

**Advanced Decision-Maker Training for
Ohio Department of Higher Education
Live Cross-Examination Hearing
Relevancy Cheat Sheet**

Relevancy Cheat Sheet for Practice¹

The Department has determined that recipients must consider only relevant evidence with the following exceptions (limited to “Rape Shield” and Exceptions, Party’s Treatment Records, and Privileged communications for purposes of this training only):

Relevancy

No definition in Regulations tells us what is not relevant (see below). Helpful tips:

- Does this help resolve an element to a policy violation? How?
- Does it help show a violation is more or less likely to have occurred?
- Remember, you can ask advisor to explain why advisor thinks it is relevant.
- Cannot bar evidence by type (cannot exclude expert witnesses, lie detector tests, character evidence) just because it is the type of evidence—still have to do a relevancy analysis
- Whether a question is relevant is different from how you assign weight to the answer when you sit down to write the decision.

(1) “Rape Shield” and Exceptions

Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, UNLESS

- Such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
- If the questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.

[34 C.F.R. 106.45(b)(6)(i)]

(2) Party’s Treatment Records

According to 34 C.F.R. 106.45(b)(5)(i), cross-examination must exclude **consideration of a party’s records** that are **made or maintained in connection with the treatment of the**

¹ This training focuses on only three relevancy issues ease of practice of the decision-maker role, not all of the relevancy issues in the regulations. For a complete list of the relevancy issues, please see the decision-maker training slides.

party by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting or assisting in the professional's or paraprofessional's capacity UNLESS

- institution of higher education obtains party's voluntary **and** written consent to consider for the grievance process

(3) Privileged Information

According to 34 C.F.R. § 106.45(b)(1)(x), a recipient's grievance process cannot require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of information protected under a legally recognized privilege, UNLESS the person holding such privilege has waived the privilege.

For practice here:

- Attorney-client privileged communications (e.g., "My attorney told me...", "I asked my attorney...", "Did your attorney tell you...")
- Counselor-client privileged communications (e.g., "My counselor told me I have PTSD...", "My counselor told me I have anxiety from the incident...", "I told my counselor...")
- Medical professional-client privileged communications (e.g., "I told the doctor...", "Did a doctor diagnose...")

(4) **No improper inference** for why a party or witness is not participating in the grievance process.

(5) **Decorum** – no yelling, intimidating, or harassing of parties or witnesses.