



GRAND RIVER | SOLUTIONS

Title IX and Bias Series

Utilizing Assessments to
Identify and Reduce Bias

Tibisay Hernandez
Manager of Diversity,
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Relations





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

Your Facilitators

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(she/her/ella)



**Manager of DEI
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(she/her/hers)



**Director of Strategic
Partnerships & Client
Relations**

Goals and Objectives

- Identify how biases can be created
- Identify several different types of biases
- Utilize mitigation strategies to create more bias-informed assessments
- Understanding assessments

Today's Agenda

01

Bias: What Is It?

02

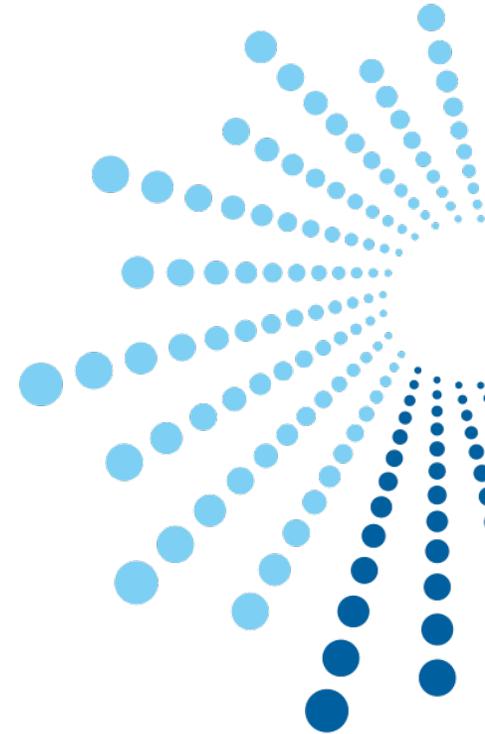
Assessment: Challenges and Opportunities

03

Where to Begin? Data

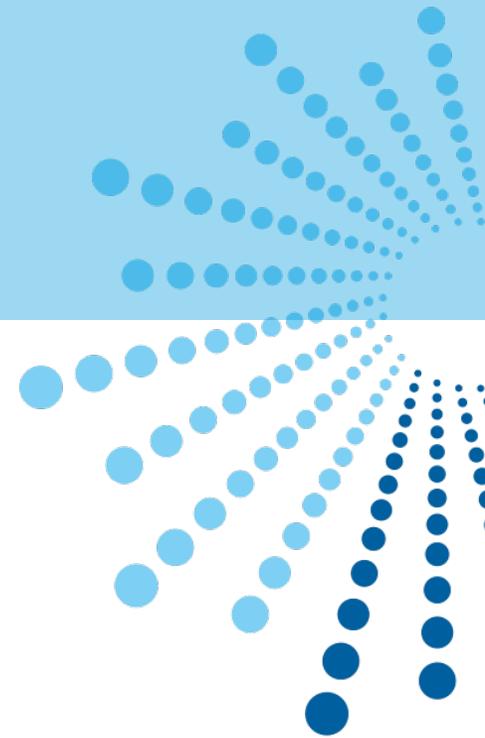
04

So What? Now What?





Bias: What Is It?



01

What is Implicit Bias?

Stereotypes:
Automatic
thoughts

Prejudice:
Feelings

Discrimination:
Actions

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.



Experiences

Implicit Bias

Actions

- Media
- Beliefs
- Education

- Automatic Thoughts
- Feelings

- Discriminatory
- Non-Discriminatory
- Overt
- Covert





Interpersonal Bias

Affinity Bias:

- To favor others who are like us. Affinity bias leads us to favor people who we feel we have a connection or similarity to.

Anchoring Bias:

- The tendency to be overly influenced by the first piece of information that we hear.

The Halo/Horns Effect:

- The tendency for an initial impression of a person to influence what we think of them overall. If our initial impression of someone was positive/negative, we want to look for proof that our assessment was accurate.

B.E. FOR DOGS:

HALO EFFECT

Duke |  CENTER FOR
ADVANCED
HINDSIGHT



BERMAN, FOEHL, TROWER 2018

Where can we find bias?

When survey is active, respond at pollev.com/grsbias

0 done

 **0 underway**

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

What percentage of CEO's are 6 feet or taller?

20%

30%

60%

75%

What percentage of men are actually 6 feet or taller?



15%

25%

30%

40%

When a woman's name was replaced with a man's name on a résumé, how much more likely were evaluators to say they would hire the applicant?



15%

35%

40%

60%

Interpersonal Bias Mitigation Techniques

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 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 them
- Collect objective information on which impression is more accurate

DEI Feedback Survey

To complete the survey, go to pollev.com/grsbias

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Bias in Data Analysis

Bias in Decision- Making and Assessment

- **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 irrelevant information—must always be acquired before deciding.
- **Attentional Bias:** The tendency to pay attention to some things while simultaneously ignoring others.
 - i.e. Tunnel vision

Bias in Action

Look at the presented sequence of numbers and propose a set of numbers that follows the rule.

2

4

8

What is the rule?

Rule: The numbers are in ascending order!!



What just happened?



Bias Mitigation Strategies

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
 - Check for hunger, fatigue, and emotional unease

Bias in Assessment Survey

When survey is active, respond at pollev.com/grsbias

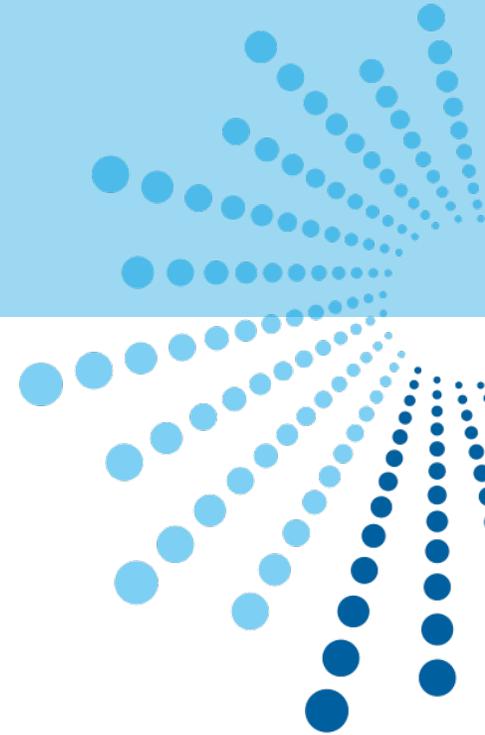
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Assessment: Challenges and Opportunities



02

What do we mean by “assessment”?

There are many different types of assessment; for the purposes of this discussion, we are focusing on program-level assessment.

Key features:

- Objective, systematic method;
- Ongoing gathering, analyzing, and use of information;
- From various sources;
- About a program;
- Measuring program outcomes.

How is assessment in Title IX and sexual misconduct processes unique?



The highly sensitive and personal nature of the work.



Lack of time and resources for most programs.



Significant scrutiny that already exists.



Erroneously equating good work with satisfaction of the parties.

Assessment

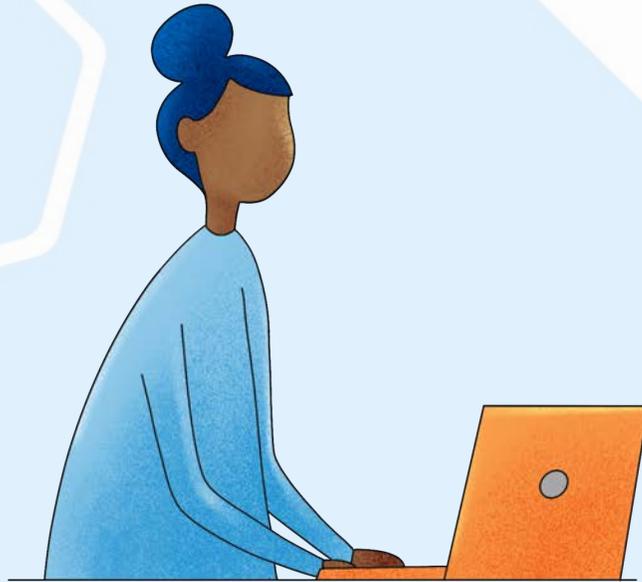
Getting Started

- What do you want to know?
- What does the institution want to know?
- Where are the pain points/fears?
- Who do you need to get on board?
 - Who are your allies?
 - Who is resistant?

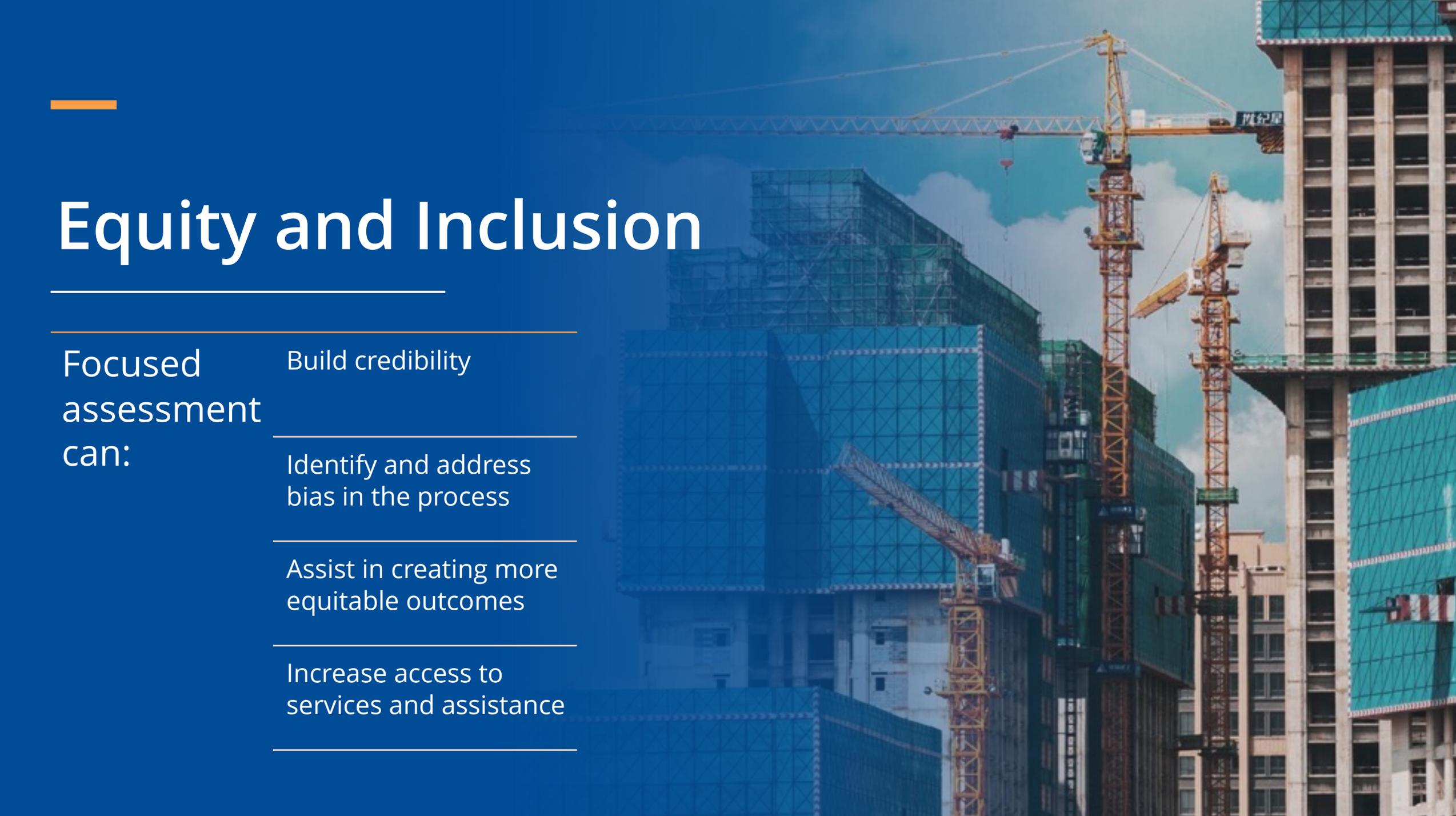


Assessment

Getting Started



- What are your obligations to disclose information or findings?
 - Public?
 - Internal only?
- Who will be your audience(s)?
- What will you communicate?
- Who wants to know what?
 - Focus on data & information – not names or details



Equity and Inclusion

Focused
assessment
can:

Build credibility

Identify and address
bias in the process

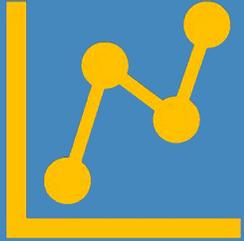
Assist in creating more
equitable outcomes

Increase access to
services and assistance



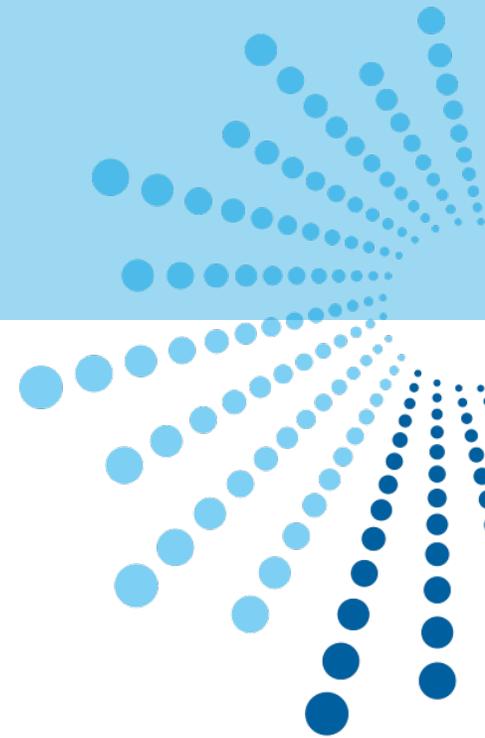
Danger Will Robinson

Do this post-resolution—not before or during.



Where to Begin? Data

03





Begin with the data
you already have.

Value
183.102
154.178
2455

What do you currently track?

Number of Reports	Number of Formal Complaints	Types of Prohibited Conduct	Mandatory & Discretionary Dismissals
Withdrawn Complaints	Number of Informal Resolutions	Informal Resolution Outcomes	Live Hearings
Outcomes of Live Hearings	Sanctions	Number of Appeals	Outcome of Appeals

What about other things to consider tracking?



Are you tracking information related to...?

Identity

Race

Ethnicity

Gender

Religion

Disability

Immigration Status

Sexual Orientation

Academics

Major

Academic Standing

Transfer Status

GPA

Campus Involvement

Residential Student

Student Athlete

Student Organization Affiliation

Reporting Factors

How did they find your office?

Delay in Reporting

Law Enforcement Involvement

Medical Care

Demographics

To fully understand what your information is telling you about who is in your process, you must first understand who is on your campus.



Finding Demographic Information

Student and Employee Information Systems

Integrated with your case management software

Office of Institutional Research

Affirmative Action Data

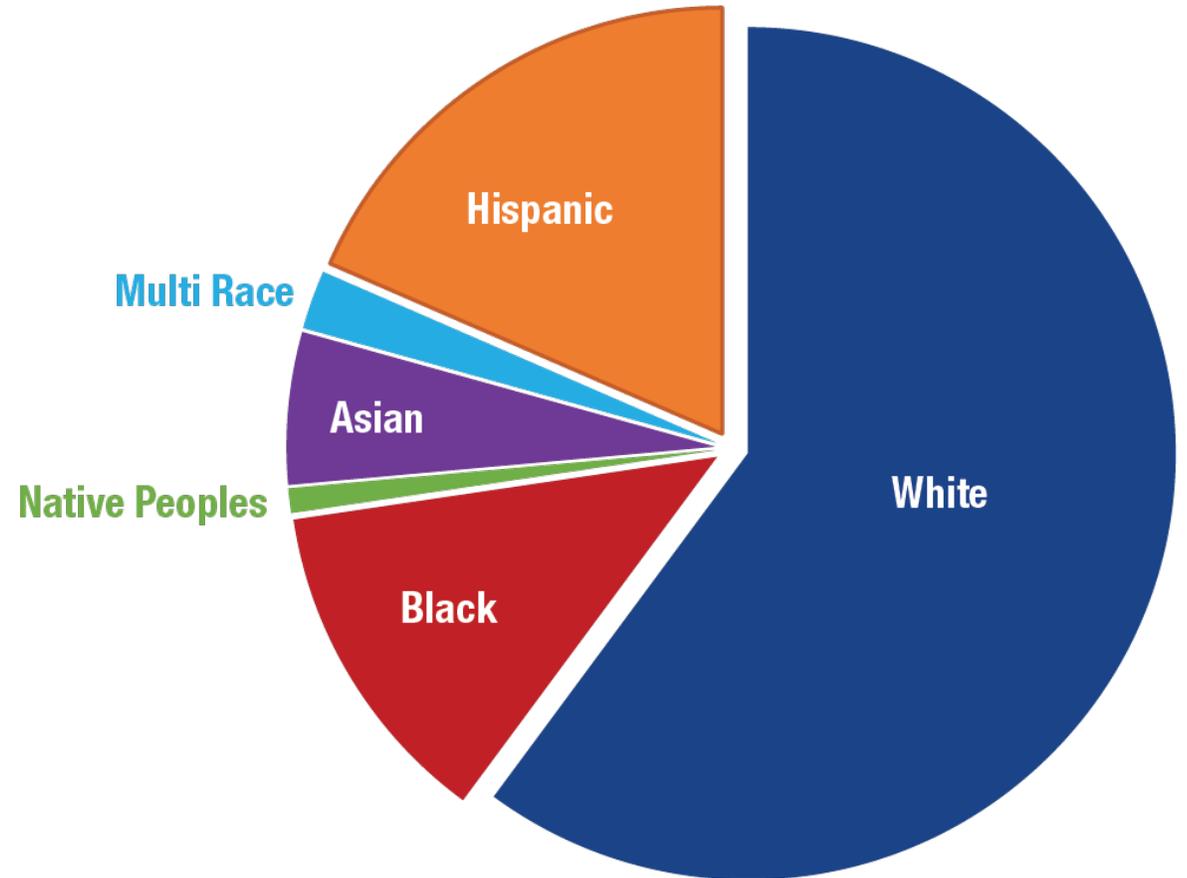
Human Resources

Admissions

Integrated Postsecondary Education Data System (IPEDS)

Proportionality

- Who is represented in your process?
- How are those same folks represented in your larger campus community?
- How do those numbers compare?



Example of a demographic breakdown by race

A₁

S₁

S₁

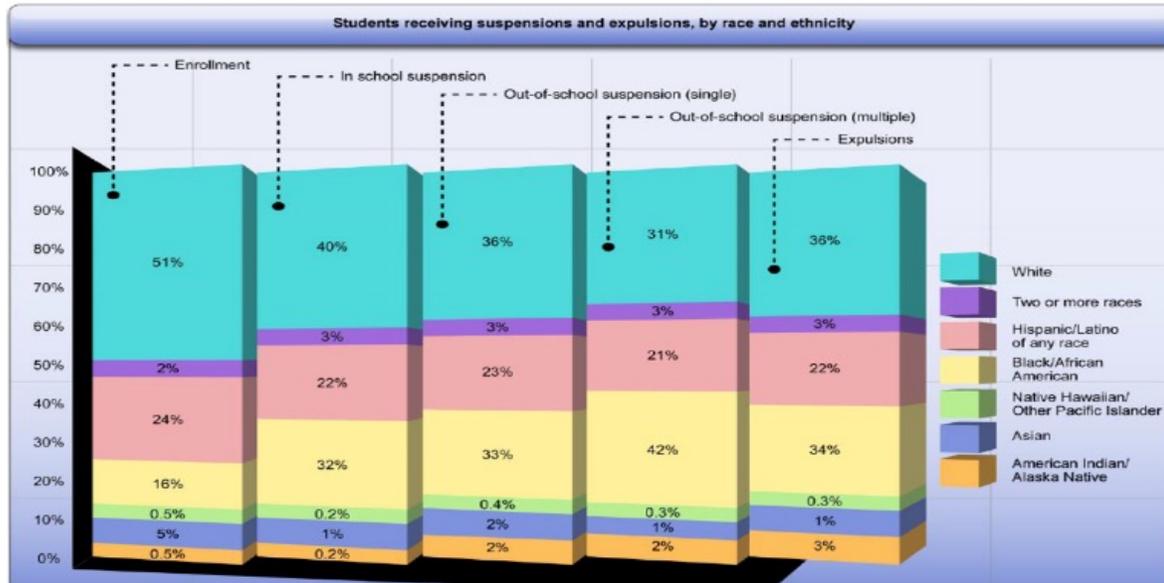
E₁

S₁

S₁

Assessing Proportionality

Which groups are experiencing disproportionality?



Whites

Two or more races

Latinx/Hispanics

Black/African American

Native Hawaiian/ Other Pacific Islander

Asian

American Indian/Alaska Native

Equity Through Proportionality

To fully understand what your information is telling you about who is in your process, you must first understand who is on your campus.

Consider...

OUTLIERS

APPROACHING
WITH
CURIOSITY

WHAT STORY
THE DATA
TELLS

Special Considerations

If you are:

A small school;

A non-residential campus;

A professional school; or

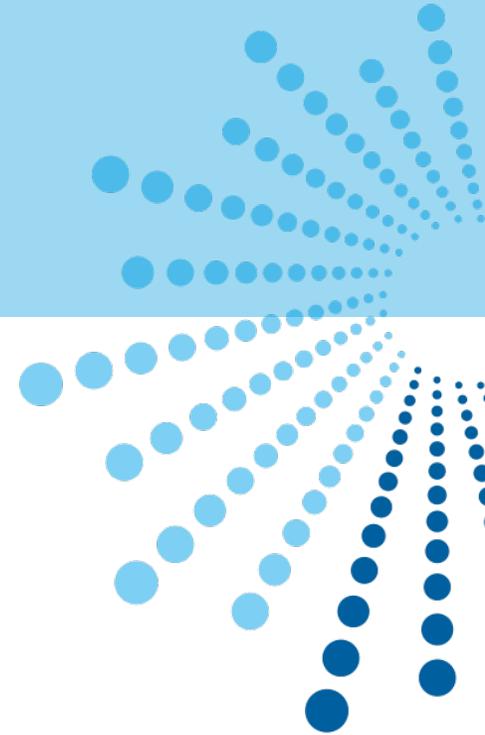
A school with a very low caseload

Change your parameters and look for information over a longer period of time.





So What? Now What?



04

What does this all mean?

Utilize campus resources to help you make sense of the information

- Department/divisional assessment professionals
- Institutional Research
- Faculty

All information can be good information

- It can confirm you are on the right track or helps you see where to focus your efforts.



Addressing Issues

Remember that what you are not seeing is just as important as what you are seeing.

Who is not making reports?

Who is not being reported?

Why is that?



Prioritize, Partner, and Plan

What is most important to address first?

Who do you need to help you address it?

How are you going to go about it?



Example 1

A review of the last two years of data shows that only 3 of the 75+ reports received by the Title IX office involve members of the LGBTQIA+ community. The institution has an active and visible LGBTQIA+ community, and that number seems very disproportionate to you.

- **What are ways you could begin to explore this?**



Example 2

A review of the last two years of data shows that 15% of the reports made to your office involve Black men as the Respondent. Only 7% of your campus population is Black.

- **What are ways you could begin to explore this?**

Sharing Information: Strategies



Begin with the end in mind



Share what you are required to by law or institutional policy



Discuss possible benefits of sharing other information

Sharing Information: Format



Charts and Graphs



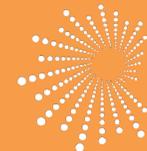
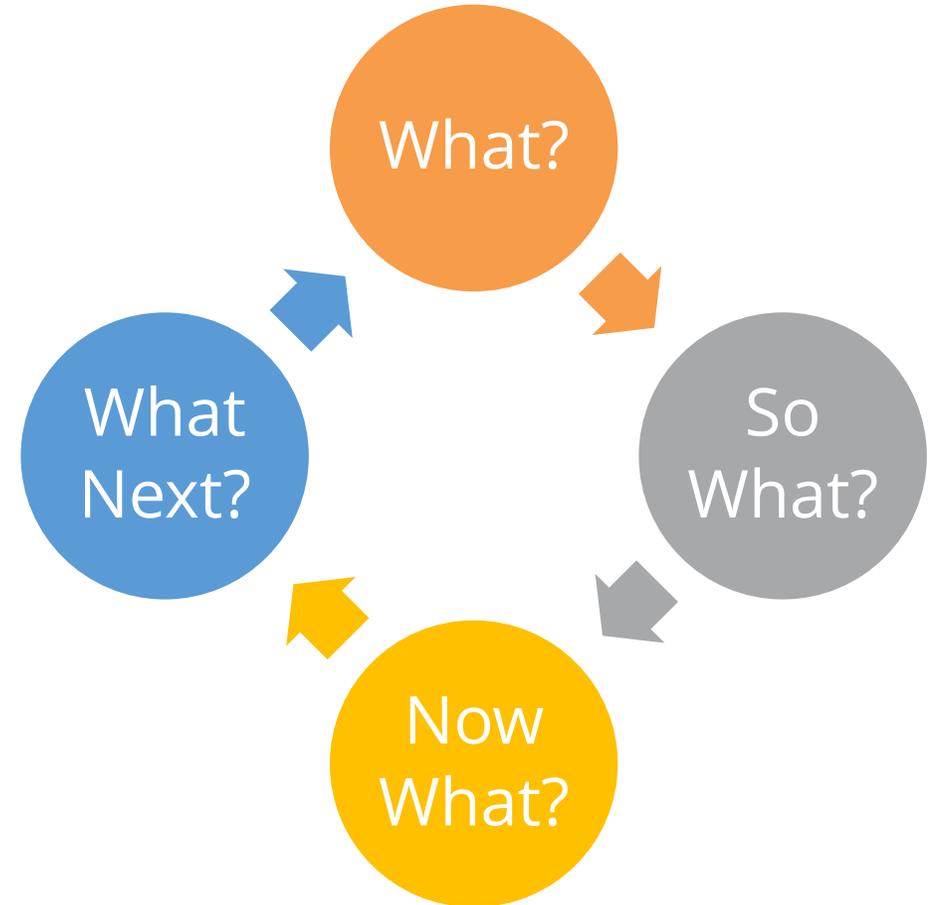
Narrative Report



Presentations

Assessment is Iterative

- What?
 - What do you want to know?
- So What?
 - What does this mean?
- Now What?
 - What do we do about it?
- What Next?
 - Did it work?



Continue the Journey



Sanctioning

Hearings

Investigations

Charging,
Emergency
Actions, &
Supportive
Measures

Save the Date!

Title IX & Bias Series

September 15, 2021

Understanding Bias in Charging, Emergency Actions, and Supportive Measures with Darci Heroy & Tibusay Hernandez

October 13, 2021

Reducing Bias in Investigations with Chantelle Cleary Botticelli & Tibusay Hernandez

November 10, 2021

Mitigating Bias in Hearings with Kelly Gallagher & Tibusay Hernandez

December 8, 2021

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DEI Trainings

September 14, 2021

Diversity Foundations: Bias Awareness and Mitigation

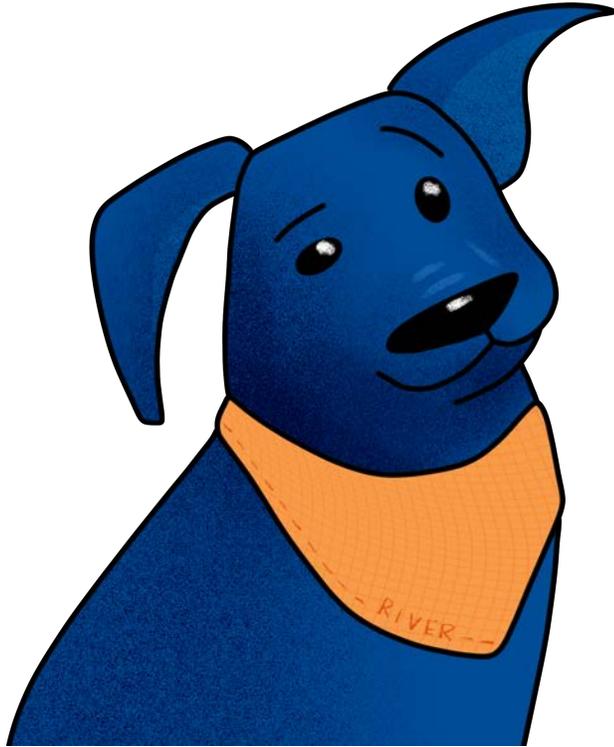
October 14, 2021

Critical Conversations: Practical Tools for Navigating Difficult Dialogues

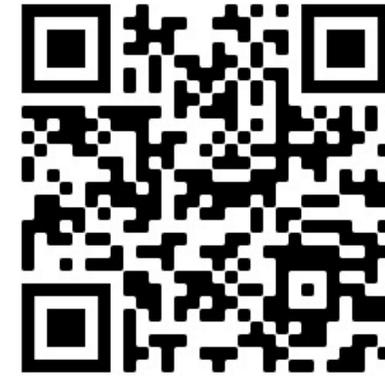
November 14, 2021

Inclusive Search Practices: Culture Add vs. Culture Fit Recruitment

Questions?



Leave Us Feedback:



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Understanding Bias in Charging,
Emergency Actions, and
Supportive Measures

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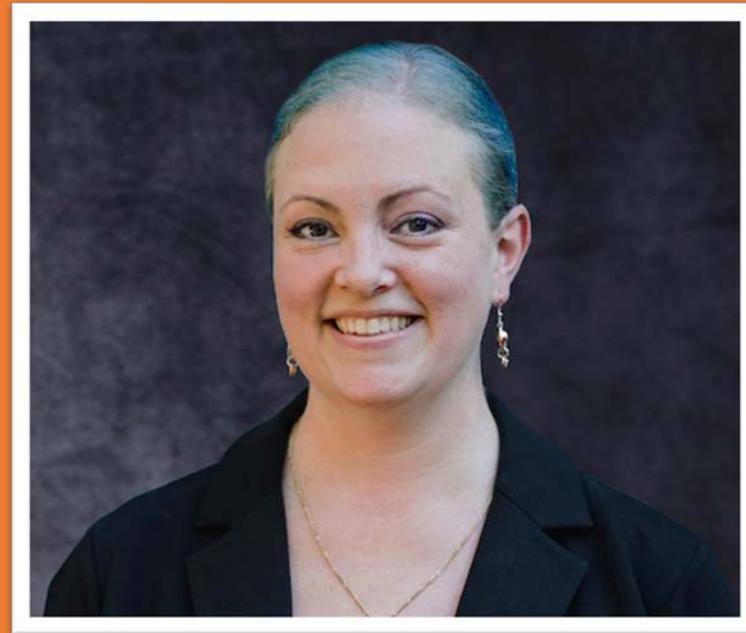
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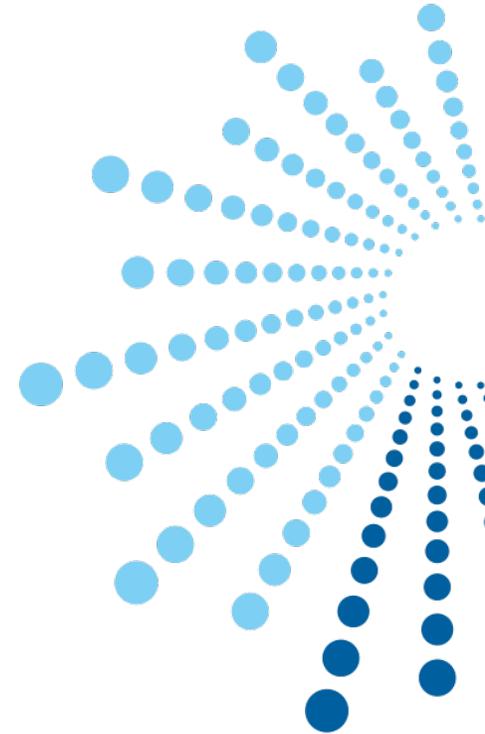
Why Is Bias Important?

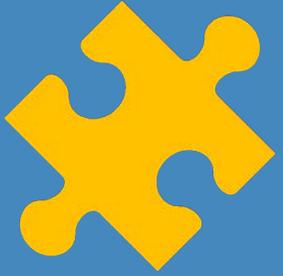
03

How Can Bias Affect Decisions?

04

How Can We Mitigate Bias?

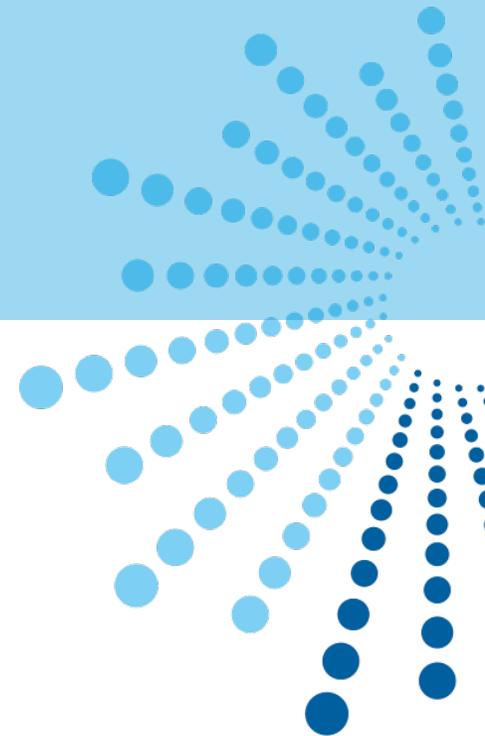




Bias: What Is It?

01

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When we say bias...



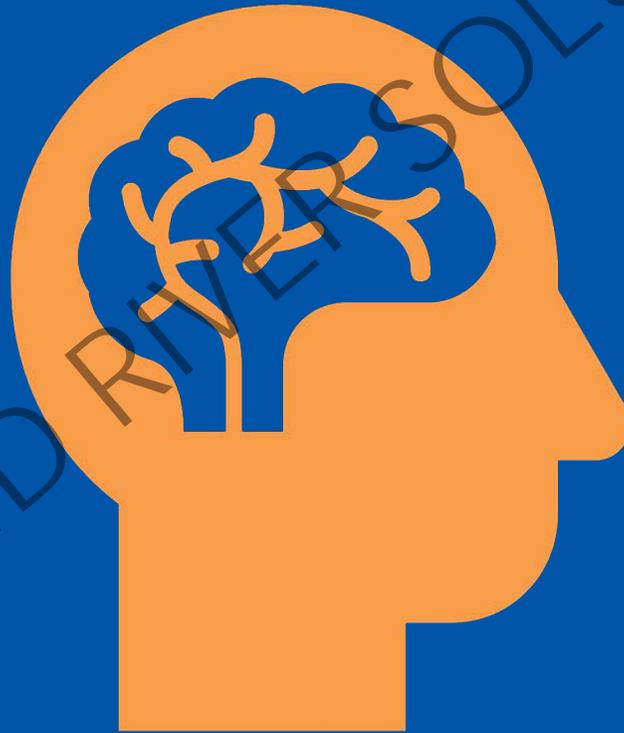
What do you think we mean?

What do we mean?

Mental Shortcuts

System 1:

- Intuitive
- Hunches
- Heuristics
- FAST



System 2:

- Rational
- Systematic
- Thoughtful
- Slow





- Media
- Beliefs
- Education



Implicit Bias

- Automatic Thoughts
- Feelings



- Discriminatory
- Non-Discriminatory
- Overt
- Covert

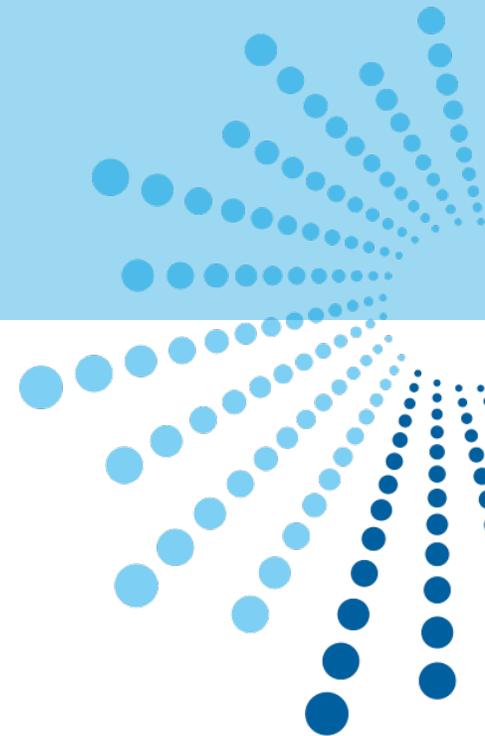




Why Is Bias Important?

02

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A photograph of a dirt path in a forest that splits into two directions. The path is covered with fallen yellow and brown leaves. The trees are green, suggesting a late summer or early autumn setting. The overall scene is a metaphor for a difficult choice or a fork in the road.

Why is this important?

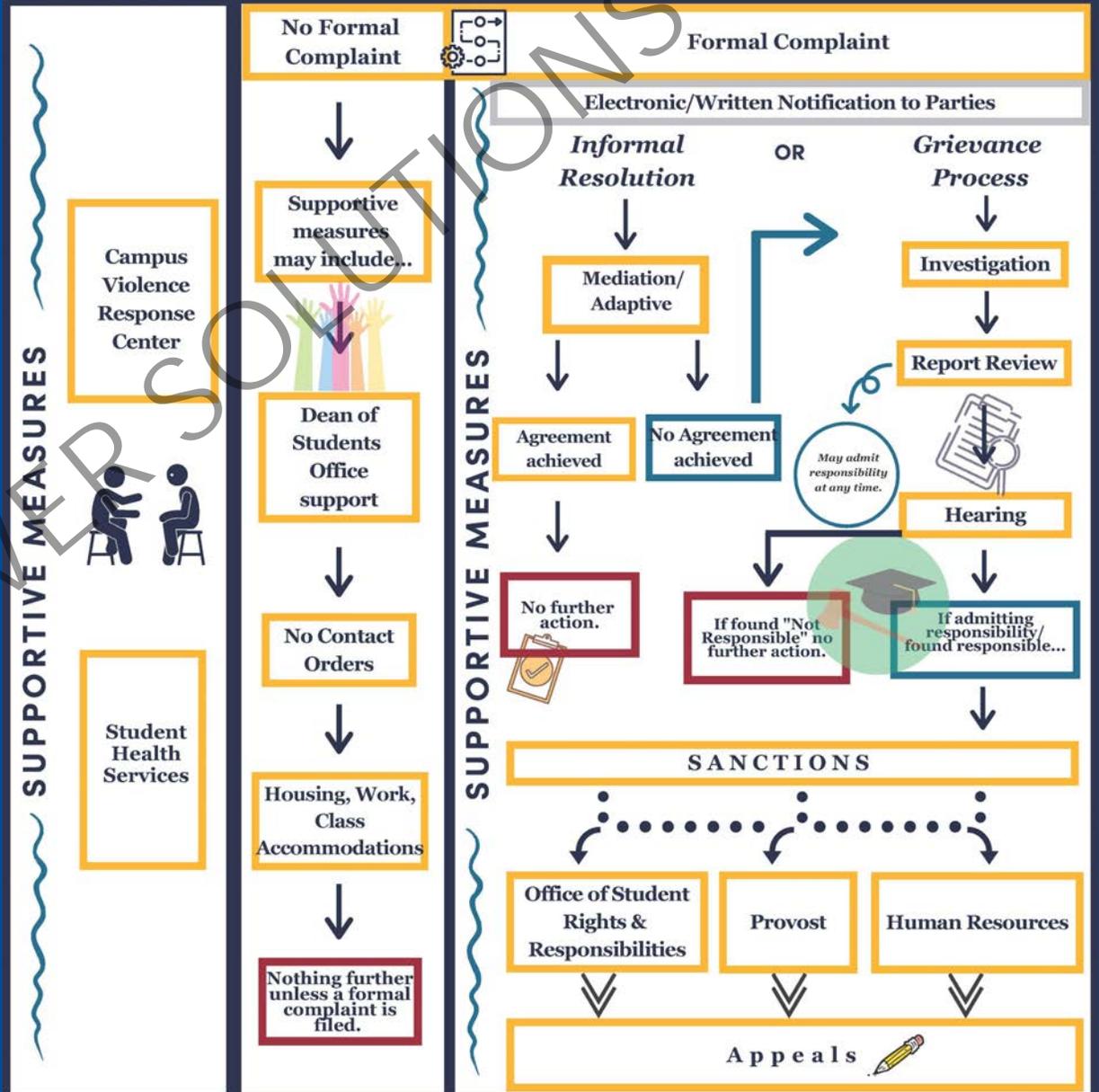
Making difficult decisions.

Decision Points

TITLE IX PROCESS

CONFIDENTIAL REPORTING

REPORTING TO THE TITLE IX OFFICE



Process Points to Evaluate



Reports

What is showing up?



Supportive Measures



Deciding to Charge/Investigate



Emergency/Interim Measures

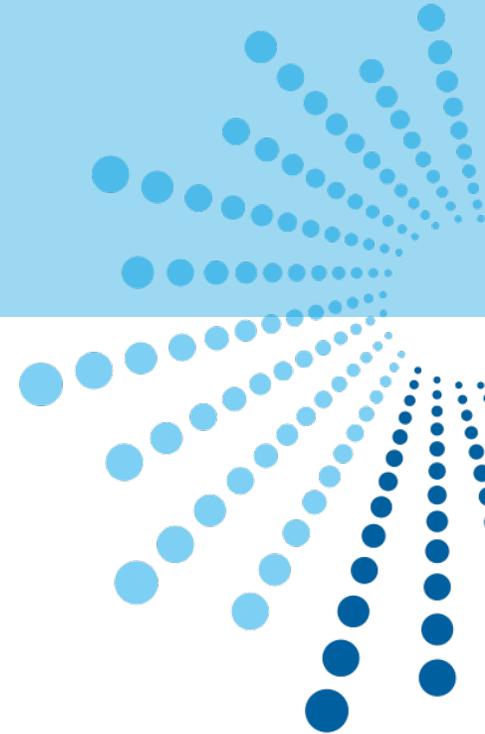




How Can Bias Affect Decision Making?

03

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Reports and Disclosures



What decisions are we making?



What questions could we be asking?

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Affect Bias

- Our emotional state can influence our decision making.
- Impacts on our emotional state can include:
 - Past lived experiences
 - How information is presented
 - Other people's emotions
 - Other people's perceptions
- Positive or negative feelings can change our perception of threats or benefits.



Reflective System



Reactive System

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Scenario 1

A residential assistant enters the Title IX office to report a sexual assault. The student is visibly upset, and they begin describing the events that took place which they are now obligated to report.

After they describe what occurred, they begin to make statements like “I hope this time the school does the right thing for this student because there doesn’t seem to be justice on this campus!” and “I think there is more to this story, but how could they trust administrators here will do right by them?”

What decisions are we making?

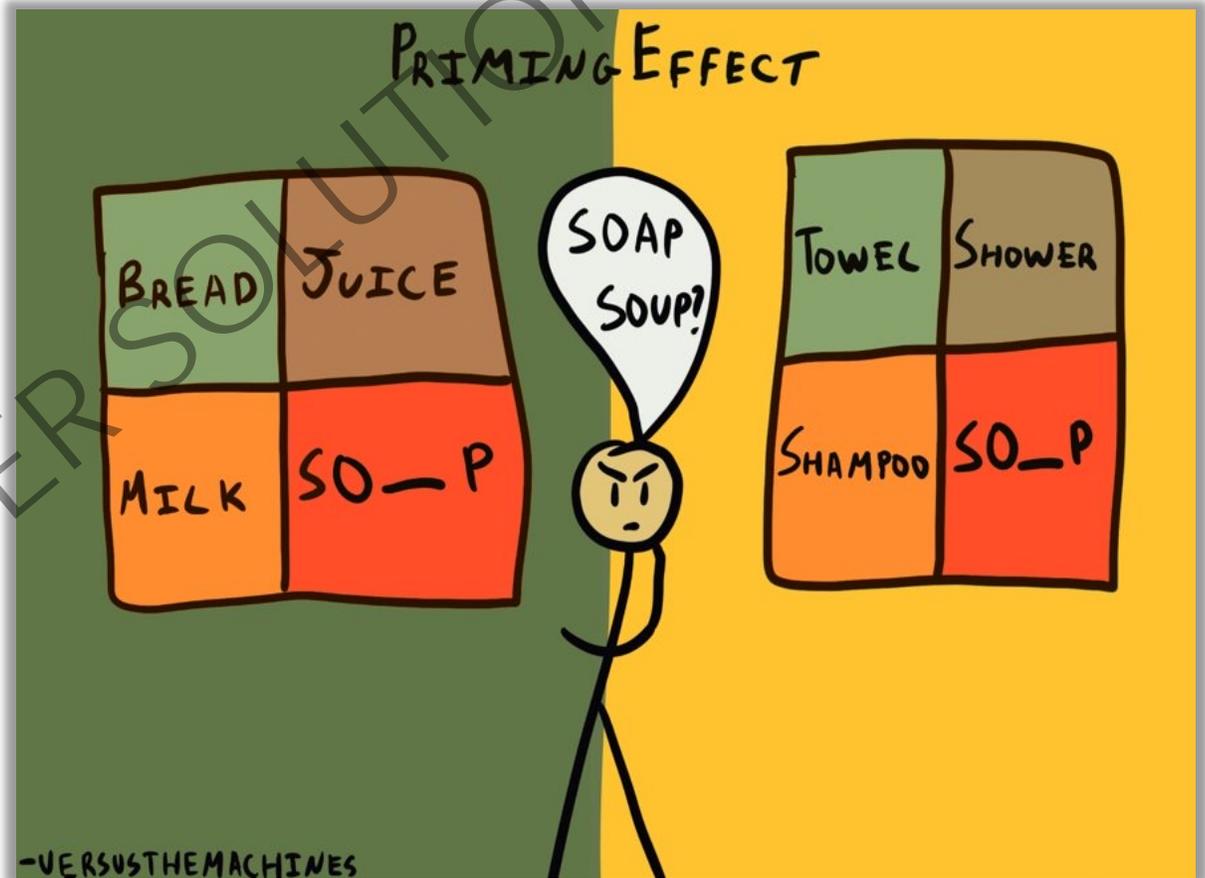
How might affect bias be showing up here?



No átrio do hotel.

Priming Effect

Activating associations between two things.



—
What happens when
we have been primed
by society?

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Scenario 2

A student comes to report an incident where they state that they feel unsafe. They describe that a floormate asked for their phone number, and they declined to give it to them and went into their room. The student reported that afterward when they walked out of their room, the floormate was "aggressively waiting" for the student in the hallway. The student states that this behavior was threatening and wants the floormate charged with stalking.

When asked what was threatening about the behavior, they state that the individual was wearing a hoodie.

What decisions are we making?

How might priming be showing up here?

Consider...

Who is receiving the report?

How and when are they receiving the report?

How is the report documented?

How are the statements or allegations characterized or framed?

What else?



Supportive Measures



WHAT DECISIONS ARE
WE MAKING?



WHAT QUESTIONS
COULD WE BE ASKING?

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)
- Biases can manifest among different groups including:
 - Nationalities
 - Races
 - Political
 - Religious Beliefs
 - Arbitrary Group Affiliations
- Ingroup members are rated as having more positive characteristics than outgroup members. (Hewstone, 1990)

Examples

Many factors such as personal characteristics can all play a role in intergroup bias. Consider this...

Are male identifying students' requests for an emergency removal downplayed or safety concerns minimized?

Are female identifying students perceived as more fragile and in need of more support services?

Is there an assumption that people with certain identities will need/have access to varying levels of support?

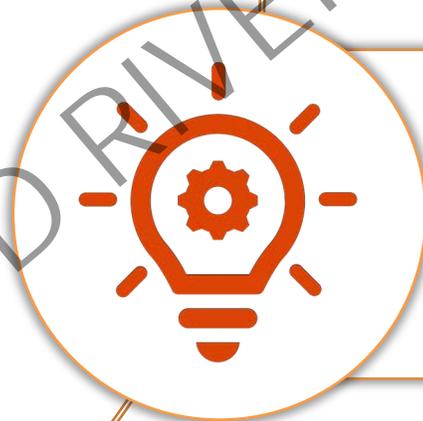
Are assumptions made about a complainant or respondent based on their physical appearance?

Are reports from students that identify as part of a particular religious community perceived differently?

Charging & Formal Processes



What decisions are we making?



What questions could we be asking?

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Anchoring Bias

The tendency to be overly influenced by the first piece of information that we hear.



Emergency/Interim Measures



WHAT DECISIONS ARE
WE MAKING?



WHAT QUESTIONS
COULD WE BE ASKING?

Emergency/Interim Measures

What are they?

- Generally taken pending an investigation/process;
- Impact the conditions of employment, school, extra curricular activities or movement of the respondent;
- Before a final decision.

Includes, but not limited to:

Fully removing from the institution or activities

Unilateral no contact directive

Changing a class section or housing

Restricting movement on campus or access to facilities

Emergency Measures Under Title IX

What changed?

- Higher threshold for emergency removals (any action that unduly burdens a party before a final decision.)
- Requires an individualized safety or threat assessment.
- An “immediate” threat to “physical health or safety.”
- “Arising from the sexual harassment allegations.”
 - This cannot be the complainant’s mental or emotional well being or impact on mental health.
 - Instead, supportive measures should be considered.

See 85 Fed. Reg. 30225 (May 19, 2020).



Unique Considerations During a Pandemic

What acts create an immediate threat of harm to physical safety in a virtual or remote setting?

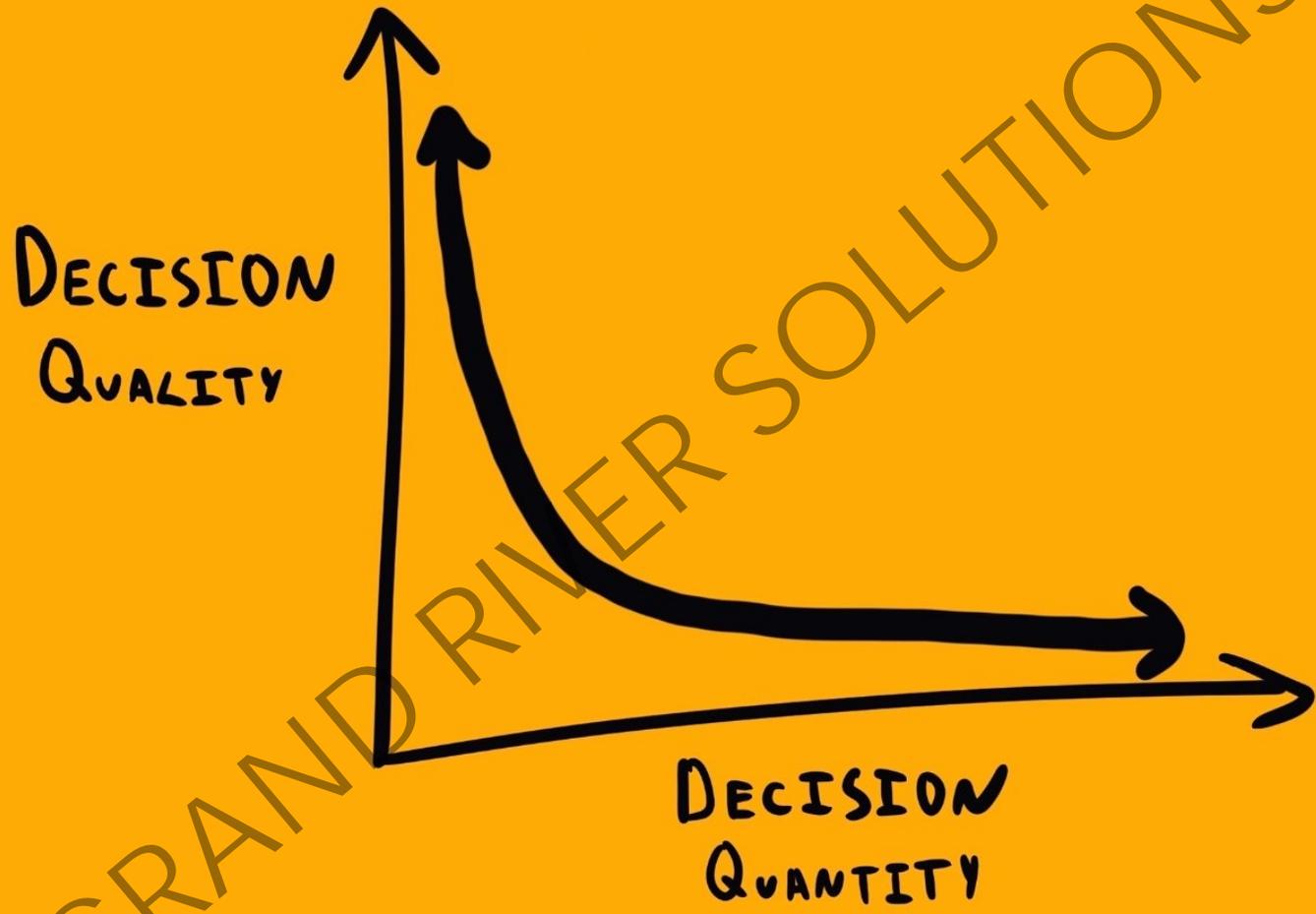
What types of emergency measures can be taken in a remote atmosphere?

What is the school's responsibility for ensure appropriate COVID-protocols are in place for students who are moved out of a residential hall?

How does an immediate threat of harm to other or community balance with threat of harm due to COVID?

- Do you have amnesty measures related to COVID-safety regulations?

DECISION FATIGUE



Decision Fatigue

The more choices you make the harder each one becomes.

Decision fatigue impacts our ability to choose between several options.

It takes more cognitive energy to process trade-offs which can lead to:

- More impulse decisions,
- Decision avoidance,
- Awaiting an unlikely best-case scenario.

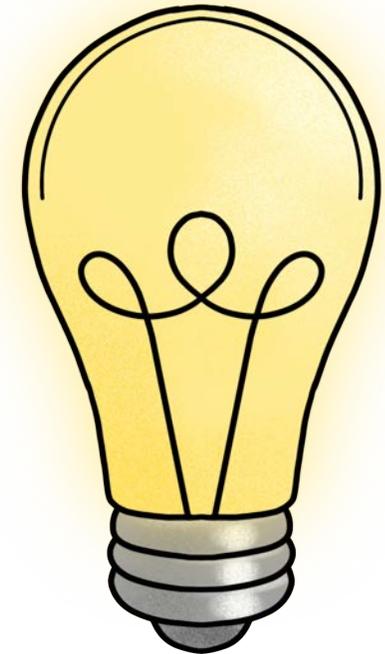
Judicial Decisions

In a 2011 study 1100 parole judge decisions were analyzed, and interesting patterns were uncovered:

- Prisoners who appeared before parole judges early in the morning received parole about 70 percent of the time.
- Those who appeared late in the day were paroled less than 10 percent of the time.

(Danziger, Levav, & Avnaim-Pesso, 2011)

Why did this occur?



And, hello pandemic brain fog...

“

The human brain is phenomenally resilient but it gets tired and over the last nine months, it has been on the equivalent of a processing marathon. There has been a tsunami of information and conflicting advice to sift through while trying to keep work and domestic life ticking over against a backdrop of health fears and job worries.

”

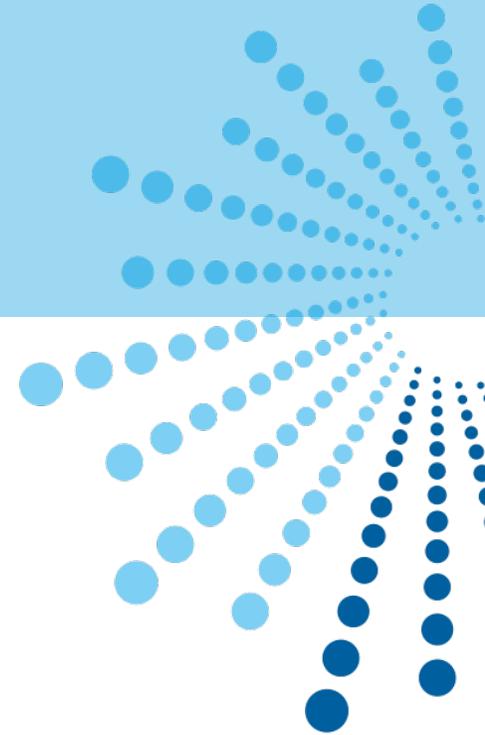
<https://www.irishtimes.com/business/work/pandemic-induced-brain-fog-is-result-of-cognitive-overload-1.4436434>



How Can We Mitigate Bias?

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Bias Mitigation Strategies

- Be aware of your emotional response.
- Use reflection guides to consider potential bias pitfalls.
- Have checks and balances for decision-making.
- Remove identity markers and present case for feedback.
- Engage in reflective decision-making instead of reactive decision-making.

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Make Decisions Easier



Have conversations now, not during crisis.



Create well-defined, objective criteria.



Create reference or reflection guides.



Define your thresholds and policy choices.



Write down your process.



Identify and encourage coping techniques.

Scenario 3

Student A's parent reports to Housing that their child is being stalked by someone from their hometown. Student B lives in the same building in campus housing.

The parent calls campus law enforcement at 9:00 p.m. and makes a report. Law enforcement responds (in full uniform) to campus housing and contacts Student B at their dorm room at 11:00 p.m.

It is 1:00 a.m. and Housing is requesting emergency action to move Student B.

What decisions are we making?

What mitigation strategies would you utilize?

Interim Limiting, Exclusionary, and Emergency Actions: Factors to Consider Before Taking Action

Some examples of interim limiting, exclusionary, and emergency actions are:

- One-way no contact directives;
- Reassignment or rescheduling of academic classes or work schedules;
- Temporary exclusion from an athletic team or activity;
- Temporary/interim suspension;
- Leave.



Save the Date!

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Reducing Bias in Sanctioning with Jody Shipper & Tibusay Hernandez

Upcoming DEI Trainings

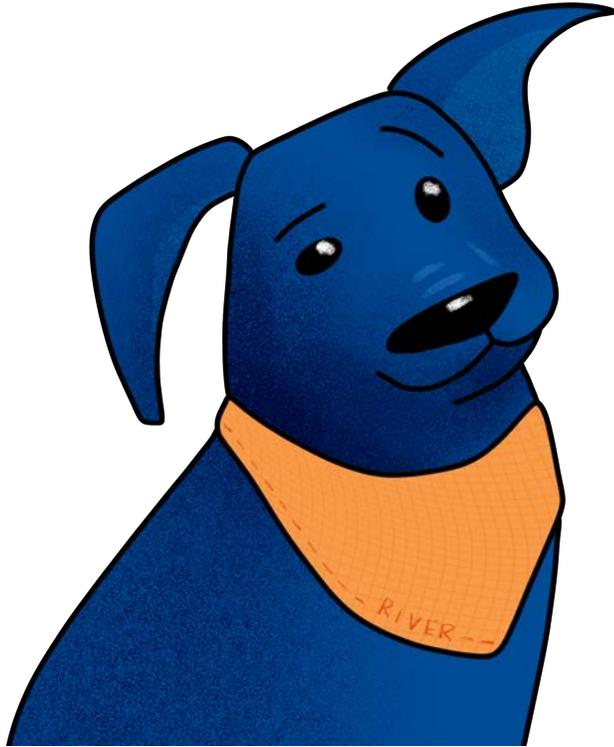
October 14, 2021

Critical Conversations: Practical Tools for Navigating Difficult Dialogues

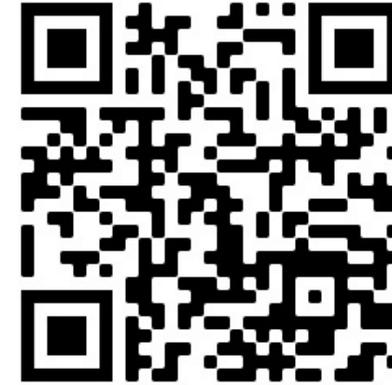
November 14, 2021

Inclusive Search Practices: Culture Add vs. Culture Fit Recruitment

Questions?



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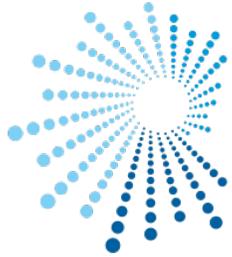
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Title IX and Bias Series

Reducing Bias in Investigations

Tibisay Hernandez

Manager of Diversity, Equity, and
Inclusion Solutions

Chantelle Cleary Botticelli

Director of Strategic Partnerships
and Client Relations





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

Your Facilitators

Tibisay Hernandez
(she/her/ella)



**Manager of DEI
Solutions**

Chantelle Botticelli
(she/her/hers)



**Director of Strategic
Partnerships & Client
Relations**

Today's Agenda

01

Overview of Investigations

02

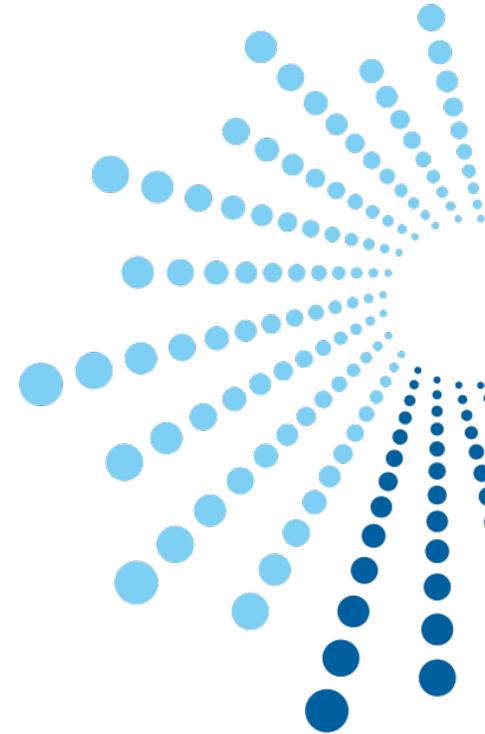
How Do We Rely On Bias?

03

How Can Bias Affect Decisions?

04

How Can We Mitigate Bias?



Why do we
conduct
investigations?





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What is an investigation?



The investigator decides

- What Information to collect
- Whether that information is important
- Whether that information can be trusted
- If more information is needed
- How to explore the information
- How to compile and present that information

Requirement of Impartiality

- Without bias
- Free from conflict of interest
- Abstaining from prejudgment of the facts



Decision Points in an Investigation






We have to
maintain our
commitment to
impartiality at
every decision
point on our way.

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But...we are human.



- Media
- Beliefs
- Education



Implicit Bias

- Automatic Thoughts
- Feelings



- Discriminatory
- Non-Discriminatory
- Overt
- Covert



Bias Impacts Decision Making

Your views are informed by your lived experiences.

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

We are also shaped by our environments

All human beings have BIAS!



YOUR VANTAGE POINT,
YOUR BIAS

Bias is Not All Good or Bad

Good

- Helped us survive and evolve
- Helps in our assessment of situations

Bad

- Contributes to decision making based on limited information
- Can lead us in directions we don't expect and don't intend

Bias may:

- Impact willingness to explore the account of a witness.
- Impact understanding of information offered.
- Lead to erroneous assumptions.
- Result in conclusions based on something other than the facts presented.

Defaulting to Bias in Decision Making is Enhanced When:



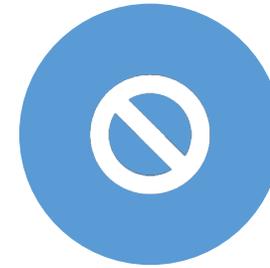
The basis for judgement is ambiguous



We are asked to make quick decisions



We are in a heightened emotional state



There is no accountability for our decision making

Ambiguity

This occurs when we have limited information upon which to base our decisions or judgements. For example:

- The witnesses have gaps in their account.
- There is evidence that can reasonably be interpreted in various ways.
- The policy violation that we are investigating is unfamiliar to us.

When presented with ambiguity, people are more inclined to make biased judgements.



Distracted or Pressured Decision Making

Exhaustion

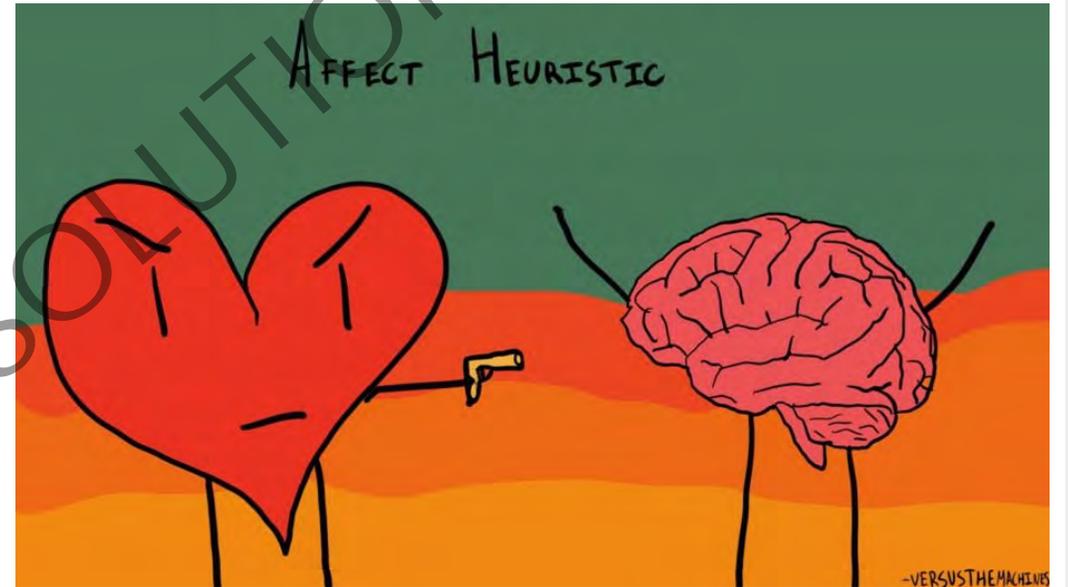
Elevated stress

Distracted

Required or
expected to
make a
complex
judgement or
decision quickly

Heightened Emotional State

- When we enter into a decision-making process, we are often unaware of our emotional state.
- When we are in a heightened emotional state there may be an impact on how we process information.
- When we are in a heightened emotional state, we are more likely to make judgements or decisions based on stereotypes or influenced by bias.



Lack of Accountability

When people know that they will not be accountable for their decision-making processes, we are more inclined to allow bias to influence our decision making.





How Do We Mitigate Bias?

When sufficient effort is exerted to limit the effects of implicit biases on judgment, attempts to consciously control implicit bias can be successful.
(Payne, 2005; Stewart & Payne, 2008).

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Mitigation Strategies

Mitigation

Ambiguity

Identify sources of ambiguity in the decision-making context and establish more concrete standards before engaging in the decision-making process.

- Preemptively commit to more specific decision-making criteria.
- Institute formal protocol to help decision makers.
- Contact subject-matter experts.



Mitigation

Quick or Pressured Decisions

- Slow down!
- Be planful; develop an investigative strategy.
- Create tools to help guide you through the investigation process.
 - Prompts for standard questions or areas of exploration
- Plan to follow-up.
- Routinely check thought processes and decisions for possible bias.

HOW TO CHALLENGE COGNITIVE DISTORTIONS

- *How do I know if this thought is accurate?*
- *What evidence do I have to support this thought or belief?*
- *How can I test my assumptions/beliefs to find out if they're accurate?*
- *Do I have a trusted friend who I can check out these thoughts with?*
- *Is this thought helpful?*
- *Are there other ways that I can think about this situation or myself?*
- *Am I blaming myself unnecessarily?*
- *What or who else contributed to this situation?*
- *Is it really in my control?*
- *Am I overgeneralizing?*
- *Am I making assumptions?*
- *What would I say to a friend in this situation?*
- *Can I look for "shades of gray"?*
- *Am I assuming the worst?*
- *Am I holding myself to an unreasonable or double standard?*
- *Are there exceptions to these absolutes (always, never)?*
- *Am I making this personal when it isn't?*

Mitigation

Heightened Emotional State

Identify distractions and sources of stress in the decision-making environment and remove or reduce them.

- Carefully design the environment in which you make decisions.
 - Ensure there is good lighting in the space.
 - Have access to snacks and beverages.
- Sit in a comfortable space or position.
- Turn off notifications on devices.
- Remove distracting clutter.
- Do Not Disturb signs on doors.
- Calendar time to do the work

Mitigation

Lack of Accountability

Institute feedback mechanisms.

- Have a colleague review your work.
- Ask for feedback from a colleague who may have a different perspective.
- Talk through how you arrived at your decision with a colleague.



Save the Date!

Title IX & Bias Series

November 10, 2021

Mitigating Bias in Hearings with Kelly Gallagher & Tibusay Hernandez

December 8, 2021

Reducing Bias in Sanctioning with Jody Shipper & Tibusay Hernandez

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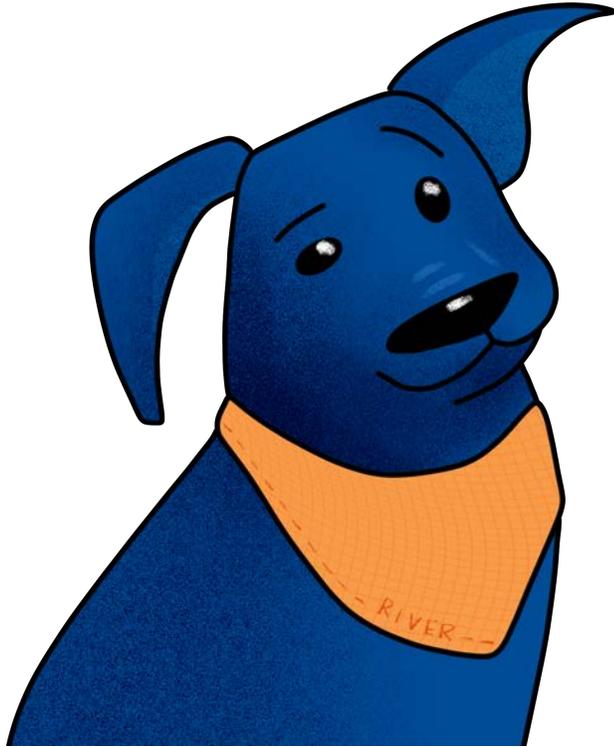
November 14, 2021

Inclusive Search Practices: Culture Add vs. Culture Fit Recruitment

January 28, 2022

Diversity Foundations: Bias Awareness and Mitigation

Questions?



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Title IX and Bias Series

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**Senior Solutions
Specialist**

Today's Agenda

01

Before the Hearing

- Preparation
- Pre-Hearing Meetings

02

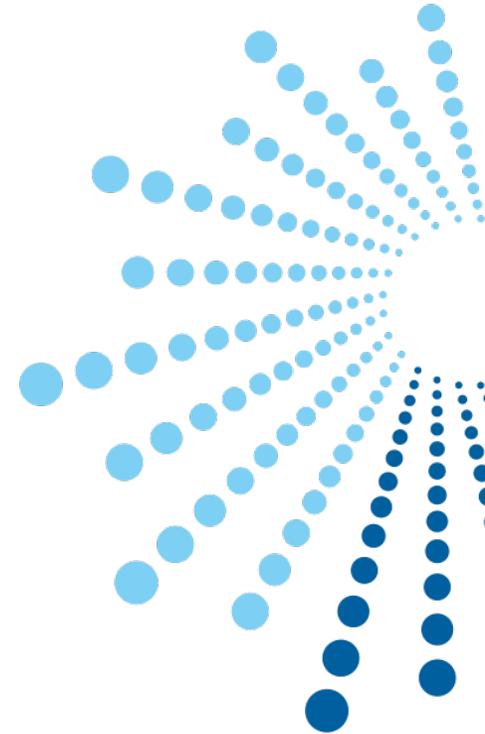
The Hearing

- Opening Instructions, Opening/Closing Statements, and Party Participation
- Relevancy Determinations

03

Decision-Making

- Evidence Weight
- Fact Finding and Credibility Determinations
- Policy Analysis





Before the Hearing

- Preparation
- Pre-Hearing Meetings

01

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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



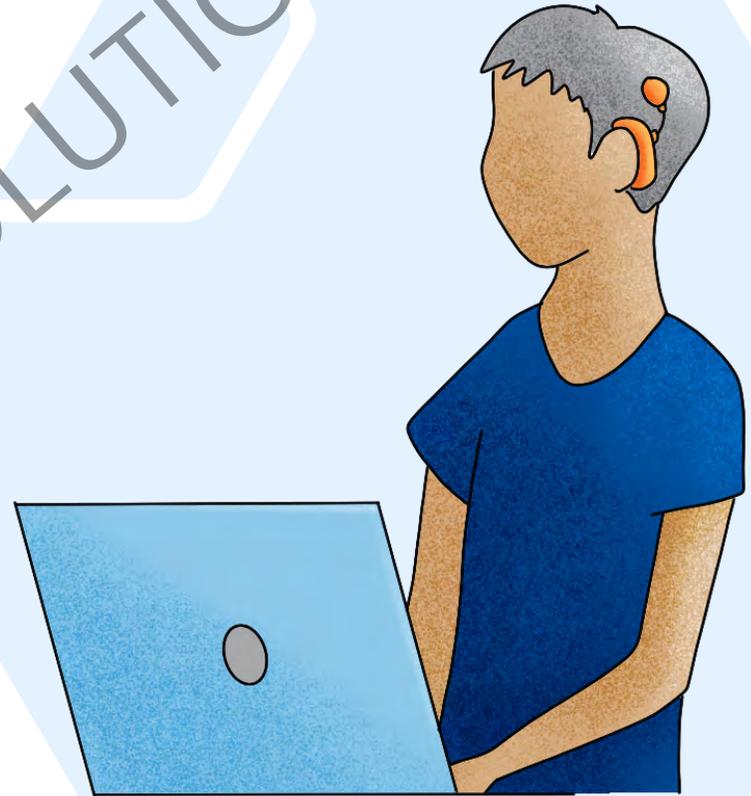
The Hearing

- Opening Instructions, Opening/Closing Statements
- Party Participation
- Relevancy Determinations

02

- Opening Instructions
- Opening/Closing Statements
- Party Participation

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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.

Halo/Horns Bias

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

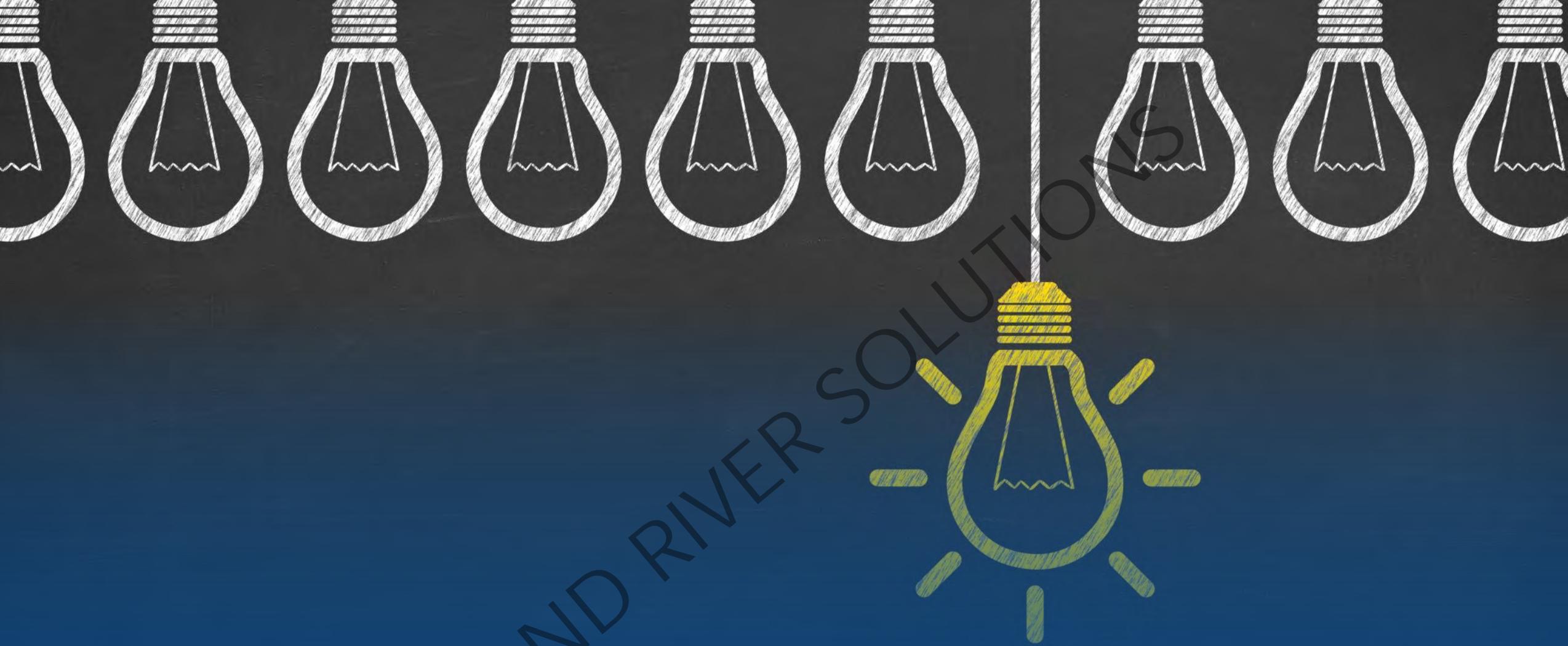
B.E. FOR DOGS:

HALO EFFECT

Duke



BERMAN, FOEHL, TROWER 2018



Relevancy Determinations

Relevancy Determination

In-the-moment decisions

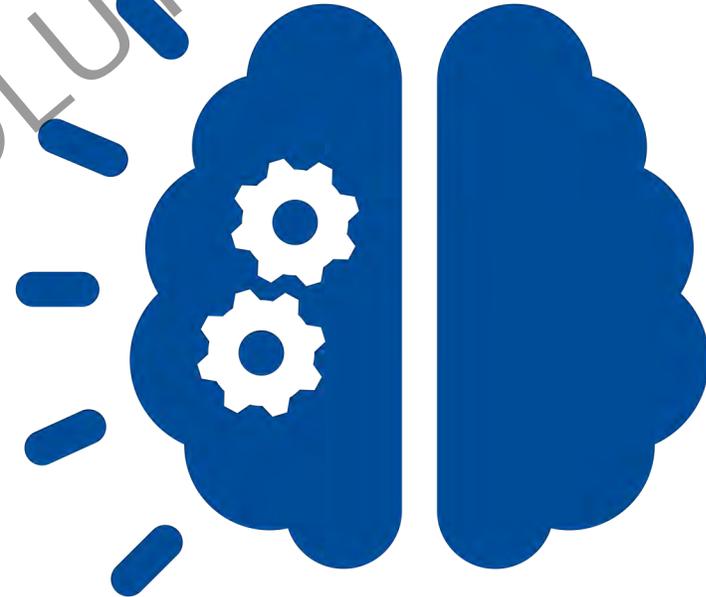
Broad definition

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.

Make definitions for relevancy or policy a visual.



Remember: you are in CHARGE!



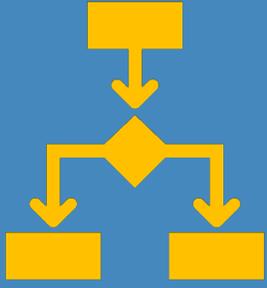
You have the opportunity to slow things down.



You have to be the person to control the room.

Have the presence and emotional intelligence to pause.

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Decision-Making

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

03

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Evaluating the Evidence

Is it relevant?

Evidence is relevant if it has a tendency to make a material fact more or less likely to be true.



Is it authentic?

Is the item what it purports to be?



Is it credible?

Is it convincing?



Is it reliable?

Can you trust it or rely on it?



What weight, if any, should it be given?

Weight is determined by the finder of fact!

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.



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Findings of Fact

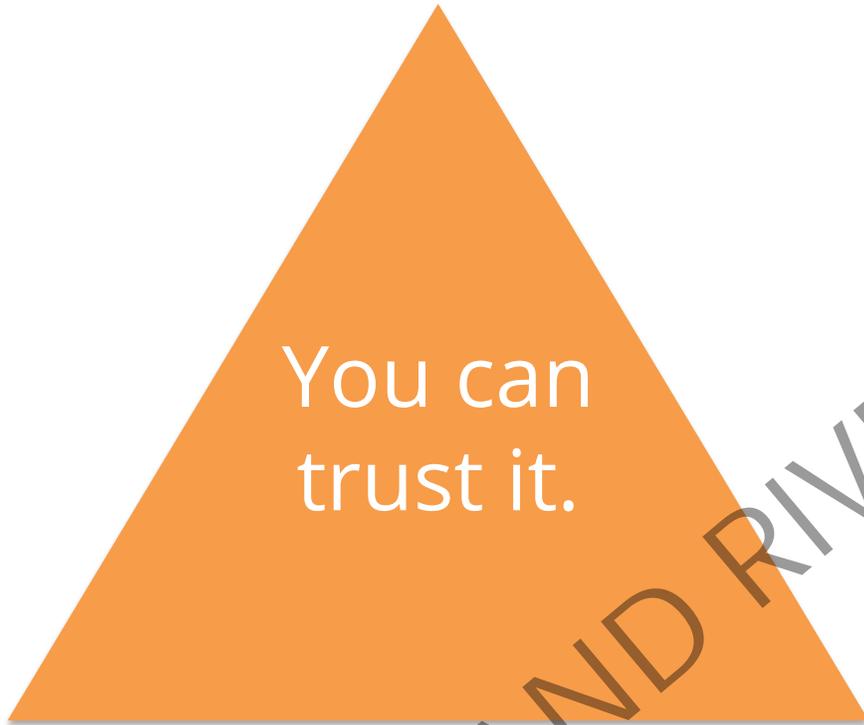
- **A "finding of fact"**
 - The decision whether events, actions, or conduct occurred, **or** a piece of evidence is what it purports to be
 - Based on available evidence and information
 - Determined by a preponderance of evidence standard
 - Determined by the fact finder(s)
- **For example...**
 -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



Reliability



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

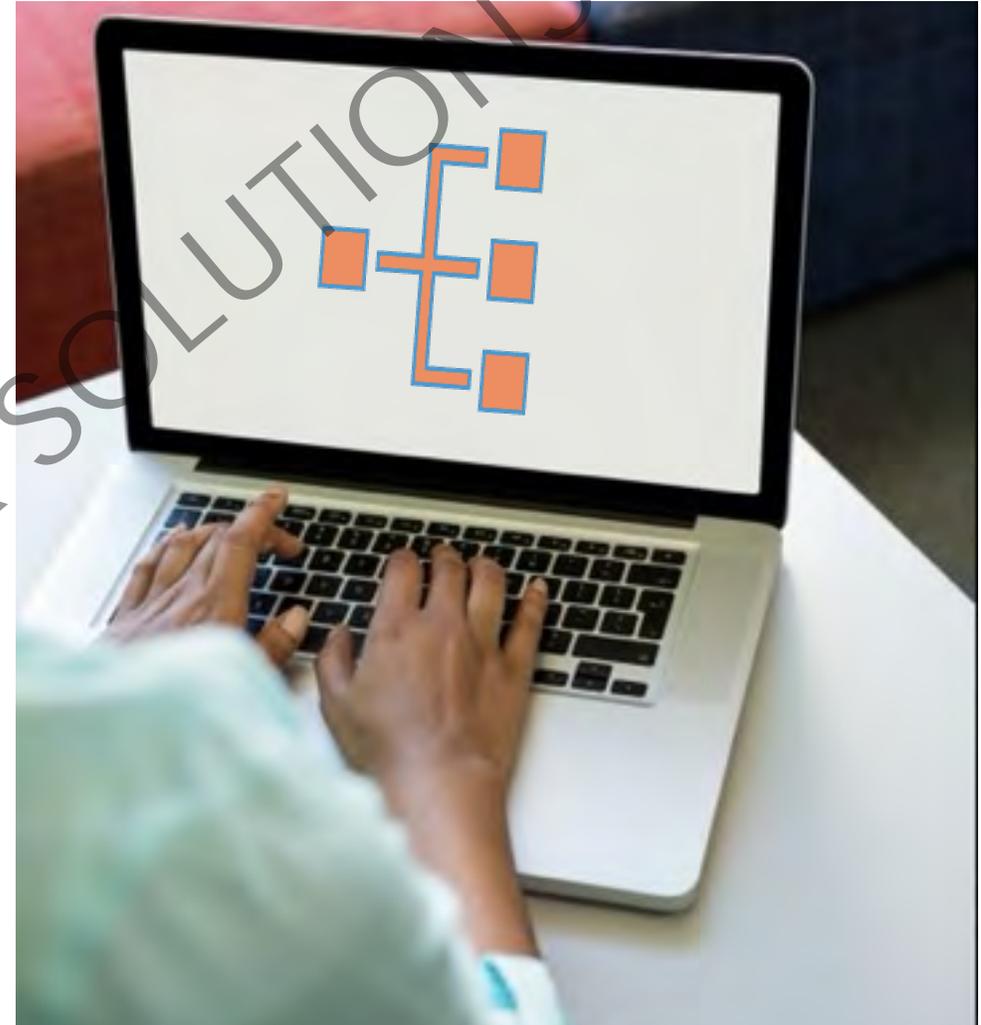
Plausibility

Consistency

Policy Analysis

Break down the policy into elements.

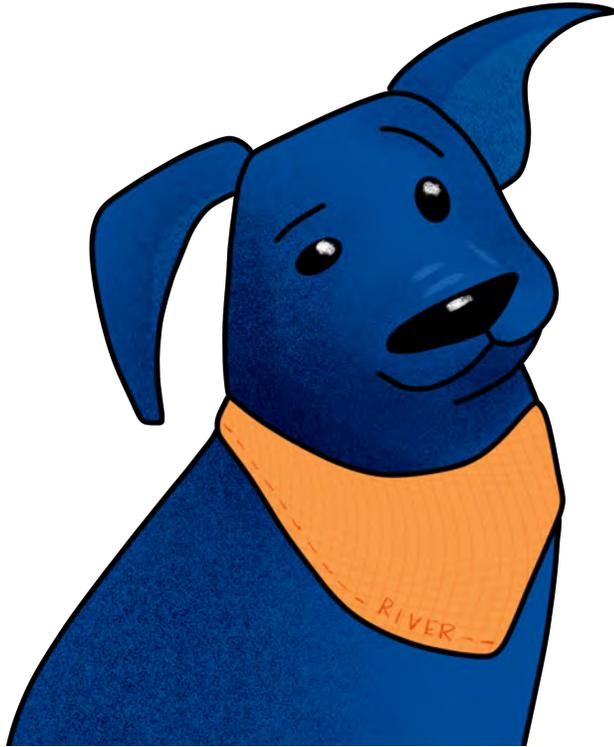
Organize the facts by the element to which they relate.



Analysis Grid

Touching of the private body parts of another person	For the purpose of sexual gratification	Without consent due to lack of capacity
<p>Undisputed: Complainant and Respondent agree that there was contact between Respondent's hand and Complainant's vagina.</p>	<p>Respondent acknowledges and admits this element in their statement with investigators.</p> <p>"We were hooking up. Complainant started kissing me and was really into it. It went from there. Complainant guided my hand down her pants..."</p>	<p>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.</p>

Questions?



Leave Us Feedback:



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Reducing Bias in Sanctioning

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and Managing Director**



Bias In Our Systems

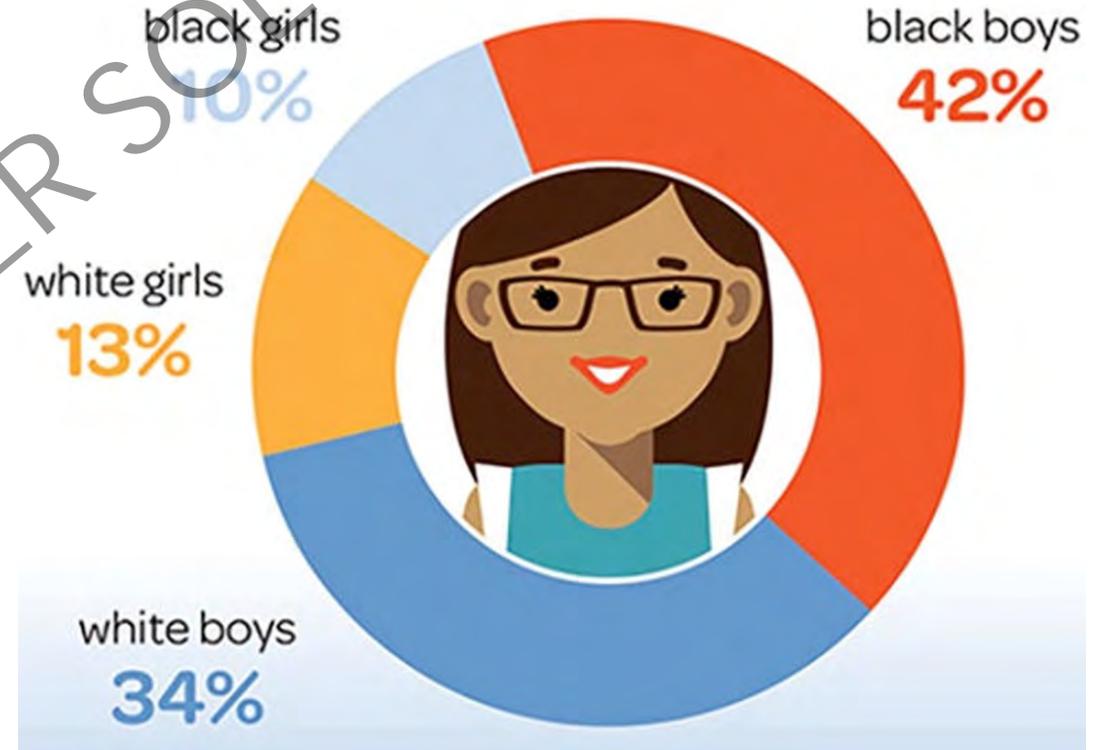
National Disciplinary Data

- Public K-12 systems are required via government reporting to provide demographic information for disciplinary cases.
- Research in the penal system is conducted to find bias in various points of the process including sentencing.
- Higher education institutions are NOT required via government reporting to provide demographic information for students facing discipline.

Implicit Bias in Early Education

- Teachers watched a video of a classroom and were asked to identify challenging behaviors.
- Eye tracking showed the amount of time they spent watching each child.

Implicit Bias in Early Education (Gilliam, Maupin, Reyes, Accavitti, & Shic, 2016)





2x

BLACK PRESCHOOLERS WERE EXPELLED 2 TIMES GREATER THAN THEIR SHARE OF TOTAL PRESCHOOL ENROLLMENT.



2.5x

PRESCHOOLERS SERVED UNDER IDEA WERE EXPELLED 2.5 TIMES GREATER THAN THEIR SHARE OF TOTAL PRESCHOOL POPULATION.

ENROLLMENT



EXPULSIONS



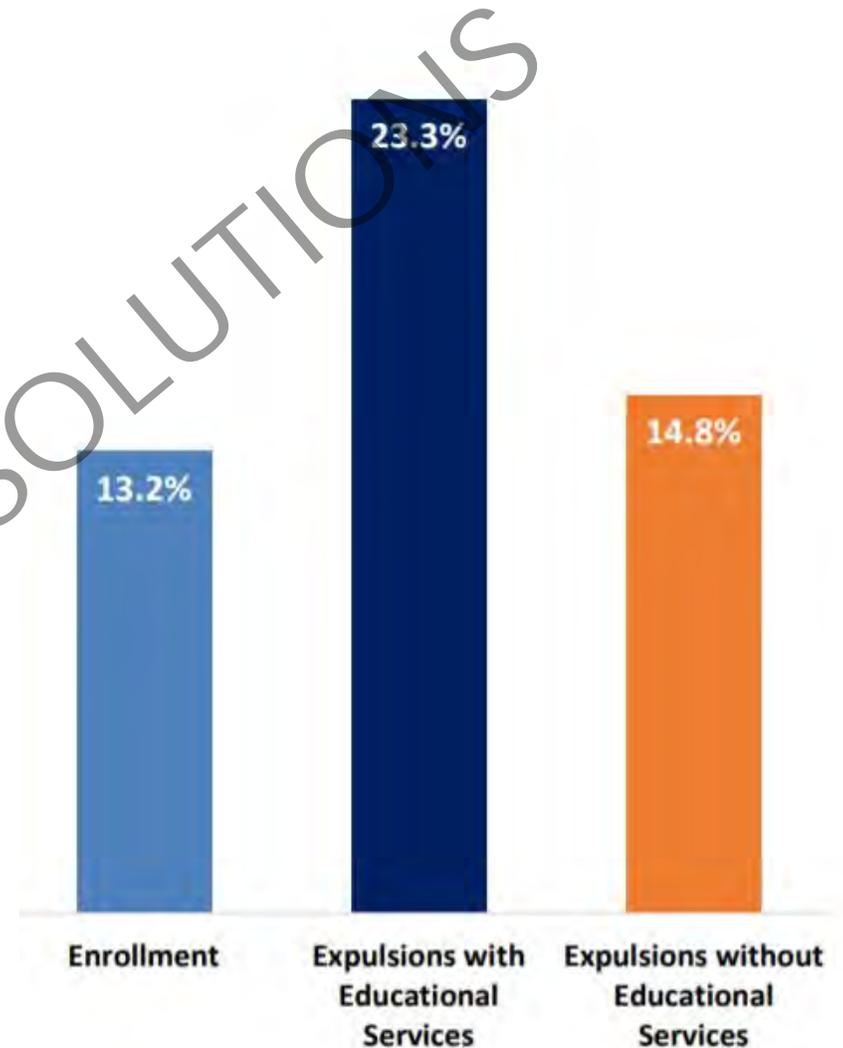
Expulsions Among Pre-School Students in 2017-18

Discipline Practices in Preschool, Office of Civil Rights, 2021

School Expulsions Among Students Served Under IDEA (2017-2018)

- Students with disabilities served under IDEA represented 13.2% total enrollment.
- Received 23.3% of all expulsions with educational services.
- Received 14.8% of expulsions without education services.

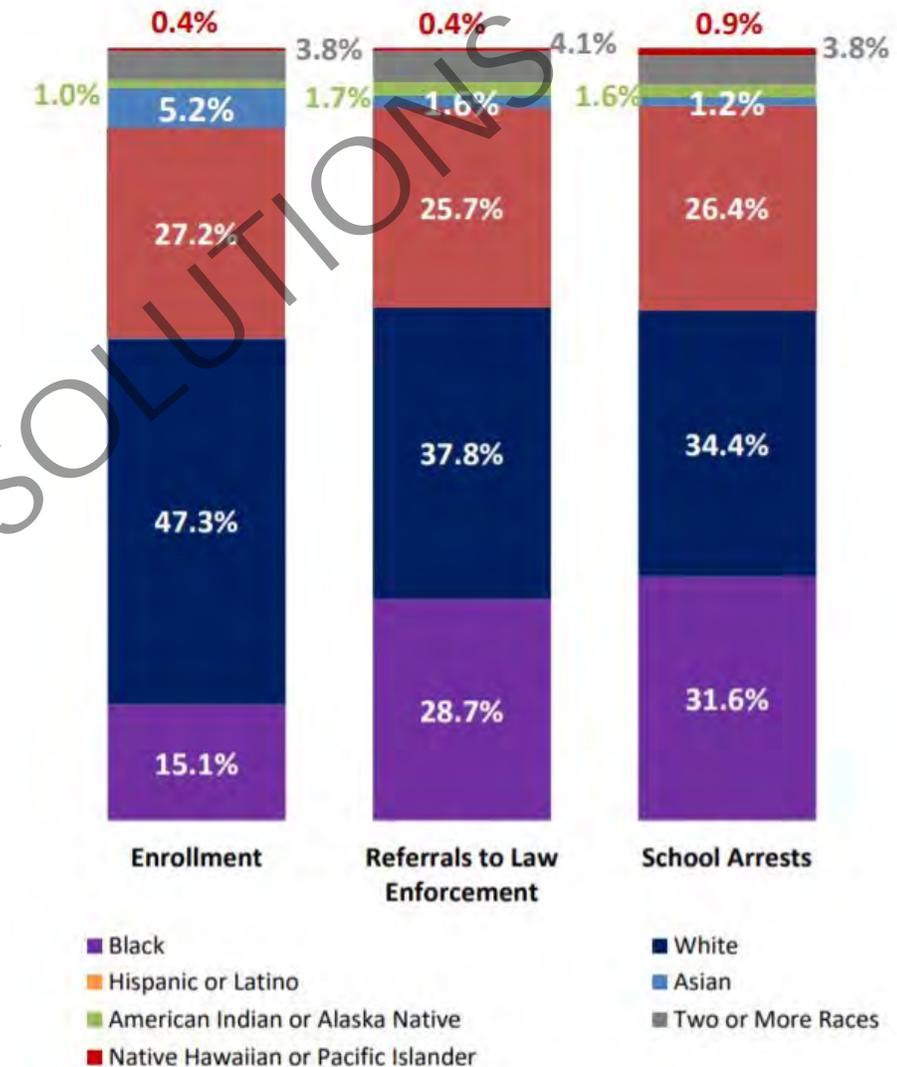
School Climate and Safety Report, Office Civil Rights, 2018



School-Related Arrests and Referrals to Law Enforcement in 2017-18

- Black students accounted for 15.1% of total student enrollment and 28.7% of all students referred to law enforcement.
- Black students were 31.6% of all students arrested at school or during a school-related activity— double their rate of enrollment.
- Similar patterns of disparities were observed for Black students served under IDEA who accounted for 2.3% of total student enrollment.
 - 8.4% of students referred to law enforcement
 - 9.1% of students who were arrested

School Climate and Safety Report, Office Civil Rights, 2018

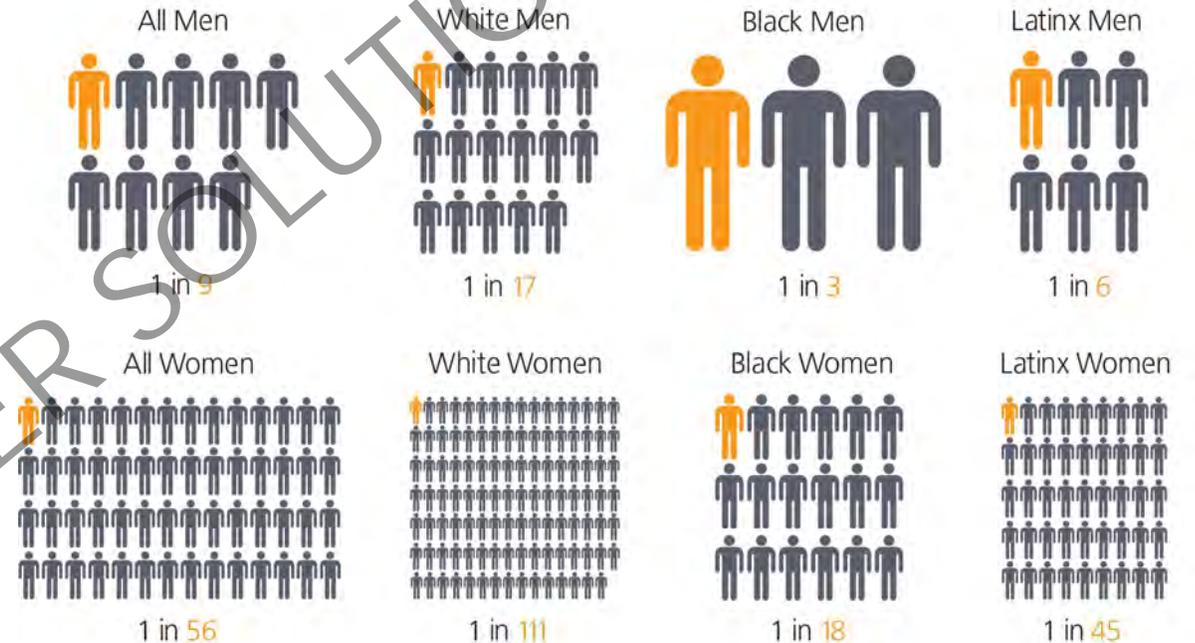


Penal System Data

- Of the 277,000 people imprisoned nationwide for a drug offense, over half (56%) are African American or Latino.
- Nearly half (48%) of the 206,000 people serving life and “virtual life” prison sentences are African American and another 15% are Latino.

Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System, The Sentencing Project, 2018

Lifetime Likelihood of Imprisonment of U.S. Residents Born in 2001



Algorithms vs. Humans

- Algorithms are more accurate than humans in predicting recidivism.
- Algorithm-based tools in some tests approached 90% accuracy.
- Human prediction had a 60% accuracy rate.

Lin, Jung, Goel, & Skeem, "The limits of human predictions of recidivism", 2020



“Pre-sentence investigation reports, attorney and victim impact statements, and an individual’s demeanor all add complex, inconsistent, risk-irrelevant, and potentially biasing information.”

Applying Theory to Practice

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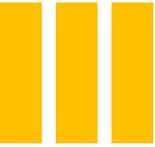
Why Sanction?

Once a determination is made and the institution has determined that conduct did violate its values (as set forth in its policies), the institution needs to decide what to do in response:

- Educate
- Rehabilitate
- Punish
- Set conditions
- Reparations
- Remediation

Goals of Sanctions/Discipline

End	Prevent	Remedy
End the harassment	Prevent the recurrence	Remedy the harm



Holding People and Institutions Accountable

"Rules of the road" (policy)

School expects community to follow the policy

Community expects school to follow the policy

Poor policy/poor practices → lack of enforcement → lack of accountability

What Does the Sanction Say?

Who is valued?
Who is not?

Community
values?

Sanctioning and Foreseeability

- Regents of the University of California v. Superior Court of Los Angeles County (Rosen), S230568, 2018 WL 1415703, (Cal. March 22, 2018)
- Schaefer v. Fu , 322 F. Supp. 3d 207 (D. Mass. 2018)



BEWARE
RISK

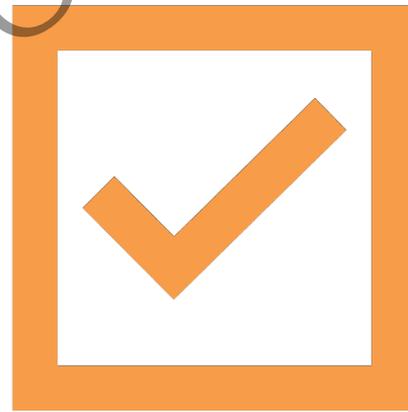
Sanctioning is Not...

A way to indicate
disagreement with
the findings.

The Sanction Does Not Undo the Finding



No lesser sanction if you disagree with findings.



Sanctioning officer must assume findings are correct.

Articulating the Rationale as a way to Reduce Bias?

Does everyone have to get fired/expelled? (Hint: NO)

Can you articulate why the action taken is reasonably calculated to end the harassment?

Can you articulate why the action is reasonably calculated to prevent the recurrence?

Remedy: To restore or preserve equal access; implemented by Title IX Coordinator.

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Determining the Sanction

Five Methods

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Sanctioning

Start from scratch each time – no system.

Expel for all violations .

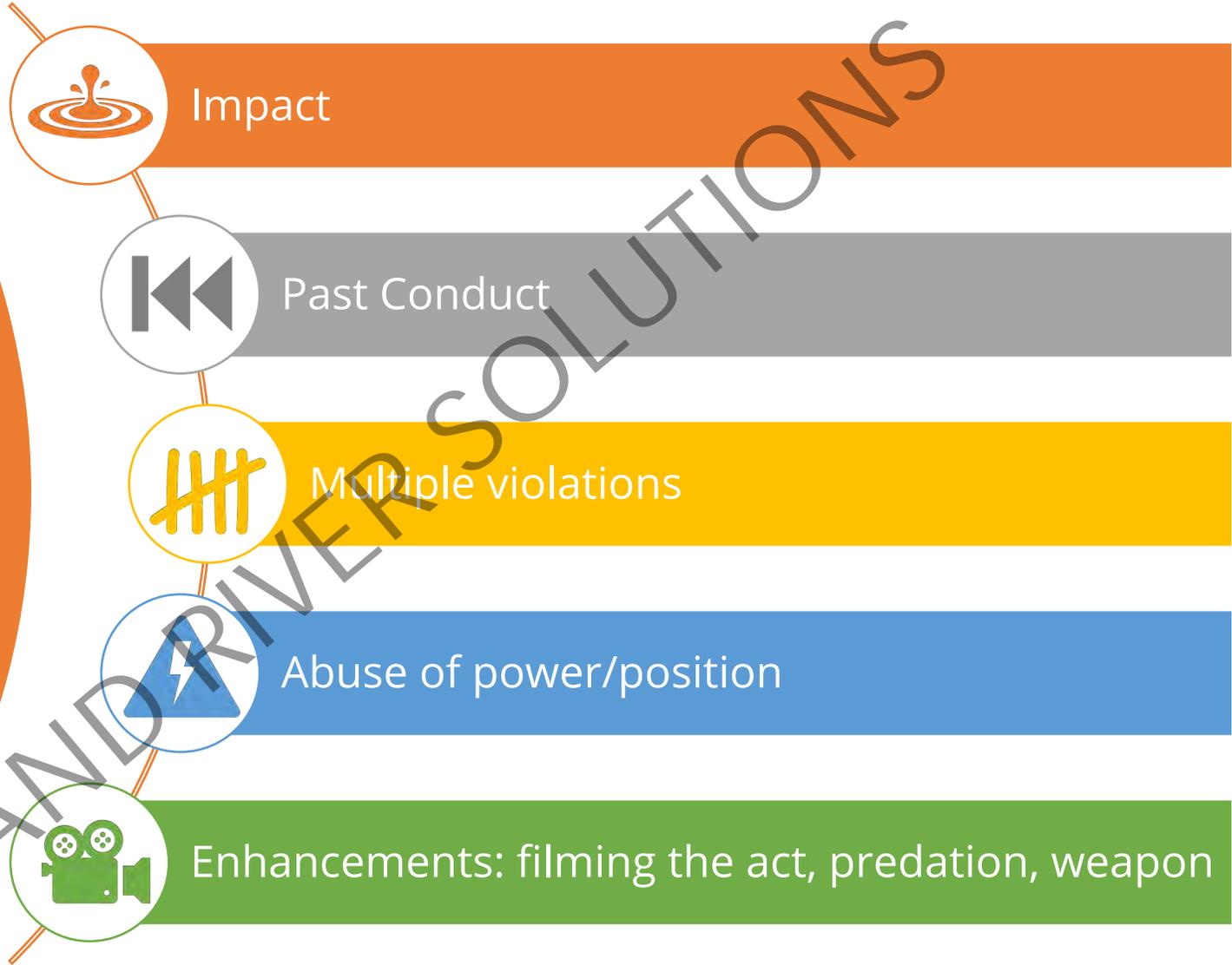
- Variation: Expel only for those that are in most egregious category.

Never expel; this is a learning environment.

Start at expulsion as default and work down.

Start at some floor (1 year? 2 years? 5 years?) and work up.

Factors to Consider Considering



Determining Proper Sanction

Factors to consider?

Consistency

Foreseeability of repeated conduct

Past conduct

Does bias creep in?

Remorse?

Victim impact?

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Aggravating Circumstances

Premeditation

Predation

Physical violence

Multiple policy violations in one incident

Harm to others, impact on complainant and/or community

Did the behavior continue after intervention?

Effort to conceal or hide the incident?

Refusal to attend past trainings

Past failures to comply with directives

Mitigating Circumstances

- Remorse
- Owns responsibility for the act and its impact
- NOT Mitigating: Respondent could not think rationally at the time due to drugs or alcohol
- NOT Mitigating: Respondent disagrees with conclusions
- NOT Mitigating: Complainant's behavior

Don't Get Personal

Personal feelings

Personal views

Personal bias

IT'S ABOUT YOU

Decision Making Biases

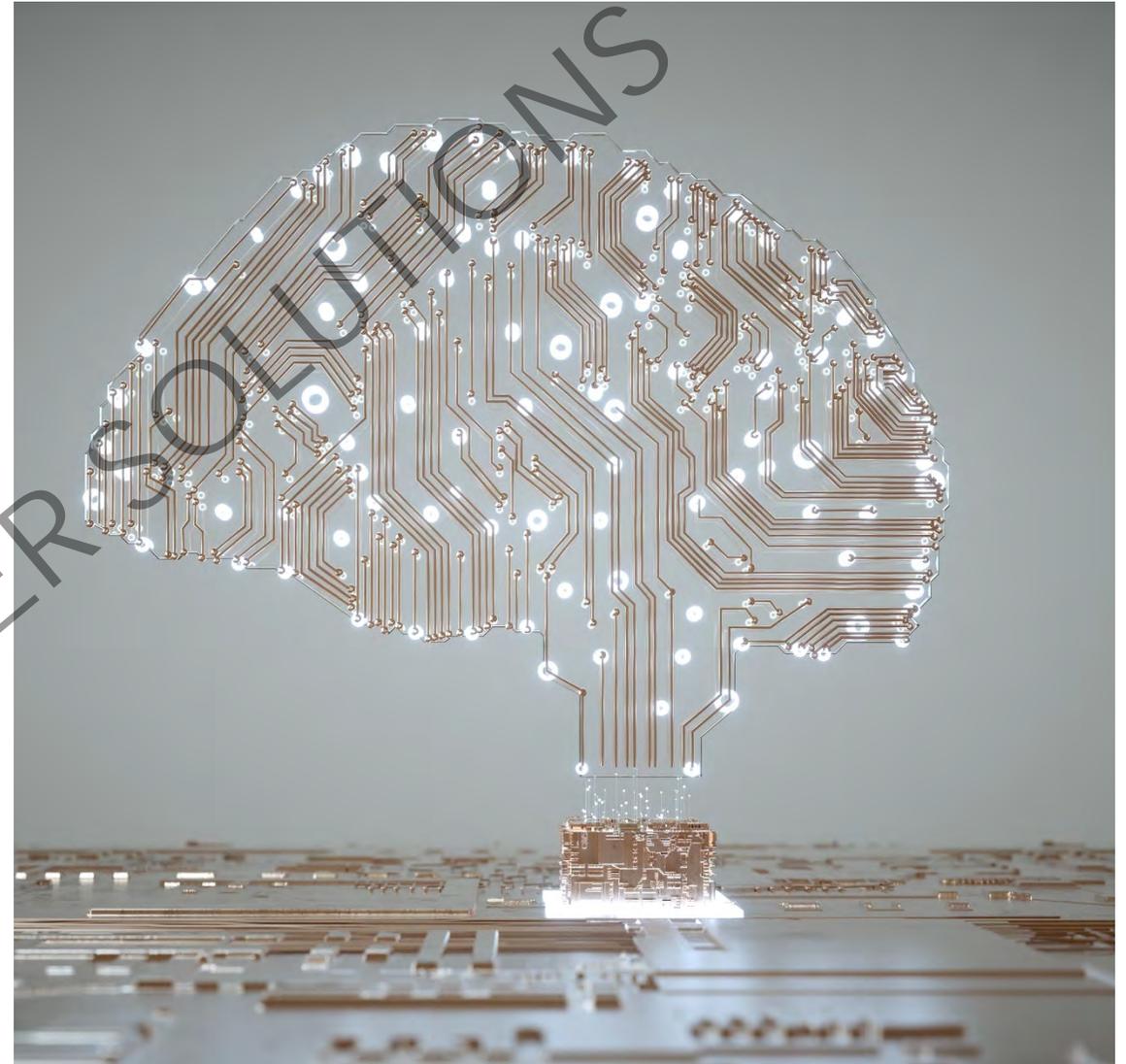
Affinity Bias

Affect Bias

Confirmation Bias

Overconfidence Bias

Anchoring Bias

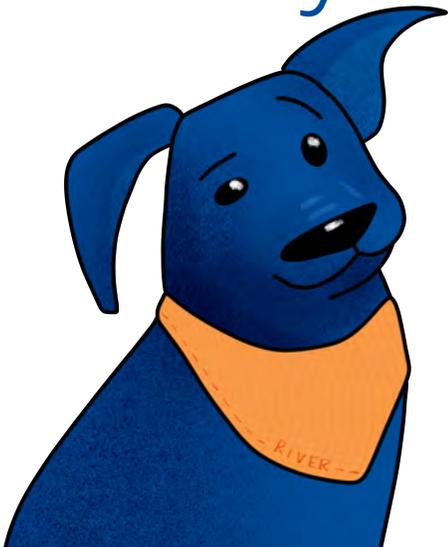


What Can We Do?

- Acknowledge bias within our systems.
- Collect the data.
- Check data for inconsistencies.
 - Can inconsistencies be explained?
- Check policies to ensure they lead to equitable outcomes.
- Create robust processes with bias checkpoints.



Thank you for
attending this series!
See you in 2022!



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