumes that something is understood to be the case.</p> <ul style="list-style-type: none"> • “What email accounts have you logged on to besides your own?”
Open-ended	<p>Provides basis for discussion or explores issue.</p> <ul style="list-style-type: none"> • “Tell me about your relationship.” • “Can you fill in some details. I don’t really understand what happened before the party.”
Closed-ended	<p>Probes specific case facts.</p> <ul style="list-style-type: none"> • “Did you unlock his phone yesterday?”
Opinion	<p>Helps determine how a person feels about a particular issue.</p> <ul style="list-style-type: none"> • “What do you think about the information gathered by the investigator?”
Vague	<p>Allows excessive latitude in answer.</p> <ul style="list-style-type: none"> • “Can you give me some of your thoughts on what is going on?”

Questions to Avoid	
Negative	<ul style="list-style-type: none"> • “You don’t know her password, do you?”
Compound	<ul style="list-style-type: none"> • “What time did you arrive, and how long were you there?”
Leading	<ul style="list-style-type: none"> • “And Sally told you everything that happened, didn’t she?”

More Helpful Question Types	
Solicit input on motive	<p>Used when there is contradictory evidence.</p> <ul style="list-style-type: none"> • “Do you have any reason to think that anyone would say something untrue about you (who and why?)” • “Can you think of why one of your roommates would tell me that [outline contrary statements]?” • “Can you think of anything you might have said that could have been misconstrued or misunderstood by the complainant as a sexual remark?”
Enumerate	<p>Used to ensure you have thoroughly reviewed all information.</p> <ul style="list-style-type: none"> • “You have told me about four comments [list], three text messages [list] and two times that you claim she inappropriately touched you [list]. Did she do anything else that you found to be inappropriate?”
Establish time	<p>Used to pin down dates and times.</p> <ul style="list-style-type: none"> • “Do you recall whether it occurred closer in time to winter break or the spring mixer?” • “Was it closer to the time you arrived at work, or lunchtime?”
Memory recall	<p>When a witness states, “I cannot recall.”</p> <ul style="list-style-type: none"> • “When you say you cannot recall, does that mean it may have occurred and you just do not remember, or does that mean it absolutely did not occur?” • “Can you say to a certainty that did not occur, or is it possible?”
Answering questions	<p>When a witness asks you a question, answer with a question.</p> <ul style="list-style-type: none"> • Witness: “Don’t you think that is inappropriate?” • Hearing Officer: “I’d like to hear your view. Do you think it was inappropriate?”
Reluctant Witness	<ul style="list-style-type: none"> • “I see that you are very quiet. What are you thinking/experiencing?”
Mistrustful Witness	<ul style="list-style-type: none"> • “Help me understand what I did to lead you to believe that.”
Angry Witness	<ul style="list-style-type: none"> • “You appear upset. Can you talk to me about that?”

More Helpful Question Types	
The Agree-With-Me-Witness	<ul style="list-style-type: none"> • “I know you are telling me your perception.”
Tearful Witness	<p>Do not offer comfort; do not agree.</p> <ul style="list-style-type: none"> • [Maybe] “I can see that you are upset. Tell me about that.”
To Reestablish Rapport	<ul style="list-style-type: none"> • “I’m feeling like I have not been good at interacting with you. Can we start again?”
To Probe Their Understanding	<ul style="list-style-type: none"> • “If you were to look at this through X’s eyes, how do you think they might view this/describe this occurrence?”
The Wrap Up Questions	<ul style="list-style-type: none"> • “Do you have any other information that would be helpful for me?” • “Is there anything else you think I should know?” • “Is there anything else I should have asked you?”

Trauma-Informed Approach	
Question	Revised Question
Tell me everything you remember about the event, from the beginning to end. Please include as much detail as possible.	What are you able to tell me about your experience? Tell me more about that. What else do you remember?
What happened next?	What else happened? What is something you cannot forget about the experience?
Sensory-evoking questions	What smells do you remember? Do you remember any specific sounds?
How many fingers was he using?	Focus only on the elements you need – Was there penetration? etc.
Why didn’t you report it? Why did you wait so long to report this?	What was your thought process about who to tell? Help me understand what led you to file this complaint. What made you decide to report this?
Are you telling the truth?	What do you think Complainant/Respondent will say about this when I interview him/her? Is there anything you would like to add or clarify about what you have told me today?

Our Goal: To minimize any potential trauma to the parties, maximize information obtained from the parties and witnesses, reduce contamination of memories of the alleged event(s), and maintain the integrity of the hearing process.

Credibility Factors

- Inherent Plausibility
- Motive to Falsify
- Direct Corroboration
- Circumstantial Corroboration
- Consistent Statements
- Inconsistent Statements [Caution: trauma informed considerations]
- Material Omission
- Past Record
- Reputation
- Attitude [Caution: Trained in behavioral science?]

Inherent Plausibility. Is the testimony believable on its face? Does it make sense? What is the extent of the witness' opportunity to perceive any matter about which he or she testifies? What is the extent of the witness' capacity to perceive, to recollect, or to communicate?

Motive to Falsify. Did the person have a reason to lie? Does the person have a bias, interest, or other motive? In assessing this factor, examine relationships, explore potential biases, consider reasons for self-protection, consider carelessness of expression versus intentional lying, and evaluate mistaken belief vs. untruthfulness.

Direct Corroboration/Lack of Corroboration. Are there witness statements that directly corroborate the party's statements? Is there physical evidence that corroborates the party's statement? Does the party have actual knowledge? What is the extent of interviewee's opportunity to perceive matters about which he or she testified?

Circumstantial Corroboration/Lack of Circumstantial Corroboration. Is there witness testimony that indirectly corroborates the party's testimony? Is there physical evidence that indirectly corroborates the party's testimony? Is there documentary evidence that demonstrates contemporaneous reporting of events? Is there a lack of circumstantial corroboration when one party expected there to be some?

Consistency/Lack of Consistency. Is there witness testimony or physical evidence that is consistent, or inconsistent with the party's testimony? Did the witness tell the same version of events to others, or in writing, in all material respects? (Consider trauma-informed forensic interviewing, as well as if the inconsistencies are material or immaterial.)

Material Omission. Did a party omit a material piece of evidence, despite having a reasonable opportunity to provide it, either in a narrative or response to a particular inquiry?

Past Record. Does the Respondent have a history of similar behavior in the past? Does the Complainant have a relevant history? What weight do we give this in the present matter?

Reputation. Does the interviewee have a reputation for honesty or veracity or their opposites? What is the person's reputation? Caution: what weight do we give character evidence? What motives do character witnesses have for their testimonies?

Attitude. Did the person cooperate when participating in the interview and/or providing information?

Factor	Sample Language
Inherent Plausibility	<ul style="list-style-type: none"> • “While difficult, it is plausible the conduct could have occurred as described. The floor area measured 5 feet 11 inches at the point nearest the desk, allowing for her 5-foot-6-inch frame to lie down fully extended as alleged.” • “Two witnesses described behavior directed at them that was similar in nature.” • “It is implausible that the witnesses could have overheard any noise, given the loud music.”
Motive to Falsify, Bias, Interest	<ul style="list-style-type: none"> • “The respondent was unable to explain why the complainant would fabricate charges against her...” • “Every witness believed respondent to be credible, but raised significant concerns about the complainant’s motives.” • “This witness may be motivated to share facts more favorable to the complainant, who is by her own admission, her best friend.”
Direct Corroboration	<ul style="list-style-type: none"> • “Two witnesses observed her remove the cash from the safe.” • “There is no direct evidence to corroborate her version of events.” • “The respondent admitted that he used profanity and kicked the door when he left.”
Circumstantial Corroboration	<ul style="list-style-type: none"> • “The incident is indirectly corroborated by complainant’s contemporaneous documentation of the event.” • “The incident is indirectly corroborated by complainant’s report of the incident to the Rape Hotline and to her two closest friends within two hours of the event.” • “The email exchanges between the two of them suggest that the two have a closer relationship than respondent would admit.” • “One witness reported hearing a scream in a location near the vicinity at the time of the event.” • “No other witnesses, including the females interviewed, attributed any sort of gender bias to him. To the contrary, they believed he treated them fairly.” (For disputed motive)
Inconsistencies	<ul style="list-style-type: none"> • “The two witnesses reported observing the conduct in a materially different way than the complainant.” • “The witness reported the same event in three ways materially inconsistent with one another.”

Factor	Sample Language
Material Omission	<ul style="list-style-type: none"> • “In providing 30 pages of text messages, the complainant failed to provide the investigator with several text messages that put her in an unfavorable light. In particular, the omitted text messages demonstrate she initiated and participated in the sexual discussions on multiple occasions.” • Despite given several opportunities to share critical information, complainant omitted and did not disclose a critical fact – that she videotaped the interaction.”
Past Record	<ul style="list-style-type: none"> • “The respondent had three prior complaints against him with similar allegations that he made sexually inappropriate comments.” • “The witness may be motivated to share facts more favorable to the complainant, who has been by her own admission, her best friends for the past 10 years.”
Reputation	<ul style="list-style-type: none"> • “By all accounts, including that of his best friend, respondent does not respect women, evidenced by...”
Attitude	<ul style="list-style-type: none"> • “Instead of directly responding to the questions, respondent challenged the investigative process, refused to answer certain questions, called multiple witnesses ‘liars’ but acknowledged he had no objective reason to do so, and otherwise obstructed the process by leaving the interview before its conclusion.”

SOCIAL MEDIA OVERVIEW

A vast majority of young adults are using social media on a daily basis, which means you will almost certainly come across it during your campus investigations. This overview is designed to give you a sense of what kinds of social media platforms might come up and how they can be useful in obtaining evidence related to your cases.

PRIVACY SETTINGS

Privacy settings on social media apps and websites allow users to change what parts of their profiles and posts are publicly visible. This means that some posts, photos, or videos that are relevant to your case may be visible only to friends of the poster, and not publicly available. Check with witnesses about providing access to posts that they refer to during their interviews.

MESSAGING

Many social media platforms have a messaging feature built in that allows users to send each other messages within the app or website. These messages are only visible to the people involved in the conversation.

EMOJI

Emoji originated in Japan and are now available as built-in keyboards on most mobile devices. Emoji are small icons or shapes that represent different people, animals, objects, etc. Some people use them to communicate specific messages, so clarify with witnesses what they mean when emoji are including in their communication.



HASHTAGS

Hashtags refer to using the pound sign (#) before a word or phrase, as a means of ‘tagging’ it to group it with other related posts. Users can search content by hashtag to find posts related to particular terms or topics.

SCREENSHOTS

A screenshot is a saved image of what is visible on a phone, tablet, or computer screen. Users can take screenshots while viewing social media posts on apps and websites and then send those screenshots to other people, including you.

‘THE CLOUD’

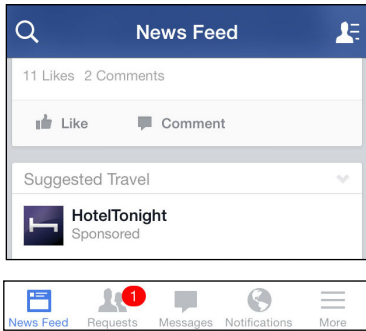
The cloud refers to online storage of apps, photos, settings, etc. Often, the cloud is set up to automatically make backup copies of many files on a user’s device. This allows a user to recover files that they may have accidentally deleted or after a phone is lost or stolen.

SOCIAL MEDIA APPS:



FACEBOOK: The standard in social networking sites.

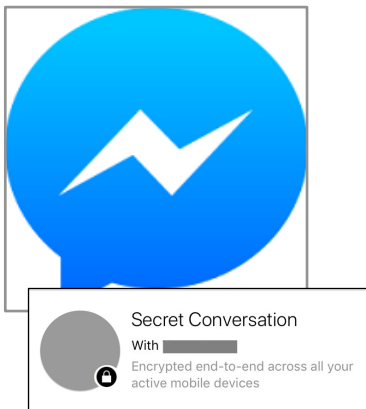
Facebook allows users to create profiles, add friends, and post photos and status updates. Facebook has more than one billion monthly active users.



Facebook users can delete content and/or 'deactivate' their account. Deactivating an account will not delete its data, however, and if a user logs back in, all of their posts and connections will become available to them again.

Facebook has a number of privacy options that limit who can see posts and images, but profile pictures, favorite pictures, and cover photos are public by default and that setting cannot be changed.

Facebook is available through the web or the mobile app.

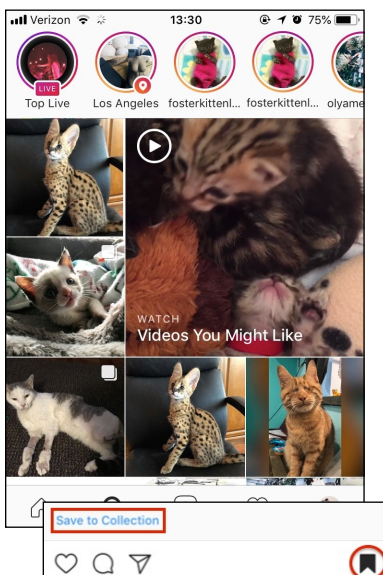


FACEBOOK MESSENGER: Message function for Facebook users.

Allows Facebook friends to have private chats similar to text messaging. Facebook Messenger can be used as a separate app on mobile devices, or can be accessed through Facebook.com. Both parties must delete the message for it to be removed from Facebook.

With messenger, users can see when a person has viewed their messages, and you can see when other users were last active.

Facebook messengers offers "Secret" conversations, which are encrypted, but visible to both users.



INSTAGRAM: Photo and video sharing app.

Instagram is a mobile photo-sharing, video-sharing, and social networking service. Instagram lets users upload photos or videos, apply various filters to their images, and add locations. Users can post to their Stories rather than their profiles; those images and videos are available for only 24 hours. Instagram recently added a feature that allows users to "save" photos that they like of other people and then access them through their own account.

Instagram Direct Message (DM): a messaging feature within the app that allows users to share posts and send and receive messages. This feature is used like other forms of text messaging, and conversations are stored on Instagram unless deleted by the user.

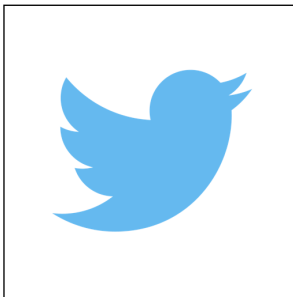
SOCIAL MEDIA APPS CONTINUED:



WHATS APP: Free international messaging app.

WhatsApp messenger is a mobile messaging app that allows users to exchange text messages, images, video, GPS location, and audio using their Wi-Fi or their data plans. WhatsApp is connected to the user's phone number.

The contents of messages sent using WhatsApp are not copied, kept, or archived by WhatsApp. After a message has been delivered, it no longer resides on WhatsApp's servers. Users can manually back up their chats at any time.



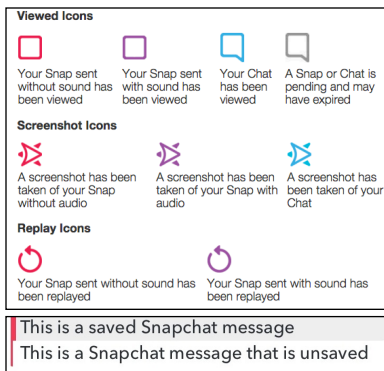
TWITTER: Text posts limited to 280 characters

Twitter is a social network that enables users to send and read short 280-character messages called "tweets." Registered users can read and post tweets, and link to other users and posts. Posts are primarily text based, but can include links to photos, videos, and gifs.



SNAPCHAT: Messages and posts are only viewable for a set amount of time.

Snapchat allows users to send photos, videos, text, and drawings that disappear after 1 to 10 seconds. Many users believe that 'snaps' are no longer available after this period, but Snapchat has a number of different ways to save and view them.



Snapchat content allows replays: users can replay one snap per day. Snapchat Stories are viewable by followers for 24 hours after being posted. Users can view another person's story multiple times during the 24 hour period. Screenshots of snaps can be taken, but the poster of that content is notified.

Snapchat offers a messaging feature which also defaults to destroying messages after they are read. One or both users can save messages in the chat by tapping and holding. Saved messages appear differently than standard messages.



TIK TOK: Networking app for short-form videos

Users can create and post short videos of between 3 and 15 seconds and looping videos of 3 to 60 seconds. Users can like and comment on videos.

SOCIAL MEDIA APPS CONTINUED:



OTHER MESSAGING APPS

The messaging features of Facebook and Instagram are common among college users, though there are many others. Messaging apps allow users to send text, photos, and videos to one another. Most apps are purely social, but some are designed for specific environments, like business use (Slack) or international communication (Viber).

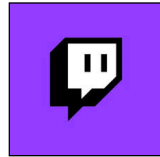


Examples: Kik, Slack, Viber, Signal

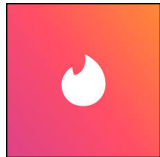


STREAMING AND VIDEO APPS

Users can post videos or 'stream' live videos that viewers can interact with using comments and likes. Most live videos are not saved by default, but users can change the settings to save videos for viewing later.



Examples: YouTube, YouNow, Twitch, Periscope



DATING APPS

Dating apps allows users to connect to each other by 'matching' or 'liking' each other based on photographs and profiles. There are hundreds of dating apps, some specific to religion, attraction type, etc.



Examples: Tinder, Bumble, Grindr, OKCupid