

## 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.