

**TITLE IX  
HEARINGS:  
INFORMATION  
FOR  
DECISION  
MAKERS**

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# Today we will cover:

- Questioning parties and witnesses
- Ruling on cross-examination questions
- Making the determination
- Writing a finding

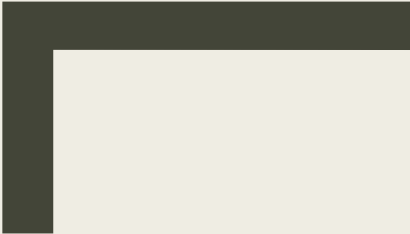
# Questioning parties and witnesses

- Do your pre-hearing homework
- Are there any gaps in the information contained in the report?
- What else do you need to know to make the determination?
- Is there any information that you need clarified?
- Come into the hearing with your outline ready


# 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

Help me understand . .	Tell me all about . . .
What were your thoughts and feelings at that time?	What were you hearing when this was happening?
You said X. I want to make sure I understand what you mean by X.	I don't want to make any assumptions, so can you explain what you mean by X?
I am going to ask some questions about X, because it is important that I understand X.	I am going to shift gears and ask about X.
What part of their body touched your body?	How did you know the other person wanted to do X?



# ASKING QUESTIONS



Your pre-hearing homework applies here too

Acknowledge that the timing is awkward

Always follow relevance (covered in prior training)

Think about consequences of disallowing it, and possible cures

## Ruling on cross-examination questions

# Concepts we use to evaluate evidence

## Relevance

- Tends to make a fact more or less probable than it would be without that evidence
- Assists in coming to the conclusion – it is “of consequence”

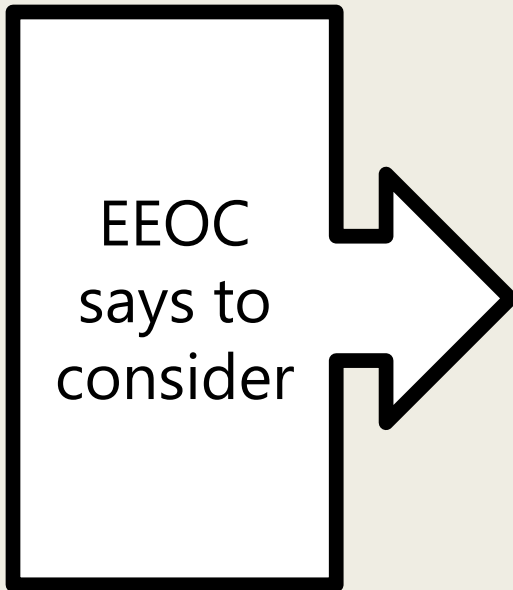
## Reliability

- Accurate
- Trustworthy

## Weight

- The value you assign to the piece of evidence

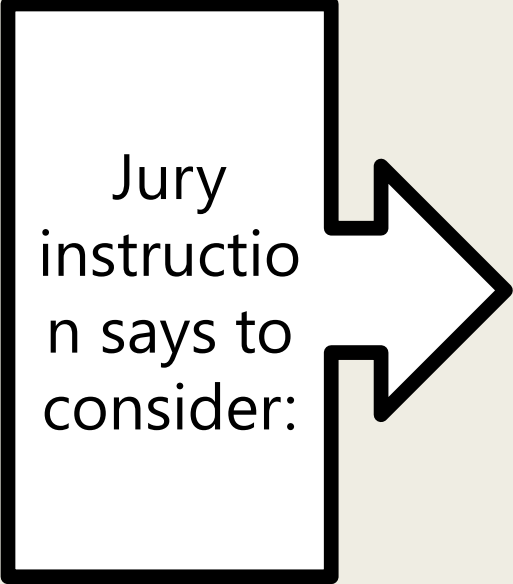
# How to determine if a person is credible?



- Inherent plausibility: Is the testimony believable on its face? Does it make sense?
- Demeanor: Did the person seem to be telling the truth or lying?
- Motive to falsify: Did the person have a reason to lie?
- Corroboration: Is there witness testimony (such as testimony by eye-witnesses, people who saw the person soon after the alleged incidents, or people who discussed the incidents with him or her at around the time that they occurred) or physical evidence (such as written documentation) that corroborates the party's testimony?
- Past record: Did the alleged harasser have a history of similar behavior in the past?



# How to determine if a person is credible?



Jury instruction says to consider:

- Relationship to the Plaintiff or to the Defendant
- Interest, if any, in the outcome of the case-- Anything to gain or lose from the case
- Manner of testifying – did they appear to be lying? Appear to be telling the truth?
- Opportunity to observe or acquire knowledge concerning the facts about which the witness testified
- Candor, fairness and intelligence
- The extent to which testimony has been supported or contradicted by other credible evidence
- Any bias or prejudice?
- Inconsistency within testimony? Reasonable/minor or significant?
- Use your common sense and your everyday experience in dealing with other people.



USE DISCIPLINED, UNBIASED  
EVALUATION OF RELEVANT  
EVIDENCE:

THINGS NOT TO CONSIDER

# Preponderance of the evidence

## IS

- Starting from the presumption of non-responsibility, is the complainant's account is supported by the majority of the evidence?
- Starting from the presumption of non-responsibility, does the evidence establish that the complainant's account is most likely to have occurred?

## IS NOT

- I think the information shows the respondent most likely to have engaged in the conduct, but I am not convinced beyond a reasonable doubt
- I think the information shows the respondent most likely to have engaged in the conduct, but I am not firmly convinced
- Since the prosecutor declined to file charges, I don't think we should hold the respondent responsible either

# Once factual findings are made, analyze under SAIC policy definition

Sexual Harassment: Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity

- 1) Unwelcome conduct
- 2) Reasonably viewed as
  - 1) *Severe and*
  - 2) *Pervasive and*
  - 3) *Objectively offensive*
- 3) Effective denial of equal access to education program or activity

# Remember our 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

# Required elements in written determination



- Identification of specific allegation of sexual misconduct
- Description of procedural steps from complaint through determination
- Findings of fact
- Conclusions regarding application of policy to facts
- Rationale for each result of each allegations
- Sanctions/remedies
- Appeal options (must permit appeal)

# Grounds for appeals

- Procedural irregularity that affected the outcome of the matter
- New information that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
- Title IX coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter
- One or more reasons why the sanction is disproportionate with the violation



# QUESTIONS?

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