

Relevancy in Sexual Misconduct (Title IX) Related Formal Hearings

Training Note

This information has been provided to Faculty and Staff members of the University Conduct Board (UCB) to assist in preparing for the Formal Hearing process while serving on the UCB or while serving as a Process Advisor. This summary is based on information from the requirements of the Title IX Final Rule of 2020 and the SUNY Student Conduct Institute training modules. Questions about this document can be directed to the Office of Student Conduct and Community Standards.

Components of Relevant Questions

Questions asked during the Formal Hearing process can help the decision-makers determine whether a student is responsible or not responsible for an alleged violation of community standards and/or the Sexual Misconduct (Title IX) Policy. The chairperson in a Formal Hearing will determine if a question is relevant (or not) using the following standard:

Does the “question seek information that will aid the decision-maker in making the underlying determination”? (SUNY SCI Advisor Resource Guide, p. 33)

If the answer is **yes**, then it is a relevant question. The Chairperson will confirm relevancy and then the person will answer the question.

If the answer is **no**, then it is not a relevant question. The Chairperson will confirm that the question is not relevant and immediately provide rationale for why the question is not relevant. The person will not answer the question, and the person that asked the question will have the opportunity to move onto another question/topic.

Relevant questions relate directly to information that will be considered when determining the outcome for an alleged violation. There may be questions about uncomfortable topic areas that may be relevant. Members of the University Conduct Board, including individuals serving as Process Advisors, should be mindful of their tone and phrasing when asking questions to allow students the opportunity to fully participate in the process.

Types of Questions that are Not Relevant

The following types of questions are generally irrelevant. Specific exceptions are noted, if applicable.

Repetitive questions that have already been answered during the Formal Hearing

- Unduly repetitious questioning is not permitted, and such questioning could lead to removal of a Process Advisor for failing to comply with the Formal Hearing decorum.

Questions about a complainant’s prior sexual behavior or sexual predisposition, unless:

- The question seeks to demonstrate that someone other than the respondent is responsible for the alleged behavior; or,

- The question relates to prior sexual activity between the complainant and the respondent with the specific purpose of demonstrating consent.

Privileged Information (protected by law) and/or Undisclosed Medical Records

- Medical information *may* be relevant if and only if it is disclosed by the specific individual. For example, medical information about the respondent that is disclosed by the respondent may lead to relevant questions. Similarly, medical information about the complainant that is disclosed by the complainant may lead to relevant questions.
- In addition, privileged information *may* be relevant if the appropriate individual has given written consent to have the information shared in the Formal Hearing process.

The Chairperson will determine whether or not a question is relevant. Questions that are determined to be irrelevant will be noted, but the person to whom the question is directed will be instructed to not answer the question.

Note that decisions on relevancy must be made during the live hearing. The rationale for why a question is not relevant must be provided during the live hearing.

References

State University of New York Student Conduct Institute. (2021, September). *Advisor Resource Guide for Title IX Investigations and Hearings*. bit.ly/TIXadvisor.

Title IX Final Rule, Effective August 14, 2020. 34 CFR Part 106 Subpart D. Accessed via <https://www.ecfr.gov/current/title-34/subtitle-B/chapter-I/part-106/subpart-D>