Decision Maker Training
Princeton University

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Meet Your Facilitators

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About Us

Vision
We exist to help create safe and equitable work and educational environments.

Mission
Bring systemic change to how school districts and institutions of higher education address their Clery Act & Title IX obligations.

Core Values
- Responsive Partnership
- Innovation
- Accountability
- Transformation
- Integrity
Agenda

1. The Requirement of Impartiality and Avoiding Bias
2. Before The Hearing
3. The Hearing
4. Decision Making
5. The Importance of Understanding the Potential Impact of Trauma
6. Trauma Informed Questioning
7. Practical Application
The Requirement of Impartiality and Avoiding Bias in Decision Making
The Requirement of Impartiality
Section 106.45(b)(1)(iii)

The grievance process must require that any individual designated by the recipient as Title IX Coordinator, investigator, decision maker, or facilitator of informal resolution not to have a conflict of interest or bias.

1. For or against complainants or respondents generally, or
2. An individual complainant or respondent
Multiple Decision Points When Serving as a Decision Maker

- What information to explore and questions to ask
- Relevancy Rulings During the Hearing
- Making the final determination
- Determining, Relevancy, and Credibility/Reliability, Authenticity and Weight
We have to maintain our commitment to impartiality at every decision point on our way.
But...we are human.
Culture & Socialization
• **Culture** can be defined as the total accumulation of many beliefs, customs, activities, institutions and communication patterns of an identifiable group of people.
Culture as an Iceberg

Complex mass that is 1/10 visible and understandable

Complex mass that is 9/10 out of sight and more difficult to comprehend

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Culture as an Iceberg

Complex mass that is 1/10 visible and understandable – “LET’S CELEBRATE!”

Complex mass that is 9/10 out of sight and more difficult to comprehend – UNDERSTAND
What is Identity?

- Our identities consist of various characteristics we use to categorize and define ourselves.
- There are visible and invisible characteristics.
- Some identities give advantages.
Discussion Questions

1. Identities you think about most often
2. Identities you think about least often
3. Think of a time when you were othered due to an identity you possess
   • How did you feel and/or respond?
What is Social Identity?

Social Identity Theory argues that people possess two identities: an inward looking ‘personal identity’ and an outward looking ‘social identity’. (Brown, 2000)

- Part of individual’s self-concept that is based on membership in specific groups
- Accepted as a description of oneself
- Shared with others who have or are believed to have some characteristics in common
How Social Identity Can Impact Our Interactions?

- How you present yourself/what you are aware of most when you enter a space
- Leads to social constructs, based on lived or learned experiences – that contributes to bias
- Guides what we think and how we approach situations
What We Now Know About Bias

Our brains are impacted by our lived experiences.

These experiences affect what information we focus on and how we categorize it.

Changing how we process information can be difficult, however, not impossible.
Intergroup/Ingroup Bias

Tendency to respond more positively to people from our ingroups than we do to people from outgroups. (Tajfel, Billig, Bundy, & Flament, 1971)

Ingroup members are rated as having more positive characteristics than outgroup members (Hewstone, 1990)

Biases can manifest among different groups including:

- Nationalities
- Races
- Political
- Religious Beliefs
- Arbitrary Group Affiliations
What is bias?
Implicit Bias

Stereotypical thoughts, which can be followed by feelings (liking/disliking) and/or discriminatory behaviors.

- Tends to involve a limited or inaccurate perception of others.
Stereotypes

A generalization where all group members are identified as having the same characteristics; actual differences among the members are ignored or not recognized (e.g., all surgeons are men).

Beliefs that associate groups with traits.

Stereotypes are created by an overexposure to single stories.
The Danger of a Single Story
Perceptions and Bias

Your views are informed by your lived experiences.

- Media
- Family
- Friends
- Education
- Societal Cues
- Culture

Your identity informs how you see the world and how the world sees you.

Multiple truths exist!
## Bias is Not All Good or Bad

<table>
<thead>
<tr>
<th>Good</th>
<th>Bad</th>
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</thead>
<tbody>
<tr>
<td>• Helped us survive and evolve</td>
<td>• Contributes to decision making based on limited information</td>
</tr>
<tr>
<td>• Helps in our assessment of situations</td>
<td>• Can lead us in directions we don’t expect and don’t intend</td>
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</table>
We all have bias!

The impact of our bias on others depends on the roles and the power we have in different situations.
Experiences
• Media
• Beliefs
• Education

Implicit Bias
• Automatic Thoughts
• Feelings

Actions
• Discriminatory
• Non-Discriminatory
• Overt
• Covert
4 Problems Biases Address

Biases are methods our minds use to process information in an efficient manner.

- Too Much Information
- Not Enough Information
- Must Act Quickly
- What To Remember
4 Consequences of Bias

- We Don’t See Everything
- We See What We Believe
- Quick Decisions Can Be Flawed
- Our Memory Reinforces Errors
Before The Hearing

- Preparation
- Pre-Hearing Meetings
Strategic Foresight Promotes Bias Mitigation

Strategic foresight considers potential challenges; alternate possibilities to develop action plans to prepare or implement strategies that help us avoid inequitable outcomes.
Mitigating Bias Through Preparation

Through a preliminary review, identify areas that may have been influenced by bias during investigation and need further exploration.

Consider questions from every angle.
Pre-Hearing Meetings

Review the Logistics for the Hearing

Set expectations
- Format
- Roles of the parties
- Participation
- Decorum
- Impact of not following rules

Advance Submission of Questions

Relevancy Arguments and Advance Rulings
Bias Mitigation = Community Trust
The Hearing

- Opening Instructions
- Party Participation and Witness Testimony
- Relevancy Determinations
Opening Instructions
Party and Witness Testimony
How Our Minds Perceive People

• **Motivation Bias** (*Fundamental Attribution Error*) can be defined as an assumption about a person’s motivations based on current behaviors.
  • We don’t consider possible reasons for their behavior.
  • We believe their behaviors tell us something about who they are as people all the time.
What does a complainant/respondent look like?
Halo/Horns Bias

Halo/Horns Bias is more specific to someone's positive/negative impressions triggering positive/negative feelings toward them.
Relevancy Determination

- In-the-moment decisions
- Broad definition
- Have an approach you feel comfortable using
Bias Can Affect Relevancy Assessment

• Brain is in overdrive because you are doing this in the moment – time is limited.
• Your emotions may be triggered (Affect Bias).
  • Eg., Advisor interrupts or shows aggressive behavior.
  • Eg., Previous negative encounters with anyone in the hearing.
Bias Mitigation Technique

Focus on the decision to be made.

Decisions about questions, relevancy of questions, evidence, final determination

Remember: you are in CHARGE!

You have the opportunity to slow things down.

Have the presence and emotional intelligence to pause.

You have to be the person to control the room.
Relevancy of Impact

When is evidence of impact relevant?
Decision Making

- Evidence Weight
- Fact-Finding and Credibility Determination
- Policy Analysis
Evaluating the Evidence

<table>
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<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is it relevant?</td>
<td>Evidence is relevant if it has a tendency to make a material fact more or less likely to be true.</td>
</tr>
<tr>
<td>Is it authentic?</td>
<td>Is the item what it purports to be?</td>
</tr>
<tr>
<td>Is it credible?</td>
<td>Is it convincing?</td>
</tr>
<tr>
<td>Is it reliable?</td>
<td>Can you trust it or rely on it?</td>
</tr>
<tr>
<td>What weight, if any, should it be given?</td>
<td>Weight is determined by the finder of fact!</td>
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Bias in Evaluating Evidence

- The **Framing Effect** is when our decisions are influenced by the way information is presented.
  - Expert evidence
  - Character evidence
- They may be related or even relevant, but it does not mean that this evidence has a greater weight.
Findings of Fact

- A "finding of fact"
  - The decision whether events, actions, or conduct occurred, or a piece of evidence is what it purports to be
  - Based on available evidence and information
  - Determined by a preponderance of evidence standard
  - Determined by the fact finder(s)

- For example...
  - Complainant reports that they and Respondent ate ice cream prior to the incident.
  - Respondent says that they did not eat ice cream.
  - Witness 1 produces a photo of Respondent eating ice cream.

- What to do when there are different versions?
Judging Credibility Invites Bias

• Can you spot a liar?
• Can investigators or hearing panel members understand clues that are culturally different from their own?
Reliability vs. Credibility

You can trust it.

Reliability

It is convincing.

Credibility
Questioning to Assess Reliability

- Inherent Plausibility
- Logic
- Corroboration
Questioning to Assess Credibility

No formula exists, but consider asking questions about the following:

- Opportunity to view
- Ability to recall
- Motive to fabricate
- Plausibility
- Consistency
Policy Analysis

Break down the policy into elements.

Organize the facts by the element to which they relate.
## Analysis Grid

<table>
<thead>
<tr>
<th>Touching of the private body parts of another person</th>
<th>For the purpose of sexual gratification</th>
<th>Without consent due to lack of capacity</th>
</tr>
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<tbody>
<tr>
<td>Undisputed: Complainant and Respondent agree that there was contact between Respondent’s hand and Complainant’s vagina.</td>
<td>Respondent acknowledges and admits this element in their statement with investigators. “We were hooking up. Complainant started kissing me and was really into it. It went from there. Complainant guided my hand down her pants…”</td>
<td>Complainant: drank more than 12 drinks, vomited, no recall Respondent: C was aware and participating Witness 1: observed C vomit Witness 2: C was playing beer pong and could barely stand Witness 3: C was drunk but seemed fine Witness 4: carried C to the basement couch and left her there to sleep it off.</td>
</tr>
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Final Determination

- The allegations
- Findings of fact
- Conclusion of application of facts to the policy
- Rationale for each allegation
The Importance of Understanding the Potential Impact of Trauma
An event that is experienced as terrifying, horrifying, or threatening and that is coupled with an actual or perceived lack of control.
Examples of Events that Might Trigger a Traumatic Response

- Sexual Assault
- Physical Assault by a Stranger
- Physical Assault by an Intimate Partner
- A Car Accident
- Accident that causes serious injury or death
- Robbery
- Significant medical event
When trauma occurs, there are very real changes in brain function that may affect a person’s ability to make memory and to recount their experience.
Common Characteristics of Disclosures by a Trauma Brain

- Inconsistent
- Non-linear
- Fragmented
- Lack of detail
- New information
- Affect is unexpected
Historically, the seemingly inconsistent behaviors that frequently accompany disclosures of sexual assault and interpersonal violence resulted in the belief that the complainant was being dishonest.
Trauma informed practice reminds us that these seemingly inconsistent behaviors might illustrate something other than dishonesty.
Benefits of Trauma-Informed Approach

- Conclude, without a thorough inquiry, that the reporting individual is not credible
- Ask questions or make decisions founded in bias
- Cause additional harm
- Jeopardize future reporting
Misapplication of Trauma Informed Practices

It is a misapplication of trauma informed principles to allow potential evidence of trauma to:

1. Influence the interpretation of a specific item of evidence;
2. Substitute for missing evidence;
3. To serve as a justification for not doing a full and thorough investigation;
4. Cause a biased belief in the veracity of one or more party.

It is a misapplication of trauma informed principles to allow potential evidence of trauma to:

1. Influence the interpretation of a specific item of evidence;
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3. To serve as a justification for not doing a full and thorough investigation;
4. Cause a biased belief in the veracity of one or more party.
Trauma Informed Questioning
Trauma informed practices provide tools/techniques for questioning and engaging with the Complainant, Respondent, and Witnesses.

- Format/Structure of the Interview
- Format of Questions
- Approach to Clarification
Trauma Informed Practices are Designed to:

01 Encourage thorough and complete fact-finding

02 Assist with recollection

03 Assist with recounting

04 Reduce potential for false information

05 Minimize unnecessary re-traumatization

06 Reduce Bias
Ask open ended questions...

Help me understand your experience?

Start where you are comfortable and share what you are able to remember.

What are you able to tell me about your experience?

Allow the person to speak uninterrupted. This takes patience.
Ask questions that are intended to clarify and more deeply explore the information and details provided by the person in their narrative.

**Do Ask:**
- Interview for clarification
- Help me understand?
- Can you tell me more about...?
- Is there anything else you can share about...?

**Avoid:**
- Questions that accusatory
- Questions that blame
- Questions that imply doubt
- Leading questions
Approach to Questioning

- Ask open ended questions
- Explain your questions, especially the difficult ones.
- Do not ask leading questions.
- Watch your tone.
- Do not rush.
- LISTEN!!!!!!!!!!!
Questioning: Recommended Focus

- Seek clarification
- Explore inconsistencies
- Explore contradictory evidence
- Explore difficult issues
- Opportunity to respond
The “Hard” Questions

- Details about the sexual contact
- Inconsistent evidence/information
- Questions about clothing
- Alcohol or drug consumption
- Continued Contact/Relationship
- Other seemingly inconsistent behaviors?
How to Ask the Hard Questions

Lay a foundation for the questions:

• Explain why you are asking it
• Share the evidence that you are asking about, or that you are seeking a response to

Be deliberate and mindful in your questions:

• Can you tell me what you were thinking when....
• Help me understand what you were feeling when...
• Are you able to tell me more about...
Opinion Evidence

When might it be relevant?

How do you establish a foundation for opinion evidence so that the reliability of the opinion can be assessed?
Opinion Evidence: Try it!

You are investigating an allegation that Casey had sex with Taylor when Taylor was incapacitated. You interview several witnesses, one of whom made the following statement:

“I got to the party pretty late, and Taylor was already lit.”

“Taylor was wasted. Like totally messed up. There is no way they could have given permission for sex”
Practical Exercises
You have reviewed the transcript of the interviews of Complainant, Respondent, and Witness 1. In your small groups:

1. Discuss whether you identified any potential bias on the part of the investigators?
2. If not, what did the investigators do that minimized bias from influencing their interviews?
Break Out #2

In your breakout group:

1. Identify areas that you would like to explore further during your questioning of Complainant, Respondent, and Witness 1.
2. Identify which areas you are most uncomfortable exploring.
3. Develop questions to explore those areas.
Exercise #1

During the hearing, Complainant's advisor asks Witness 1 the following question. What is your relevancy ruling?

1. You told the investigators that after the formal, Taylor stopped going out and that she was different. What was different about her?

What is your relevancy ruling?
Exercise #2

During the hearing, Complainant’s advisor asks Respondent the following questions. What is your relevancy ruling?

1. Did you ever say “if you get a girl drunk enough, you can pretty much do whatever you want with her?” or suggest to your frat brothers that they should serve women punch with higher alcohol content so that the boys could get lucky?

What is your relevancy ruling?
Exercise #3

During the hearing, Respondent’s advisor asks Complainant the following questions. What is your relevancy ruling?

1. Did you ever say “if you get a girl drunk enough, you can pretty much do whatever you want with her?” or suggest to your frat brothers that they should serve women punch with higher alcohol content so that the boys could get lucky?

What is your relevancy ruling?
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