



THE UNIVERSITY OF ARIZONA
GLOBAL CAMPUS

Title IX Training Part II

P&P Review, Recognizing Bias , Removing Prejudgment and Conflicts of Interest



AGENDA

- Policy & Procedure
- Understanding & Mitigating Bias
- Avoiding Prejudgment
- Removing Conflicts of Interest





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Title IX Policy & Procedures

A brief review and updates



Sexual Harassment Definition

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it **effectively denies** a person equal access to the recipient's education program or activity(see additional information below regarding effective denial); or
- (3) “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30). See below.



Effective Denial

To determine whether a person has been **effectively denied** equal access to an education program or activity, the University will evaluate “whether a reasonable person in the complainant’s position would be effectively denied equal access to education compared to a similarly situated person who is not suffering the alleged sexual harassment. Examples of specific situations that likely constitute effective denial of equal access to educational opportunities include a decline in a student’s grade point average, and having difficulty concentrating in class. A complainant does not need to have “already suffered loss of education before being able to report sexual harassment. Effective denial of equal access to education does not require “that a person’s total or entire educational access be denied.” Complainants do not need to have exhibited specific trauma symptoms to be effectively denied equal access. It is impermissible to deny the review a complaint by deciding the complainant was not traumatized.



Examples of University's Scope

When the University has actual knowledge of sex/gender discrimination, misconduct or harassment in the University's education program or activity, the University will respond promptly, equitably, and reasonably. The University's education programs or activities include the remote learning platform, commencement events, and any sponsored club or society activities. The University will treat complainants and respondents equitably by offering protective/supportive measures, and by following its grievance process before the imposition of any disciplinary sanctions or other actions that are not protective/supportive measures against a respondent. The Title IX Coordinator will promptly contact the complainant to discuss the availability of protective/supportive measures, consider the complainant's wishes with respect to protective/supportive measures, inform the complainant of the availability of protective/supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.



Clarifying statement of the initial assessment process

- If a formal or informal complaint is not applicable (there are no assumed facts alleging sex/gender harassment) AND desired (the Complainant does not desire a formal or informal procedure although alleged facts do constitute sex/gender harassment), the Title IX Coordinator works with the Complainant on a supportive and remedial response. If the initial assessment does not constitute sexual harassment as defined; is outside the jurisdiction of the school, i.e., the conduct did not involve an education program or activity of the school;, or did not occur against a person in the United States, the Title IX Coordinator must dismiss the formal complaint regardless of proof. In that event, the Title IX Coordinator shall forward the formal complaint to an appropriate University official who will determine whether the conduct alleged in the complaint violates a separate policy or code of conduct. The Title IX Coordinator may continue providing support and refer the Complainant to the appropriate office(s), such as, Student Conduct, Student Dispute Resolution Center, and/or Human Resources to seek resolution of the complaint.



Additional Guidance to Hearing Procedure

Questions and evidence about any parties medical or mental health records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, are prohibited unless the University obtains that party's voluntary, written consent to do so.

Questions of information considered under legal privileged and evidence are prohibited unless consent of the party is given.



Additional Guidance to Hearing Procedure Cont.

Decorum and Wellbeing of Parties

The University requires all parties, advisors, and witnesses to maintain appropriate decorum throughout the live hearing. Participants at the live hearing are expected to abide by the directions and determinations of the hearing officer(s), maintain civility, and avoid emotional outbursts and raised voices. Repeated violations of appropriate decorum will result in a break in the live hearing, the length of which will be determined by the hearing officer(s). The hearing officer(s) reserve(s) the right to appoint a different advisor to conduct cross-examination on behalf of a party after an advisor's repeated violations of appropriate decorum or other rules related to the conduct of the live hearing.

The hearing officer(s) will discuss measures available to protect the well-being of parties and witnesses at the hearing. These may include, for example, use of lived names and pronouns during the hearing, including names appearing on a screen; a party's right to have their support person available to them at all times during the hearing (in addition to their advisor); and a hearing participant's ability to request a break during the hearing, except when a question is pending.



Stated Time Frames

From Start to Finish

Initial Assessment: 1 to 5 Business Days

Investigation: 45 Business Days

Overall: All formal complaints will conclude within seventy-five (75) business days of the receipt of the complaint. There may be extensions of this or any timeframe within this procedure for good cause with simultaneous, written notice to the parties of the delay and the reason(s) for the delay.

Appeals: The appeal process will conclude within ten (10) business days following the appeal acceptance. There may be extensions of this or any timeframe within this procedure for good cause with simultaneous, written notice to the parties of the delay and the reason(s) for the delay.



Notes on Included Definitions

- Information and definitions specific to California were removed.
- Arizona's definition of consent added:
 - Under **Arizona** law "without consent" includes any of the following:
 - The victim is coerced by the immediate use or threatened use of force against a person or property;
 - The victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant. "Mental defect means the victim is unable to comprehend the distinctively sexual nature of the conduct or is incapable of understanding or exercising the right to refuse to engage in the conduct with another;
 - The victim is intentionally deceived as to the nature of the act;
 - The victim is intentionally deceived to erroneously believe that the person is the victim's spouse; and/or
 - The victim is under the age of 18.



Understanding & Mitigating Bias

What is Bias?

bias \ 'bī-əs \ 1. a tendency to lean in a certain direction.
2. an unreasoned judgment : prejudice. 3. prejudice
toward or against something or someone.



Types of Bias

- **Implicit Bias:** Stereotypical thoughts below conscious awareness, which can be followed by feelings of liking or disliking (prejudice) and/or discriminatory behaviors; tends to involve a limited or inaccurate perception of others.
- **Affinity Bias:** To favor others who are like us.
- **Anchoring Bias:** The tendency to be overly influenced by the first piece of information that we hear.
- **Halo/Horns Effect:** The tendency for an initial impression of a person to influence what we think of them overall.
- **Confirmation Bias:** To search for, interpret, focus on, and remember information that aligns with our preconceived opinions.
- **Information Bias:** Based on the incorrect belief that more information – even if irrelevant – must always be acquired before deciding.
- **Attentional Bias:** The tendency to pay attention to some things while simultaneously ignoring others (tunnel vision).



Reducing Bias

Affinity Bias

- Question your assumptions and first impressions.
- Would your view of the person change if they were different/similar to you?
- Justify your decision/rationale by writing down the reasons for it.

Anchoring Bias

- Ensure you have enough time to evaluate the situation.
- Reflect on whether you have rushed to judgement in the past.
- Ask yourself if you have thoroughly considered all key factors.

The Halo/Horns Effect

- Remind yourself that people are complex.
- Create two possible impressions of people when you first meet/interact with them.
- Collect objective information on which impression is more accurate.



Reducing Bias

Confirmation Bias

- Take notice every time you feel strongly about a conclusion
- Seek out missing perspectives that challenge your opinions.
- Assign someone on your team to play “devil’s advocate” for major decisions.

Information Bias

- Be realistic about what information is critical, what is not, and why.
- Write down key factors that should be considered.

Attentional Bias

- Remind yourself that you can be wrong.
- Mood and physiological discomfort affect your attentiveness and decision-making (hunger, fatigue, and emotional unease).



Avoiding Prejudgment



What is Prejudgment?

Prejudgment is passing judgment in advance of gaining all facts, or without thorough reflection and investigation.



Examples of Prejudgment

1. “I knew something was off when they arrived to our scheduled Zoom meeting 10 minutes late and looked like they just hopped out of bed.”
2. “Since they were in a consensual relationship months earlier, his claim that she sexually harassed him at work seems fishy.”
3. “ She admitted that before the assault occurred, a group of students got together to celebrate after graduation and probably had too much to drink.”



Steps to avoid Prejudgment

- Keep an open mind throughout the whole process, and listen to individual perspectives;
- Avoid making assumptions and wait to hear all of sides of involved parties before drawing any conclusions;
- If you do not have the facts to support, or if you feel yourself skipping ahead to conclusions, seek out additional facts; “Tell me more about that?”
- Be cautious about your potential bias in situations involving sexual assault, drugs, or alcohol use;
- Review once more your conclusions before making decisions; and,
- Document in detail all rationale regarding any steps taken, steps not taken, and any determinations made by applying the stated standard of evidence.



Removing Conflicts of Interest

Conflict of Interest

con·flict of in·ter·est

noun

- a situation in which the concerns or aims of two different parties are incompatible.
 - "the conflict of interest between elected officials and corporate lobbyists"
- a situation in which a person is in a position to derive personal benefit from actions or decisions made in their official capacity.
 - "Watson quit his job after questions about a possible conflict of interest"



Examples in Title IX Cases

- Fiduciary – monetary interest
- Employment – a continued or enhanced employment interest
- Emotional or Relationship – the benefits of a successful or happy romantic or intimate relationship
- Role – Trying to please a supervisor or having multiple roles.

**These can overlap. (Staff member married or in relationship with a leader who can influence their pay/raises).*



Conflict of Interest v. Bias

- Bias is a slant – you aren't viewing the evidence objectively and impartially.
- Conflict of interest is divided loyalty. You are torn between your divided loyalties that compromises your objectivity.

PERCEPTION IS IMPORTANT:

Can someone challenge you for not being objective due to Conflict of Interest or Bias?



Managing Conflict of Interest

- If you are going to making more than one substantive decision in a case in more than one role, there may be a conflict of interest.
- President and Senior Leaders (C-Suite) are out of decision-making roles.
- Title IX best practice is to not fall under General Counsel but do engage with.
- Be aware of prior investigations/cases. Ex: Previous conduct record and conduct officer.
- If needed, address conflicts of interest “on the record” or during the investigation/hearing.
- Avoid having a “desired outcome.”



Process should always
be fair, impartial,
and have integrity.



Questions

