



ISSUES OF RELEVANCE FOR TITLE IX DECISION MAKERS:

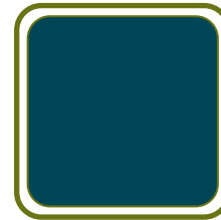
How to ensure legally sound, trauma-informed, and policy-compliant relevance determinations

with Collin Baer

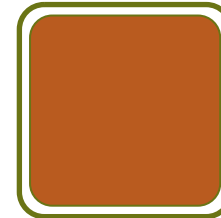
Today's Focus



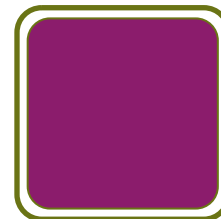
Defining relevance



Consistent application
of standards

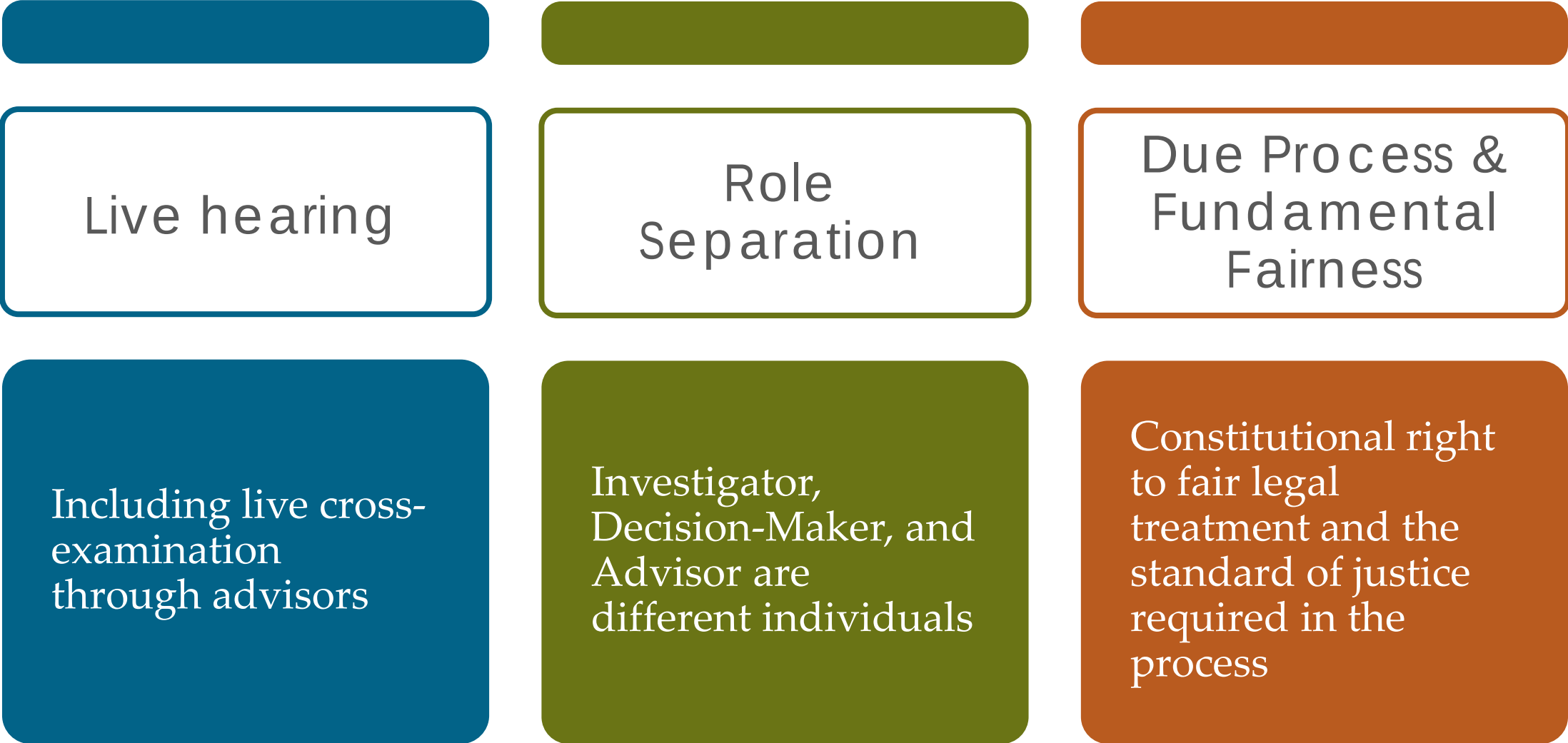


Removing bias and
speculation



Articulating clear rationales

TITLE IX PROCESS IN HIGHER EDUCATION



The diagram illustrates the Title IX process in higher education through a 3x3 grid. Each column represents a different aspect of the process, color-coded in blue, olive green, and orange. Each row represents a different stage or principle. The top row consists of solid colored bars. The middle row contains boxes with titles. The bottom row contains larger boxes with detailed descriptions. The text is centered within each box.

Live hearing

Role
Separation

Due Process &
Fundamental
Fairness

Including live cross-
examination
through advisors

Investigator,
Decision-Maker, and
Advisor are
different individuals

Constitutional right
to fair legal
treatment and the
standard of justice
required in the
process

ROLE OF THE DECISION-MAKER

- Be free from conflict of interest or bias
 - For or against complainants or respondents generally
 - An individual complainant or respondent
- Evaluate only the relevant evidence
- Fairly and consistently apply the standard of proof stated in policy



RELEVANCE DEFINED

(Federal Rule of Evidence 401 Test for Relevant Evidence)

Evidence is relevant if:

- It has a tendency to make a fact **more or less probable** than it would be without the evidence
- The fact is **of consequence** in determining the action

Does this evidence make a material fact more or less likely?



RELEVANT EVIDENCE ...

Makes a fact more or less probable



Is linked to the alleged conduct



Is linked to the policy elements



Is NOT based on emotional impact or personal belief

RELEVANT EVIDENCE CONTINUED



Tends to make a fact more or less probable than it would be without the evidence

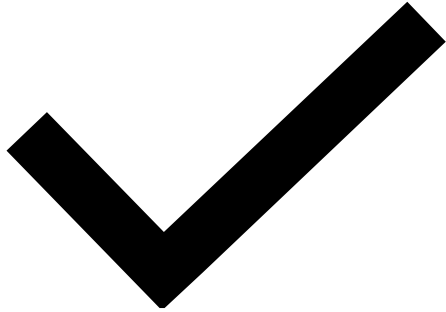


Logical connection between the evidence and the alleged conduct

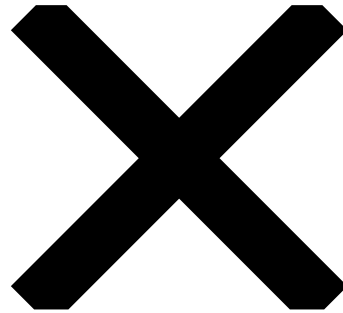


Assists in coming to the conclusion – is it “of consequence?” /linked to policy elements

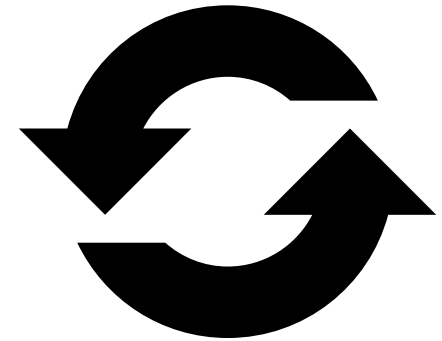
CATEGORIZING EVIDENCE TYPES



Relevant



Irrelevant



Directly
Related

DEFINING RELEVANCE: Mandatory exclusions

- Evidence about a complainant's sexual history is prohibited with two limited exceptions.
- Privileged information without written consent is prohibited.



Applying Relevance Standards Consistently: Assessing Credibility & Reliability

Authenticity

A subset of
reliability and
credibility

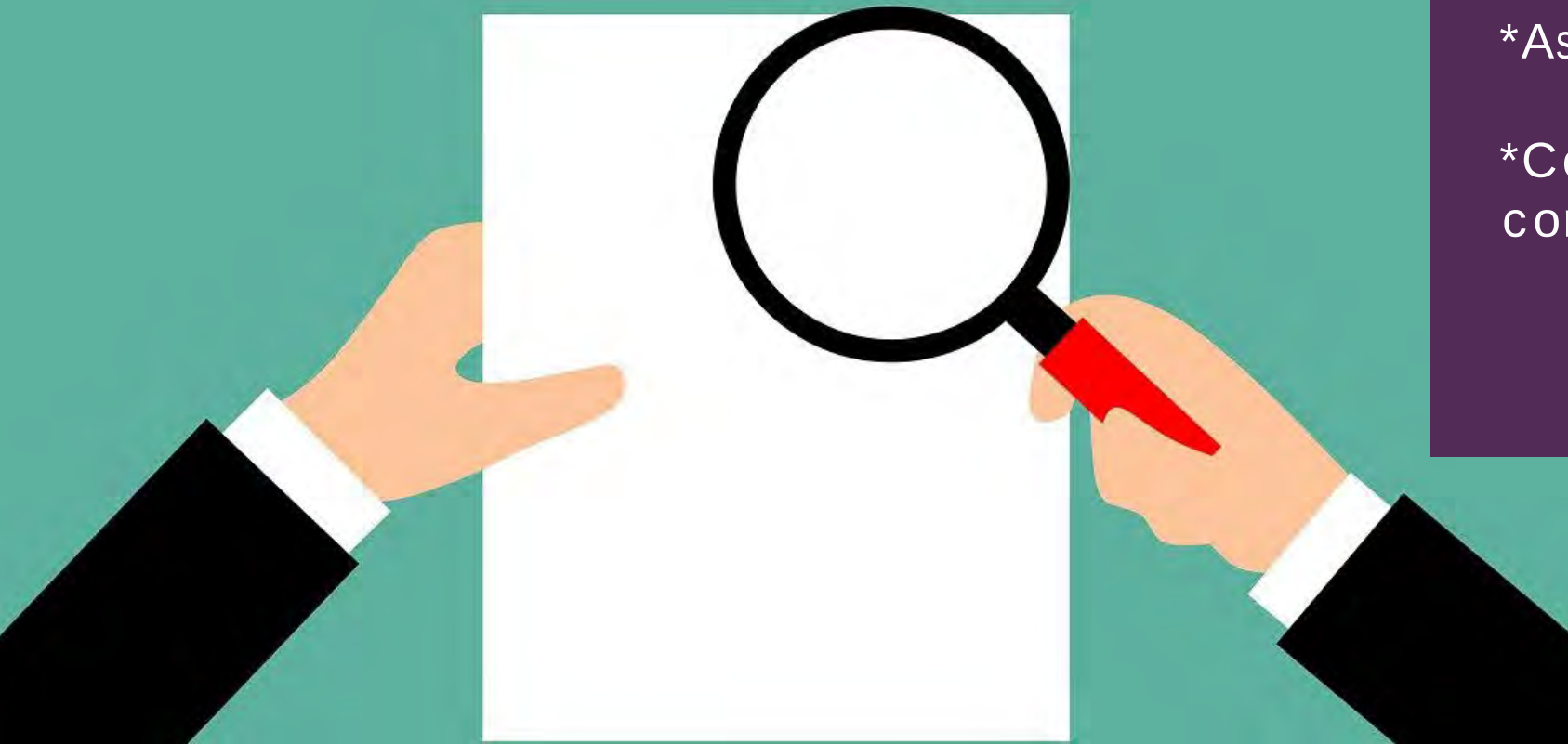
Credibility

- The person is convincing
- Whether they are and worthy of belief

Reliability

- The person's statements can be trusted
- Whether the hearing officer can reasonably rely on the evidence they provided

APPLYING STANDARDS CONSISTENTLY: AUTHENTICITY



*Question the person who submitted the evidence.

*Ask others to review.

*Consider other records that may corroborate.

EVALUATING EVIDENCE WITHOUT BIAS OR SPECULATION: Avoiding Improper Reasoning



Credibility shortcuts

Assumptions based on
trauma responses

Outcome-driven reasoning

ARTICULATING CLEAR RATIONALES: Making the Determination & Writing a Defensible Decision

What evidence is deemed relevant?

What evidence is excluded and why?

Make findings of fact.

Organize the facts by the element to which they relate.

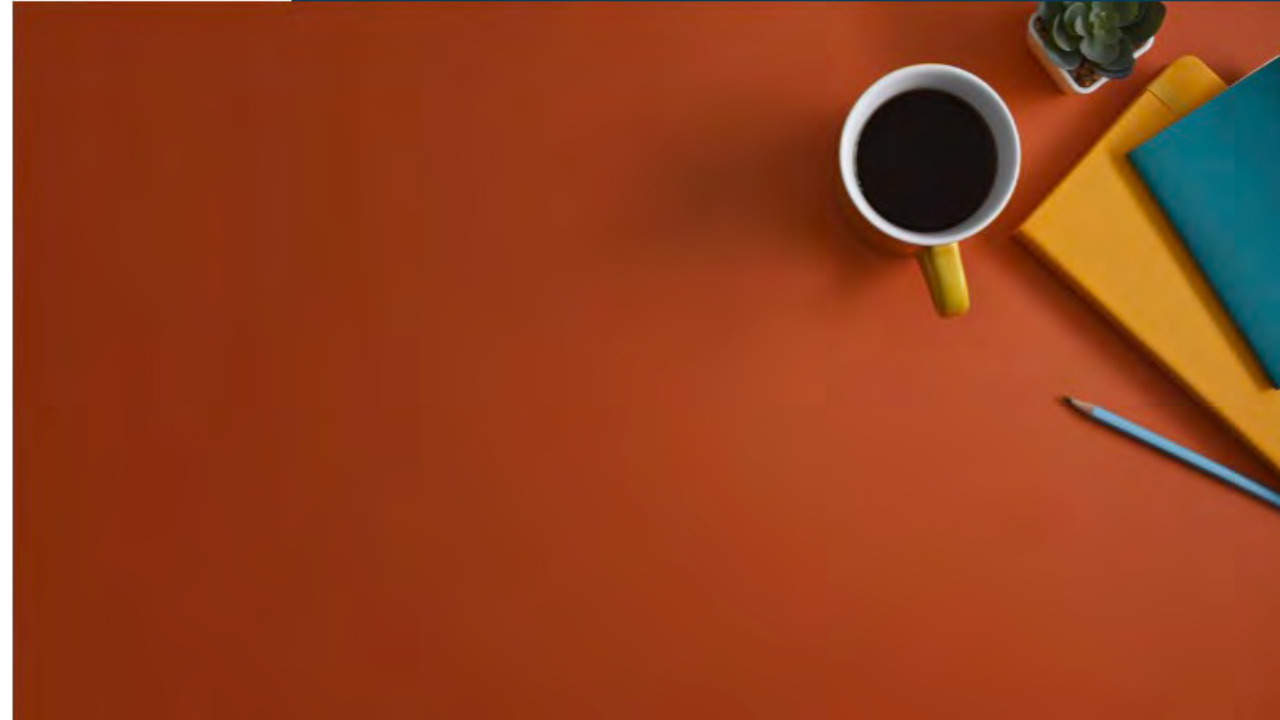
Assign weight to each piece of evidence.

Apply the evidence and standard of proof stated in policy to each element of the alleged violation.

Use this information to make a determination of “responsible” or “not responsible.”

IN CONCLUSION...

- Clear, consistent relevance determinations underpin an equitable process
- Apply standards thoughtfully.
- Document determinations well.





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