



## Level Two

# TITLE IX DECISION-MAKER TRAINING





- 
- We are not giving you legal advice. Consult with your legal counsel regarding how best to address a specific situation.
  - Use the chat function to ask general questions and hypotheticals.
  - While this training satisfies both annual Clery training and the generally applicable topics required by the Final Title IX regulations, it does not cover institution-specific grievance procedures, policies, or technology.
  - This training is not being recorded, but we will provide you with a packet of the training materials to post on your websites for Title IX compliance.



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- Questions are encouraged
  - “For the sake of argument...” questions help to challenge the group, consider other perspectives, and move the conversation forward
  - Be aware of your own responses and experiences
  - Follow-up with someone if you have any questions or concerns
  - Take breaks as needed





- Yes!
- The “recipient” is required by §106.45(b)(10)(i)(D) to post materials used to train Title IX personnel on it’s website
- We know this and will make this packet available to you electronically to post.



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Under the new Title IX regulations, recipients who receive federal funds must provide live cross-examination hearings before any determination and discipline can be issued



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Specifically, the new Title IX regulations require training of decision-makers on the following, which we will be discussing throughout this training in 106.45(b)(1)(iii):

- Jurisdiction: understanding “the scope of the recipient’s education program or activity” (Level1)
- Definitions of “sexual harassment” under the new Title IX regulations (Level1)
- How to conduct a live cross-examining hearing. (30320)



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- How to serve impartially, including by avoiding prejudgment of the facts at issue, bias and conflicts of interest
    - Avoiding stereotypes (Level 1 and review here)
  - Training on any technology to be used at a live hearing\*
  - The grievance process for the decision-maker's institution\*





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- **Relevance** determinations (not Rules of Evidence)



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- How to objectively evaluate all relevant evidence, including inculpatory and exculpatory and make decisions on relevancy (30320)
    - Inculpatory: evidence that tends to prove the violation of a policy
    - Exculpatory: evidence that tends to exonerate the accused





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Under Clery Act, must receive **annual** training on:

- Issues related to sexual assault, domestic violence, dating violence, stalking (Level 1)
- How to conduct an investigation and hearing process that protects the safety of victims and promotes accountability (Level 1 and today)





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Traditionally, cross examination questions are those that try to elicit “yes” or “no” answers, not explanations.

Examples:

- You witness the MM a y >



- Essential for truth seeking (30313)
- Provides opportunity of both parties to



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- Provides parties with the opportunity to “direct the decision-maker’s attention to **implausibility, inconsistency, unreliability, ulterior motives, and lack of credibility**” in the other party’s statements. (30330)
  - Promotes transparency and equal access (30389)





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According to the Department, the process in 106.45 best achieves the purposes of:

- (1) effectuating Title IX's non-discrimination mandate by ensuring **fair, reliable outcomes** viewed as **legitimate** in resolution of formal complaints of sexual harassment so that victims receive remedies
- (2) **reducing and preventing sex bias** from affecting outcomes; and
- (3) ensuring that Title IX regulations are consistent with **constitutional due process and fundamental fairness**  
(30327)





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In this process:

- Decision-maker must permit each party's advisor to ask the other party and any witnesses **all relevant**



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- Before a party or witness may answer a question, the decision-maker must first determine whether the question is relevant and explain the reason if not relevant
  - Must audio record, audio-video record or provide a transcript of the hearing



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- Regulations prohibited consideration of statements from parties or witnesses that are not subject to cross-examination (34 CFR 106.45(b)(6)(i))
  - September 4, 2020 Q&A clarified that failure of a party or witness to answer even one question on cross-examination meant that none of the statements of the party or witness could be considered in the decision





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The preamble discussion provides some additional information on protecting neutrality of the **decision-maker**:

“To the extent that **a party wants the other party questioned in an adversarial manner** in order to further the asking party’s views and interests, that questioning is conducted by the party’s own advisor, **and not by the recipient**. Thus, no complainant (or respondent) need feel as though the recipient is “taking sides” or otherwise engaging in cross-examination to make a complainant feel as though the recipient is blaming or disbelieving the complainant.” (30316)



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- Obtain **factual admissions** helpful to your party's case.
  - **Corroborate the testimony** of your party's witnesses.
  - Minimize the other party's case by *impeachment of witness* being questioned.
  - Minimize the other party's case by *impeachment of other witnesses* through the witnesses being questioned.
  - Reduce **confusion and seek truth.**







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- Perception and Recall

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- What is the witness's perception of the facts?

- Has Time impacted recall or ability to remember clearly?

- How many times has the witnesses talked to the other party about this case?

- Was there anything that impacts the person's as th M



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- Example: Intoxication level information from witness.
    - You did not see the consumption, or keep track of how



- Inconsistency in statements
  - If a fact was very important, why is the hearing the first time it has come up?
  - What possible reasons might the witness have for changing



- 
- Lack of Corroborating Evidence
    - Example: Missing receipts...
      - You testified that you were drinking with the Complainant on the night of the incident?
      - You testified that you paid for the alcohol?
      - You paid with your credit card?
      - But you did not provide the receipt to the investigator?
      - You didn't even provide access to your credit card statement?



Not





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Party or witness **cannot** answer a question until the decision-maker determines whether it is relevant.

- Requires decision-makers to make “on the spot” determinations and explain the “why” if a question or evidence is not relevant (30343)











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Under the **clear and convincing** standard of evidence:

- Does this help me in deciding if a fact is highly probable to be true?
- Does it make it more or less probable?
- Why or why not?

If it doesn't move this dial: likely not relevant.



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The Rules of Evidence do NOT apply and CANNOT apply

“[T]he decision-maker’s only evidentiary threshold for admissibility or exclusion of questions and evidence is 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 Evidence.” (30343)



## Examples:

- No reliance of statement against a party interest (30345)
- No reliance on statement of deceased party (30348)
- A recipient may not adopt a rule excluding relevant evidence whose **probative value is substantially outweighed by the danger of unfair prejudice** (30294)



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**Recipient** must ensure that “all *relevant* questions and evidence are admitted and considered (though varying weight or credibility may of course be given to particular evidence by the decision-maker).” (30331)

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The Department has determined that recipients must consider relevant evidence with the following exceptions:

- (1) Complainant's sexual behavior (except for two narrow exceptions)
- (2) information protected by a legal privilege
- (3) party's treatment records (absent voluntary written waiver by the party) (30337)





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- According to 34 C.F.R. 106. 45(b)(6)(i), Cross-examination **must exclude** evidence of the Complainant’s “sexual behavior or predisposition” **UNLESS**
    - its use is to prove that someone other than the Respondent committed the conduct, OR
    - it concerns specific incidents of the







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Section 106.45(b)(1)(x):

A recipient's grievance process *a i ghÅ bch* *require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of*, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.



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Other typical privileges recognized across jurisdictions but with variations (will want to **involve your legal counsel for definitions in your jurisdiction**):

- Attorney-client communications
- Implicating oneself in a crime



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When parties do not participate:

- “If a party or witness does not submit to cross-examination at the live hearing...the decision-maker(s) cannot draw an inference about the determination regarding responsibility **based solely** on a party’s or witness’s absence from the live hearing or refusal to answer cross-examination or other questions.” 34 C.F.R. 106.45(b)(6)(i).



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When parties elect not to participate, a recipient cannot retaliate against them (30322)

What if a party or witness gave a statement during the investigation but is not participating in cross-examination?

- “Must not rely on any **statement** of that party or witness in reaching a determination”



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If parties do not testify about their own statement and submit to cross-examination, **the decision-maker will not have the appropriate context for the statement**, which is why the decision-maker cannot consider that party's statement.

(30349)









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Third party cross-





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“[E]ven though the refusing party’s statement cannot be considered, the decision-maker may reach a determination based on the remaining evidence so long as no inference is drawn based on the party or witness’s absence from the hearing or refusal to answer cross-examination (or other) questions.” (30322)

Example: “[W]here a complainant refuses to answer cross-examination questions but video evidence exists showing the underlying incident, a decision-maker may still consider the available evidence and make a determination” (30328)



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- But, if a party or witness does not submit to cross examination and makes a statement in a video, cannot consider that statement in the video to reach a decision on responsibility (30346)
  - Remember: No rules of evidence can be imported



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- This expressly means no statements in police







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- What about sex stereotyping questions?
  - What about questions by advisor about why a party isn't participating?
  - What about decorum?



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The preamble to the Title IX Regulations contains many discussions of an institution's discretion to set rules to maintain decorum throughout hearings and to remove non-complying advisors, parties, or witnesses.

Note: In our experience, we have seen decorum issues more commonly with advisors than parties...and have seen this equally on both sides. This is more likely to be an issue when family members serve as advisors, because, understandably, these can be emotional matters.





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“[W]here the **substance of a question is relevant**, but the manner in which an advisor attempts to ask the question is **harassing, intimidating, or abusive (for example, the advisor yells,**

**)**, the recipient may appropriately, evenhandedly enforce rules of decorum that require relevant questions to be asked in a respectful, non-abusive manner.”

(30331)



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“The Department acknowledges that predictions of **harsh, aggressive, victim-blaming** cross-examination may dissuade complainants from pursuing a formal complaint out of fear of undergoing questioning that could be perceived as interrogation. However, recipients retain discretion under the final regulations to educate a recipient’s community about what cross-examination during a Title IX grievance process will look like, including developing rules and practices (**that apply equally to both parties**) to oversee cross-examination to **ensure that questioning is relevant, respectful, and non-abusive**







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Okay, decision-maker, is this question relevant?

For practice, we will pose these in cross-examination format. As discussed before, the traditional cross-examination style is aimed at eliciting a short response, or a “yes” or “no,” as opposed to open-ended question which could seek a narrative (longer) response.

For example, instead of, “How old are you?” the question would be, “You’re 21 years old, aren’t you?”





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For each practice hypothetical, ask yourself:

**Is this question relevant or seeking relevant information?**

- Why or why not?
- Does the answer to this depend on additional information?
- If it so, what types of additional information would you need to make a relevancy determination?



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*Disclaimer: The following hypotheticals are not based on any actual cases we have handled or of which we are aware. Any similarities to actual cases are coincidental.*



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“Cameron, texted Riley the week before telling Riley that you wanted to have sex with them, didn’t you?”



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“Cameron, isn’t it true you usually have sex with Riley while intoxicated?”



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“Riley, did your attorney tell you not to answer that question?”



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“Riley, did you tell your counselor that Cameron was unresponsive during sex during the alleged incident?”



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“Cameron, are you choosing not to answer my questions because you lied to investigators?”







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“Riley, isn’t it true you texted Cameron the next day to see if Cameron was mad at you?”







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“Cameron, you could be wrong about that timeline, right?”



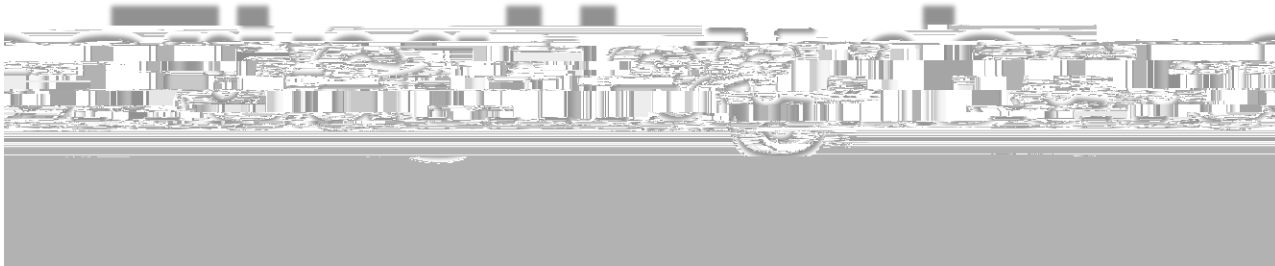
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“Cameron, you had consensual sex with Riley the next night, didn’t you?”



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“Cameron, your witness, Wyatt, didn’t even show up today, right?”





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- Can have in one room if a party doesn't request separate rooms and recipient chooses to do so.
  - Separate rooms with technology allowing live cross examination at the request of either party
  - “At recipient’s discretion, can allow any or all participants to participate in the live hearing virtually” (30332, see also 30333, 30346) explaining 106.45(b)(6)(i)







- An advisor of choice may be an attorney



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If a party does not have an advisor present at the live hearing, the recipient **must provide** without fee or charge to that party, an advisor \_\_\_\_\_, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.  
(106.45(b)(6)(i) and preamble 30339)



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- Advisors do not require Title IX Training, however a recipient may train its own employees whom the recipient chooses to appoint as party advisors (30342)
  - A party cannot “fire” an appointed advisor (30342)
  - “But, if the party correctly asserts that the assigned advisor is refusing to ‘conduct cross-examination on the party’s behalf’ then the recipient is obligated to provide the party an advisor to perform that function, whether counseling the advisor to perform the role or stopping the hearing to assign a different advisor” (30342)



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- Regulations permit a recipient to adopt rules that (applied equally) do or do not give parties or advisors the right to



- 
- Not in the hearing, unless required by law (30339) **BUT July 2021 Q&A allows for support persons for the parties**
  - “These confidentiality obligations may affect a recipient’s ability to offer parties a recipient-provided advisor to conduct cross-examination in addition to allowing the parties’ advisors of choice to appear at the hearing.”
  - ADA accommodations-required by law
  - CBA require advisor and attorney?





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- Order of questioning parties and witnesses – not in regulations
    - Consider time restraints on witnesses
    - Questioning of Complainant
    - Questioning of Respondent





- 
- The neutrality of the decision-maker role is and the role of the advisor to ask adversarial questions, protects the decision-maker from having to be neutral while also taking on an adversarial role (30330)
  - “[P]recisely because the recipient must provide a neutral, impartial decision-maker, the function of adversarial questioning must be undertaken by persons who owe no duty of impartiality to the parties” (30330)



- 
- BUT “the decision-maker has the right and responsibility to ask questions and elicit information from parties and witnesses on the decision-makers own initiative to aid the decision-maker in obtaining relevant evidence both inculpatory and exculpatory, and the parties also have equal rights to present evidence in front of the decision-maker so the decision-maker has the benefit of perceiving each party’s unique perspective about the evidence.” (30331)



- 
- Ruling on relevancy between every question and answer by a witness or party
    - Assumption that all questions are relevant unless decision-maker otherwise states irrelevant? Risky.
    - Set expectation that party or witness cannot answer question before decision-maker decides if relevant.
      - Pros: helps diffuse any overly aggressive or abusive questions/resets tone
      - Cons: may lengthen hearing



- 
- “[N]othing in the final regulations precludes a recipient from adopting a rule that the decision-maker will, for example, send to the parties after the hearing any revisions to the decision-maker’s explanation that was provided during the hearing.” (30343)





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- Pre-hearing conference – helps inform parties and set expectations – have one separate with each party and the party’s advisor
  - Provides opportunity to address issues common to both parties:
    - Parties and their representatives will often not understand the process: help educate and answer questions (again, know your institution’s grievance process)
    - Jurisdictional challenges: perhaps less of an issue with new jurisdictional terms—many issues were related to off-campus extension of jurisdiction (may tell advisor that you will provide the opportunity for advisor to state on the record at the hearing)



- Parties may want to add evidence and witnesses that were not in the investigation for the first time at the hearing (perhaps outside of the process).



- 
- Responsible for running an orderly and fair hearing.
  - A script can serve as a checklist of everything the decision-maker wants to cover and a cheat sheet for reminders of allegations, alleged policy violations, and elements of the alleged policy violations
  - Helps ensure rights, responsibilities, and expectations are set
  - Helps provide consistency between one hearing and the another
  - Helps provide transparency
  - Can even have a separate one for prehearings





- 
- Evaluating each question for relevancy before a party or witness can answer can help set the tone
  - Remind parties about expectations of



- 
- Preamble discusses the use of breaks to allow parties to recover from panic attacks or emotional questioning
  - Also helpful to reset tone and reduce emotion and tension
  - Can use to review policy and procedures to address relevancy issues that arise



- 
- Do you have the information you need on each element to be able to evaluate the claims?
  - Consider neutral phrasing of questions:
    - “In the report you said... Help me understand...”
    - “You stated... Tell me more about that.”
    - “Could you give more information about what happened before/after...”



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## Hearing panel:

- Identify one person on the panel to make relevancy rulings
- Identify one person to draft the decision (for review of other panel members)
- Determine how panel members will ask questions (e.g., will only one person ask the questions or will panelists take turns?)





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- As addressed in the preamble and discussed earlier, the decision-maker should evaluate:



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**credibility** (30315)



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(030330)



- 
- Standard of Evidence: Preponderance of the Evidence or Clear & Convincing
  - Must use same standard for formal Title IX complaints against both students and employees (including faculty) for all policies and procedures with adjudication for sexual harassment complaints (e.g., union grievances procedures, faculty conduct)
  - Must begin with a presumption of no violation by Respondent.



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The preamble discussion includes the following additional information on credibility:

- “Studies demonstrate that inconsistency is correlated with deception” (30321)
- Credibility decisions consider “plausibility and consistency” (30322)





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## Considerations:

- Statements by any witnesses to the alleged incident
- Evidence about the relative credibility of the complainant/respondent
  - The level of detail and consistency of each person's account should be compared in an attempt to determine who is telling the truth
  - Is corroborative evidence lacking where it should logically exist?



- Evidence of the complainant's reaction or behavior after the alleged harassment
  -





- 
- Other contemporaneous evidence:
    - Did the complainant write about the conduct and reaction to it soon after it occurred (e.g. in a diary, email, blog, social media post)?
    - Did the student tell others (friends, parents) about the conduct and their reaction soon after it occurred?
  - **Again, only if subjected to cross-examination**



- 
- Keep an open mind until all statements have been tested at the live hearing
  - Don't come to any judgment, opinion, conclusion or belief about any aspect of this matter until



- 
- You must render a sound, reasoned decision on every charge
  - You must determine the facts in this case based on the information presented
  - You must determine what evidence to believe, the importance of the evidence, and the conclusions to draw from that evidence



- 
- You must make a decision based solely on the relevant evidence obtained in this matter and only statements in the record that have been tested in cross-examination
  - You may consider nothing but this evidence

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- You must be impartial when considering evidence and weighing the credibility of parties and witnesses
  - You should not be swayed by prejudice, sympathy, or a personal view that you may have of the c0.251170.008 4..251BDC gg EMC /P AMCID





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- The quality of evidence is not determined by the volume of evidence or the number of witnesses or exhibits.
  - It is the weight of the evidence, or its strength in tending to prove the issue at stake that is important.
  - You must evaluate the evidence as a whole based on your own judgment.



- Decision-makers who are trained to perform that role means that the same well-trained decision-maker will determine the weight or credibility to be given to each piece of evidence, and how to assign weight (30331)



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The preamble provides in the discussion:

“[W]here a cross-examination question or piece of evidence is relevant, but concerns a party’s character or prior bad acts, under the final regulations **the decision-maker cannot exclude or refuse to consider the relevant evidence, but may proceed to objectively evaluate that relevant evidence by analyzing whether that evidence warrants a high or low level weight or credibility,** so long as the decision



- 
- You must give the testimony and information of each party or witness the degree of importance you reasonably believe it is entitled to receive.
  - Identify all conflicts and attempt to resolve those conflicts and determine where the truth (standard or review/proof) lies.



- 
- Consider the reasonableness or unreasonableness, or probability or improbability, of the testimony.
  - Does the witness have any motive?
  - Is there any bias?



- Credibility is determined fact by fact, not witness by witness
  - The most earnest and honest witness may share information that turns out not to be true





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Use the your standard of evidence as defined by your policy when evaluating whether someone is responsible for each policy violation and **ALWAYS** start with presumption of no violation.

- Preponderance of the evidence: a fact is more likely than not to be true (30373 fn. 1409)
- Clear and convincing: a fact is highly probable to be true (30373 fn. 1409)





- Look to all the evidence in total, and make judgments about the weight and credibility, and then determine whether or not the burden has been met.
- Any time you make a decision, use your standard of evidence



- Don't consider the potential impact of your decision on either party when determining if the charges have been proven.
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Written determination must include:

- Identification of the allegations potentially constituting sexual



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Include key elements of any potential policy violation so parties have a complete understanding of the process and information considered by the recipient to reach its decision (30391) – should “match up” with decision (30391)







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- Statement of rationale: requiring recipients to describe, in writing, conclusions (and reasons for those conclusions) will help prevent confusion about how and why a recipient reaches determinations regarding responsibility (30389)
  - The requirement of “Transparent descriptions of the steps taken in an investigation and explanations of the





- 
- Institution's procedures and permissible bases for complainant and respondent to appeal
  - Provided to both parties in writing contemporaneously (106.45(b)(7)(ii))







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The preamble discussion notes that it does not “expressly require the written determination to address evaluation of contradictory facts, exculpatory evidence, all evidence presented at a hearing, or how credibility assessments were





- 
- Could someone unfamiliar with the incident pick up the decision and understand what happened?
  - Make no assumptions that the reader will understand certain aspects of the community
  - Write for a judge and jury to understand with no prior background



- 
- Include any decisions made that exclude information as not relevant and the explanation given in hearing
  - Check to ensure that your report does not contain any information you are prohibited from including?



- Will the parties feel heard?
- Will the parties feel blamed?
- Will the parties feel vilified?
- Will the tone otherwise inflame the parties unnecessarily?
- Maintain neutral, evidence-driven tone.





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- Maintain a non-judgmental tone
  - Stay away from charged words of advocacy:
    - Clearly/obviously
    - Innocent/guilty
    - Victim/perpetrator
  - Watch your adjectives and adverbs – unless they are in a quote
  - Recognize the impact of your words



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- Set the scene visually (will help identify inconsistencies in stories)
  - Use quotation marks carefully
  - Include details to the level that you can thoroughly understand what it looked like
  - Be careful of pronoun usage so that we always know who is saying or doing what





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Respondent engaged in sexual intercourse with Complainant from behind.





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Complainant stated that  
Respondent jacked himself off,  
then gave him a blow job.





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John stated that Alice told him to  
“knock it off.”





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On a scale of 1 to 10,  
Respondent was a “level 4 kind  
of drunk.”



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There was no evidence to support Complainant's assertion that the activity was without consent.



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During the mediation,  
Respondent admitted to the  
misconduct and promised not to  
do it again.



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Professor Clark indicated that he had never known Respondent to commit sexual misconduct at 2:00 in the morning in the back of a bar before.



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Respondent stated that  
Complainant was diagnosed  
with bipolar disorder and that the  
complaint was “all in his head.”



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When Respondent asked if Complainant wanted oral sex and Complainant said, “That’s OK,” that was clear indication of the Complainant’s consent.

Being impartial, avoiding bias and conflict of interest



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A decision-maker needs to recognize that a party **should not be** “unfairly judged due to inability to recount each specific detail of an incident *in sequence*, whether such inability is due to trauma







- 
- Department declined to determine whether bias has to be actual or if perceived is sufficient to create an issue
  - Each specific bias issue requires a fact-specific analysis

(30252)



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# No single-investigator model for Title IX





- “[R]ecipients **should have objective rules** for determining when an adjudicator (or Title IX Coordinator, investigator, or person who facilitates an informal resolution) is **biased**, and the Department **leaves recipients discretion to decide how best to implement the prohibition**” (30250)
- Recipients have the discretion to have a process to raise bias during the investigation
- Bias is a basis for appeal of decision-maker’s determination (34 C.F.R. 106.45(b)(8)(i)(C))





- 
- No *per se* prohibited conflicts of interest from using employees and administrative staff, including supervisory hierarchies (30352)
    - but see portion about decision-makers and Title IX Coordinator as supervisor
  - No *per se* conflict of interest or bias for professional experiences or affiliations of decision-makers and other roles in the grievance process (30353)



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## The preamble discussion:

- Provides as an example that it is **not a *per se* bias or conflict of interest to hire professionals with histories of working in the field of sexual violence** (30252)
- Cautions against using generalizations to identify bias and conflict of interest and instead recommends **using a reasonable-person test** to determine whether bias exists



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“[F]or example, **assuming that all self-professed feminists, or self-described survivors, are biased against men, or that a male is incapable of being sensitive to women, or that prior work as a**





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“[T]he **very training required by 106.45(b)(1)(iii)** [that **you are sitting in right now**] is intended to

- provide Title IX personnel with the tools needed to serve impartially and without bias
- such that the prior professional experience of a person whom a recipient would like to have in a Title IX role
- need not disqualify the person from obtaining the requisite training to serve impartially in a Title IX role.”

(30252)



- Department also **cautioned** parties and recipients from **concluding bias** or possible bias “based solely on the **outcomes of grievance processes** decided under the final regulations.”  
(30252)
- Explained that this means, \_\_\_\_\_  
**certain number of outcomes result in determinations of responsibility, or non-responsibility, does not necessarily indicate**  
\_\_\_\_\_  
(30252)



- 
- Situations where a decision-maker has already heard from a witness or party in a prior case and has made a credibility determination re: that person;
  - Situations where information “gleaned” by the investigator is shared with the decision-maker outside the investigation report (in meetings to discuss pending cases, in passing while at work, etc.)





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Decision-makers are trained to avoid bias and sex stereotypes—

- “such that even if a cross-examination question impermissibly relies on **bias or sex stereotypes** while attempting to challenge a party’s plausibility, credibility, reliability, or consistency,
- **it is the trained decision-maker**, and not the party advisor asking a question,
- **who determines whether the question is relevant if it is relevant**, then evaluates the question and any resulting testimony in order to reach a determination on responsibility” (30325)



- 
- “Must” not rely on sex stereotypes: Also helpful to avoiding pre-judgment of facts, remaining unbiased and impartial
  - Examples of sex stereotypes in comments (30253):
    - Women have regret sex and lie about sexual assaults
    - Men are sexually aggressive or likely to perpetrate sexual assault
    - Consideration of marginalized groups: people with disabilities, people of color, people who identify in the “LGBTQ” community (30259-30260)



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The preamble discussed a particular study referred to by commenters about a “common tactic” in defense of sexual assault remains the “leveraging rape myths” when cross-examining rape victims (30325)

- However, the preamble discussion determines that this is a broader societal issue, a not an issue with cross-examination as a tool for truth-seeking







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- Individual cases are not about statistics
  - Decision in every case must be based on preponderance of evidence or clear and convincing evidence presented
  - Cannot fill in evidentiary gaps with statistics, personal beliefs or information about trauma
  - Process must be fair and impartial to each party
  - Institution may proceed without active involvement of one or both parties; base conclusions on impartial view of evidence presented



- 
- **Withhold pre-judgment:** The parties may not act as you expect them to
  - Be aware of your own biases as well as those of the complainant, respondent, and witnesses
  - Let the available facts and standard of proof guide your role in overseeing the live cross-examination hearing, not unfair victim-blaming or societal/personal biases



- 
- Burden of gathering the evidence on the recipient, not the parties (30333)
  - should be an issue with investigation, but might be something you see as the decision-maker

