Complainant's Sexual Predisposition and Prior Sexual History

Generally, the Complainant's sexual predisposition and prior sexual history are not relevant, except where offered to proof:

- Someone other than the Respondent committed the misconduct at issue
- The parties have a prior sexual relationship and the information is provided to show consent

Relevancy and Character Evidence

Adequacy of Cross-Examination

Question to OCR:

Suppose the respondent's advisor isn't well-prepared and forgets to cross-examine the complainant during the hearing on a key statement related to credibility. What is the effect of this on the statement made by the complainant—may or may not the decision-maker consider it, and please explain why or why not?

OCR's Answer: The new Title IX Rule requires that postsecondary institutions hold a live hearing at which each party has the opportunity to cross-examine other parties and witnesses, where such cross-examination is conducted by a party's advisor and never by a party personally. [citation omitted]. If a party [through their advisor] does not pose a cross-examination question to the other party, then the answering party cannot be said to have "not submitted" to cross-examination, and the provision of [the Title IX provision] prohibiting the decision-maker from relying on the statements of a party who has not submitted to cross-examination would not apply to the regulations are necessary.

Presenter's Contact Information

- Partner, Hogan Marren Babbo & Rose, Ltd., Chicago, Illinois
- Title IX Compliance Services
  - External Investigator
  - Hearing Officer
  - Appeal Decision-maker
  - Policies and procedures review
  - Compliance assessments and recommendations
  - Training
  - General Title IX advice and consultation
- OCR senior manager in Headquarters and OCR Chicago (for 25 years)

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