ISSUES OF RELEVANCE FOR TITLE IX INVESTIGATORS:

How to ensure legally sound, trauma-informed, and policy-compliant relevance determinations

2026

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TITLE IX PROCESS IN HIGHER EDUCATION

Live hearing	Role Separation	Due Process & Fundamental Fairness
Including live cross-examination through advisors	Investigator, Decision-Maker, and Advisor are different individuals	Constitutional right to fair legal treatment and the standard of justice required in the process

ROLE OF THE INVESTIGATOR

01

Sort evidence appropriately

02

Identify relevant evidence during investigations

03

Sort evidence appropriately

04

Document relevance decisions clearly in reports

Your job is not to determine responsibility, but to gather relevant evidence fairly and completely.

Correctly apply the principles of relevance

RELEVANCE DEFINED

(Federal Rule of Evidence 401 Test for Relevant Evidence)

Evidence is relevant if:

- It has a tendency to make a fact more or less probable than it would be without the evidence
- The fact is of consequence in determining the action

Does this evidence make a material fact more or less likely?

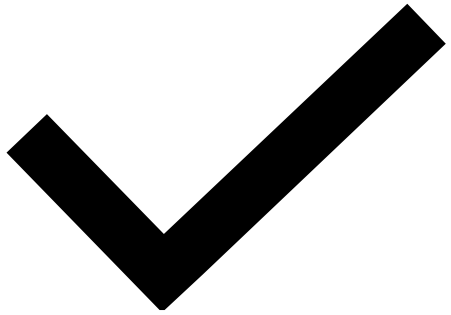
RELEVANT EVIDENCE

Tends to make a fact more or less probable than it would be without the evidence

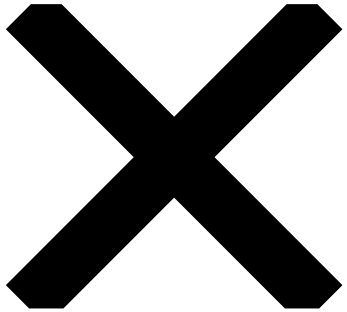
Logical connection between the evidence and the alleged conduct

Assists in coming to the conclusion – is it "of consequence?"/linked to policy elements

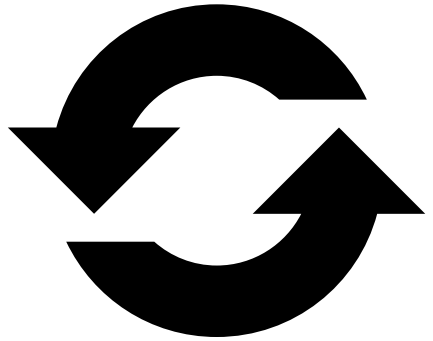
GATHERING RELEVANT EVIDENCE



Relevant



Irrelevant



Directly Related

EXAMPLES OF RELEVANT EVIDENCE

Testimony from a neutral witness (such as a resident assistant) that, earlier the same evening of the alleged conduct, Complainant asked the RA whether they could stay in a vacant room because they "didn't feel comfortable being alone" with Respondent after Respondent repeatedly insisted they go back to the Respondent's room.

Card swipe data showing the time at which Respondent had entered the residence hall, as Respondent had stated that he left the party at 1 pm and returned to his residence hall room to study, and the incident being investigated occurred at approximately 11:30 pm at a party across campus.

A long text thread between Complainant and a witness in which Complainant's texts start to fill with typos and non-sensical words, considered to help determine whether Complainant had the capacity to consent after consuming many drinks at a party.

DIRECTLY RELATED OR NO?

Directly Related →

Evidence that is Directly Related might be vaguely related to the case, but does not necessarily prove or disprove what is alleged.

Why produce more than relevant evidence? →

We want to provide the parties with the broadest view of the evidence, so they know all that was gathered by the investigator as part of the investigation.

EXAMPLES OF DIRECTLY RELATED EVIDENCE

Directly Related but NOT relevant

Let's suppose the Complainant and Respondent first met each other at a campus event, and they later went to a bar downtown to have drinks, and Complainant alleged that after returning to campus the Respondent fondled Complainant without consent. A text thread between a witness and Complainant about whether they are planning to attend that particular campus event and what they might wear could be Directly Related, but is not relevant to the allegations.

Directly Related AND relevant

Security camera footage from the hallway outside the Respondent's residence showing Complainant and Respondent entering together and leaving separately within the timeframe of the alleged incident.

APPLYING RELEVANCE STANDARDS CONSISTENTLY: ASSESSING CREDIBILITY & RELIABILITY

Department emphasizes in the Preamble that investigators have discretion to determine relevance at the investigation stage.

The ultimate determination of relevancy will be made by the decision maker at the hearing phase.

The final investigation report and all the evidence collected must be provided to the parties and the decision maker.

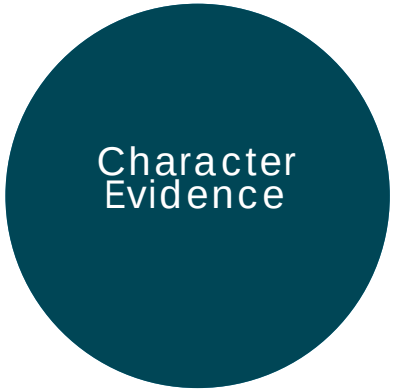
MANDATORY EXCLUSIONS: EVIDENCE YOU CANNOT INCLUDE OR CONSIDER

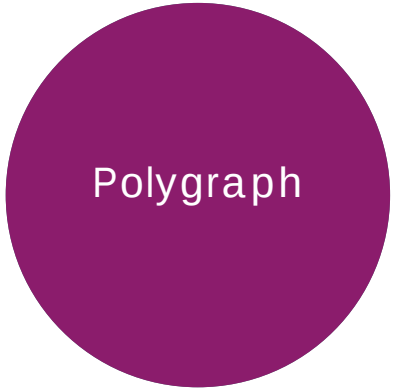
- Evidence about a complainant's sexual history is prohibited with two limited exceptions.

- Privileged information without written consent is prohibited.

WEIGHT AND RELEVANCE

Relevance determines what evidence is admissible



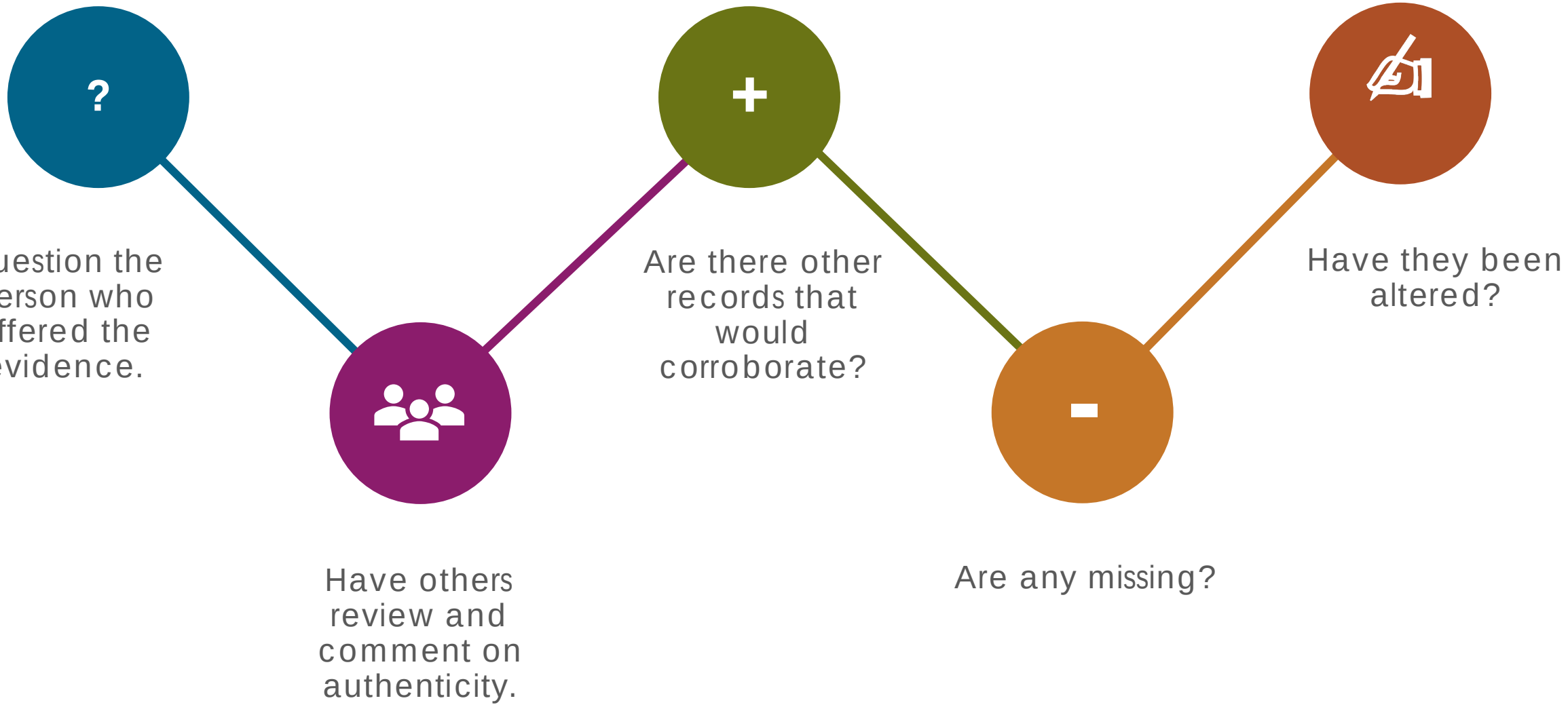


Consult institution's policy and procedure and carefully assess if it is relevant

Widely accepted as unreliable. Conduct an individual assessment on its relevance

May be relevant but is mostly unreliable unless the factual basis for the opinion is explored

APPLYING RELEVANCE STANDARDS CONSISTENTLY: IS IT AUTHENTIC?



APPLYING RELEVANCE STANDARDS CONSISTENTLY: THINGS TO AVOID

1. **Avoid credibility shortcuts**
2. **Avoid assumptions based on trauma responses**
3. **Avoid outcome-driven reasoning**
4. **Take a neutral approach**

SCOPE OF RELEVANCE-RELEVANCE VS CURIOSITY

- **As an investigator think ahead about what information the decision maker will need:**
  - What will the decision maker be asked to decide?
  - What does the formal complaint allege?
  - What are the elements of each alleged act of prohibited conduct?

- **Relevancy:**
  - Focus on the alleged conduct, policy definitions, and elements.

- **Curiosity—Avoid probing into**:
  - Sexual preferences
  - Mental health unless directly relevant
  - Character unrelated to allegations

TRAUMA INFORMED RELEVANCE

Investigators should keep an open mind and avoid immediately interpreting seemingly inconsistent behaviors as deception.

An understanding of trauma is essential to a fair and thorough investigation.

The department permits the use of trauma-informed practices and recognizes that trauma-informed practices can be used in an impartial and non-biased manner.

COMMON CHARACTERISTICS OF DISCLOSURES DUE TO TRAUMA

- Inconsistencies in memory or details
- Changes in timeline
- New details over time
- Difficulty recalling peripheral details
- Inconsistent emotional reactions
- Confusion about dates or order of events

IN CONCLUSION...

- Investigator's role must be a separate role
- Gather relevant evidence fairly and completely
- Relevant evidence lends itself to making a material fact more likely than not
- How to categorize evidence
- Mandatory exclusions
- Importance of thinking ahead throughout investigation
- Ensure evidence is authentic
- Use a trauma informed lens for investigation and relevancy determinations

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