Title IX Regulations
34 CFR Part 106
Title IX Relevancy Training

• Grievance Process Basic Requirement of objective evaluation of all relevant evidence.
  – Require an objective evaluation of all relevant evidence – including inculpatory and exculpatory evidence – and provide that credibility determinations may not be based on a person’s status as complainant, respondent, or witness.
  34 C.F.R. 106.45(b)(ii)
Independent/Neutral Decision-Maker Responsibilities
106.45(b)(7)

• Decision-maker makes relevancy determinations
  – during the hearing,
  – after each question,
  – and prior to each answer during cross,
  – will need to provide the rationale for any determination that evidence is not relevant
Relevancy and Cross Examination

- Only relevant evidence is considered at the hearing
- Decision-maker must make a determination on relevancy after each question is asked, and before the witness/party responds
- Must provide their rationale for excluding questions on a relevancy basis
- Challenge on relevancy determinations could be a basis for a party to appeal
Relevancy What is It?

Relevance is not defined in the final regulations, therefore the ordinary meaning of the word should be understood and applied.

Definition of Relevance by Oxford Dictionary

“a close connection with the subject you are discussing or the situation you are in”

Evidence pertinent to proving whether facts material to the allegation are more or less likely to be true and that do not relate to complainant's sexual predisposition or prior sexual acts (with two exceptions).
Relevance Is Not

- Strength of the evidence
- Believability of the evidence
- Based on complicated rules of litigation
- Based on type of evidence:
  - Direct
  - Circumstantial
Related-to vs. Relevant

• Related to:
  – Investigator must collect all evidence that is related to the allegations whether or not relevant (excluding evidence subject to privilege; medical records)

• Relevant:
  – Relevant evidence is all evidence related to, except that which is protected under the rape shield provisions (and not otherwise privileged; medical records)
Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.
Questions and evidence about the complainant’s prior sexual behavior are NOT RELEVANT, unless offered to prove:

• “Mistaken Identity”: that someone other than the respondent committed the conduct alleged by the complainant, or

• Consent: concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.

• It is critical to remember that questions about a Complainant’s predisposition are never allowed, they are not subject to the exception.
Making a Relevancy Decision

The question is irrelevant if:

• It calls for prior sexual behavior without meeting one of two exceptions (mistaken identity or consent) or
• Because the question is not probative of any material fact concerning the allegation.
Is This Relevant

- Transcript
- Letter from aunt that the complainant or respondent has always been a nice person
- Polygraph exam
- Photos of respondent making crude gestures
- Photos of complainant drinking alcohol at a party
Is this Relevant, continued

• Respondent to Complainant:
  - How many people have you had sex with?
• Complainant to Respondent:
  - How many people have you had sex with?

Are these relevant questions?
Conclusion

Thank You

Questions?