

## **SUNY Cobleskill Title IX Relevance Policy**

SUNY Cobleskill will consider a relevant question to be one that will ask whether the facts material to the allegations under investigation are more or less likely to be true. A question not directly related to the allegations will generally be irrelevant. During a hearing, relevance decisions will be made on a question by question basis, looking narrowly at whether the question seeks information that will aid the decision making in marking the underlying determination. Relevance decision will not be based on who asked the question, their possible (or clearly stated) motives, who the question is directed to, or the tone or style used to ask about the fact. Relevance decisions will not be based in whole or in part upon the sex or gender of the party for whom it is asked or to whom it is asked, nor based upon their status as complainant or respondent, past status as complainant or respondent, any organizations of which they are a member, or any other protected class covered by federal or state law (e.g. race, sexual orientation, disability).

If a question is relevant but offered in an abusive or argumentative manner, the Hearing Facilitator has the discretion to ask the advisor to rephrase the question in an appropriate manner.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless:

1. 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
2. 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(6)(i).

Questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege are irrelevant. 34 C.F.R. § 106.45(1)(x). Depending on your state, individuals with legal privilege may include medical providers (physician, dentist, podiatrist, chiropractor, nurse), psychologists, clergy, rape crisis counselors, and social workers. (for instance, New York's "laws of privilege" are listed within [CPLR Article 45](#); Each state has its own rules around privilege).

Questions that call for information about any party's medical, psychological, and similar records are irrelevant unless the party has given voluntary, written consent. 85 Fed. Reg. 30026, 30294 (May 19, 2020).

Questions that repeat, in sum or substance, questions already asked by the decision-maker prior to cross-examination, or by a party's advisor during cross-examination (and if part of your process, during direct examination), may be ruled duplicative, and therefore irrelevant.

Any party or their advisor may request that the Hearing Facilitator reconsider their relevance determination.

The Hearing Facilitator may deny or grant the request to reconsider. This determination is final but may be subject to appeal under the Title IX Grievance Process.