

University of Connecticut Title IX Review, Update & Anti-Bias Training

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AGENDA

Level Setting

Title IX Review and Updates

Bias and Partiality

Investigation Strategies

What Guides Your Work?

Through the implementation of an ethic of care and concern that promotes the fair, transparent, and compassionate application of published institutional standards and expectations, OCS aims to thoroughly investigate and resolve allegations of student behavioral harm to the UConn community in an educational and restorative manner.

How do you demonstrate an ethic of care and concern?

How do you demonstrate fairness and transparency?

How do you demonstrate compassion?

TIX DEFINITIONS

TITLE IX OF THE EDUCATION AMENDMENTS OF 1972 (20 U.S.C. §1681, ET SEQ.) AND ITS IMPLEMENTING REGULATIONS (34 C.F.R. PART 106) PROHIBIT DISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES:

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

CT Civil Rights

- 1967 Protection against sex discrimination added to the Fair Employment Practices Law
- 1973 Sex added as protected class in public accommodations and housing law. Sex and marital status added as protected classes in credit transactions. (P.A. 73-573) Pregnancy leave benefits and job rights were specified under employment discrimination law. (P.A. 73-647)
- 1974 The State Constitution's Declaration of Rights was amended to prohibit the denial of equal protection of the law and segregation or discrimination in the exercise of civil or political rights because of sex. (Article I, Sec. 20)
- 1974 Marital status added as a protected class under housing law. Sex added as a protected class to contract compliance law and to the law prohibiting deprivation of legal or constitutional rights.
- 1980 Sexual harassment is specifically prohibited in employment law. (P.A. 80-285) Religion and national origin covered under law prohibiting deprivation of legal or constitutional rights.
- 1991 Public Act 91-58 adds sexual orientation as a protected class, as proscribed in sections 4a-60a and 46a-81a to 46a-81o.
- 1992 Commission authorized to require employers to post notices and provide training to supervisory employees concerning sexual harassment. (P.A. 92-85)

CT Civil Rights

Protections for College and University Students

In addition to federal requirements under Title IX, since 1975 Connecticut law has required state public higher education policies to ensure that no qualified person be denied the opportunity for higher education based on sex. The legislature added protections based upon gender identity or expression in 2011 ([CGS § 10a-6\(b\)\(1\)\(A\)](#)). Table 2 traces the legislative history of this statute.

Table 2: Legislative History of Postsecondary Protections in CGS § 10a-6

Public Act	Relevant Provision(s)	Relevant Context, Testimony, or Floor Debate
CGS § 10-234 (passed in 1975, but repealed and replaced by PA 77-573, see below)	Adopted the goal for the state's public higher education system to ensure that no qualified person be denied the opportunity to for higher education on the basis of sex, among other things (see the Program Review and Investigations Committee Report , "Strengthening Higher Education," April 1977, page 5)	No relevant testimony available, but Article V, an amendment to the Connecticut state constitution prohibiting sex-based discrimination, passed in 1974
PA 77-573, § 6	Maintained the goal codified in 1975 as part of a reorganization of higher education oversight that created the Board of Higher Education to replace the Commission on Higher Education	No discussion of anti-discrimination goals at the committee-level or during House or Senate debate
PA 11-55 , §§ 2, 10 & 37	Added "gender identity or expression" to the discrimination protections, with exceptions for religious educational institutions regarding (1) employment or (2) matters of discipline, faith, internal organization or ecclesiastical rule, custom, or law established by the institution	Part of a larger omnibus act prohibiting discrimination on the basis of gender identity or expression in various contexts, including employment, public accommodations, the sale or rental of housing, the granting of credit, public schools and libraries, electric suppliers, and telephone or telecommunication providers

Furthermore, since 2012 the legislature has enacted a series of protections for college and university students relating to sexual assault, stalking, and intimate partner violence (IPV). Table 3 describes these laws, including the relevant testimony and floor debate.

CT Civil Rights

Table 3: Legislative History of Sexual Assault, Stalking, and IPV Protections: CGS §§ 10a-55m to -55r

Public Act	Relevant Provision(s)	Relevant Context, Testimony, or Floor Debate
PA 12-78	<p>Requires public and private higher education institutions to adopt and disclose policies on sexual assault and IPV that must include provisions for (1) informing students about their options for assistance if they are victims of such violence, (2) disciplinary procedures, and (3) possible sanctions</p> <p>Requires these institutions, within existing budgetary resources, to offer (1) sexual assault and intimate partner violence primary prevention and awareness programming for all students and (2) ongoing prevention and awareness campaigns</p>	<p>March 6, 2012, Higher Education Committee testimony: Connecticut data shows that 19% of college female residents and 26% of women are sexual assault survivors, many victims do not report incidents, and institutional barriers are present (e.g., secret disciplinary proceedings, off-the-record negotiations)</p>
PA 14-11 & PA 14-217 , §§ 163-4	<p>Extends PA 12-78 requirements to (1) for-profit institutions licensed to operate in Connecticut and (2) applies them to (a) stalking and (b) all institutions' employees (except the online Charter Oak State College)</p> <p>Requires all institutions, after a reported incident, to immediately provide concise written notification to each victim about his or her rights and options under the institution's policy or policies; allows all institutions to permit anonymous reporting</p> <p>Requires all institutions to (1) establish a campus resource team to review their policies and recommend protocols for providing support and services to students and employees who report being victims and (2) enter into a memorandum of understanding with at least one community-based sexual assault crisis service center and one community-based domestic violence agency</p>	<p>April 10, 2014, House transcript: students on campus have been working very diligently to raise awareness of this issue; current and former students at the University of Connecticut came forward last fall and told their stories</p> <p>(See CT Mirror story: "UConn students file federal lawsuit over university's handling of sexual assaults," November 1, 2013)</p>

Table 3 (continued)

Public Act	Relevant Provision(s)	Relevant Context, Testimony, or Floor Debate
PA 16-106	<p>Requires higher education institutions to use an affirmative consent standard when determining whether sexual activity is consensual in the context of their required policies on sexual assault and IPV</p> <p>Requires the policies to include clear statements advising students and employees of the affirmative consent standard</p>	<p>March 1, 2016, Education Committee public hearing testimony: "Affirmative consent is a shift from 'no means no' to 'yes means yes.' While 'no means no' places the burden on the victim to actively resist, 'yes means yes' engages both partners in a dialogue about what they want and about actively seeking consent."</p>
PA 21-81 & PA 21-2 , June Special Session, § 125	<p>Generally prohibits an institution from disciplining students or employees for violating the institution's drug or alcohol policy, if they reported or disclosed an alleged sexual misconduct incident</p> <p>Establishes a Council on Sexual Misconduct Climate Assessments to develop a list of data points for higher education institutions to collect using sexual misconduct climate assessments</p> <p>Requires higher education institutions to biennially conduct a sexual misconduct climate assessment and distribute it to enrolled students, starting by March 1, 2023</p>	<p>May 25, 2021, House transcript: goal is creating amnesty for students who have been drinking or have been in some way violating the drug and alcohol policies on their campus and are subject to assault or witness an assault; survey looks at sexual violence on campus to see what students think about how well the administration is protecting them and the processes in place; students will have a chance to voice what's happening on their campus, what they have seen in their own experiences</p>

TIX DEFINITIONS**

Conduct:

§ On the basis of sex,

§ that occurs within the institution's education program or activity,

§ within the United States, and

§ Involves

Title IX sexual harassment

- An institution's employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct OR
- Unwelcome conduct that is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution's education program or activity;

TIX DEFINITIONS**

UConn's Educational Program of Activity

- locations, events, or circumstances
- over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred,
- and also includes any building owned or controlled by a student organization that is officially recognized by a post secondary institution (such as a fraternity or sorority house).
- Title IX applies to all of a school's education programs or activities, whether such programs or activities occur on-campus or off-campus (but not internationally). A school may address sexual harassment affecting its students or employees that falls outside Title IX's jurisdiction in any manner the school chooses, including providing supportive measures or pursuing discipline.

TIX DEFINITIONS**



Sexual Assault
Domestic Violence
Dating violence
Stalking

SEXUAL ASSAULT

RAPE: Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

FONDLING: The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

INCEST: Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

STATUTORY RAPE: Non-forcible sexual intercourse with a person who is under the statutory age of consent. (Age of consent is 16 in CT, so anyone 15 or younger cannot consent; slightly more complicated.)

CONSENT

"Affirmative consent" means an active, clear and voluntary agreement by a person to engage in sexual activity with another person

Consent is an understandable exchange of affirmative words or actions, which indicate a willingness to participate in mutually agreed upon sexual activity.

Consent must be informed, freely and actively given. It is the responsibility of the initiator to obtain clear and affirmative responses at each stage of sexual involvement. Consent to one form of sexual activity does not imply consent to other forms of sexual activity. The lack of a negative response is not consent.

An individual who is incapacitated by alcohol and/or other drugs both voluntarily or involuntarily consumed may not give consent. Past consent of sexual activity does not imply ongoing future consent.

CONSENT

Force: is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and/or coercion that overcome resistance.

Coercion: is unreasonable pressure for sexual activity. Coercion is more than an effort to persuade, entice, or attract another person to have sex. Conduct does not constitute coercion unless it wrongfully impairs an individual's freedom of will to choose whether to participate in the sexual activity.

Incapacitation: is a state where an individual cannot make rational, reasonable decisions due to the debilitating use of alcohol and/or other drugs, sleep, unconsciousness, or because of a disability that prevents the individual from having the capacity to give consent. Intoxication is not incapacitation and a person is not incapacitated merely because the person has been drinking or using drugs. Incapacitation due to alcohol and/or drug consumption results from ingestion that is more severe than impairment, being under the influence, drunkenness, or intoxication. The question of incapacitation will be determined on a case-by-case basis. Being intoxicated or incapacitated by drugs, alcohol, or other medication is not a defense to any violation of this Policy.

DATING VIOLENCE

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, and

(i) The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(ii) For the purposes of this definition—

(A) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

(B) Dating violence does not include acts covered under the definition of domestic violence.

NOTICE

Name, contact info of TIXC must be shared with

- **All new employees and students**
- **Applicants for admission**
- **Applicants for employment**
- **All unions**

FAIRNESS

Bias and Conflicts of Interest

Limited Jurisdiction

Limited Definition

Rigid Timelines

Applies to employees



Recent Updates

- **March 8, 2021** E.O. Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity
- **April 5, 2021** Clarification that TIX protects against discrimination based upon sexual orientation and gender identity (consistent with *Bostock v. Clayton County*)
- **April 6, 2021** Sec. of Ed. Cardona announced plans to review (initially expected April 2022, then May 2022, now "very soon")
- **July 2021** Q & A Document
- **August 24, 2021** DOE's OCR states will not enforce requirement to ignore information not subject to cross examination (consistent with *Victim Rights Law Center et al., v. Cardona*.
- *Cummings v. Premier Rehab Keller, PLLC, (2022)*
- **June 15, 2022** National Women's Law Center Letter pushing for June 23, 2022 release of new NPRM that promises comprehensive "overhaul" of 2020 regulations

What's Next For Title IX?

The U.S. Department of Education Office of Civil Rights (OCR) held virtual public hearings and collected written comments on Title IX enforcement from June 7 through June 11, 2021.

1) the 2020 amendments to Title IX regulations regarding sexual harassment, including due process rights of persons accused of alleged Title IX violations;

- Defining sexual harassment (the AND), jurisdiction
- Live hearings (cross examination)
- Evidentiary rules

and

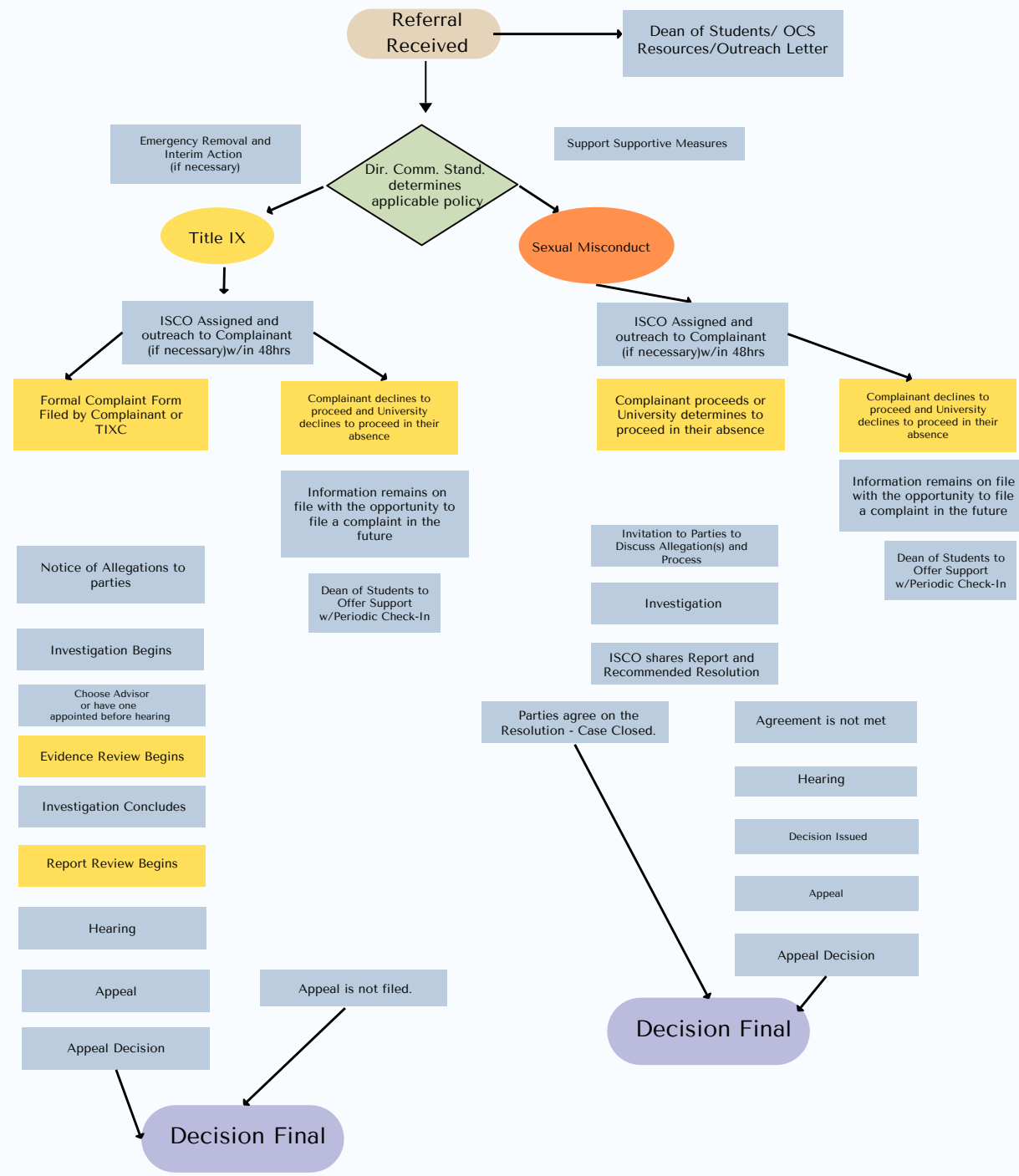
2) discrimination against individuals on the basis of sexual orientation and gender identity.

UConn Updates

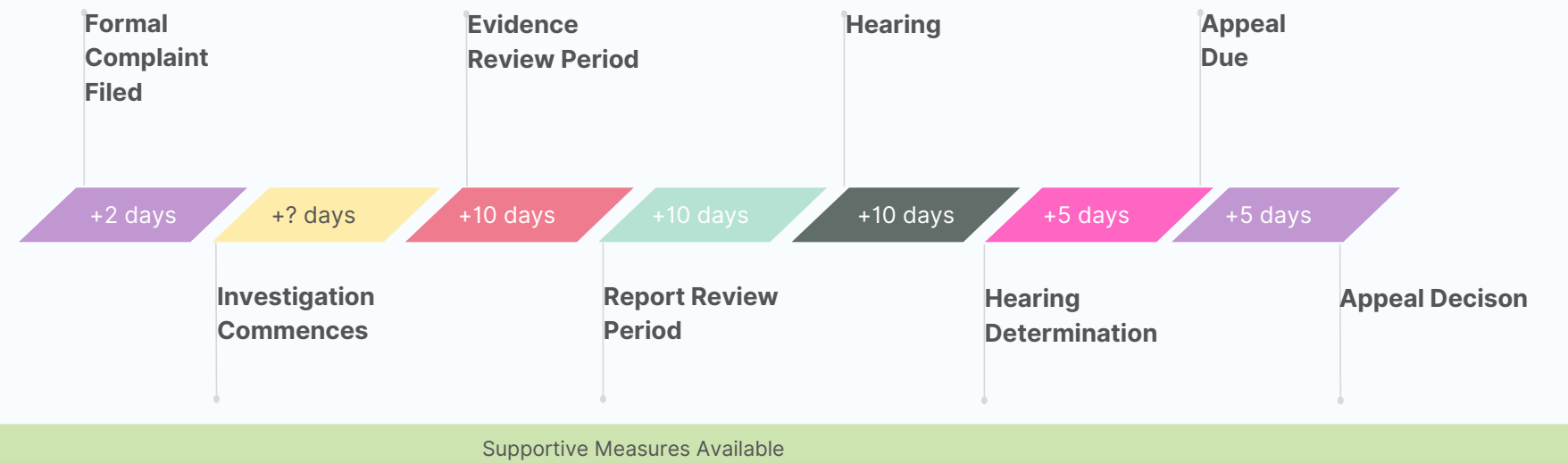
- Streamlining Existing Tools (hearing script)
- Adding to Investigation Toolbox (roadmap, timeline, questioning strategies)
- Visualization of Process

Sexual Misconduct Process Visuals

SEXUAL MISCONDUCT FLOWCHART



Title IX Investigation and Adjudication



BIAS, CONFLICT OF INTERESTS & PREJUDGEMENT

June 20, 2022



TODAY'S DISCUSSION

- Intro
- Bias (implicit and direct)
- Conflict of Interest
- Prejudgment



REQUIRE THAT ANY INDIVIDUAL DESIGNATED BY A RECIPIENT AS A TITLE IX COORDINATOR, INVESTIGATOR, DECISION-MAKER, [. . .] NOT HAVE A CONFLICT OF INTEREST OR BIAS FOR OR AGAINST COMPLAINANTS OR RESPONDENTS GENERALLY OR AN INDIVIDUAL COMPLAINANT OR RESPONDENT.

§106.45(b)(1)(iii)

"...TITLE IX COORDINATORS, INVESTIGATORS, DECISION-MAKERS, AND ANY PERSON WHO FACILITATES AN INFORMAL RESOLUTION PROCESS, [MUST] RECEIVE TRAINING ON [...] HOW TO SERVE IMPARTIALLY, INCLUDING BY AVOIDING PREJUDGMENT OF THE FACTS AT ISSUE, CONFLICTS OF INTEREST, AND BIAS"

§106.45(b)(1)(iii)

(8) APPEALS. (I) A RECIPIENT MUST OFFER BOTH PARTIES AN APPEAL FROM A DETERMINATION REGARDING RESPONSIBILITY, AND FROM A RECIPIENT'S DISMISSAL OF A FORMAL COMPLAINT OR ANY ALLEGATIONS THEREIN, ON THE FOLLOWING BASES:

(A) PROCEDURAL IRREGULARITY THAT AFFECTED THE OUTCOME OF THE MATTER;

(B) NEW EVIDENCE THAT WAS NOT REASONABLY AVAILABLE AT THE TIME THE DETERMINATION REGARDING RESPONSIBILITY OR DISMISSAL WAS MADE, THAT COULD AFFECT THE OUTCOME OF THE MATTER; AND

(C) THE TITLE IX COORDINATOR, INVESTIGATOR(S), OR DECISION-MAKER(S) HAD A CONFLICT OF INTEREST OR BIAS FOR OR AGAINST COMPLAINANTS OR RESPONDENTS GENERALLY OR THE INDIVIDUAL COMPLAINANT OR RESPONDENT THAT AFFECTED THE OUTCOME OF THE MATTER.

§106.45(b)(8)

“The Department’s conception of bias is broad and includes bias against an individual’s sex, race, ethnicity, sexual orientation, gender identity, disability or immigration status, financial ability, socioeconomic status, or other characteristic.”
85 FR 30084

A “recipient that ignores, blames, or punishes a student due to stereotypes about the student violates the final regulations[.]” 85 FR 30496

“Treating a party differently on the basis of the party’s sex or stereotypes about how men or women behave with respect to sexual violence constitutes impermissible bias.”
85 FR 30238-40



BIAS

Bias: prejudice in favor of, or against, one thing, person, or group compared with another, usually in a way considered to be unfair.

Explicit bias: is an bias that somebody is consciously aware of having.

Implicit bias: is a positive or negative mental attitude towards a thing, person, or group that a person holds at an unconscious level.

Stereotype: “To believe unfairly that all people or things with a particular characteristic are the same”
(Merriam-Webster’s Learner’s Dictionary)

Explicit

Wrote a book entitled "All men are rapists" (wherein they argue that every single man is a rapist and there is no way anyone could ever convince you otherwise.)

Regularly write editorials in the NY Times arguing that no person should be expected to live up to the "affirmative consent standard" (and how they would find everyone not in violation if they were ever on a hearing or appeal board.)

Tell the parties before the hearing begins that they will always "vote for the complainant" because no one would go through this difficult process if they hadn't been assaulted.

EMPLOYEE STATUS

Just b/c you are an employee
doesn't mean you are "pro-
institution."

PROFESSIONAL EXPERIENCE/ AFFILIATIONS

Research, advocacy work.

PERSONAL EXPERIENCE/ AFFILIATION

Gender or sexual orientation

TIXC SIGNED COMPLAINT

Doesn't mean they are biased
against respondent.

What is not bias "per se"?



Confirmation

Cultural

In Group

Self-Serving

Availability

Fundamental Attribution Error

Anchoring

Halo



IMPLICIT BIAS

Ordinary mental operations that serve us quite well in most circumstances can fail our intentions

Sometimes helpful...often not, and never helpful in TIX world

Awareness, personal curiosity, and cultural humility can help combat implicit bias



1. Vqeb peow

2. Cvir zxyq

3. Vhrn wwte

4. Xoc jbnj oew

5. Zre ytu vee

1. sky

2. grass

3. dirt

4. Sunshine

5. Stop sign

1. Dirt

2. Sunshine

3. Sky

4. Grass

5. Stop sign

1. Green

2. Blue

3. Brown

4. Red

5. Yellow



IMPLICIT BIAS



“Prejudice is bad so if I think or act (or am accused of thinking and acting) with bias, I am a bad person.”

NEW!

"Prejudiced thoughts and actions are inherited manifestations of being human."

Its how our brain works.

When critically examined and questioned we can break away from these habits.

Doing so requires more than good intentions, it requires a willingness to engage



REAR?

Stress

Time constraints

Multi-tasking



DIS APPEAR?

Introspection

Mindfulness

Slow down

Individuation

Humility

PAUSE

Why do I think that?

What information has given me this impression?

Why did I ask that question?

What assumptions am I making in asking this question this way?

Why did I have an emotional response to reading/hearing this?



CULTURAL HUMILITY



Philosophy, initiated by Alan Guskin and expanded by physicians, Drs. Melanie Tervalon and Jann Murray-Garcia. Seeks to empower individuals to effectively engage in interpersonal relationships that are dynamically diverse and mutually respectful.

Cultural humility provides a framework for individuals to increase their understanding of the significant funds of knowledge that exists within each individual's cultural background and identities.

CULTURAL HUMILITY

Practicing cultural humility requires us to put aside our own beliefs, generalizations, and assumptions about other people and cultures and instead focus on learning how individuals identify themselves.

It requires us to step back and critically assess our own assumptions and values, then acknowledge how these factors affect our interactions with people of other cultures.

CONFLICTS OF INTEREST

A situation or relationship that prevents one from acting impartially.



ACTUAL

(Close friends with one party)



PERCEIVED

(Sits next to accused in every official ceremony)



POTENTIAL

(May be promoted to supervise party)

OBJECTIVE EVALUATION OF CONFLICT OF INTEREST

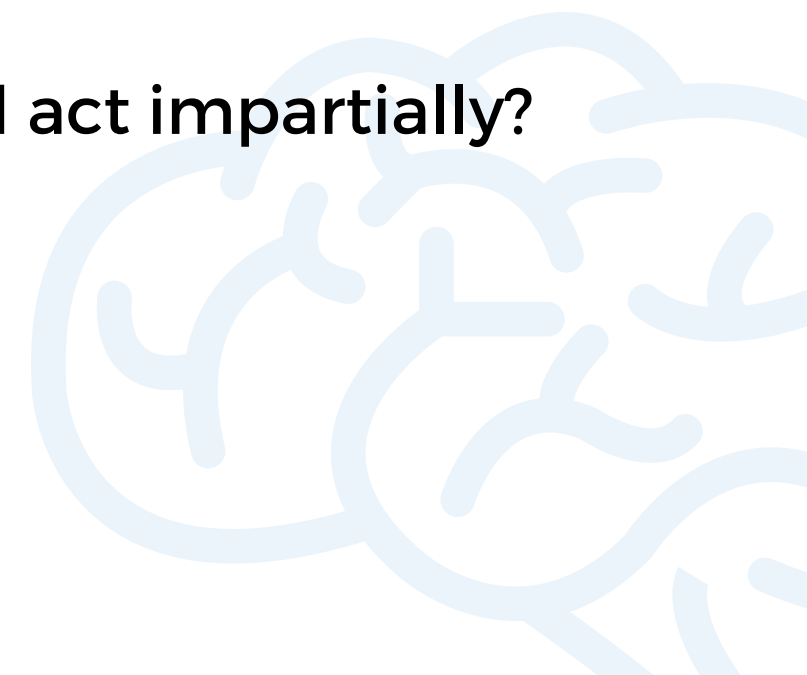
Recipients of Federal financial assistance also enjoy some discretion to determine what may constitute a specific conflict of interest or bias with respect to the unique factual circumstances in a report of sexual harassment.

85 FR 30026, 30527

Objective: "expressing or dealing with facts or conditions as perceived without distortion by personal feelings, prejudices, or interpretations"

- What is the relationship between the participants that could give rise to a conflict?
- What is the circumstance that has given rise to the individual believing the participant is biased?
- Do the participants believe that they can act impartially?
- Would a reasonable person believe that someone in the participant's situation could act impartially?

85 FR 30250-30253



REMAINING IMPARTIAL

Avoid prejudgment of the facts -keep an open mind.

Give all parties an equal opportunity to present facts, witnesses, and their versions of the story.

Evaluate all the facts presented fairly and approach each allegation of all parties neutrally.

Wait to hear all facts before making a conclusion.

Check your assumptions.

DISCLOSE YOUR BIASES

Would you like it if others became aware of your connection to the issue?

If you saw someone else with the conflict, would you think they would be barred from participation?

Does it "feel" too close?

