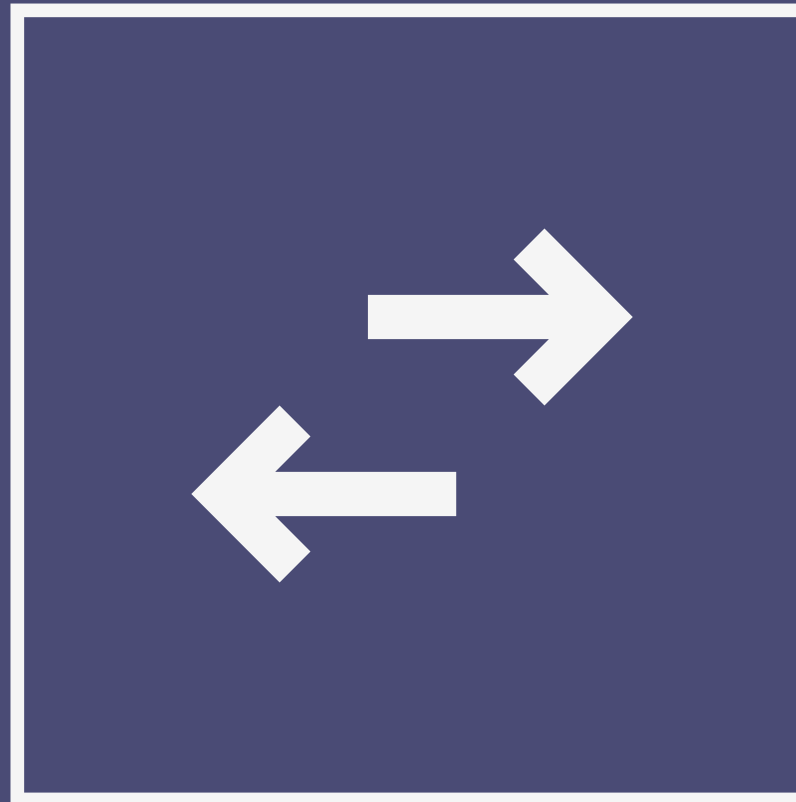


# Understanding Relevance

YES  
NO →

# IN THIS CHAPTER



UNDERSTANDING  
RELEVANCE

# The Importance of Relevance

The Title IX Regulations make it clear that ALL questions asked within a Title IX hearing must be relevant.

What does this mean and how will it be determined?

# When Will the Decision-Maker Rule on Relevance?

The Decision-Maker will be responsible for ruling on the relevancy of EVERY question asked during the hearing. They must also explain any decision to exclude a question as irrelevant.

This may be accomplished in one of two ways:

- 1** Questions may be submitted to the Decision-Maker to review prior to the hearing.
- 2** Decision-Makers may rule on each question before a Witness or Party answers at the hearing.

\*In the K-12 setting, questions may be submitted in writing and "shuttled" between the Parties by the Decision-Maker.

# Questioning Cadence

- Following the Advisor's question, prior to the Party or Witness answering, the Decision-Maker will rule on the relevance of the question
- Can be awkward at first, but provides a pause before an answer is given
- Will become easier as the hearing progresses



# What is Never Relevant Under Title IX?

As outlined in the Title IX Regulations, the following evidence is NEVER relevant:

- "Evidence about a Complainant's prior sexual behavior, except when:
  - Questions and evidence are offered to prove someone other than Respondent committed alleged conduct;" or

## EXAMPLE:

"She has dated, and slept with, me and my roommate in the past. We kind of look alike. She was so intoxicated that she thought I was him and went into his room. It wasn't me. Ask anyone at the party."

# What is Never Relevant Under Title IX?

As outlined in the Title IX Regulations, the following evidence is NEVER relevant:

- "Evidence about a Complainant's prior sexual behavior, except when:
  - Questions and evidence concerning specific incidents of the Complainant's prior sexual behavior with respect to the Respondent are offered to prove consent."

## EXAMPLE:

"We have a safe word during sex. I have an entire email thread about it. We agreed that if we weren't comfortable with something, we would say the word. They never said the word that night and they have every single time we've engaged in something they're not comfortable with. How else would I know that wasn't ok?"

*Note: The same rules do not apply to the sexual predisposition or history of the Respondent*

# What is Never Relevant Under Title IX?

Additionally, "a school's grievance process must not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege."

## EXAMPLES:

- Medical records
- Academic records protected under FERPA
- Conversations with privileged individuals such as counselors or clergy

# Directly Related vs. Relevant

Neither term is explicitly defined in the Title IX Regulations.

## Directly Related

Evidence that is connected to the complaint but **does not** tend to prove or tend to disprove the complaint or allegations.

Example: A receipt from a movie the Complainant and Respondent attended on the night of an alleged sexual assault.

## Relevant

Evidence that is connected to the complaint or allegations that would make a disputed fact more or less probable.

Example: A receipt from a bar the parties attended after the movie showing the Complainant consumed seven mixed alcoholic drinks.

# Directly Related vs. Relevant

Directly related evidence is a broader term than relevant evidence. All directly related evidence is included in the investigation file.

Only relevant evidence, however, is summarized in the investigation report.

Directly  
related

Relevant

# Inculpatory vs. Exculpatory

Witness  
statements

Physical  
evidence such as  
text messages to  
friends bragging  
about the  
conduct

Prior  
complaints  
alleging similar  
conduct

Inculpatory=  
Corroborating Evidence

Inculpatory  
vs.  
Exculpatory

Exculpatory=  
Contradicting Evidence

Physical evidence,  
such as an audio  
recording,  
demonstrating the  
incident did not  
happen as alleged

Respondent  
was with  
someone else  
during incident

Complainant told  
another person  
the conduct  
didn't happen

# Evidentiary Rules of Admissibility

Schools do not have the same rules of admissibility for evidence as courts of law, nor may they impose such rules that would exclude relevant evidence.

What about relevance of the following?

- Polygraph test results
- Voice stress analysis
- Sexual assault forensic exam kits
- Character witnesses
- Expert witnesses

# Relevance Determination Practice

Let's discuss some examples and rule on their relevance:

The Complainant's clothing

Use of alcohol or drugs by any Party or Witness

Emotional state of Parties or Witnesses

Mental health diagnoses of Parties or Witnesses

# Relevance Determination Practice

Let's discuss some examples and rule on their relevance:

Arrest record of a Party or Witness

Criminal record of a Party or Witness

Occupation of a Party or Witness

Prior complaints filed by the Complainant  
(and if so, their disposition)

# Relevance Determination Practice

Let's discuss some examples and rule on their relevance:

Prior complaints filed against the Respondent  
(and if so, their disposition)

Dating history of the Parties

Previous sanctions imposed by the institution or another institution

Party telling a mental health professional they need to apologize

# Relevance Determination Practice

Let's discuss some examples and rule on their relevance:

A Party's grade in class

A statement from the party's coach about outstanding leadership and conduct on the team

# Key Takeaways



Relevancy does not exist in a vacuum. It is contextual, situational, and specific to the fact pattern of the case.



What is relevant in one case will not always be relevant in another. The totality of the circumstances will dictate what is relevant (*with the exception of those items never allowed under Title IX Regulations*).

*Did you find this section relevant?*