

TITLE IX HEARINGS: KEY INFORMATION FOR ALL HEARING PARTICIPANTS

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Today we will cover:

- Participants and their roles
- Hearing structure and rules of decorum
- Understanding relevance
- Why cross-examination matters

Key Title IX hearing requirements from regulations

- Follows full investigation conducted by investigator
- Decision maker is different than investigator and different than coordinator
- Conducted live, in real time; may be conducted remotely
- Parties can see and hear each other, decision maker, and witnesses
- Cross-examination conducted by parties' advisors
- Hearing officer rules on relevance of each question
- For disallowed questions, hearing officer must state basis for disallowance
- Hearing is recorded

Hearing participants

- Parties
- Witnesses

- Advisors
- Decision maker


- (Appeals officers)

Important lesson:

All participants must be very familiar with SAIC's Sexual Misconduct Under Title IX policy

- <https://www.saic.edu/life-at-saic/stop-sexual-violence>
- <https://www.saic.edu/sites/default/files/Sexual%20Misconduct%20Under%20Title%20IX%20Policy.pdf>

- Opening statement from Complainant
- Complainant questioned by decision maker
- Complainant questioned by Respondent's advisor
- Opening statement from Respondent
- Respondent questioned by decision maker
- Respondent questioned by Complainant's advisor
- Witnesses, questioned by (1) decision maker, (2) Complainant's advisor, (3) Respondent's advisor
- Closing statement from Complainant
- Closing statement from Respondent



SAIC hearing structure

Asking Questions– Decision Maker v. Advisor

- “Help me understand your thoughts and feelings when you were in the bed.”
- “I don’t want to make any assumptions, so can you tell me what you meant when you said XX?”
- “Isn’t it true that you drank so much alcohol, voluntarily, that you became blackout drunk that night?”
- “Why should we believe anything you say, given that you are the Complainant’s best friend and roommate?”

Rules of decorum

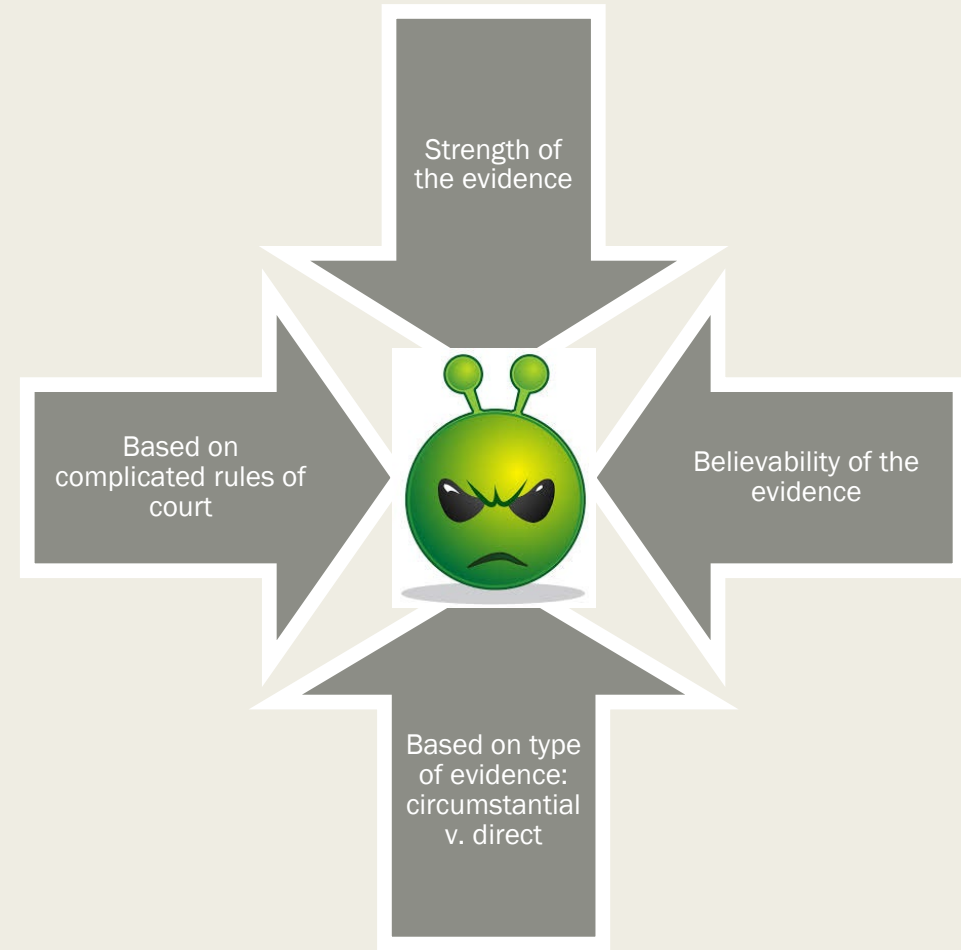
- In general: Expectation of civility and respect in all interactions
- No acting abusively or disrespectfully
- No intimidation
- No disruptive behavior (interrupting, applause, heckling, outbursts)
- Refer to person using name and gender pronoun used by that person
- Convey questions in a neutral tone
- Questions are meant to be interrogative statements used to test knowledge or understand a fact
- Questions may not include accusations within the text of the questions

Relevance IS

Something that tends to make a fact more or less probable than it would be without that evidence



Relevance IS NOT



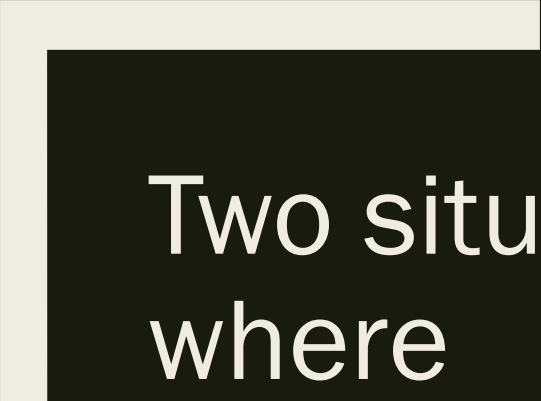
What is “relevant evidence?”

- Use logic and common sense
- Toss out old rules/practices regarding categories of information permitted (except for three situations)

- Irrelevant*
- Irrelevant*
- Relevant
- Irrelevant*
- Irrelevant*

Special categories of evidence that are irrelevant or otherwise off-limits

- Complainant's prior sexual predisposition or prior sexual history (with two exceptions)
- Information protected under a legally-recognized privilege without waiver
- Medical, psychological and similar treatment records without written consent of party



Two situations
where
complainant's
prior sexual
history may
be relevant

- It is offered to prove that someone other than respondent committed the conduct alleged

or

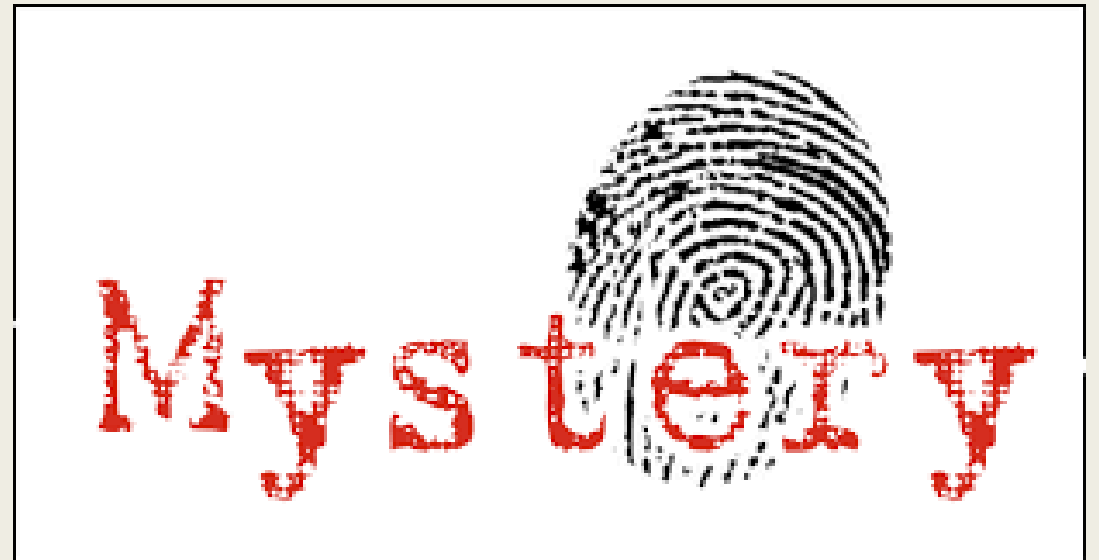
- If the questions and evidence concern specific incidents of complainant's prior sexual behavior with respect to respondent and are offered to prove consent.

Fun activity applying evidence in a sexual harassment matter

1. Unwelcome conduct (subjective and objective)
2. Severe
3. Pervasive
4. Objectively offensive
5. Effective denial of equal access to school's education program or activity

“Submitting to cross examination”

- What this means
- What does NOT submitting to cross examination look like?
- Consequences of NOT submitting to cross examination





QUESTIONS?

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