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Title IX and Bias Series

Understanding Bias in Charging,
Emergency Actions, and
Supportive Measures

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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

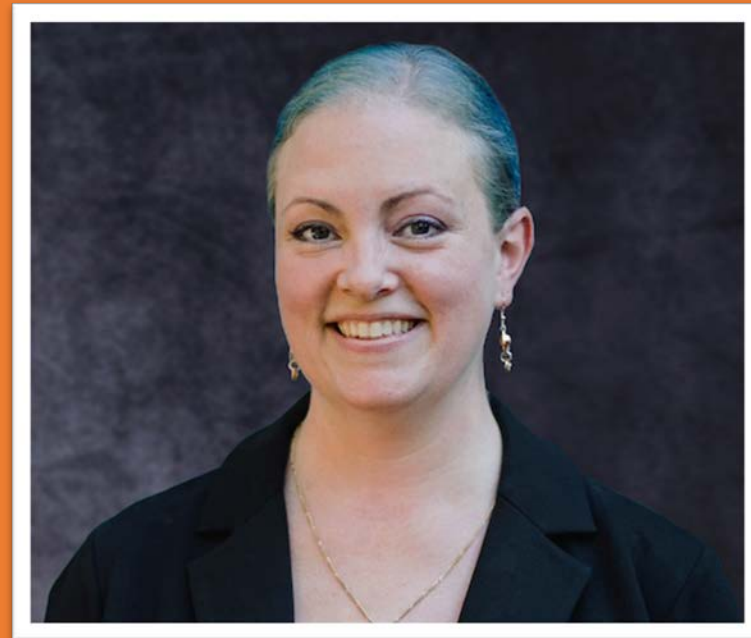
Your Facilitators

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Today's Agenda

01

Bias: What Is It?

02

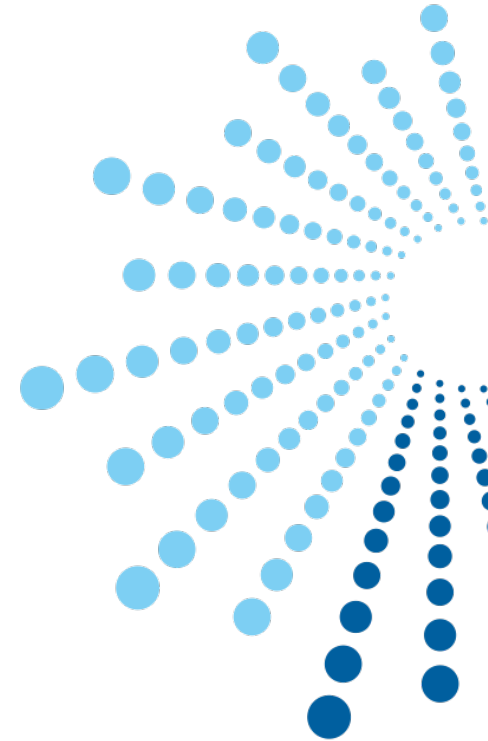
Why Is Bias Important?

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?

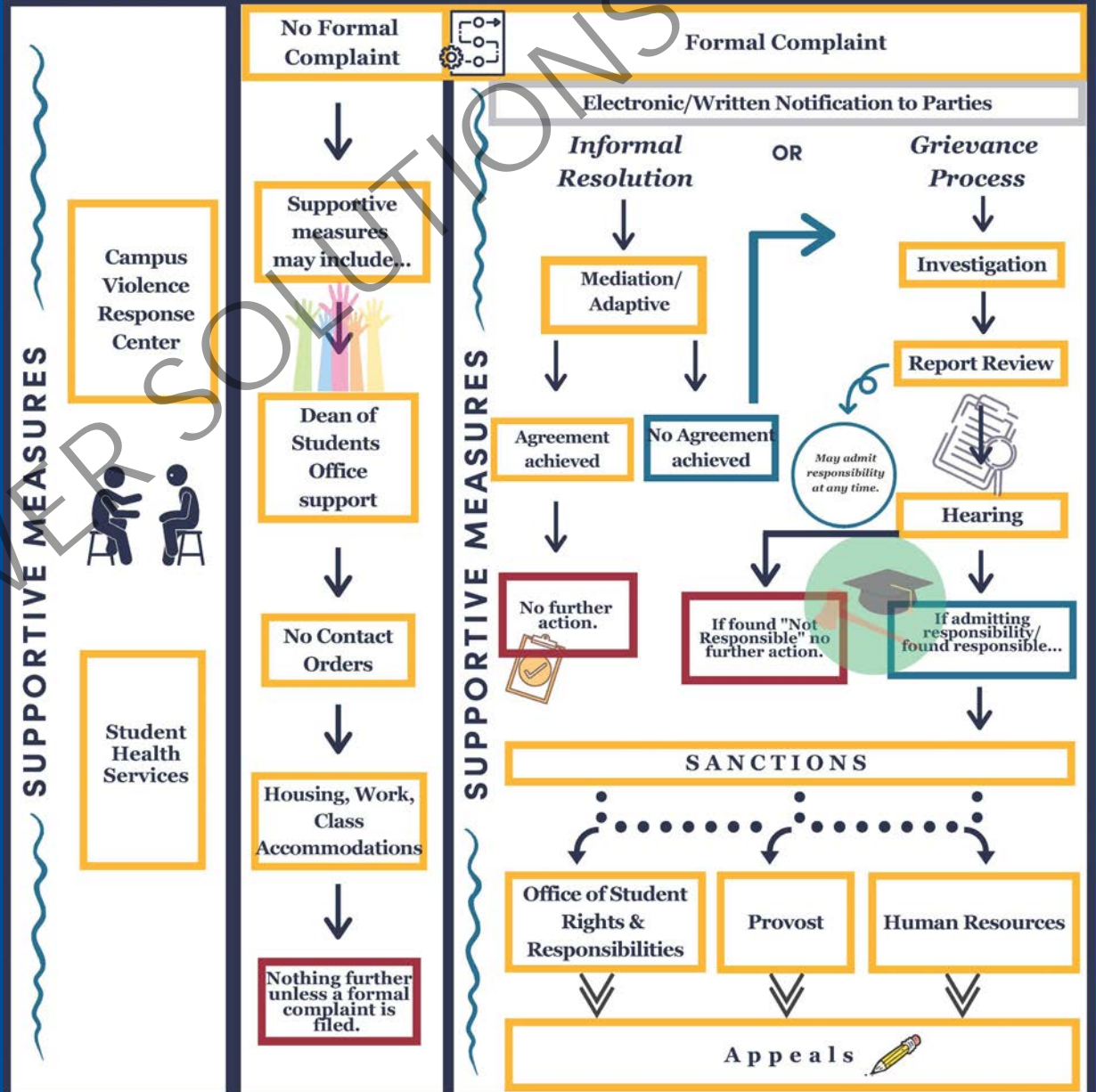
Making difficult decisions.

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

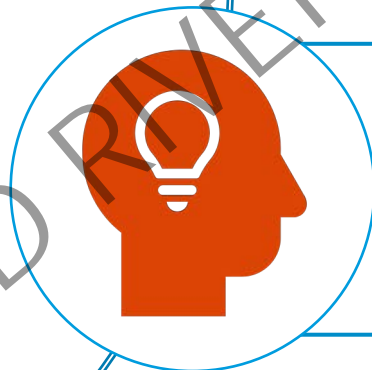
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Reports and Disclosures



What decisions are we making?



What questions could we be asking?

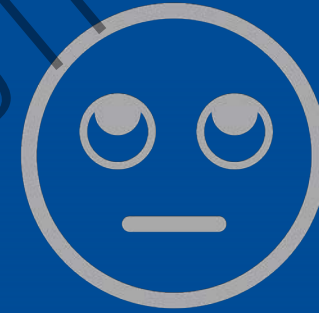
Affect Bias

- 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?

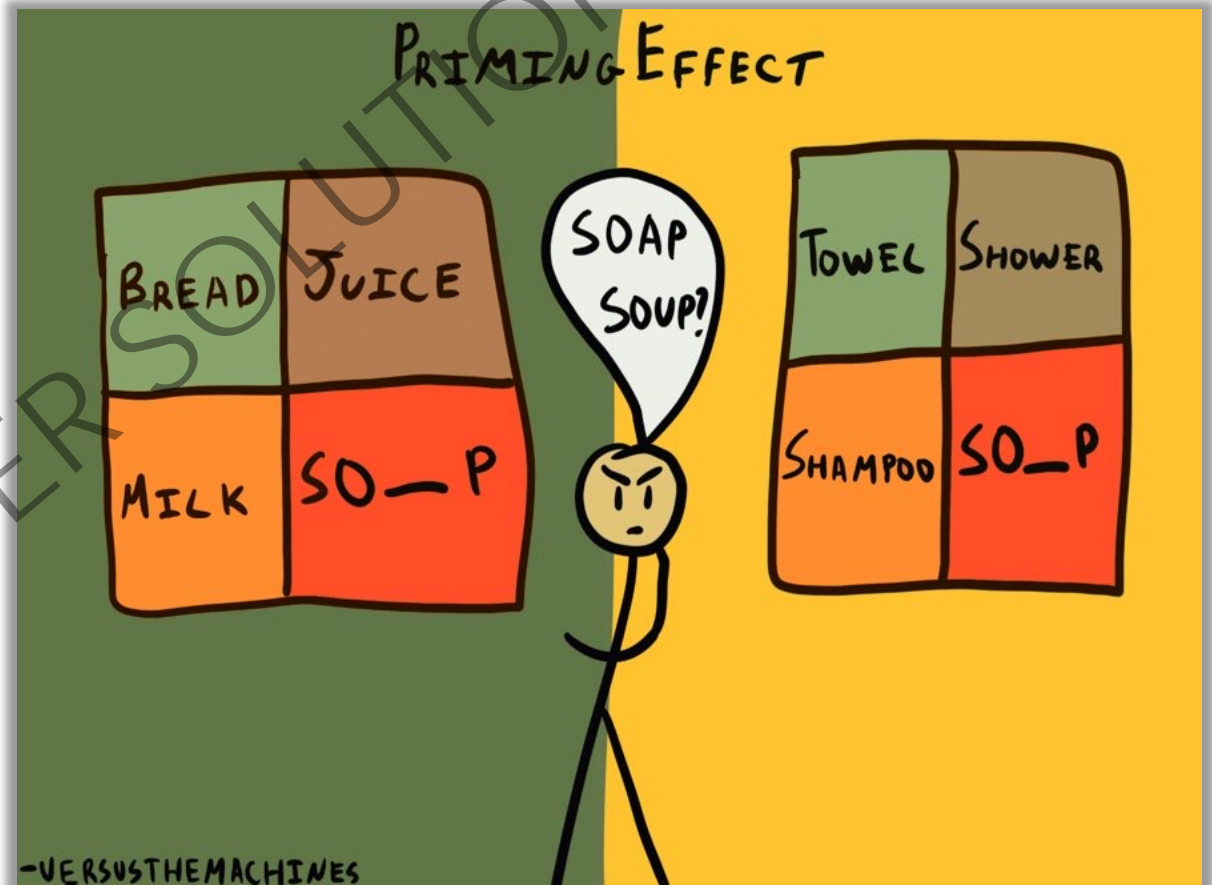
How might affect bias be showing up here?



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...

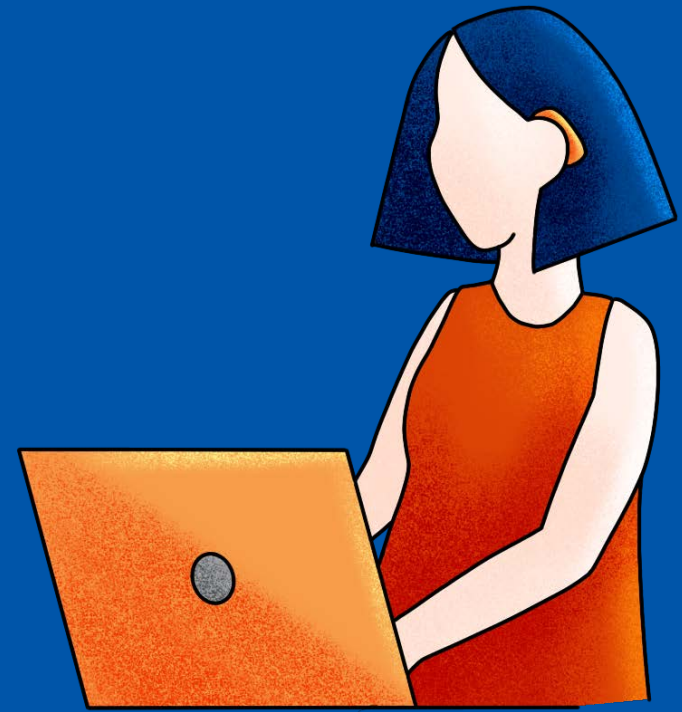
Who is receiving the report?

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?

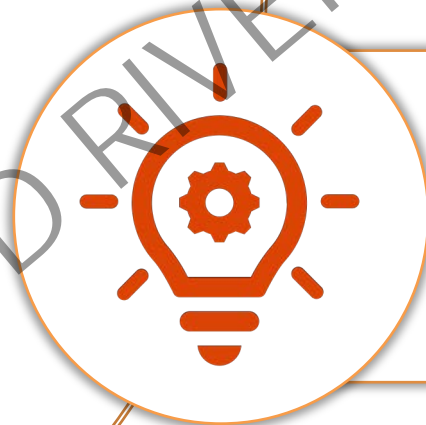
Are assumptions made about a complainant or respondent based on their physical appearance?

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).



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Unique Considerations During a Pandemic

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

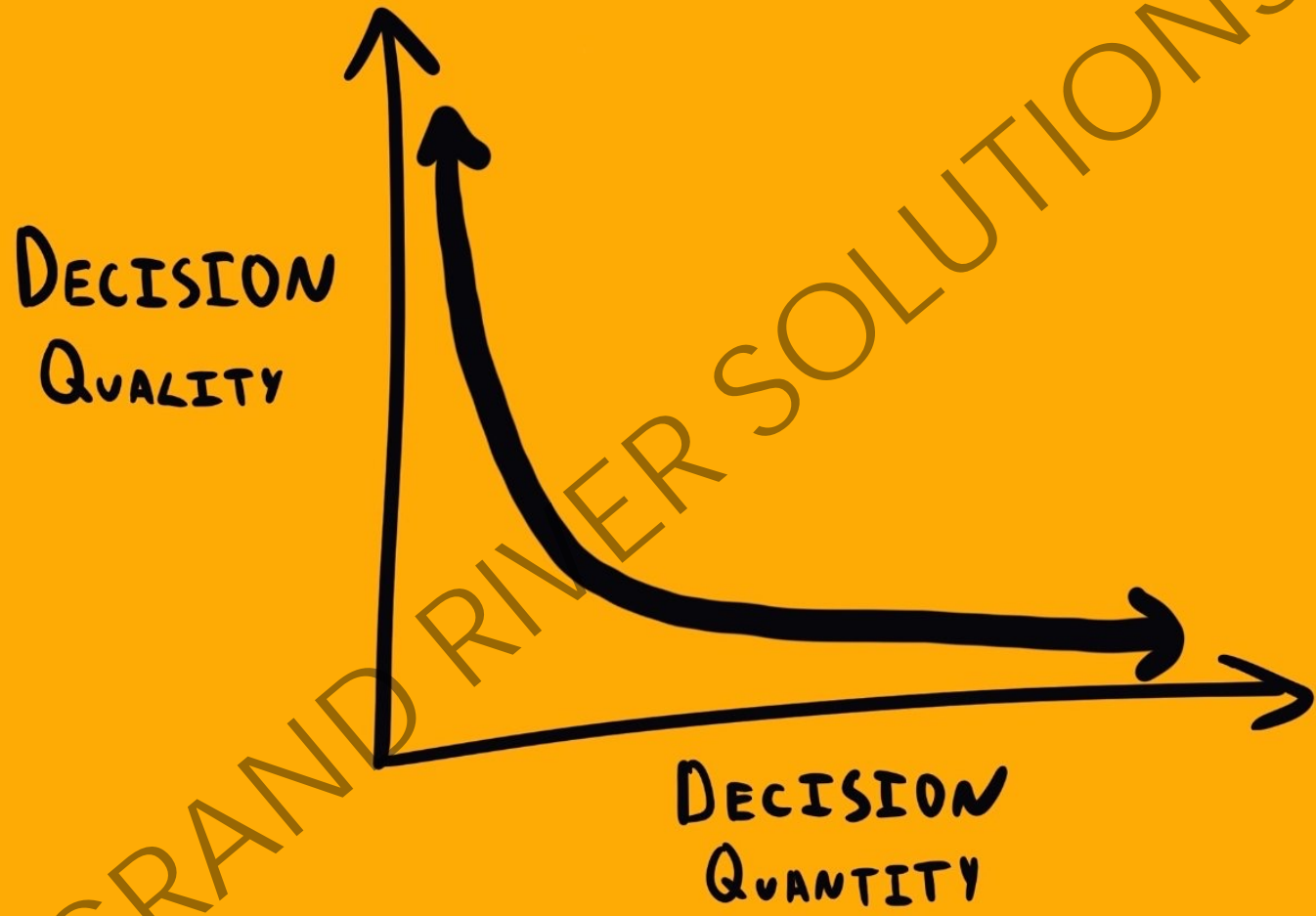
What types of emergency measures can be taken in a remote atmosphere?

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



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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?

04

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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!

Title IX & Bias Series

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

Reducing Bias in Sanctioning with Jody Shipper & Tibusay Hernandez

Upcoming DEI Trainings

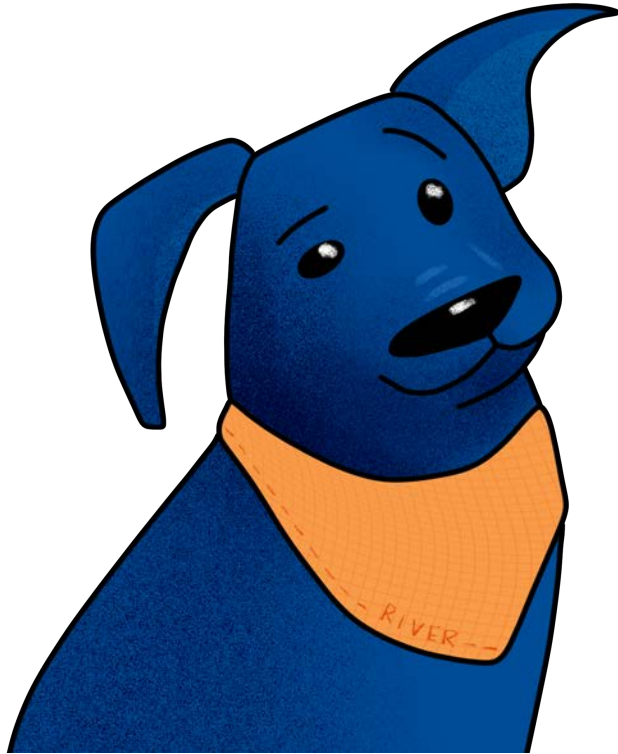
October 14, 2021

Critical Conversations: Practical Tools for Navigating Difficult Dialogues

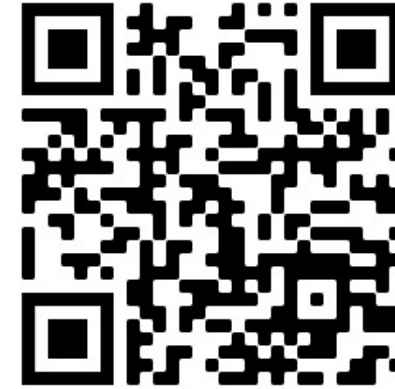
November 14, 2021

Inclusive Search Practices: Culture Add vs. Culture Fit Recruitment

Questions?



Leave Us Feedback:



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