Impartiality, Conflicts of Interest and Bias

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Regulatory Requirements

- The Title IX regulation, at 34 C.F.R. 106.45(b)(1)(iii), requires that any individual designated by a recipient as a Title IX Coordinator, investigator, decision-maker or any person designated by a recipient to facilitate an informal resolution process, receive training on:

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"How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias."

106.45(b)(1)(iii)

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Impartiality - Definition

The fact of not supporting any of the sides involved in an argument.

dictionary.Cambridge.org

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Impartiality - Definition

The regulations and commentary to the regulations indicate that Title IX considers "impartiality" to be the avoidance of:

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

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Prejudgment of the Facts

Prejudgment of the Facts

- To judge beforehand without possessing adequate evidence. (https://www.thefreedictionary.com/prejudgement)
- To pass judgment on prematurely or without sufficient reflection or investigation. (https://www.dictionary.com/browse/prejudgement)

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Prejudgment of the Facts

Investigators and decision-makers should not immediately assume they know what happened in a case, despite “signs” that suggest one side or the other is telling the truth.

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Prejudgment of the Facts

- Prejudgment often occurs when investigators and decision-makers adhere to sex-based stereotypes about males and females.
- Decisions should be made based on individual facts, not stereotypical notions of what males and females do or do not do.

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Prejudgment of the Facts

Example:

An investigator immediately assumes a female complainant is lying because she is not outwardly displaying emotion.

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Prejudgment of the Facts

Studies show that human beings are not good at spotting deception based on body language, especially when we do not spend much time around the individual.

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Prejudgment of the Facts

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

Title IX Sexual Harassment Training: Serving Impartially & Avoiding Conflicts of Interest and Bias, Maricopa Community Colleges (*Quarles & Brady LLP*)

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Prejudgment of the Facts

Example:

An investigator or decision-maker:

- Assumes consent because the complainant and respondent had a previous relationship, or
- Assumes drug or alcohol use prevents a party from recalling events accurately.

Avoiding Prejudgment of the Facts

- Keep a neutral mindset focused only on the evidence.
- Only make decisions based on supporting evidence – do not speculate or jump to conclusions.
- Leave stereotypes out of your thinking!

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Conflicts of Interest

Conflict of Interest - Definition

A conflict between the private interests and the official responsibilities of a person in a position of trust

https://www.merriam-webster.com/dictionary/conflict%20of%20interest

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Conflict of Interest - Definition

When an employee's personal interests or relationships conflict with the ability of such employee to act in a neutral manner with regard to a complaint against a faculty member, staff member or student.

https://www.grinnell.edu/sites/default/files/documents/Conflict%20of%20Interest%20for%20Title%20IX%2002.24.2017_0.pdf

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Conflicts of Interest

OCR has not established any employment relationships or administrative arrangements as *per se* conflicts of interest, deciding instead to give institutions discretion and holding them accountable for the end result of how they use personnel throughout the process.

Final Rule, 34 C.F.R. Part 106, pg. 826

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Conflicts of Interest

Even specific professional affiliations (such as being affiliated with a women's rights group) do not automatically constitute a conflict.

Final Rule, 34 C.F.R. Part 106, pg. 826

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Conflicts of Interest

A conflict of interest arises when an individual working on a particular Title IX matter is prevented from being impartial.

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Conflicts of Interest

A conflict may be:

- **Actual**: a direct conflict exists between professional responsibilities and a personal interest.
- **Perceived**: no actual conflict exists but one could reasonably perceive that one does
- **Potential**: no actual conflicts, but one could develop in the future

Conflicts of Interest

Conflicts can come from a variety of situations:

- Family relationships
- Close friendships or dating relationships
- Adversarial relationship in or out of the workplace
- Legal disputes
- Business relationships
- Possibly some employment relationships

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Objective Standard

The Department "encourages" the adoption of objective standards for determining potential biases and/or conflicts of interest. An "objective" standard, according to the Department "is whether a reasonable person would believe bias exists."

Final Rule, 34 C.F.R. Part 106, pg. 827

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Conflict of Interest – How to Determine

- Do I have anything to personally gain or lose from this set of circumstances?
- Would I feel comfortable if both parties knew about my relationship, and the nature of my relationship, with this person?
- Would I be comfortable with these circumstances if I were one of the parties?
- Could a reasonable person question my impartiality in this set of circumstances?

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Bias

Bias - Definition

An inclination of temperament or outlook *especially:* a personal and sometimes unreasoned judgment.

https://www.merriam-webster.com/dictionary/bias

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Bias - Definition

A bias is a tendency, inclination or prejudice toward or against something or someone.

- Biases are often based on stereotypes, rather than actual knowledge of an individual or circumstance.
- Biases are cognitive shortcuts that can result in prejudgments that lead to rash decisions or discriminatory practices.

https://www.psychologytoday.com/us/basics/bias

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Bias

As mentioned above, OCR encourages recipients to apply an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving in a Title IX role is biased.

Final Rule, 34 C.F.R. Part 106, pg. 827

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Bias

OCR also cautions entities not to apply generalizations that might unreasonably conclude that bias exists, such as assuming that all self-professed feminists, or self-described survivors, are biased against men, or that a male is incapable of being sensitive to women, etc.

Final Rule, 34 C.F.R. Part 106, pg. 827

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Avoiding Bias

- Treat people as individuals and not members of a class.
- Do not make assumptions based on the race, national origin, religion, sex, age or disability status of an individual.
- Think about your own biases and do your best to leave them out of your thought process.

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Avoiding Bias

- Consider the language you use. Does it include sex stereotypes?
- Do not automatically make assumptions when drugs or alcohol is involved.

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