Avoiding Bias & Conflicts of Interest Training

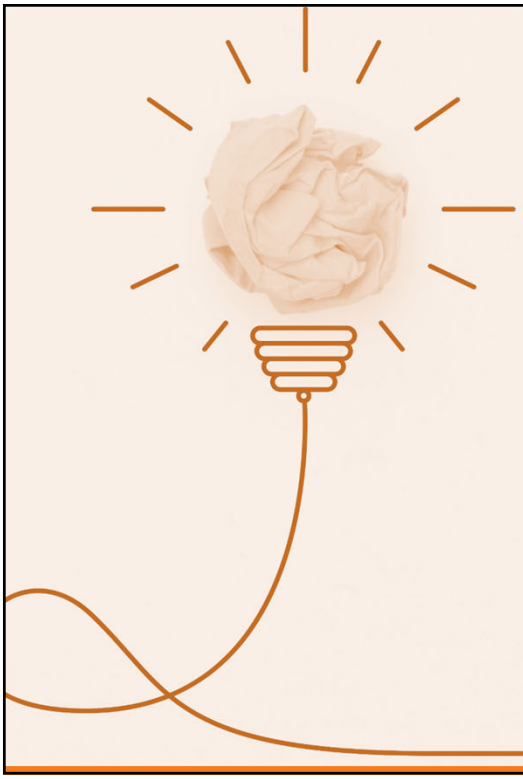
Krista Anderson, Systemwide Title IX Coordinator
Sean Flammer, Associate General Counsel

Fall 2025

The University of Texas System
THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

1

1



Agenda

1. Title IX Intro
2. What is Bias?
3. Types of Bias
4. Conflicts of Interest
5. Strategies for Mitigating Bias & Conflicts of Interest
6. Objective Criteria Example
7. Hypotheticals

2

2

Introduction

TITLE IX

Key Concepts & Framework

3

3

Title IX

Sex Discrimination
Sexual Harassment
Retaliation

The University of Texas System
THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

4

4

Key Pillars: Title IX Process

- **Impartiality**
- **Respect**
- **Fairness**
- **Equity**

For all of the participants in the process:

Complainants
Respondents
Witnesses
Third-party Reporters

5

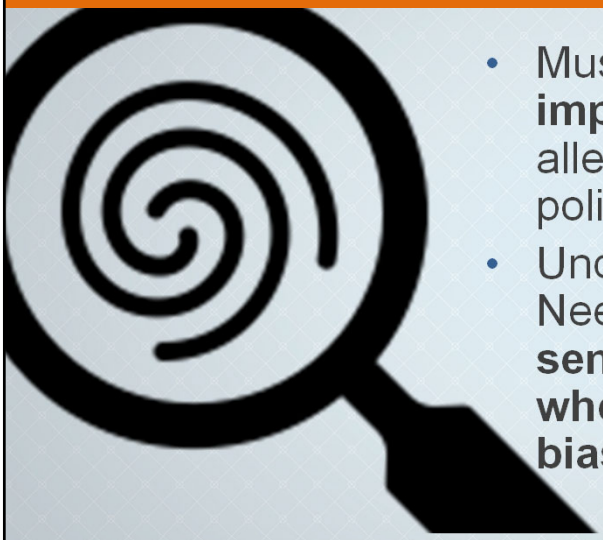
Serving Impartially in your Role

- Must avoid **prejudgment** of the facts at issue
- Must avoid **conflicts of interest**
- Must avoid **bias**

Source: Title IX Regulations (2020)

6

Principles for Title IX Process



- Must maintain **complete neutrality & impartiality at all times** in investigating alleged conduct violations of institutional policies.
- Understanding bias & whether it exists: Need to take an **"objective, common sense approach to evaluating whether a person serving in a role is biased."** (*Title IX Preamble (2020)*)…

7

Avoiding Bias

- Must **not** treat a party differently:
  - On the basis of the person's **sex**;
  - On **stereotypes** about how men or women behave with respect to sexual violence; and/or
  - On the basis of the person's **protected characteristics**.

Source: Title IX Preamble (2020)

8

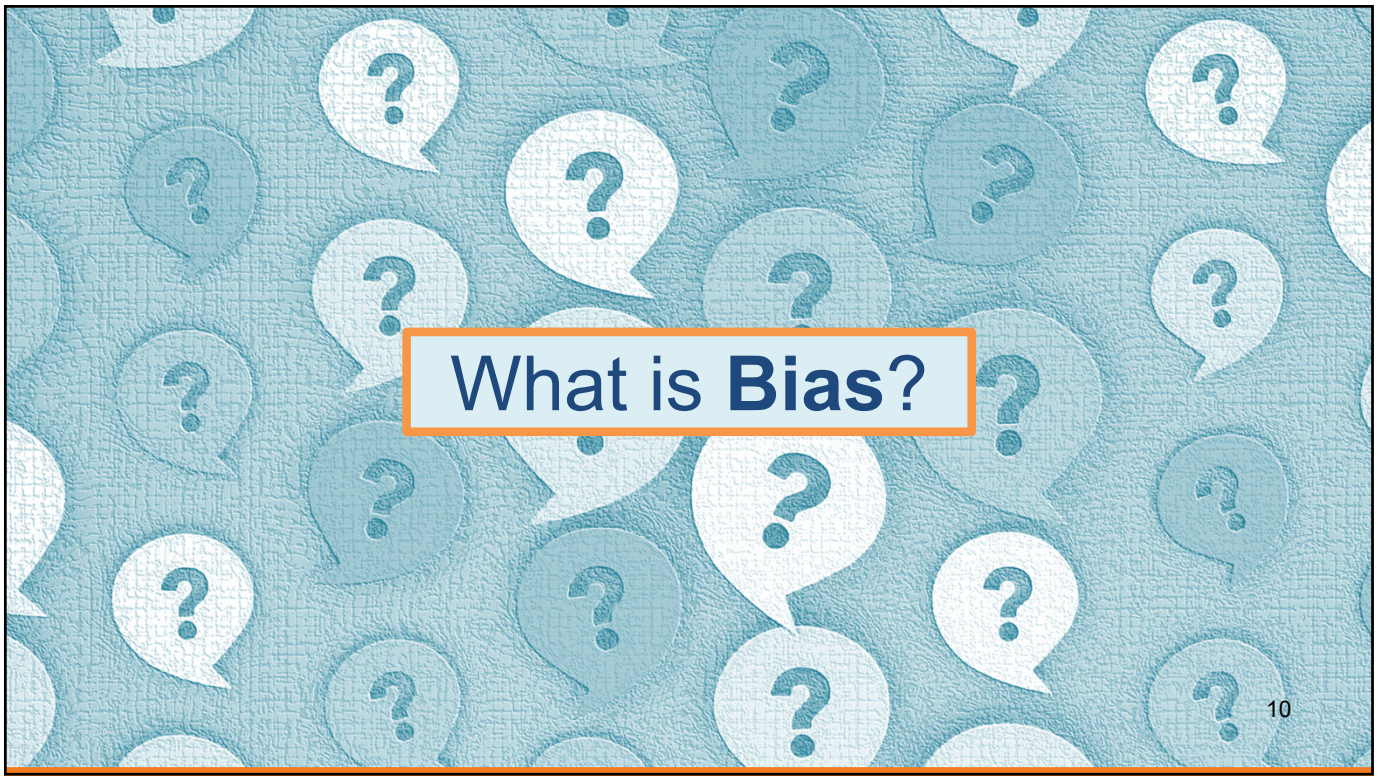
What is "**Serving Impartially**" in your Role?

9

Impartial	Independent	Objective
State of mind or attitude where there is no biased influence, perceived or real	Free from outside influence	Absence from any personal or professional interest that affects a person's ability to be fair & impartial to all parties involved

The University of Texas System
THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

9



10

What is Bias?

11

Assumptions	Stereotypes	Prejudices
Thoughts, Generalizations	Overly simplified Ideas	Beliefs, Feelings, Attitudes of liking or disliking someone or something
Limited or inaccurate perception of others	Limited or inaccurate perception of others	Limited or inaccurate perception of others

11

Examples of Sex/Gender-based Biases

1. **"Real men" cannot be victims** of sexual assault.
2. If a **woman doesn't physically resist rape**, then it cannot constitute sexual assault.
3. If a **man is intoxicated**, it might be **unintentional sexual contact** (e.g. getting carried away), but it's not sexual assault.
4. If a **woman** engages in **alcohol consumption willingly**, then she is at least **somewhat responsible** for later allowing sexual contact or engaging in any other sex activity.
5. If a **woman initiates kissing** or other forms of sexual contact, then she is **consenting** to all of the sexual activity.
6. If a **woman** has had **multiple past sexual partners**, then the incident in question likely isn't a "real sexual assault". She's just **promiscuous, regretful** and/or **lying**.
7. If a **man** is accused of **sexual assault**, he likely did it because men **always** desire sex.

The University of Texas System
THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

Source: Research and Citations in Blueprint for Campus Police (2016)

12

12

Misconceptions & Realities of Sexual Assault

Misconceptions About Sexual Assault	Realities About Sexual Assault
Only women are victims of sexual assault.	**Victims can be male, female or transgender** In Texas, 1 in 5 men experience sexual assault in their lifetime.[25] Nationally, male victims range from 1 in 10 to 1 in 20 victims.[26]
The perpetrators are mostly strangers.	**Perpetrators are most often known to the victim** In Texas, 77% of victims knew their offenders.[27] Nationally about 3 in 4 victims of sexual violence knew the offender.[28]
The "normal" response to being assaulted is hysteria and crying.	**Emotional responses vary;** victims are often in shock and passive, quiet, and unemotional.[29]
Sexual assault usually involves a weapon.	**Often no weapon is used, but perpetrators use strategies and tools like alcohol intoxication to commit sexual assaults.** In Texas, weapons were used in only 3% of sexual assaults.[30] Nationally, only 1 in 10 rape or sexual assault victimizations involve a weapon.[31] Perpetrators also use manipulation, deceit, premeditation, planning, victim selection, and betrayal of trust to commit sexual assaults.[32]

Source: Research and Citations in Blueprint for Campus Police (2016)

13

Misconceptions & Realities of Sexual Assault (Cont.)

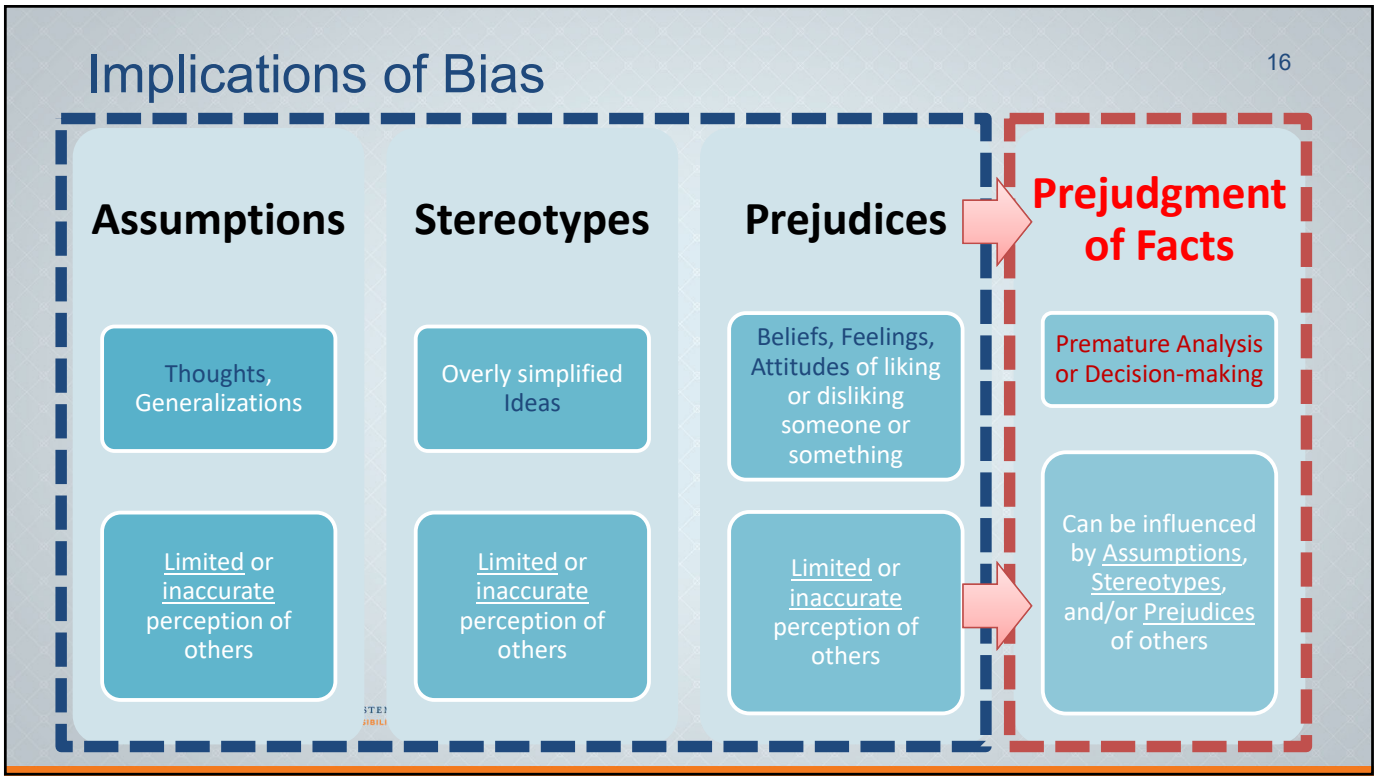
Misconceptions About Sexual Assault	Realities About Sexual Assault
Most 'real' victims do not delay reporting to law enforcement.	**Victims often don't report or delay for a number of reasons.** This should not be seen as a cause for suspicion.[33] In Texas, only 9.2% of sexual assaults are reported to police.[34]
Men are usually sexually assaulted by men.	**In Texas, men report being just as likely to be victimized** by women as they are by men.[35]
The victim will have physical evidence of violence on the body such as bruises and cuts.	**Often there are no visible physical injuries** and this lack of visible injury should never been seen as a cause for suspicion. In Texas, only 10.4% of victims reported being physically injured.[36] Nationally, only 1 in 3 female sexual violence survivors sought some type of treatment for their injuries.[37] However, some injuries like strangulation might not be as visible early on so check for raspy voice, loss of consciousness, and undergoing the four stages of strangulation: denial, realization, primal, and resignation.[38]
Victims will physically resist to the utmost to deter the rape.	**One study found only 1 in 4 women used forceful physical resistance.**[39] Another study found women were more likely to: reason, plead, turn cold, physically struggle, or cry.[40] Women often do not resist because they are taken by surprise, scared, confused, fear injury or are too incapacitated. Also, due to the neurobiology of trauma, victims may suffer from a rape-induced paralysis called tonic immobility.[41]

Source: Research and Citations in Blueprint for Campus Police (2016)

14


Beware of "Trusting your Gut"
Subjective (personal point of view)
Emotional response
Based on limited information
Inherent "blind spots"
Influenced by our filters or past experiences (limited, anecdotal lens)
Can be influenced by our biases
Instead: "Check your Gut"
for assumptions, stereotypes, and prejudices before acting on them.
Source: Thinking, Fast and Slow (Daniel Kahneman, 2011)
15

15


Implications of Bias
16
Assumptions
Thoughts, Generalizations
Limited or inaccurate perception of others
Stereotypes
Overly simplified Ideas
Limited or inaccurate perception of others
Prejudices
Beliefs, Feelings, Attitudes of liking or disliking someone or something
Limited or inaccurate perception of others
Prejudgment of Facts
Premature Analysis or Decision-making
Can be influenced by Assumptions, Stereotypes, and/or Prejudices of others

16

Prejudgment Examples

1. The Complainant (CP) was consuming alcohol at the time of the alleged incident, so the decision-maker relies solely on this information to determine the CP's statements regarding the incident are not accurate or reliable.
2. The Respondent (RP) is alleged to have committed sexual assault. The RP identifies as a man, so the decision-maker, without any other relevant evidence to inform whether there was consent, concludes that the RP committed sexual assault.
3. The Complainant (CP) and Respondent (RP) were in a consensual sexual relationship at the time of the alleged incident, so the decision-maker relies solely on this information to determine that the CP consented to sexual activity regarding the specific conduct at issue.

17

Other Implications of Bias

Assumptions	Stereotypes	Prejudices	Discrimination Harassment Retaliation
Thoughts, Generalizations	Overly simplified Ideas	Beliefs, Feelings, Attitudes of liking or disliking someone or something	Actions
Limited or inaccurate perception of others	Limited or inaccurate perception of others	Limited or inaccurate perception of others	Can be influenced by Assumptions, Stereotypes, and/or Prejudices of others

18

Types of Bias

19

19

Types of Bias

20



Gender Bias

Having a preference, favoring for or against one gender over another.

Beauty Bias (Appearance Bias)

Associating a person's appearance with their personality; making judgments based on a person's physical appearance.

Affinity Bias

Favoring others who share one's own qualities or qualities of someone you like.

In-group Bias

Responding more positively toward one's own "in-groups" than from "out-groups"

Confirmation Bias

Searching for evidence that backs up one's preconceived opinions or theories; can lead to selective observation or overlooking information that is also relevant.

20

Types of Bias (Cont.)

21

Anchoring Bias

Relying on the first piece of information received about a matter, regardless of its relevance or whether substantive in nature.

Contrast Effect

Assessing two or more similar things and comparing them with one another, rather than looking at each component based on its own merit(s).

Halo Effect

Relying on a perceived "positive" impression about a person and overlooking other information or aspects.

Horns Effect

Relying on a perceived "negative" impression about a person and overlooking other information or aspects.

21

Types of Bias (Cont.)

22

Attention Bias

Focusing on certain information while ignoring other information that is relevant or substantive in nature.

Affect Bias

One's emotional state influencing one's decision-making; one's positive or negative feelings may affect one's perception of information or meaning(s).

Motivation Bias

Assuming someone's motivation(s) based on their current behavior; a form of emotionally biased reasoning that isn't considering all of the evidence.

Overconfidence Effect

Relying on one's subjective confidence in their own judgments rather than considering the objective accuracy of those judgments.

22

Types of Bias (Cont.)

23

Recency Bias

Overemphasizing the most recent information received about a matter, regardless of its relevance or whether substantive in nature.

Framing Effect

Relying on the way information is presented when making judgments or decisions. Overvaluing ***how*** something is presented (e.g. its framing), which can then cause undervaluing of ***what*** is being presented (which can still be relevant or substantive)

Ambiguity

Limited or lack of information to base one's decisions or judgments.

23

Prejudgment Examples Revisited

1. The Complainant (CP) was consuming alcohol at the time of the alleged incident, so the decision-maker relies solely on this information to determine the CP's statements regarding the incident are not accurate or reliable.
2. The Respondent (RP) is alleged to have committed sexual assault. The RP identifies as a man, so the decision-maker, without any other relevant evidence to inform whether there was consent, concludes that the RP committed sexual assault.
3. The Complainant (CP) and Respondent (RP) were in a consensual sexual relationship at the time of the alleged incident, so the decision-maker relies solely on this information to determine that the CP consented to sexual activity regarding the specific conduct at issue.

The University of Texas System
THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

24

24

25

What is "**Serving Impartially**" in your Role?

26

Impartial	Independent	Objective
State of mind or attitude where there is no biased influence, perceived or real	Free from outside influence	Absence from any personal or professional interest that affects a person's ability to be fair & impartial to all parties involved

The University of Texas System
THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

26


What can cause a Conflict of Interest?
Lack of Independence in your role
Lack of Objectivity in your analyses
Lack of Impartiality in your decision-making
27

27


Strategies for Mitigating Bias & Conflicts of Interest
28

28

Mindset Throughout the Process

- **Fairness** and **appearance of fair.**
- Parties need to **be heard** and **feel heard**.

Remember: This is likely a **major life event** for both the Complainant & Respondent.

29

29

Check Your "Gut"

30

30

Mitigating Bias

- Identify the **objective criteria** for the investigation or adjudication.
- Focus on the **relevant facts** and **evidence gathered**.
- Remind yourself that **individuals** are **complex** and **diverse**.
- Investigate the allegations fully, gathering **ALL** of the **relevant facts** and **evidence** available/accessible from the parties involved.

31

31

Mitigating Bias (Cont.)

- Be open to & obtain **<u>outside</u> input** & **feedback** on your analyses, explanations, or justifications for conclusions.
- Remove **distractions** and reduce sources of **stress** when considering analyses or decision-making.
- Recognize **ALL** possible **outcomes**.

32

32

Mitigating Bias (Cont.)

DO NOT pass judgment on the allegations presented by any of the parties or witnesses.

DO NOT pass judgment on the individual parties or witnesses.

DO NOT jump to any **premature conclusions & avoid early hypotheses.**

The University of Texas System
THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

33

33

Testing & Detecting Bias

Test to address any potential implicit bias.

- What is the **essence** of potential policy violation?
- Create **hypothetical** that includes those elements. Then flip or change the genders.
- You must have **fair & consistent considerations**, regardless of gender.

When developing your analysis, making your decision(s), or coming to your conclusions:

- List out the evidence favorable to both sides to ensure **evidentiary support** (as opposed to biased influences).

34

34

Bias Checklist Questions

1. Is your **first impression** of someone **subjectively influencing** your analysis or judgment? Are there **other considerations** of that person that **counter** the first impression?
2. Would your **view** of the person or their statements **change** if they were **different** or **similar** to you?
3. Are you **rushing** to judgment? Have you considered **ALL** the **key factors** & **elements**?
4. Are there **missing perspectives** or **exceptions** that may be relevant to consider? (Play devil's advocate.)

35

35

Bias Checklist Questions (Cont.)

5. Could you be **wrong** about your analysis?
6. Are you **oversimplifying** your conclusion?
7. Are you **distracted** or hyper-sensitive to an **emotional** element?
8. What are your **reasons** for your analysis or decision? Is your analysis **sound**? (Write out your rationale, then think critically about it.)
9. Do you have **sufficient time** to consider your analysis or decision(s)?

36

36

Mitigating Conflict of Interest

- Avoid any actual or perceived conflicts of interest.
- Even the **appearance** of a "conflict" can **undermine** the perceived fairness of the process or proceedings.
- Don't take "conflict" allegations or concerns personally.
- **Be open** and **considerate**, even if you may disagree with the "conflict" allegations or concerns.
- Avoid an Overconfidence Effect from impairing your judgment on any "conflict" concerns with your role.
- **Recuse yourself** when appropriate or necessary.

37

37

Conflict of Interest Checklist: Questions for Decision-Makers

1. Do you have a **direct** or **personal relationship** with any of the parties or witnesses that could compromise your objectivity?
2. Have you played a **decision-making role** in the matter previously or will you play a decision-making role later in the process?
3. Are you aware of **any other facts or circumstances** that might be viewed as undermining your ability to render an analysis or decision that is fair, impartial and unbiased?

38

38

Objective Criteria

39

39

Look at the Provision(s) at Issue:

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

For the purposes of this definition:

- ***Course of conduct*** means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- ***Reasonable person*** means a reasonable person under similar circumstances and with similar identities to the victim.
- ***Substantial emotional distress*** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

40

40

Look at the Provision(s) at Issue:

Engaging in a (1) course of conduct (2) directed at a specific person that would (3) cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

For the purposes of this definition:

- ***Course of conduct*** means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- ***Reasonable person*** means a reasonable person under similar circumstances and with similar identities to the victim.
- ***Substantial emotional distress*** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

41

41

Burden of Proof on the Institution

Preponderance of the Evidence Standard

Whether the greater weight of the credible evidence establishes that the Respondent engaged in the alleged policy violation.

Note: The Respondent is presumed **not responsible**.

42

42

Relevant Evidence

Evidence is **relevant** if:

- The evidence has any tendency to make a **fact** more or less probable than it would be without the evidence; **and**
- The **fact** is of consequence in determining the action.

43

Relevant Evidence

Another way to frame it:

- **Exculpatory evidence**: Evidence tending to excuse, justify, or absolve the person of the alleged conduct.
- **Inculpatory evidence**: Evidence that places responsibility on the person of the alleged conduct.

44

"Stalking" Elements Breakdown (Example) Complainant's Statements

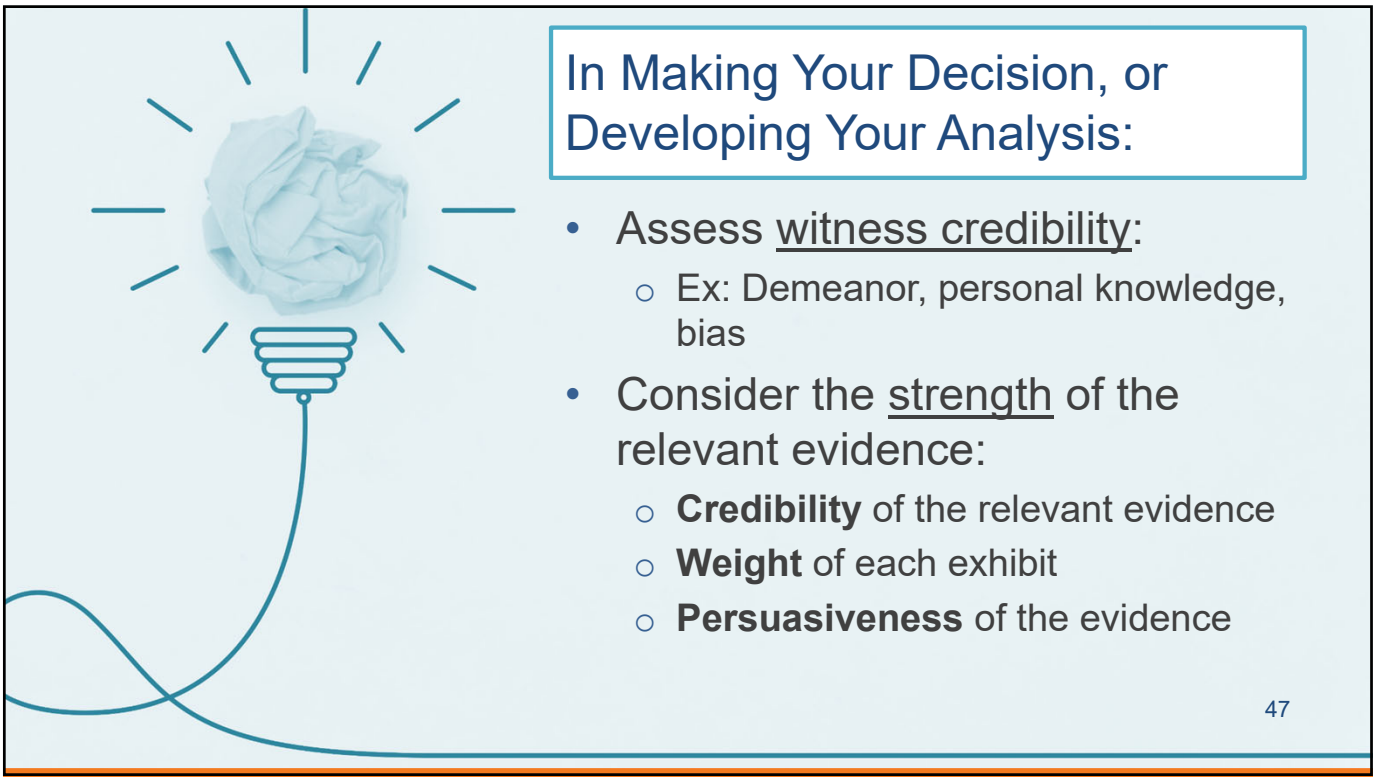
Course of Conduct	Directed at a Specific Person	Cause a Reasonable Person to (a) Fear for his/her/their safety or the safety of others; or (b) Suffer substantial emotional distress
1. Phone call 2. In-person confrontation	Complainant (CP)	1. Respondent (RP) implied watching and following the CP from personal residence to their transportation and other places only the CP would reasonably be accessing or visiting (work location, parent's house, CP's friends). 2. RP "begging, crying, pleading" with CP to return to the relationship, & "can't live without CP." 3. RP doesn't want to be "alone," is worried about self-safety, and is having self-harming thoughts.

45

"Stalking" Elements Breakdown (Example) Respondent's Disputes & Responses

Cause a Reasonable Person to (a) Fear for his/her/their safety or the safety of others; or (b) Suffer substantial emotional distress	Respondent's Disputes & Responses
1. RP implied watching and following the CP from personal residence to their transportation and other places only the CP would reasonably be accessing or visiting (work location, parent's house, CP's friends). 2. RP "begging, crying, pleading" with CP to return to the relationship, & "can't live without CP." 3. RP doesn't want to be "alone," is worried about self-safety, and is having self-harming thoughts.	1. RP denied implying "watching" or "following" CP. RP asked CP where they've been going, but it was a casual question and not specific in anyway to watching or following the CP. 2. RP admitted to saying, "I can't live without CP," but it was a "figure of speech." RP admitted to wanting to "get back together" with CP but RP claims that CP is "exaggerating" RP's emotional state and how RP "presented" in that moment. 3. RP denied saying anything about "self-harming" thoughts or being worried about their own "safety." RP said they have a hard time "living alone," as in not having other roommates or others around. RP's always had roommates and siblings growing up.

46



In Making Your Decision, or Developing Your Analysis:

- Assess witness credibility:
  - Ex: Demeanor, personal knowledge, bias
- Consider the strength of the relevant evidence:
  - **Credibility** of the relevant evidence
  - **Weight** of each exhibit
  - **Persuasiveness** of the evidence

47

47

Weighing Evidence

Does some evidence weigh more than other evidence? (Is it more persuasive?)

- Plausible—does it make sense?
- Detailed v. vague recollection (but beware of trauma)
- Direct or circumstantial
- Personal observation/knowledge v. hearsay (what somebody told witness)
- Corroboration? Are there objective facts that can corroborate any testimony? (Texts; Phone log; video evidence; emails, etc.)

48

48

Burden of Proof: The greater weight

Example:

Complainant's testimony was that consent was lacking because Complainant said, "I don't want sex." But Respondent testifies that Complainant said, "Let's have sex."

49

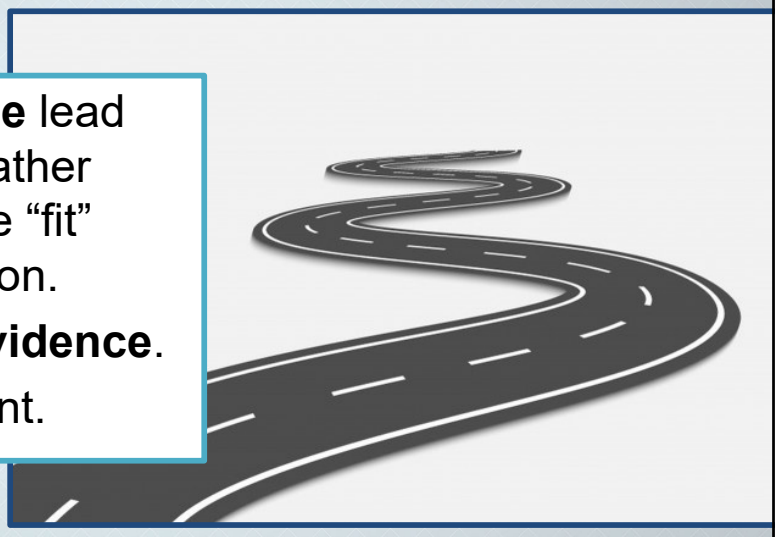
Tips for Evaluating Witnesses: Credibility Considerations

- Are there inconsistencies? Is there corroboration?
- Is an explanation plausible?
- What did the witness do? What did they *not* do?
- Are there motives for the witness to be less than truthful?
- Are there motives for the witness to frame the event in a way more favorable to themselves? Are they lying to themselves?
- Is there an opportunity for a good faith mistake?

50

Potential Pitfalls

- You must let the **evidence** lead you to the **conclusion**, rather than making the evidence "fit" your pre-formed conclusion.
- Focus on the **relevant evidence**.
  - Hint: It's **not** all relevant.



51

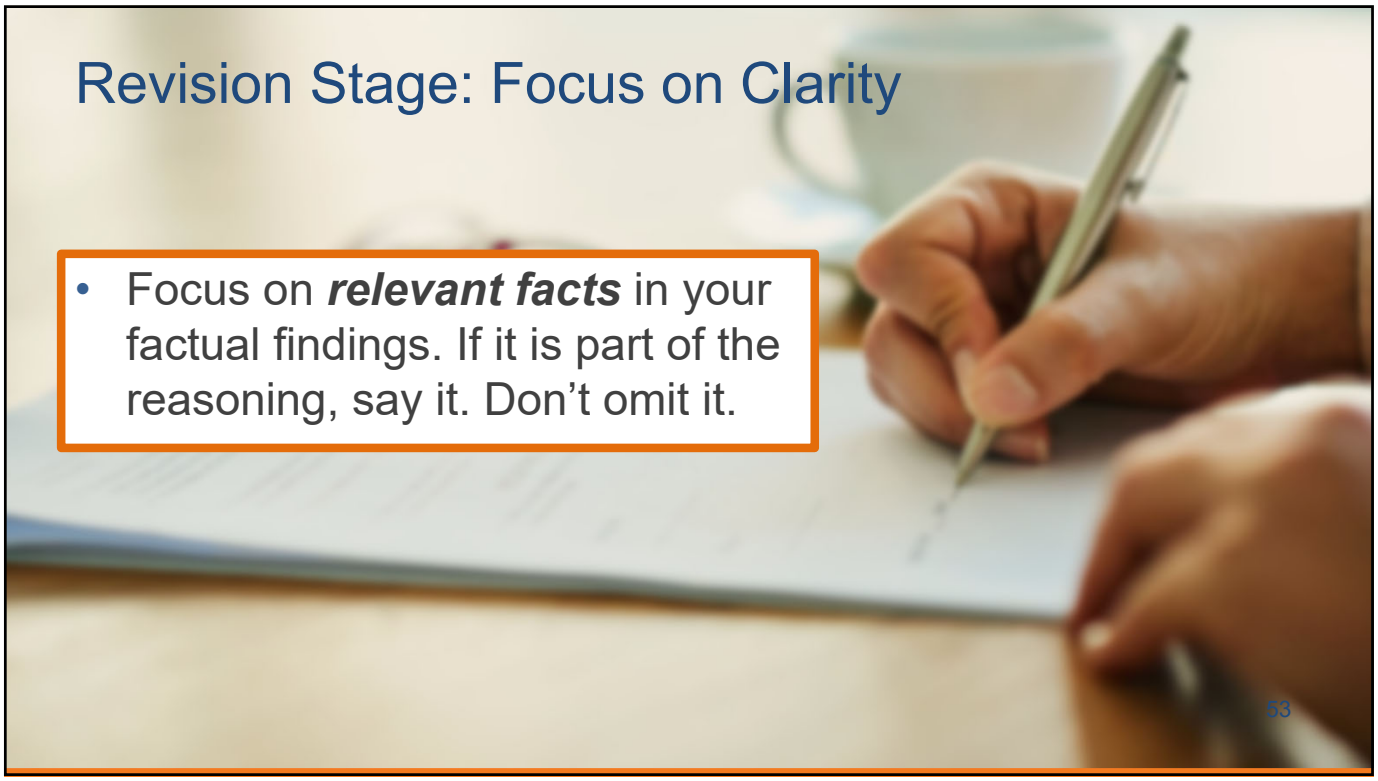
A **Good** Decision Analysis & Decision:

- Demonstrates the care and attention given to the **factual findings** and **weighing of the evidence**.
- Shows that the institution reached a **reasoned, good faith conclusion**.
  - It's not enough to reach a conclusion. You must be able to **"show your work."**
- Serves as a **framework** for all future proceedings.

52

Revision Stage: Focus on Clarity

- Focus on ***relevant facts*** in your factual findings. If it is part of the reasoning, say it. Don't omit it.



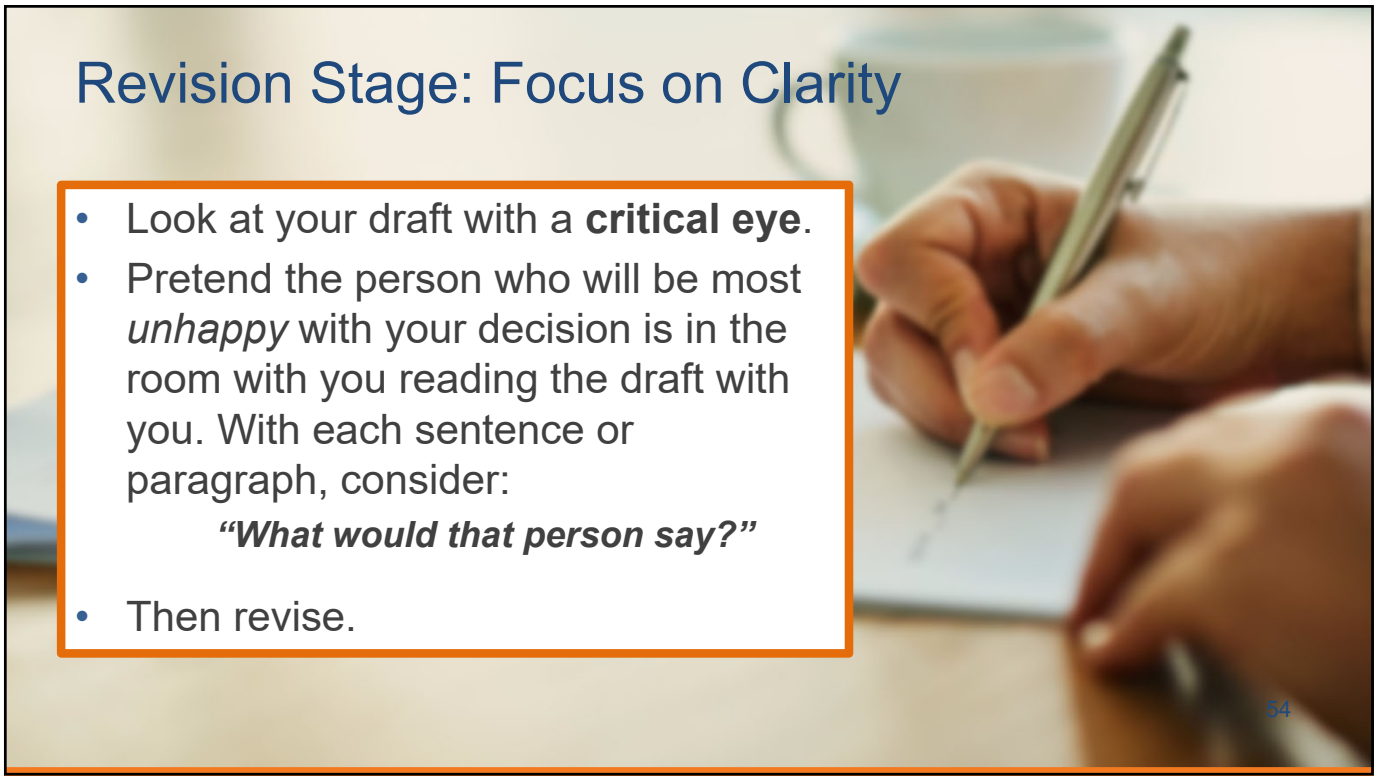
53

Revision Stage: Focus on Clarity

- Look at your draft with a **critical eye**.
- Pretend the person who will be most *unhappy* with your decision is in the room with you reading the draft with you. With each sentence or paragraph, consider:

  "What would that person say?"

- Then revise.



54

Reminder on **Fairness** & Appearance of Fair

Deal with facts **contrary** to your decision:

- If you don't, it looks like you didn't consider or hear the argument, that you weren't paying attention, or that the process is unfair.

55

55

56

Hypothetical 1

The Respondent (RP) says that they didn't sexually harass the Complainant (CP) because the RP didn't find the CP "attractive." The decision-maker doesn't find the CP "attractive" in a "typical" way either, so the decision-maker relies solely on this perception to determine the sexual harassment allegations are unsubstantiated.

57

57

Hypothetical 2

The investigator has an early hunch that the Respondent (RP) is responsible for stalking the Complainant (CP) based on CP's initial statements and text message evidence submitted, even though RP later submitted possibly compelling responses and explanations to the allegations. The investigator says that CP's evidence seems very convincing and authentic upon first view.

58

58

Hypothetical 3

A witness describes the Complainant (CP) as “spiteful” because the Respondent (RP) ended the relationship with the CP a week prior to the CP filing a report of dating violence. Without any evidence or basis, the witness says the CP was “jealous” of RP’s new date. The RP is dating someone new; this fact is not disputed. The decision-maker is concerned with this impression of the CP and uses only this information to justify the allegations are unsubstantiated.

59

Hypothetical 4

A decision-maker asks the Complainant (CP) “Why did you wear that specific outfit on the night of the alleged sexual assault with the Respondent (RP)? Why create a target for yourself?”

60

Hypothetical 5

An Advisor that's been provided by the institution has been assigned to a Complainant (CP). The Advisor meets with the CP and learns more about the general timeline of the investigation and circumstances. Afterwards, the CP sends the Advisor a copy of the Investigation Report, and the Advisor recognizes the Respondent (RP) to be someone they've assisted with in the residence hall the previous year regarding a roommate issue.

The University of Texas System
THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

61

61

Hypothetical 6

The Complainant (CP) provided graphic testimony about their domestic violence experiences, including injuries & emotional trauma. The decision-maker has an emotional reaction listening to the statements; eyes visibly watering. The decision-maker is aware that they are in a "heightened emotional state."

The University of Texas System
THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

62

62

63

Contact Information

Krista Anderson	Sean Flammer
Systemwide Title IX Coordinator	Associate General Counsel
Office of Systemwide Compliance UT System (Austin, TX)	Office of General Counsel UT System (Austin, TX)
Phone: 512-664-9050	Phone: 512-579-5106
Email: kranderson@utsystem.edu	Email: sflammer@utsystem.edu

The University of Texas System
THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
64

64