

**TITLE IX SEXUAL HARASSMENT: SERVING  
IMPARTIALLY & AVOIDING CONFLICTS OF  
INTEREST  
AND BIAS  
(INVESTIGATORS, DECISION-MAKERS,  
INFORMAL RESOLUTION FACILITATORS)**

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# AGENDA

- Background on impartiality
- Prejudgment of the facts at issue
- Conflicts of Interest
- Bias
- Quiz



## IMPARTIALITY IS INTEGRAL

Serving impartially includes avoiding the following:

### **PREJUDGMENT OF THE FACTS AT ISSUE**

Prejudgment refers to passing judgment prematurely or without sufficient reflection or investigation

- *Example: A Complainant was crying while making a sexual harassment report. You conclude that because the Complainant was crying when describing the conduct at issue, the Complainant must be telling the truth and the Respondent must be responsible for the action.*

Prejudgment often occurs when allegations involve sexual conduct, sexual history, drugs, and/or alcohol use.

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



## IMPARTIALITY IS INTEGRAL

Sex stereotypes also often lead to prejudgment – you need to check these at the door!

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



IMPARTIALITY  
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## CONFLICT OF INTEREST

A conflict of interest occurs when personal or private interests may compromise one's judgment, decisions, or actions.

Conflict of interests may arise from family, friendships, faculty member relationships, financial investments, or other social factors.

*Example of Potential Conflict: The Title IX coordinator is close family friends with a Complainant's parents.*

There are no per se conflicts of interest outlined in the Title IX regulations. Thus, an investigator who is affiliated with a rape survivors' rights organization does not have an automatic conflict of interest. Nonetheless, that may result in the appearance of a conflict or the appearance of bias that prevents the investigator from serving after further assessment.



## IMPARTIALITY IS INTEGRAL

A conflict of interest exists that disqualifies you from the Title IX process is one that prevents you from being able to impartially participate.

- Conflicts of interest can be "actual," "perceived," or "potential"

### **ACTUAL, PERCEIVED, OR POTENTIAL:**

An actual conflict of interest is a direct conflict between one's official duties and responsibilities, and a competing personal interest or obligation. *EX. The Decision-maker's daughter is the Respondent in a Title IX case.*

- A perceived conflict of interest is a situation where it could reasonably be perceived that a competing interest could improperly influence the performance of one's official duties and responsibilities. *EX. The Title IX investigator previously had a relationship with the family member of the Respondent.*
- A potential conflict of interest arises where a personal interest or obligation could conflict with one's official duties and responsibilities in the future. *EX. The Title IX Coordinator and Complainant co-chair a committee and socialize outside of work on occasion.*



**IMPARTIALITY  
IS INTEGRAL**

How do you determine if a conflict (actual, perceived, or potential) is present that should disqualify you from involvement in a particular Title IX grievance?

Apply the "objective test" and ask yourself the following questions:

1. Would I be happy if my colleagues became aware of the conflict?
2. Would I be happy if the conflict appeared in the media with respect to the grievance process?
3. If I saw someone else with the same potential conflict, would I think they should be barred from participating?



## IMPARTIALITY IS INTEGRAL

### **BIAS**

A bias is a tendency, inclination, or prejudice toward/against Someone.

- Biases are often based on stereotypes, rather than actual knowledge of an individual or a particular circumstance
- They are frequently based on a person's gender, race, or sexual orientation
- In effect, biases are "shortcuts" our mind makes that can result in prejudgments, which lead to improper decisions or potentially discriminatory practices.

*EX: 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).*

*EX: 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.*

## QUIZ QUESTION #1

John, a Title IX Coordinator, is a self-professed feminist, a former defense attorney, and a victim advocate. He has a Master's Degree in Gender Studies, and has supported organizations that work to prevent sexual assault for years.

- In terms of a conflict of interest, would you be concerned about John's impartiality?

## ANSWER

Answer: Potentially – Although John's professional and educational background would likely not rise to the level of an actual conflict of interest, there may be a perceived conflict of interest.

Reasoning: Conflicts of interest should be assessed using the objective test. A colleague may perceive that John has a conflict of interest because of his education and organizational affiliations; but an actual conflict of interest likely does not exist. John (and the rest of the Title IX team) will need to make an assessment of whether he can impartially serve despite his background.

## QUIZ QUESTION #2

Allie is an investigator who conducts Title IX investigations. Allie frequently makes statements to her colleagues regarding how provocatively female students at school dress and that they are "asking" for others to catcall and give them attention. In the case at hand, a female Complainant, who was wearing a crop top during class, reported that a classmate made sexually harassing comments to her during class.

- In terms of prejudgment of the facts, would you be concerned about Allie's impartiality?

## ANSWER

Answer: Yes – Allie's belief that the way female students dress may inherently invite a certain type of response from other students (including catcalling) is a prejudgment based on a sex stereotype that women should dress a certain way or expect sexually harassing behavior. This belief and prejudgment could unfairly impact how she approaches a Title IX investigation, particularly based on the facts of this complaint.

## QUIZ QUESTION #3

Betty is a trained Title IX mediator who conducts informal resolution for parties that elect it under the formal grievance process. Betty is also a principal, who strives to uphold the school's academic reputation standing. A student (with a 2.1 average GPA) made a formal complaint alleging that a classmate (with a 3.99 GPA) sexually harassed them in the classroom while completing work on a group assignment. The two elect the informal resolution.

- In terms of bias, would you be concerned about Betty's impartiality?

## ANSWER

Answer: Potentially – Betty's affiliation/concern with the school's academic reputation may create an explicit bias in favor of the higher achieving student. Her affiliation may also create an implicit bias of which she is not aware or it may not be present.

Reasoning: Betty may have an explicit bias in favor of students with strong academic records, which could lead Betty to believe that students with good grades tell the truth, and students with bad grades do not tell the truth; and she may not be able to serve impartially. Betty could also hold implicit biases against poor performing students due to her role as an academic dean without recognizing the impact the role may have had on her thinking. Nonetheless, she may also not believe that the credibility of students depends on their grades and therefore may not have a bias issue on this topic.

WHAT QUESTIONS DO YOU  
HAVE?