

# Presumptions, Burdens & Evidentiary Issues

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Equity & Title IX Annual Volunteer Training



University of Missouri System  
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# **THE PRESUMPTION**

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## PRESUMPTION OF NON-RESPONSIBILITY

- Respondent is **presumed not responsible** for any violation; determination regarding responsibility should be made *only* at the conclusion of the process after consideration of the relevant evidence.
- Fact-finders are not charged with finding a *particular* outcome.
- Fact-finders should avoid pre-conceived notions and consider *only* the information provided during the process.



# **THE BURDEN OF PROOF**

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## BURDEN OF PROOF

**What is “Burden of Proof?”**

The level of certainty and degree of evidence necessary to establish a policy violation.



# BURDENS OF PROOF

- *Beyond a Reasonable Doubt*: “firmly convinced”
- *Clear and Convincing*: “substantially more likely than not”
- **Preponderance of the Evidence**: “more likely than not”; 50%+
  - This is the standard of proof in the Title IX and Equity Resolution processes.



## PREPONDERANCE OF THE EVIDENCE

- This preponderance is based on the **more convincing evidence and its probable truth or accuracy and not on the amount of evidence.**
- ... A preponderance of evidence has been described as “just enough” evidence to make it more likely that the fact the claimant seeks to prove is true.



# **THE EVIDENTIARY ISSUES**

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# TYPES OF EVIDENCE

## DIRECT EVIDENCE

- Evidence that directly proves a key fact at issue
- No inference or conclusion has to be drawn to show that something happened.
- *EX:* Eyewitness testimony, video

## CIRCUMSTANTIAL EVIDENCE

- A set of facts that, if true, allows a person to infer the fact at issue
- Requires drawing a conclusion/ inference based on the circumstances to show that something happened.
- *EX:* Witness saw two people emerge from the same room and one was disheveled; could infer that a fight or assault between the two took place.



## RELEVANCY & 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.
- Relevancy and admissibility of any evidence offered at the hearing shall be determined by:
  - Title IX → Hearing Officer
  - Equity → If requested by member of Hearing Panel, the question presented by Chair will be decided by majority vote



## WHAT IS 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; *and*
  - The fact is of consequence in determining the action. (FRE 401)
- All relevant evidence does **not need to be given equal weight**.
  - Evidence may have some tendency to make something more or less probable, but not much.
  - ASK: How probative is the evidence?



## TEST FOR RELEVANCY

- To determine the relevancy of evidence that is being offered at a hearing, follow these steps:
  1. Consider the evidence that is being offered.
  2. Consider the allegations of the (Formal) Complaint.
  3. Does the evidence that is being offered have the potential to prove or disprove the allegations?



## RELEVANCY & EVIDENCE

The Hearing Officer or Panel Chair *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.**



## WHAT NOT TO CONSIDER ...

- Complainant's **prior sexual behavior** (with two exceptions)
- Information **protected by legally recognized privilege**
- **Party's treatment records** without that Party's voluntary, written consent
- **Statements not subject to cross-examination** (in Title IX hearing)
- **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



# PRIOR SEXUAL HISTORY

- Generally, questions and evidence about a complainant's sexual predisposition or prior sexual behavior *are **not relevant*** and will not be admitted as evidence during a Title IX hearing
- *Exceptions:*
  - Where the sexual behavior is used to show that someone other than the Respondent committed the conduct alleged by the Complainant
  - Evidence concerning specific incidents of the Complainant's prior sexual behavior with respect to the Respondent if offered to prove consent



# KNOWLEDGE CHECK

## SCENARIO A

- In a sexual harassment case, the Respondent's friend says that the Respondent is honest, kind, and treats others with respect.
  - Relevant?
  - Weight?





# KNOWLEDGE CHECK

## SCENARIO B

- National origin discrimination alleged against faculty  
Respondent by graduate student. Respondent has received accolades for extensive scholarship.
  - Relevant?
  - Weight?



# KNOWLEDGE CHECK

## SCENARIO C

- In a domestic violence case, the Complainant's counselor diagnosed Complainant with PTSD.
  - Relevant?
  - Weight?



# KNOWLEDGE CHECK

## SCENARIO D

- In a sexual harassment case, the Complainant made another report of sexual harassment against a different person two years before this report.
  - Relevant?
  - Weight?



# KNOWLEDGE CHECK

## SCENARIO E

- In a sexual harassment case, the Respondent has been found responsible for spiking a drink on two prior occasions.
  - Relevant?
  - Weight?



# KNOWLEDGE CHECK

## SCENARIO F

- In a sexual harassment case, the Complainant alleges that there was not consent because the Respondent did not specifically ask Complainant for her consent on the night in question. Respondent wants to offer evidence that the Parties have been intimate on several prior occasions.
  - Relevant?
  - Weight?

