

Serving Impartially: Avoiding Prejudgment of Facts, Conflicts of Interest, and Bias



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Agenda

- Prejudgment of the Facts at Issue
- Conflicts of Interest
- Bias

Write down a list of 5 people that you trust. They cannot be family or significant others.

We will revisit this activity later in the training.



Serving Impartially

Individuals involved in the Title IX process are required to serve impartially.

This includes avoiding the following:

- Prejudgment of the facts at issue
- Conflicts of interest
- Bias



Prejudgment of the Facts at Issue

Prejudge: to form a judgment on an issue or person prematurely and without having adequate information

- Commonly caused by stereotypes and social stigmas related to sexual history, drug/alcohol use, gender, etc.

Men cannot be sexually assaulted.

She had consensual sex with him earlier that day, why would it not have been consensual that night?

There is no way a gay man sexually assaulted a woman.



Prejudgment of the Facts at Issue

Examples:

After filing a complaint, the Complainant does not respond to an investigator's emails requesting to schedule an interview. Are they lying or now changing their story?

The Complainant attends the hearing, but the Respondent does not. Can I find the Respondent credible?



Prejudgment of the Facts at Issue

Examples:

The Respondent hired an attorney as their advisor. Are they guilty?

The Complainant obtained a sexual assault kit immediately after the incident. How could they not have been sexually assaulted?



Prejudgment of the Facts at Issue

Examples:

This is the 10th complaint filed by the same person. How can they all be true?

The witness is the Respondent's best friend. Won't they just lie to help the Respondent?



Prejudgment of the Facts at Issue

Examples:

A complaint was filed against a reputable professor. This can't be true?

The Complainant is covered in bruises. The Respondent must have caused them, right?



Avoiding Prejudgment of Facts

- Treat all parties fairly and equally.
- Treat each party as an individual, not a member of a certain class (i.e., gender, race, national origin, etc.).
- Give all parties equal opportunity to present witnesses and evidence.
- Keep an open mind throughout the formal grievance process.
- Do not form any opinions prior to the conclusion of the formal grievance process.
- Evaluate all facts fairly and neutrally.

Conflicts of Interest

Occurs when an individual's personal or private interests could compromise their judgment, decisions, or actions

- Family, friendships, past and current relationships
- Financial investments
- Other social factors
 - Past experiences – personal and professional
 - Position at work

Conflicts of Interest

Title IX Regulations do not provide any *per se* conflicts of interest. However, they do say that...

- Individuals involved in the Title IX process cannot have a conflict of interest or bias for or against complainants or respondents generally, or an individual complainant or respondent.
- Hearing officer cannot be same person as Title IX Coordinator or investigator.
- Decision-maker for an appeal cannot be same person as Title IX Coordinator, hearing officer, or investigator.

Evaluating Conflicts

Actual conflict: direct conflict between your official duties and responsibilities, and a competing personal interest or obligation.

- Hearing officer's child is the Respondent in a sexual misconduct case.

Perceived conflict: it could be perceived that a competing interest could improperly influence the performance of your official duties and responsibilities.

- Investigator previously was in a dating relationship with a family member of the Complainant.

Potential conflict: a personal interest or obligation could conflict with your official duties and responsibilities in the future.

- Title IX Coordinator serves on a university committee with the Respondent and socializes with them outside of work sometimes.

Evaluating Conflicts

A conflict of interest that prevents you from being able to serve **impartially** would result in disqualification.

Questions to ask yourself:

- Do you have anything to gain/lose from outcome of case?
- How would you feel if others became aware of the conflict? Or if it were reported to the media?
- If you saw someone else with the same conflict, would you think they should be disqualified from participating? What if you were one of the parties?

Inform Title IX Coordinator if you believe you have a conflict related to a case.



What is bias?

Prejudice in favor of or against one thing, person, or group compared with another, usually in a way considered to be unfair. (Oxford Languages)

The action of supporting or opposing a particular person or thing in an unfair way, because of allowing personal opinions to influence your judgment. (Cambridge Dictionary)

A tendency to believe that some people, ideas, etc., are better than others that usually results in treating some people unfairly. (Britannica Dictionary)



Brain Teaser

A father and son were involved in a car accident in which the father was killed, and the son was seriously injured. The father was pronounced dead at the scene of the accident and his body was taken to a local morgue. The son was taken by ambulance to a nearby hospital and was immediately wheeled into an emergency operating room. A surgeon was called. Upon arrival and seeing the patient, the attending surgeon exclaimed “Oh my God, it’s my son!”

Can you explain this?

Two Types of Bias

Explicit Bias

- Conscious bias
- Clear feelings/attitudes that person is aware of
- Behaviors are overt and intentional
- Can be influenced by stereotypes, prejudice, discrimination

Implicit Bias

- Unconscious bias
- Operates outside of person's awareness and control
- Can be subtle and in direct contradiction to a person's openly held beliefs
- Often the result of upbringing, socialization, and experiences and can be influenced by race, gender, age, sexual orientation, national origin, etc.



Forms of Implicit Bias

Confirmation Bias: tendency to search for, interpret, favor, and recall information in a way that confirms or supports prior beliefs or values

Ex: After the hearing officer reads the Investigative Report, they think the Complainant is telling the truth. During the hearing, the hearing officer's questions are focused on reconfirming Complainant's version and questioning the Respondent's credibility.

Attribution Bias: systemic errors made when people evaluate or try to find reasons for their own or others' behaviors

Ex: You assume the Complainant is lying because during their interview they are very positive/happy and do not seem upset.



Forms of Implicit Bias

Beauty Bias: appearance-based discrimination - physically attractive individuals are rewarded socially

Ex: The Complainant comes to the hearing dressed in sweats. The Respondent comes to the hearing dressed in a suit. You think the Respondent is more credible because they are dressed nicely.

Conformity Bias: tendency to behave like those around us instead of using our own judgment

Ex: Your co-investigator on a case says they think you have done all the investigation necessary because the Complainant doesn't seem credible. You think there are a few more witnesses worth interviewing, but do not say anything and just agree with your co-investigator.



Forms of Implicit Bias

Affinity Bias: tendency to favor people who are similar to oneself

Ex: A hearing officer is a former college athlete. The Respondent is currently a college athlete, and because of this, the hearing officer finds the Respondent more credible than the Complainant.

Halo Effect: tendency for positive impressions created in one area to influence opinion in another area

Ex: The appeal agent knows the Complainant is in Student Government and has done exceptional volunteerism for the university, thus the appeal agent believes the Complainant's version of events is credible.



Forms of Implicit Bias

Horn Effect: causes a person's perception of another to be unduly influenced by a single negative trait

Ex: The Title IX Coordinator previously had a bad experience with a fraternity member while in college. The Respondent in a case is a fraternity member, so the Title IX Coordinator automatically does not like the Respondent.

Contrast Effect: distorts our perception of something when we compare it to something else, by enhancing the differences between them

Ex: Complainant is distraught and cries during their interview. Respondent is angry and does not want to answer questions during their interview. You believe the Complainant and not the Respondent based on their reactions during their interviews.



Circle of Trust Activity

Next to each of the names you previously wrote down, next write next to their names the following:

- Gender
- Race
- National Origin
- Age
- Religion
- Political Affiliation



Mitigating Bias

- Acknowledge that bias exists.
- Participate in bias training and education on a repeat basis.
- Do not pick sides.
- Recognize your own bias – question your thinking and challenge your assumptions.



Mitigating Bias

- Consider your interviewee prior to the interview so you can evaluate for affinity bias. Do you have a lot in common with them? This could influence your belief about their credibility.
- Avoid developing a theory early on, because it can lead to confirmation bias.
- Partner with other investigators; talk with other Title IX administrators.
- Avoid gut decision making – slow down, be analytical and critical.
- Ensure decisions are objectively made based on relevant evidence/facts.
- Be mindful of influential factors.

Questions?