



Conducting Remote Hearings

Ensuring Consistency, Competence, and Compassion

WEBINAR SERIES
Course Material
May 13, 2020



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:

Conducting Remote Hearings

Ensuring Consistency, Competence, and Compassion

Resource Materials

May 13, 2020

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Liz Paris is a Partner with Van Dermeyden 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 Dermeyden 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.

PowerPoint Notes

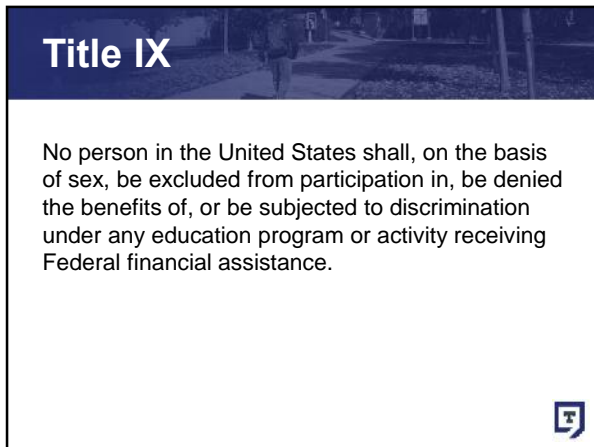








Current Landscape



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.




Where are we right now?

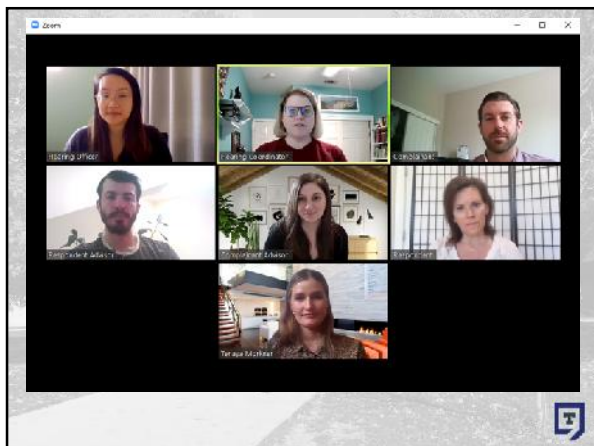
- **Case law:**
 - Hearings required when a party is facing severe sanctions AND credibility is central to the findings (CA)
- **New Regulations:**
 - They're here!
 - Hearings required in postsecondary institutions
 - Fully remote hearings are acceptable

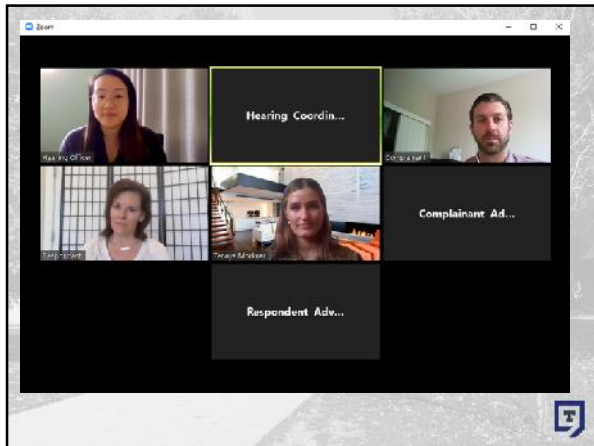


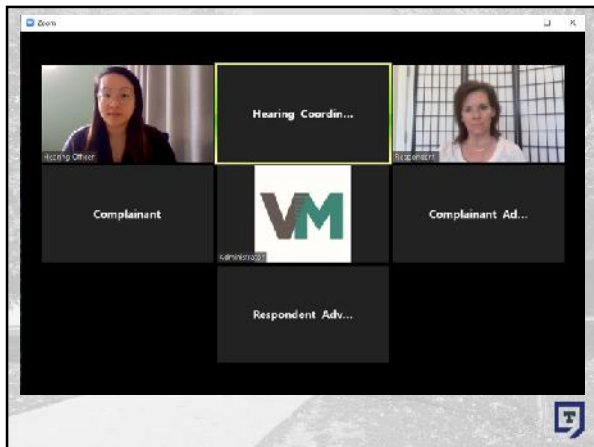
Some Basics

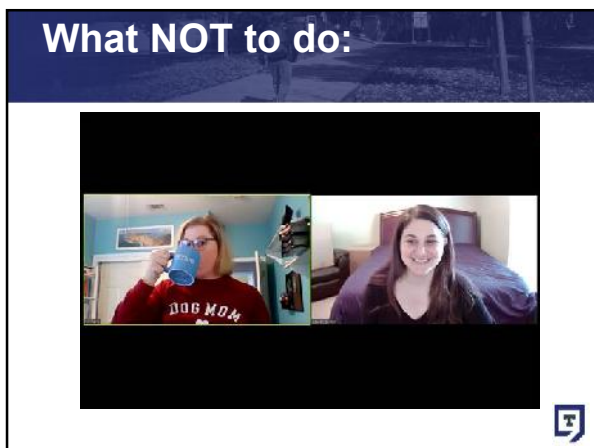
- One meeting host
- Titles versus names
- Recording
- Consider how you appear
- Consider how participants are appearing
- Video and mute











Hearing Considerations

- Space considerations (yes, even in remote hearings)
- Technology considerations
- What role will the Investigator and Investigation Report play?
- Sanctions
- Temporary Restraining Orders
- Ongoing criminal proceedings
- Nonparticipation and No-Shows
- On the record and off the record



Selecting the Hearing Officer



Who Makes the Decision?

- **Panel**
 - Chair
 - Who casts votes?
 - Who writes the decision?
 - Tiebreaking vote?
- **Single Hearing Officer**
 - Internal or external?
 - Consider conflicts of interest
 - What information to provide to the parties?



What to look for in a Hearing Officer

- **Experience**

- Title IX/Student Affairs
- Administrative Hearings
- Investigations

- **Training**

- Frequency and quality
- New requirement to post training materials
- Decision writing component?



Running the Hearing



Must Haves

- Hearing Coordinator
- Reliable technology
- Clear plan to handle questioning
- Contact methods outside of computers
- Tentative schedule



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



Opening Remarks

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



Conducting the Hearing/ Gathering the Evidence

- Opening script
- Investigator testimony
- Opening and closing statements
- Questions from the Hearing Officer
- Role of the Investigative Report
- Questioning witnesses



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 recording has stopped and no parties and advisors are still in the room



Managing the Parties



Remember:

- No matter how sophisticated, how resourced, how nonchalant – this is a tough process!
- 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
 - Think about pre-hearing discussions regarding self-care during and after the hearing





Upcoming T9 Mastered Webinar

NEW TITLE IX REGULATIONS –
Considerations and Next Steps for Your Campus
Wednesday, June 3, 11am PST
Price: \$145 for one hour webinar
Discount: \$120 for prior attendees of T9 Mastered
In this hour-long webinar we will explore the new DOE Title IX regulations and what those regulations mean for your campus.
Go to t9mastered.com to register and follow us on Facebook and Twitter.

Sample Hearing Script

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

This is a Hearing regarding University students COMPLAINANT and RESPONDENT. This Hearing is a confidential closed hearing, which means it is private and not open to the public. This Hearing is being conducted under UNIVERSITY Policy, concerning Sexual Misconduct and Dating Violence. I will utilize the definitions found in this policy when determining if Respondent violated policy.

This hearing is being recorded. The recording represents the sole official verbatim record of the Hearing and is the property of UNIVERSITY. No other recordings shall be made of this hearing.

This is a closed hearing, taking place via videoconference. Those present on this videoconference are:

- 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

I did not identify any other witnesses central to a finding, or whose credibility was central to the allegations/issues raised.

Myself, Complainant, and Respondent are able to see and hear all parties providing testimony. Per UNIVERSITY policy, all participants on this videoconference are reminded of the following:

- You must remain on mute and off-video until you are taken off mute by me.
- Parties are expected to speak for themselves.
- If you have difficulty seeing or hearing the testimony today, or if any other problems arise during the Hearing, please notify our Hearing Coordinator. You can call, email, or text the Hearing Coordinator.

The purpose of this Hearing is to conclude the complaint process involving COMPLAINANT'S DATE complaint. 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

Questioning – I will determine the order of the questioning and I will oversee all questioning during today's hearing. Per Policy, Advisors may directly question the other party, as well as any witness providing testimony.

I have the discretion to review questions posed. I will direct witnesses and parties not to answer any questions I determine are repetitive, harassing, relate to impermissible character evidence, or seek to ascertain non-relevant sexual history. I will notify the parties, on the record, if I determine the posed question should not be answered.

I will decide any procedural issues for the hearing and make any other determinations necessary to ensure an orderly, productive, and procedurally proper hearing. My decisions regarding procedural issues are final. I expect all participants to follow my directions. If any participant fails to follow my directions, or if any participant disrupts the hearing in any manner, I have the discretion to terminate the hearing and/or limit the participation of individual.

I cannot compel participation in today's hearing. However, if a party selectively participates in the process, I may consider that selective participation in evaluating the party's credibility. Additionally, if a party chooses to remain silent, and not provide information or evidence, such actions may limit my ability to fully examine this matter, which may subsequently impact my findings.

After the hearing is completed, I will dismiss the remaining participants, and deliberate in private and reach a decision. 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.

The standard by which I analyze the evidence, and make my decision, is "by a preponderance of the evidence." The "preponderance of the evidence" means it is more likely than not that a violation of policy occurred, based on all the relevant information provided.

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

Are there any questions before we begin?

Credibility Factors

- Inherent Plausibility
- Motive to Falsify
- Direct Corroboration
- Circumstantial Corroboration
- Consistent Statements
- Inconsistent Statements [Caution: trauma informed]
- Material Omission
- Past Record
- Reputation
- Attitude/Demeanor [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/Demeanor. 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-feet-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.”