

Relevancy of Questions and Evidence



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Relevancy and Evidence

- Fact-finders should determine the "facts" based on the relevant evidence presented at the hearing.
- Fact-finders must address conflicting evidence that bears on the outcome of the proceeding.
- The relevancy and admissibility of any evidence offered at the hearing shall be determined by the Hearing Officer, whose ruling shall be final.

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What is relevant evidence?

- Evidence is relevant if:
 - a. It has any tendency to make a fact more or less probable than it would be without the evidence; and
 - b. The fact is of consequence in determining the action.

Rule 401 Federal Rules of Evidence

The Hearing Officer **has the discretion** to determine the relevance of any witness or documentary evidence and may exclude information that is **irrelevant, immaterial, cumulative, or more prejudicial than informative.**

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What Evidence Should (not) be Considered?

- The formal rules of evidence do not apply, but the evidence must be relevant.
- Questions and evidence about the Complainant's pre-disposition or prior sexual behavior are not relevant, unless offered to prove that someone other than the Respondent committed the alleged conduct.
- Evidence concerning specific incidents of the Complainant's prior sexual behavior with respect to the Respondent is not relevant unless it is offered to prove consent.
- Character evidence is of limited utility and should not be admitted unless relevant.
- Incidents or behaviors of a party not directly related to the alleged conduct should not be considered unless it shows a pattern of related misconduct that is deemed relevant.
- Records of a party made or maintained by a physician or similar professional in connection with the provision of treatment to a party may not be used without the party's express consent.
- Information protected under a legally recognized privilege shall not be allowed, relied upon or otherwise used unless the person holding the privilege has waived that privilege.

Questioning of parties and witnesses at a hearing under 600.030

- A Party is subject to direct cross-examination by the other Party's Advisor; the Parties may not directly question each other.
- A Party's Advisor will be permitted to ask the other Party and any witnesses relevant questions and follow-up questions, including those challenging credibility.
- Before a Party or witness answers a question, the Hearing Officer must determine whether the question is relevant.
- If a question is excluded as not relevant, the Hearing Officer must explain the decision to exclude that question.
- Where the Hearing Officer permits a question to be answered, there is a presumption that the Hearing Officer found the question to be relevant.
- The Parties' Advisors may object to questions on limited grounds as set forth in the Rules of Decorum.

Cross-examination and questioning of parties and witnesses under 600.030

- No Party or witness can be forced to participate in the 600.030 process, including testifying at a hearing.
- If a Party or witness fails to submit to cross-examination at a hearing, the Hearing Panel shall not rely on any statement of that Party or witness in reaching a determination regarding responsibility.
- The Hearing Panel shall not draw any inference about the determination regarding responsibility based solely on a Party's or witness's failure to submit to cross-examination.

Presumption of Not Responsible & Preponderance of Evidence

Presumption of Not Responsible/ Standard of Proof

- The Respondent is presumed not responsible for a policy violation.
- A determination regarding responsibility is made at the conclusion of the Title IX/ Equity process; the Respondent remains not responsible for a violation until they have been proven responsible.
- The Standard of Proof under CRR 600.030 is Preponderance of the Evidence.
