

***Required Title IX Training That is Required for All Title IX Personnel:
Title IX Coordinator, Title IX Investigator, Title IX Decision-Maker, and
Title IX Appeals Decision-maker.***

Initial Version: August 4, 2020

Revised: August 24, 2021 because of Department of Education notice to all universities

TITLE IX DEFINITION

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.

TITLE IX DEFINITION OF SEXUAL HARASSMENT

Sexual harassment

For the purposes

this term means conduct on the basis of sex that satisfies one or more of the conditions defined below that occurs in a Roseman University educational program or activity against a person in the United States:

- (1) An employee of the University conditioning the provision of an aid, benefit, or conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University;
- (3) of conduct that is prohibited by 34 W.U.E. 12291(c)(10), of conduct that is prohibited by 34 W.U.E. 12291(c)(8), of conduct that is prohibited by 20 W.U.E. 1092(h)(6)(C)(x), or of conduct that is prohibited by 34 W.U.E. 12291(c)(30).

Domestic violence

The following quoted text comes

Sexual harassment: Does not require complainant to already suffer loss of education

Page 524

The Department appreciates the opportunity to clarify that, contrary to many interpretations, the regulations do not require that a complainant has already suffered loss of education before being able to report sexual harassment. This element of the *Davis* standard is not that a person's access to education has been denied, not that a person's access to education has been denied. This element identifies severe, pervasive, objectively offensive unwelcome conduct that deprives the complainant of *equal* access, measured against the access of a person who has not been subjected to the sexual harassment.

class,

Page 525

Neither the Supreme Court, nor the final regulations in § 106.30, requires showing that a complainant dropped out of school, failed a class, had a panic attack, or otherwise responded to sexual harassment. The Department acknowledges that individuals react to sexual harassment in a wide variety of ways, and does not interpret the *Davis* standard to require such a response.

The following references are to the

Davis:

Education Program or Activity

, this includes locations, events, or circumstances over which the university exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the university.

The Department of Education noted in the discussion of the final regulations that the Department of Education will exercise substantial control over all of the academic, educational, extra-curricular, athletic, and other programs of the school, whether they take place in the facilities of the school, on a school bus, at a class or training program sponsored by the school at another location, or any other location.

The Department of Education explained in the discussion of the final regulations that the Department of Education will exercise substantial control over the use of, and computer hardware or software owned or operated by, or used in the operations of, the university. A student using a personal device to perpetrate online sexual harassment during class time may constitute a circumstance over which the University exercises substantial control. The Department of Education final regulations apply to sexual harassment perpetrated through use of cell phones or the internet if sexual harassment occurs on campus or at a location controlled by the university.

The Department of Education noted in the discussion the final regulations that a student organization, alone, does not conclusively determine whether all of the events and actions of the students in the organization become a part of an education program or activity.

The Department of Education noted in the discussion of the final regulations that official recognition of a student organization, alone, does not conclusively determine whether all the events and actions of the students in the organization become a part of an education program or activity.

General Approach to Title IX Interviews

- The Title IX Investigator will remain neutral during all interviews without signaling agreement
- *Vj g kpvgtxkgy gta tqrg is not to determine responsibility*, therefore, listen to each party and witness without judgment
- Explain the *vj g r wtr qug qh vj g kpvgtxkgy ku vq i cvj gt kphqto cvkpp cpf vj g eqo r nckpwpwu* statement. Let the party and the witnesses know that you are not there to find fault or blame.
- *F qpøvqvej c r ctv\ qt c y kpguu f wtkpi cp kpvgtxkgy*
- Allow a party or witness to tell their story with enough detail that the person is firm and committed before you ask follow-up questions
- Interview each witness privately, do not interview witnesses in a group
- Do not promise a witness confidentiality
- **FQP ØV LECTURE A PARTY OR A WITNESS DURING AN INTERVIEW**
- Do not react with surprise or shock at what anyone tells you. Some people will admit to engaging in certain behavior if you respond non-judgmentally
- Each party and each witness *hau vj g tki j v vq uc{ ðkø f qpgö cvcp{ vko g f wtkpi vj g r tqeguu*
- The key to a good interview is *planning ó plan*: what are the questions you are going to ask?
- Plan relevant interview questions in advance. Anticipate follow-up questions
- When conducting an interview, obtain as many details as possible. Compare where the complainant's and respondent's stories don't match up.
- Focus on at least these three questions:
 - 1) What were the sexual harassing behaviors? Was there force or coercion involved?
 - 2) Who was the initiator of these sexual harassing behaviors?
 - 3) Was there consent / was consent possible?
- Let each party and witness know you may need to conduct follow-up interviews
- Try to make each party feel comfortable in the interview space
- Avoid an environment and an interview style that feels like an interrogation
- *Tghgevdcmey j cv{ qwøxg j gctf*

- Consider using the following open-ended phrases:

Uq y j gp {qwuc{í j gr o g wpf gtucpf y j cv{qwo gcp d{ y j cv?

When you wug y j g y qtf (u)í y j cvf qgu y j cvo gcp wq {qu?

Uq Kó j gctkpi í ku y j cvceewtcvg?

- Allow parties to explain what happened (but, do not tell them tell you what a reasonable

- Become comfortable with using objective, non-slang, names for body parts and sexual acts
Use terms *svej cu õr gpküö qt õxci kpcö*

ó Learn the language that parties use

- Ask each party for their account of the time(s) in question, their relationship with the other party (if deemed relevant) before probing for additional details
- Ask each party for names of individuals who can provide relevant, first-hand accounts about the allegation. *Explicitly tell each party you do not want the names of individuals*

GuideliQq4q4q4q4q4q4q4q4q414-

The Investigative Report

Suggested (*but not required*) framework/roadmap/template for a Roseman Title IX Investigative Report:

- Names and Titles of Title IX Investigator(s)
- Date of Final Version of Report
- Executive Summary
Example text:

The report is the product of an investigation conducted by Roseman University Title IX investigators regarding allegations that the respondent, John Doe, engaged in sexual harassment that violated the Roseman University Title IX Policy. The purpose of this report is to advise the Roseman University Title IX Decision-maker of the findings of the neutral and impartial investigation into the formal complaint made by the complainant against the respondent.

- List and provide brief Background information about the parties and witnesses
- Summary of allegations
Example text:

Ugzwncucwncufghpfd{ Tqugo cp Wpkxgtukv{ ou Vkrng KZ r qrlk{ which reads:
Sexual assault
Means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

- Interview summaries
- Summary of other relevant evidence
- Investigative Findings
Example text:

may participate in the proceedings, as long as the restrictions apply equally to both parties;

5) Provide, to a complainant,

Investigator has sent the Title IX Investigative Report at least ten (10) business days prior to a hearing to the complainant and respondent, the Title IX

Hearing

Vj g F gr ctvo gpvqhGf wecvkpa hpcntgi wrcvku pu tgs wktg vj cvvj g Wpkxgtukv au grievance process provides for a live hearing. Title IX hearings may be conducted with all parties r j { ulecmf r tgugpvk vj g uco g i gqi tcr j k nqecvqp qt, cvvj g Vkrq KZ Eqqtf kpcvt au discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

Title IX hearings are not open to the public. Only individuals determined by the Title IX Coordinator as being necessary to conduct the hearing will be granted access. A person assisting a party with a disability, or a language interpreter, may accompany a party to the j gctkpi , kpcf f kkp vj g r ctv au cf xkuqt, dgecwug vj g r tgugpeg qhc r gtuqp cuukvpi c r ctv with a disability at the hearing is required by law and/or necessary to conduct the hearing.

At the request of either party, the Title IX Coordinator must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the Title IX decision-maker and parties to simultaneously see and hear the party or the witness answering questions.

The Title IX Decision-maker presides over this hearing and has the right to impose reasonable rules of conduct and decorum on all parties participating in the hearing, including reasonable time limits. The Title IX Decision-maker shall not allow the complainant, the respondent, and witnesses to be subjected to insulting treatment, including inappropriate comments, during the hearing. The Title IX Decision-maker has discretion to adopt rules governing the conduct of hearings that could, for example, include rules about the timing and length of breaks requested by parties or advisors and rules forbidding participants from disturbing the hearing by loudly conferring with each other. However, the parties have the right to reasonably consult with their advisor during a hearing.

The complainant and the respondent have the right, but are not required, to make opening and closing statements during the hearing. The Title IX Decision-maker has the right to establish and enforce rules for time limits, relevance, and civility for opening and closing remarks. Advisors are not allowed to make opening and closing statements on a eqo r kpcpv au qt tgr qp f gpv au dgj crh

The complainant and the respondent have the right to directly raise an objection to the tgrxcpeg qhgxf gpeg kvtqf vegf f wtkpi vj g j gctkpi (kg., vj g{ f qpovj cxg vj cumvj gk cf xkuqt to raise an objection on their behalf). An advisor does not have the right to make objections on a complkpcpv au qt tgr qp f gpv au dgj crh. Chgt c Vkrq KZ F gekukqp-maker rules on a eqo r kpcpv au qt tgr qp f gpv au qdlgevqp vj g tgrxcpeg qhgxf gpeg f wtkpi vj g j gctkpi , vj g Title IX Decision-o cngt au twkpi uj cmdg hpcn However, a complainant and/or respondent has the right to cite this decision if a party chooses to file an appeal with the Title IX Appeals Decision-maker.

C r ctv ecppqv hkgö cp cuuk pgf cf xkuqt f wtkpi vj g j gctkpi , dwkh vj g r ctv eqttgevn cuugtu that the assigned advisor is refusing to ðeqpf wevetquu-gzco kpcvqp qp vj g r ctv au dgj crh then the Title IX Coordinator or Title IX Decision-maker is obligated to provide the party an

advisor to perform that function, whether that means counseling the assigned advisor to perform that role, or stopping the hearing to assign a different advisor.

Title IX requires the University to create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review. However, the Department of Civil Rights and Liberties may refuse to provide a copy of the recording or transcript.

Cross Examination

É Cross-examination at the live hearing must be conducted directly, orally, and in real time by an advisor acting on behalf of the complainant or respondent personally, notwithstanding the right of the Title IX Decision-maker to use discretion to otherwise restrict the extent to which advisors may participate in the proceeding. The Title IX Decision-maker may also ask questions of witnesses and questions to be asked of other parties and witnesses.

É At the live hearing, the Title IX Decision-maker (and a Title IX Investigator can be called as a witness), all relevant questions and relevant follow-up questions, including those challenging credibility. If a party does not have an advisor present at the live hearing, the Title IX Coordinator or the Title IX Decision-maker must provide without fee or charge to that party, or to the party's attorney, to conduct cross-examination on behalf of that party.

É Cross-examination may occur even when the party whom they are advising does not appear. Similarly, where one party does not appear and that party's advisor does not appear, a Title IX personnel-provided advisor must still cross-examine the appearing party, resulting in a finding of responsibility for the appearing party (inference being drawn based on the non-appearance). Because the statements of the appearing party were tested via cross-examination, a fair, reliable outcome can result in such a situation.

É The Title IX Decision-maker may adopt rules of order or decorum to forbid badgering a complainant, respondent or witness, and may fairly deem repetition of the same question to be irrelevant. When the manner in which

É If a party objects to a question asked by the Title IX Decision-maker (for example, by insisting on yelling at the other party), the Title IX Decision-maker may require that party to use a different advisor. Similarly, if an advisor that the Title IX Coordinator provides refuses to comply with a Title IX Decision-maker's order of decorum, the Title IX Coordinator may provide that party with a different advisor to conduct cross-examination on behalf of that party.

É Only relevant cross examination and other questions may be asked of a party or witness. Questions and evidence about a party's or witness's prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence are offered to prove consent.

É Before a complainant, respondent, or witness answers a cross-examination or other question, the Title IX decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The requirement for an explanation does not require the decision-maker to give a lengthy or complicated explanation; it is sufficient, for example, for the decision-maker to explain that a question is irrelevant because the question calls for prior sexual behavior information without meeting one of the two exceptions, or because the question asks about a detail that is not probative of any material fact concerning the allegations. No lengthy or complicated exposition is required to satisfy this provision.

É A complainant, respondent or advisor does not have the right to object to the Title IX Decision-maker's ruling. However, a complainant and/or respondent has the right to cite this decision if a party chooses to file an appeal with the Title IX Appeals Decision-maker.

questions but video evidence exists showing the underlying incident, the Title IX Decision-maker may still consider the available evidence and make a determination. ~~If a party or witness makes a statement in the video, then the Title IX Decision-maker may not rely on the statement of that party or witness in reaching a determination regarding responsibility.~~ The Title IX Decision-maker may consider video evidence that does not constitute statements or to the extent that the video contains non-statement evidence.

*Per an email from the U.S. Department of Education <ed.gov@public.govdelivery.com>
Sent: Tuesday, August 24, 2021 1:44 PM
Subject: Update on Court Ruling about the*

The Department of Education noted that on July 28, 2021 a federal district court in Massachusetts issued a decision in *Victim Rights Law Center et al. v. Cardona*, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021). The federal court's email explained that:

The court explained that the prohibition against statements not subject to cross-examination of the part of § 106.45(b)(6)(i) regarding the prohibition against statements not subject to cross-examination. Postsecondary institutions are no longer subject to this portion of the provision.

In practical terms, a decision-

É

ÉVj g Vkrig KZ Eqqtflpcvqt kutgur qpukdrig hqt vj g ghgevkxg ko r ngo gpwvqp qhcp{ tgo gflgu.

ÉVj g Vkrig KZ Eqqtflpcvqt j cu vj g tki j vq ngr uwr r qtvkxg measures in place even after a determination that a respondent is not responsible, so complainants do not necessarily need to be left in constant contact with the respondent, regardless of the result of the Wpkxgtukv{ ou i tkxcpeg r tgegua.

ÉThe Department of Education noted in the discussion of the final regulations that it declines to require a university to offer remedies for respondents in situations where a

Grievance Process: Investigation: Do a thorough search for evidence under constraints of designated, reasonably prompt timeframes

Page 973-974

The Department believes that the scope of § 106.45(b)(5)(i) appropriately obligates a recipient to undertake a thorough search for relevant facts and evidence pertaining to a particular case, while operating under the constraints of conducting and concluding the investigation under designated, reasonably prompt time frames and without powers of subpoena. We expect the recipient to make reasonable efforts to gather evidence while reasonably expecting the recipient to gather evidence that is available.

Grievance Process: Investigative Report: Only DOE requirement for investigative report is that it fairly summarize relevant evidence

Page 1039

The Department takes no position here on such elements beyond what is required in these final regulations; namely, that the investigative report must fairly summarize relevant evidence. We note that the decision-maker has a responsibility that must contain certain specific elements (for instance, a description of procedural steps taken during the investigation) and so a recipient may wish to instruct the investigator to include such matters in the investigative report, but these final regulations do not prescribe the contents of the investigative report other than specifying its core purpose of summarizing relevant evidence.

Grievance Process: Evidence: No comprehensive rules of evidence, no subpoena power

Page 1483-1484

The grievance process in § 106.45 does not have all of the same protections as a court

HOW TO:

- **SERVE IMPARTIALLY**
- **AVOID PREJUDGMENT OF THE FACTS AT ISSUE**
- **AVOID BIAS**

Title IX personnel must serve impartially, avoid prejudgment of the facts at issue, not have a bias for or against complainants or respondents generally, or an individual complainant or respondent and will not rely on sex stereotypes.

Title IX personnel will remain neutral during all meetings, Title IX interviews, and the hearing.

Title IX personnel will listen to each party and witness without judgment.

Title IX personnel will reflect on and use the issues presented below to promote impartial investigations and adjudications of formal complaints of sexual harassment.

Bias

ÉVj g F gr ctvo gpvqhGf wecvkqp f qgu pqvf ghkg vj ku term in the final regulations.

ÉVj g Wplxgtukv{ cf qr wu vj g hqmy kpi f ghpkkqp qhdku htqo vj ku rlpmq vj g P cvkqpcn
Institutes of Health: <https://diversity.nih.gov/sociocultural-factors/implicit-bias#:~:text=Bias%20consists%20of%20attitudes%2C%20behaviors,or%20group%20compared%20to%20another.>

Bias consists of attitudes, behaviors and actions that are prejudiced in favor of or against one person or group compared to another. *Implicit bias* is a form of bias that occurs automatically and unintentionally that nevertheless affects judgments, decisions, and behaviors.

Sex Stereotyping

Sex stereotyping occurs when an individual has a preconceived idea about how someone should be, act, or behave on the basis of gender.

An example of sex stereotyping:

É Treating someone differently because he or she does not act masculine or feminine enough based on predetermined ideas of what it means to be either masculine or feminine. Common gender stereotypes include things like expecting males to be tough, aggressive, or unattached or expecting females to be more sensitive, more emotional, and not aggressive.

Sexual stereotypes about men and women that pertain to sexuality include (but is not limited to):

Men are more sexual than women.

Women are not that interested in sex.

Men have more sexual experiences and fantasies than women do.

Women are not as sexually active as men.

ÉCuuuu gcej kpvgtxky ggau tgrvqpuij kr vq yj g r ctvku and consider whether bias is playing a role in their statements

ÉAssess the level of detail and consistency of each person's account ó compare the versions of the descriptions of the events to identify the differences

ÉAssess each person's credibility by examining if corroborative evidence is lacking where it should logically exist.

ÉHow did this person become aware of the information the person knows? Was the person present at the event ó did the person directly observe and/or hear the event?

ÉDoes this person have a motivation to lie and/or to protect someone?

ÉFqgu yj kú r gtuqpau ucvgó gpvo cng ugug i kxg yj g tgr qtú qhqvj gt r gqr rg?

ÉIs the information provided by this person consistent with other known facts?

Do not allow the following issues to influence the perception of a party or witness:

ÉWillingness to cooperate and behavior during the interview is NOT AN INDICATOR of credibility. A party or witness may be reluctant to testify because they are afraid of retaliation, shame, etc.,

ÉThere is no "right way" for a complainant to behave

A rape victim doesn't need to cry when talking to an investigator, he/she may be in a state of shock

ÉThere is no "right way" for a respondent to behave

A respondent may be stressed / anxious during an interview not because he/she is guilty, but because he/she is afraid of the process

ÉCharacter witnesses do not help establish credibility

Having other people who did not directly observe the event tell you, "Person A is a good person, person A would never lie, etc.," doesn't mean that Person A is credible *in this situation*

ÉA person's "likeability" or popularity doesn't mean a person is credible. [The mass murderer Ted Bundy was charming.]

ÉA person's lack of a disciplinary record or satisfactory academic performance doesn't mean that the person is credible *in this situation*

**HOW TO:
- AVOID CONFLICTS OF INTEREST**

Grievance process: evidence: Must be directly related to allegations

Page 1017

Non-~~v~~gcw g~~p~~vtgeqtfu~~cp~~f k~~h~~to~~cv~~q~~p~~, u~~we~~j cu~~c~~ r~~ct~~v{~~o~~ h~~o~~pc~~e~~kn~~q~~t ug~~z~~wcn~~j~~ k~~u~~q~~t~~{, o w~~u~~vdg directly related to the allegations at issue in order to be reviewed by the other party under §106.45(b)(5)(vi), and all evidence summarized in the investigative report under E106.45(d)(5)(xk) o w~~u~~vdg ö~~t~~g~~r~~x~~c~~p~~v~~ö u~~we~~j v~~j~~ cv~~g~~x~~k~~f g~~p~~eg cd~~q~~wc eqo r~~ck~~pc~~v~~u~~u~~g~~w~~cn predisposition would never be included in the investigative report and evidence about a eqo r~~ck~~pc~~v~~u~~u~~r~~t~~kor sexual behavior would only be included if it meets one of the two narrow exceptions stated in § 106.45(b)(6)(i)-(ii) (deeming all questions and evidence about a eqo r~~ck~~pc~~v~~u~~u~~g~~w~~cnr t~~g~~f k~~u~~r k~~u~~k~~q~~p ö~~p~~q~~v~~t~~g~~r~~x~~c~~p~~v~~ö~~ cp~~f~~ c~~m~~s w~~g~~u~~k~~q~~p~~u cp~~f~~ g~~x~~k~~f~~ g~~p~~eg cd~~q~~wc cqo r~~ck~~pc~~v~~u~~u~~r~~t~~qt ug~~z~~wcnd~~g~~j c~~x~~k~~q~~t ö~~p~~q~~v~~t~~g~~r~~x~~c~~p~~v~~ö~~ y k~~j~~ v~~y~~ q~~h~~o k~~g~~f g~~z~~eg~~r~~ k~~q~~p~~u~~).

Grievance Process: Investigation: Decision maker must consider relevant evidence only

Page 1135

The Department appreciates the opportunity to clarify here that the final regulations do not allow a recipient to impose rules of evidence that result in exclusion of relevant evidence; the decision maker must consider relevant evidence and must not consider irrelevant evidence.

Grievance Process: Evidence: Relevance is single admissibility rule

Page 1190-1191

Instead, the Department expects decision-makers to apply a single admissibility rule

with two concrete exceptions. This approach leaves the decision-maker discretion to assign weight and credibility to evidence, but not to deem evidence inadmissible or excluded, except on the ground of relevance (and in conformity with other requirements in § 106.45, including the provisions discussed above whereby the decision-maker cannot rely on

Grievance Process: Investigative Report: Investigator only has to summarize relevant evidence
Page 1194

Title IX Investigator - How to Fairly Summarize Evidence

Investigative Report

ÉO gcpu vj g hqto cnkpxguki cvkxg tgr qtvj cvhckn{ uwo o ctkt gu tgrgxcpvxkf gpeg vj cvku
completed by the individual designated as the Title IX Investigator.

May 2020, Final Regulations (the page number listed refers to the page number of the
n of the

ADDITIONAL TRAINING SPECIFICALLY REQUIRED FOR TITLE IX DECISION-MAKER

- TECHNOLOGY USED AT LIVE HEARING

- ISSUES OF RELEVANCE OF QUESTIONS AND EVIDENCE

- HOW TO OBJECTIVELY EVALUATE ALL RELEVANT EVIDENCE

**-HOW NOT TO MAKE CREDIBILITY DETERMINATIONS BASED ON A
STATUS AS A COMPLAINANT, RESPONDENT OR WITNESS BEFORE MAKING A
DETERMINATION OF RESPONSIBILITY**

TECHNOLOGY USED AT A LIVE HEARING

Roseman University will use Zoom software to conduct Title IX Live Hearings.

The Title IX Decision-maker will familiarize themselves with Zoom features and how to hold a hearing using Zoom by visiting this link: <https://www.zoom.us/>.

ISSUES OF RELEVANCE OF QUESTIONS AND EVIDENCE

Please review section: Title IX Investigator - Issues of Relevance

The follow

Hearing: Protections for sexual assault victims during hearing

Page 1090

however, the we believe that § 106.45(b)(6)(i) anticipates the potential for retraumatization of sexual assault victims and mitigates such an effect by ensuring that a complainant (or respondent) can request being in separate rooms for the entire live hearing (including during cross-examination) so that the parties never have to face each other in person, by leaving recipients flexibility to design rules (applied equally to both parties) that ensure that no party is questioned in an abusive or intimidating manner, and by requiring the decision-maker to determine the relevance of each cross-examination question before a party or witness answers.

Training: Decision-maker

Page 1158-1159

D{ eqpvtcu, vj g fgekukppo cngtø qpñ gxf gpvct { vj tguj qrf hqt cf missibility or exclusion of questions and evidence is whether the question or evidence is relevant ó not whether it would then still be excluded under the myriad of other evidentiary rules and exceptions that apply under, for example, the Federal Rules of Gxf gpeg. Y j kq vj kú r tqxkukpp f qgu tgs wktg ðqp vj g ur qvö f gvgto kpcvkpu cdqwc s wgvkppø tgrgxcpeg, **the decision-maker must be trained in how to conduct a grievance process, specifically including how to determine relevance within the scope of this prov**

Contrary to some eqo o gpvgtuøcuugt vkpu, lwf i gu kþ ekxkncpf etko kpcnvtlcnu qhgp f q o cng ðqp vj g ur qvö relevance determinations, **and while this provision requires the decisionmaker to**

Department believes that this provision will aid parties in having confidence that Title IX decision-makers are appropriately considering all relevant evidence. The final regulations contemplate that decision-makers often will be laypersons, not judges or lawyers.

Hearing: Decision maker must explain why question was irrelevant. Relevance is determined by logic and common sense

Page 1159

D{ eqpvtcu, c r { r gtuqpø f gvgto kpcvkpp vj cvc s wgvkpp kú pqvtgrgxcpvkú o cf g d { cr r n { kpi logic and common sense, but not against a backdrop of legal expertise. Thus, an explanation of how or why the question was irrelevant to the allegations at issue, or is deemed irrelevant by these final regulations (for example, in the case of sexual predisposition or prior sexual behavior information) provides transparency for the parties to understand a decision-o cngtø relevance determinations

behavior with others

Page 1196

and the second applies narrowly to allow **sexual behavior questions or evidence concerning incidents between the complainant and respondent if offered to prove consent. The second exception does not admit sexual history**
be **or implication**
that a woman with an extensive sexual history probably consented to sexual activity with the respondent, is not validated or promoted by this provision.

Grievance Process: Evidence: Rape Shield does not apply to respondents. Respondents past sexual behavior must be evaluated for relevance similar to other evidence

Page 1196-1197

The Department reiterates that the rape shield language in this provision does not pertain to the sexual predisposition or sexual behavior of respondents, so evidence of a pattern of inappropriate behavior by an alleged harasser must be judged for relevance as any other evidence must be.

Grievance process: Evidence: Rape Shield: Someone else committed assault or behavior between complainant and respondent established consent are only exceptions to relevance rule

Page 1197

this r tqxkukqp crtgcf { f ggo u kttgrgxcpcvms wguvkpu qt gxkf gpeg qhc eqo r rckpcpwur tkqt
sexual behavior unless offered t

HOW TO OBJECTIVELY EVALUATE ALL RELEVANT EVIDENCE

Sexual harassment: use reasonable person standard

Page 477

Elements of severity, pervasiveness, and objective offensiveness must be evaluated in light of the known circumstances and depend on the facts of each situation, but must be determined from the perspective of a reasonable person standing in the shoes of the complainant. The final regulations revise the second prong of the § 106.30 definition to state that the *Davis* elements must be determined under a reasonable person standard.

Grievance Process Evidence: gather relevant evidence, inculpatory and exculpatory r irrelevant with two exceptions, and preclude use of legally recognized privilege

Page 811

While the proposed rules do not speak to admissibility of hearsay,¹⁰¹⁷ prior bad acts, character evidence, polygraph (lie detector) results, standards for authentication of evidence, or similar issues cPr3l. 612 45r-3(e (or 71ET12 0 TJv)3ETQq0.00000912 0 (c)nBfi/F3 a re/F1g(e)4(naBT/F

Grievance Process: Investigation: *Decision maker has the right to ask questions on their own initiative*

Page 1114

The Department believes that § 106.45(b)(6)(i) prescribes an approach that is both proactive and reactive, for the benefit of the recipient and both parties; **that is, the decision-maker has the right and responsibility to ask questions and elicit information from parties and witnesses on the decision-**

Grievance Process: Evidence: Rape Shield does not apply to respondents. Respondents past sexual behavior must be evaluated for relevance similar to other evidence

Page 1196-1197

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Page 1702-1703

Where sexual harassment is alleged in the education program or activity of a PSE institution, § 106.45(b)(6)(i) requires the recipient to adjudicate the allegations by holding a live hearing, with cross-examination and fo/F3 12 Tf1 0 0 1 489.82 695.02 Tm0 g0 G[()] TJETQ EMC n00912 0 61rt12 1

Training: personnel must refrain from drawing conclusions until conclusion of truthfulness until conclusion of grievance process

Page 873

A critical feature of a fair grievance process is that Title IX personnel refrain from drawing conclusion of the grievance process; therefore, the Department declines to impose a presumption that either party (or both parties) are credible or truthful.

Hearing: Judging credibility is done by jurors as functions of common sense rather than legal expertise

Page 1083

the Department notes that judging credibility is traditionally left in the hands of non-lawyers without specialized training, in the form of jurors who serve as fact-finders in civil and criminal jury trials, because assessing credibility based on factors such as witness demeanor, plausibility, and consistency are functions of common sense rather than legal expertise.

Hearing: Advisor for complainant can be appointed to conduct cross examination on behalf of absent complainant if respondent is at hearing

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Further, as noted above, if a complainant still does not wish to appear or be cross-examined, an appointed advisor may conduct cross-examination of the respondent (if the respondent does appear) so that a decision-o cngt qpnf eqpukf gtu vj g t gur qpf gpwu uc vgo gpv kh vj g statements have been tested for credibility.

Rescinded by Department of Education August 24, 2021 because of Federal Court Decision
~~subjected to cross~~

examination

~~Page 1175~~

~~Cross-examination might be admissible in a civil or criminal trial under rules of evidence that apply in those contexts, the Department has determined that such untested~~

~~statements will not be relied on by the decision-maker, but the Department believes that any determination reached under this provision will be more reliable than a determination reached based on sta~~