



# Title IX Sexual Harassment Training: Serving Impartially & Avoiding Conflicts of Interest and Bias

---

Understanding How to Remain Impartial and Preserve Integrity of the Formal Grievance Process

*Yavapai*  
COLLEGE

Quarles & Brady<sup>LLP</sup>

# Road Map

---

- Background on Impartiality
- Prejudgment of the Facts at Issue
- Conflicts of Interest
- Bias
- Tips on Impartiality in the Formal Grievance Process
- Quiz – Test Your Knowledge of Impartiality!
- Questions?

# Background on Impartiality

---

- Impartiality is integral to the Title IX formal grievance process
- Serving *impartially* includes avoiding the following:
  - *Prejudgment of the facts at issue*
  - *Conflicts of interest*
  - *Bias*
- But what do each of these things mean (and how do you avoid them)?

# 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 actions alleged.*
- Neither Complainants reporting sexual harassment, nor Respondents defending against allegations of sexual harassment, should be met with prejudgment throughout the Title IX process.

# Prejudgment of the Facts at Issue

---

- 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 particular conduct was given.*

# Prejudgment of the Facts at Issue

---

- 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*

# Prejudgment of the Facts at Issue

---

- How do you avoid prejudging facts?
  - Keep an open mind throughout the investigation process
  - Wait to hear *all* of the facts (there are two or more) sides to every story
  - Seek out additional facts and/or witnesses if you feel yourself jumping to conclusions – facts are your friends!
  - Be particularly cautious about checking your assumptions in situations involving sexual assault, drugs, or alcohol use

# Prejudgment of the Facts at Issue

---

- **Hypothetical:** Allie is an investigator who conducts Title IX investigations. Allie frequently makes statements to her colleagues regarding how provocatively female students on campus 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 her lab partner made sexually harassing comments to her during a lab.
- In terms of *prejudgment of the facts*, would you be concerned about Allie's impartiality?



# Quiz – Test Your Knowledge of Impartiality

---

- **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 mediation, particularly based on the facts of this complaint.

# Conflicts 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.*
  - **Example of Potential Conflict:** *The investigator and Respondent are co-owners of a side business that resells textbooks on campus.*

# Conflicts of Interest

---

- 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.
- How do you know whether a conflict prevents you from participating?

# Conflicts of Interest

---

- 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"
- You should first determine what type of conflict is present as you consider your ability to impartially serve.

# Conflicts of Interest

---

- An ***actual*** conflict of interest is a direct conflict between one's official duties and responsibilities, and a competing personal interest or obligation
- 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
- A ***potential*** conflict of interest arises where a personal interest or obligation could conflict with one's official duties and responsibilities in the future

# Conflicts of Interest

---

- **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.*

# Conflicts of Interest

---

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

# 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



# Bias

---

- **Example:** *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).*
- **Example:** *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.*

# Bias

---

- You may or may not be aware of your own biases – so you need to be vigilant about removing them from your thinking!
- Biases can be (and are often) *implicit*, meaning that certain attitudes and stereotypes can affect understanding, actions, and decisions in an unconscious manner.

# Bias

---

- Ways to combat bias:
  - Pay attention to your language
  - Avoid generalizations
  - Question your thinking and challenge your assumptions
  - Listen!

# Bias

---

- Understanding bias is particularly important in the Title IX context because:
  - Most evidence is circumstantial rather than direct
  - There are social stigmas associated with sex, alcohol, and drugs
  - Improper sex-based bias is prevalent and prevents reliable outcomes
  - There are also potential biases related to economic status, gender, race/ethnicity, and academic standing

# Tips for Impartiality in the Formal Grievance Process

---

- Treat all informal reports of sexual harassment equally, regardless of the form of the report or the demographics of the Complainant or Respondent
- Make no assumptions about the allegations based on the demographics of the Complainant or Respondent
- Offer supportive measures to Complainants and Respondents *equally*

# More Tips for Impartiality in the Formal Grievance Process

---

- Keep an open mind and actively listen to all the facts presented
- View all relevant evidence objectively
- Remember that each case is unique

# Quiz – Test Your Knowledge of Impartiality!

---

- 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?

# Quiz – Test Your Knowledge of Impartiality!

---

- **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 – Test Your Knowledge of Impartiality!

---

- Betty is a mediator who conducts informal resolution for parties that elect it under the formal grievance process. Betty is also an academic dean for the college, 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 campus library while completing work on a group assignment. The two elect mediation.
- In terms of ***bias***, would you be concerned about Betty's impartiality?

# Quiz – Test Your Knowledge of Impartiality!

---

- **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?

© 2020 Quarles & Brady LLP - This document provides information of a general nature. None of the information contained herein is intended as legal advice or opinion relative to specific matters, facts, situations or issues. Additional facts and information or future developments may affect the subjects addressed in this document. You should consult with a lawyer about your particular circumstances before acting on any of this information because it may not be applicable to you or your situation.