

TITLE IX Training

Part 2: Relevance

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What is a Title IX investigation seeking to accomplish?

What happened?
Was there a violation?

Relevance

Information is relevant if 1) it has any tendency to make a fact more or less probable than it would be without the information **(WHAT HAPPENED?)** and 2) the fact is of consequence in the matter **(WAS THERE A VIOLATION?)**.

Fact: e.g. there was consent; a person was present in the room.

Evidence/Information: establishes a fact or not.

How do we determine **WHAT HAPPENED?**

The Basic Questions

- Who?
 - Involved parties (Reporting Party, Respondent), witnesses.

- Where?
 - Locations. Macro and micro levels.

- When?
 - Dates, times, durations, intervals.

- What?
 - The details and sequence of the actions.

Who, Where, When, What . . .

This is what the investigation is trying to establish – are asked in multiple ways of multiple people.

Who was in the room?

The answers to those questions . . .

Provide information which indicates what is more or less probable.

Reporting Party says Persons A and B were in the room. Respondent says only Person C was in the room. Security camera footage shows Person B entered the room.

The fact that Person B was in the room is more probable.

**How do we determine whether
WHAT HAPPENED is OF
CONSEQUENCE?**

Of Consequence? – The Allegations & the Definitions

What does the Reporting Party claim? What prohibited conduct is implicated?

Sexual Harassment

Quid pro quo harassment

Sexual Assault

Domestic Violence

Dating Violence

Stalking

“Unwelcome Conduct”

Sexual Exploitation

The allegations and the definitions establish the initial scope of the inquiry.

A report comes in . . .

Reporting Party states that Respondent is “bothering” them. There is no physical contact, but the Respondent is “always there”.

What does this sound like?

Stalking. Engaging in a course of conduct (two or more acts) directed at a specific person that would cause a reasonable person to: fear for the person’s safety or the safety of others; or suffer substantial emotional distress.

What information is of consequence? What further questions can be asked to find more information that matters?

Further questioning indicates . . .

Reporting Party and Respondent had “been together” last year, but Reporting Party broke it off after “some pictures were taken”.

What does this sound like?

Sexual Exploitation by Recording: recording (whether by photograph, video, audio, or other means) an individual involved in sexual activity or in an intimate or private state of undress without their knowledge or consent. Consent to sexual activity does not equate to consent to the recording of sexual activity.

What information is of consequence? What questions can be asked to find more information that matters?

Of Consequence? – Where?

What is the extra importance of “Where?”

What was the location?

What was the larger context of where the alleged conduct occurred?

How did the institution relate to that context?

What control did the institution have over the circumstances?

Did the alleged conduct occur within an institution’s Educational Program and Activity?

If not, then a Formal Complaint **MUST** be dismissed.

Information is NOT Relevant where it is:

Related to the Reporting Party's sexual disposition or prior sexual behavior,

Unless:

1. Offered to prove that someone other than the Respondent committed the alleged conduct, or
2. Is related to the Reporting Party's prior sexual behavior with respect to the Respondent and is offered to prove consent.

Information is NOT Relevant where is it is:

Protected by a legally recognized privilege.

Derived from a party's medical, psychological, or similar records, unless that party has provided prior written consent.

It is duplicative or repetitive.

Relevance and the role of the Hearing Officer

Evaluate questions for relevance during the hearing and as they are asked. (question – pause for review – answer)

Questions that are NOT relevant must NOT be allowed.

Steps:

1. Does the question seek info in one of the “NOT” categories?
2. Would the information tend to indicate something is more/less probable?
3. Is that something of consequence?

Directly Related

Information is directly related to a Reporting Party's allegations of Sexual Harassment where it has some plausible connection to those allegations. Not all Directly Related information will necessarily be considered Relevant.

How does this compare to Relevant information?

Directly Related v. Relevant

Directly Related

- Some plausible connection.
- Investigation seeks to gather information that is Directly Related.
- Parties review and can respond to all Directly Related information.

Relevant

- More or less probable/of consequence.
- The Investigation Report summarizes the Relevant information gathered.
- The hearing is an opportunity for the parties to ask one another Relevant questions.
- The Final Determination of Responsibility is made based on Relevant information.

Hypothetical – Reporting Party’s Narrative

Allegations ? Definitions?
Directly Related – more questions?
Relevant? Not?

Reporting Party met Respondent for the first time at a party last night. Reporting Party had been drinking alcohol prior to arriving at the party. Reporting Party went to the party with their friend Person A, arriving at about 10:00 pm. Reporting Party and Respondent met, started talking, did some shots together, but Reporting Party can’t remember what they were talking about.

Reporting Party does remember kissing Respondent at some point during the party. Respondent invited Reporting Party back to Respondent’s room. Reporting Party doesn’t remember leaving the party with Respondent, but does remember signing in to Respondent’s residence hall. Inside Respondent’s room, Reporting Party remembers taking off their shoes and then laying down on the floor.

The next thing Reporting Party remembers is waking up in Respondent’s bed. Reporting Party was not wearing pants or underpants when they woke up. Reporting Party is pretty sure they had sex. The next day, Person A told Reporting Party that there were rumors about a picture of Reporting Party.

Reporting Party alleges that Respondent had sex with them without Reporting Party’s consent. Reporting Party would like you to interview Person B because Person B is friends with Respondent and knows what Respondent is like at parties.

Hypothetical – Respondent’s Narrative

Allegations ? Definitions?

Directly Related – more questions?

Relevant? Not?

Respondent arrived at the party around 9:00 pm and had been drinking alcohol before arriving. Respondent met Reporting Party while talking to Person C about geology. They all did tequila shots. Reporting Party asked Respondent whether they could go to Respondent’s room.

On the way, Respondent asked Reporting Party whether Reporting Party was okay. Person C told Respondent to be careful about Reporting Party, that Person C had heard some stories about Reporting Party. Respondent remembers stumbling a few times. At the residence hall entrance, Respondent tripped and fell, cutting their knee and ripping a hole in their pants. In Respondent’s room, Respondent remembers kissing Reporting Party as soon as the door closed.

Reporting Party sat on the floor and mumbled something. Respondent couldn’t hear it and said “What?” Reporting Party answered loudly saying “Let me give you something to remember”. Reporting Party then took off some of their clothes, gave their phone to Respondent and told Respondent to take a picture of Reporting Party. Reporting Party took the phone back and sent the picture to Respondent via text. Reporting Party and Respondent then got undressed and had sex.



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