

Helpful Hints About Rape Shield Protections

- A. Title IX personnel must keep in mind rape shield protections when assessing evidence. Every relevance analysis in the Title IX formal grievance process must include a consideration of rape shield protections.
- B. Title IX's rape shield protections relate to a complainant's sexual history and provide that questions and/or evidence about the complainant's sexual predisposition or prior sexual behavior are presumptively not relevant and should not be considered.
- C. However, there are two, narrow exceptions to this rule. Questions and/or evidence about a complainant's sexual predisposition or prior sexual history may be considered when:
 - 1. The questions and/or evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant; or
 - 2. The questions and/or evidence relate to specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

Common Scenarios that Require Analysis of Rape Shield Protections

- A. When evidence of a complainant's "reputation" is offered: Evidence of a complainant's "reputation" as sexually promiscuous, prude, or anything in between is not relevant.
 - 1. *Example:* A respondent cannot present evidence that a complainant is "easy" or frequently "sleeps around" to prove that the respondent and complainant had a consensual sexual encounter.
- B. When evidence of a complainant's relationship with respondent is offered: Evidence relating to the complainant and respondent's prior sexual relationship may be considered.
 - 1. *Example:* A respondent can offer her previous, sexually-explicit text messages with the complainant to prove that the complainant consented to the sexually-explicit text messages that he alleges to be sexual harassment.
- C. When evidence of a complainant's relationship with another person is offered: Evidence of a complainant's sexual relationship with another person is generally not relevant.
 - 1. *Example:* Evidence that the complainant engaged in certain sexual acts with other people cannot be offered to show that the complainant consented to these same sexual acts with the respondent.
- D. When evidence is offered to show someone other than the respondent committed the conduct: Evidence that someone other than the complainant committed the alleged sexual harassment may be considered.
 - 1. *Example:* A respondent can offer evidence that an ex-boyfriend of the complainant, who had stalked the complainant and left sexually-graphic notes in the complainant's locker, was the perpetrator of alleged stalking and harassment, not the respondent.