

HOW TO SERVE IMPARTIALLY

AVOIDING PREJUDGMENT OF THE FACTS

CONFLICT OF INTEREST AND BIAS



KEY DEFINITIONS

- Impartial- not partial or biased; treating or affecting all equally
- Prejudgment- to judge before hearing or before full and sufficient examination
- Conflict of Interest- a conflict between the private interest and the official responsibilities of a person in a position of trust
- Conflict- mental struggle resulting from incompatible or opposing needs, drives, wishes, or external or internal demands
- Bias- an inclination of temperament or outlook; an instance of such prejudice
- Prejudice- preconceived judgment or opinion; an adverse opinion or leaning formed without just grounds or before sufficient knowledge; an irrational attitude of hostility directed against an individual, a group, a race, or their supposed characteristics.

THIS MAY NOT BE FOR YOU

- If you cannot serve in your Title IX role and remain impartial, avoid prejudgment of the facts or conflicts of interest, and fairly serve due to any bias (good or bad) you might have, this is not the position for you.**
- We owe it to our students, staff, faculty, and university to do our jobs in a fair and equitable way.**
- The integrity of this process hinges on the integrity of you.**

PREJUDGMENT OF THE FACTS

- Prejudgment- to judge before hearing or before full and sufficient examination
- It doesn't matter whether the Respondent or Complainant sound believable or if you feel sorry for them. You should not make any prejudgments about anything until you have heard everything, reviewed all evidence, and have a full picture to determine what happened while keeping the standard of evidence in mind.
- Be careful of the prejudgments you might have if you are aware of any of the following facts in a case:
 - Alcohol and drug involvement
 - Previous consensual sexual encounters
 - The dress or attire of either party
 - Possible coincidental events
 - Narratives that fit sex stereotypes
- **STEER CLEAR OF ALL SEX STEREOTYPES**

CONFLICT OF INTEREST

- Conflict of Interest (COI)- a conflict between the private interest and the official responsibilities of a person in a position of trust
- COI's can range from friendships, personal relationships, familial ties, mentorships, hierarchal, etc.
- Quarles and Brady LLP give three COI's to look for:
 - Actual
 - Perceived
 - Potential

CONFLICT OF INTEREST

- Quarles and Brady LLP definitions of these conflicts are below:
 - Actual Conflict- a direct conflict between one's official duties and responsibilities, and a competing personal interest or obligation
 - Perceived Conflict- a situation where it could reasonably be perceived that a competing interest could improperly influence the performance of one's official duties and responsibilities
 - Potential Conflict- where a personal interest or obligation could conflict with one's official duties and responsibilities in the future

CONFLICT OF INTEREST

- It's all about the optics.
- Never give anyone the opportunity to say there was, is, or could've been a conflict of interest.
- Recuse yourself to be safe.
- Disclose any possible relationship with any party that can be perceived as a potential conflict.
- When in doubt, always ask.

BIAS

- Bias- an inclination of temperament or outlook; an instance of such prejudice.
- Prejudice- preconceived judgment or opinion; an adverse opinion or leaning formed without just grounds or before sufficient knowledge; an irrational attitude of hostility directed against an individual, a group, a race, or their supposed characteristics.
- “Cheat sheet” based on what we think we know about a person or group.
- Types of Bias
 - Explicit
 - Implicit

BIAS

- Explicit- fully revealed or expressed without vagueness, implication, or ambiguity; leaving no question as to meaning or intent
- Explicit bias- a fully revealed or expressed temperament or outlook that refers to the attitudes and beliefs we have about a person or group. (Aware of this bias)
- Implicit- capable of being understood from something else though unexpressed
- Implicit bias- a temperament or outlook capable of being understood from something else though unexpressed; attitudes or stereotypes that affect our understanding, actions, and decisions which we are unaware of

UNIQUE TYPE OF BIAS

- Bias against or for the subject matter.
- If you have been sexually assaulted, stalked, or a survivor of dating or domestic violence, you may be biased and unable to fairly investigate or adjudicate related to those subjects.
- This unique bias can open the door for a form of conflict of interest by which you may not be able to impartially serve in your role during this process.

EXAMPLES OF PREJUDGMENT

- The Respondent tells you the only reason the Complainant is coming forward is because they are upset because they broke up two months ago and they are now dating the Complainant's best friend. The Respondent begins to tell you all the opportunities post-graduation they will lose, so because they have shared all they will lose and you figure the Complainant could reasonably be mad about what the Respondent did, the Respondent must be telling the truth.
- The Complainant is crying while sharing the story of the sexual harassment incident. Because you see the Complainant crying and distressed, the Complainant must be telling the truth and the Respondent is responsible for the alleged violations.

EXAMPLES OF PREJUDGMENT

- *The Complainant was drinking at the time of the incident so the investigator presumes his/her recollection of an event is not accurate.*
- *The Respondent and Complainant were in a consensual relationship previously, so the Title IX coordinator assumes consent to particular conduct was given.*

Sex stereotypes also often lead to prejudice

- *Men are sexually aggressive and/or likely to perpetrate sexual assault.*
- *Women have regret about sexual experiences and are likely lying about sexual assault.*
- *Men cannot be sexually assaulted.*
- *Women complaining about sex harassment are just jumping on the "#MeToo" Bandwagon.*

Examples courtesy of Quarles &
Brady LLP

EXAMPLES OF CONFLICTS OF INTEREST

- *Potential Conflict: The Title IX coordinator is close family friends with a Complainant's parents.*
- *Potential Conflict: The investigator and Respondent are co-owners of a side business that resells textbooks on campus.*
- *Actual Conflict: The Title IX Decision-maker's daughter is the Respondent in a sexual assault case.*
- *Perceived Conflict: The Title IX investigator previously had a relationship with the family member of the Respondent.*
- *Potential Conflict: The Title IX Coordinator and Complainant co-chair a faculty committee and socialize outside of work on occasion.*

EXAMPLES OF BIAS

- *When talking with Title IX Complainants, the Title IX Coordinator begins each initial meeting by asking who the Respondent is and what “he” did to the Complainant (assuming the Respondent is a male).*
- *A Title IX Decision-maker finds a Respondent in a case more credible than a Complainant because the Respondent speaks “perfect English” while the Complainant, who only knows English as a second language, does not.*

CLOSING THOUGHTS

- Listen.
- Keep an open mind.
- Don't make assumptions.
- Be mindful of your body language.
- Think before you speak.
- Recuse yourself if you cannot overcome your bias or prejudice.
- Avoid leading questions.

QUESTIONS AND HOMEWORK

NOW HOMEWORK

- How Privileged Am I Exercise- <https://forms.gle/NE4iqZvU8YbFA6Br7>

LATER HOMEWORK

- Harvard Implicit Bias Test- <https://implicit.harvard.edu/implicit/selectatest.html>
 - Take the following tests:
 - Race IAT,
 - Skin tone IAT
 - Sexuality IAT
 - Gender-Career IAT.

WHAT DID YOU LEARN ABOUT YOURSELF?

- What are your takeaways from this activity?
- Are you as privileged as you thought?
- Are you a part of more minority (targeted groups) than you realized?
- How does this change your perspective of yourself? Others?
- Why is it important to know this information and be mindful of this in your Title IX role?