



**GRAND RIVER** | SOLUTIONS

# Title IX and Bias Series

## Mitigating Bias in Hearings

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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

**Tibisay Hernandez**  
(she/her/ella)



**Manager of DEI  
Solutions**

**Kelly Gallagher**  
(she/her/hers)



**Senior Solutions  
Specialist**

# Today's Agenda

01

## Before the Hearing

- Preparation
  - Pre-Hearing Meetings
- 

02

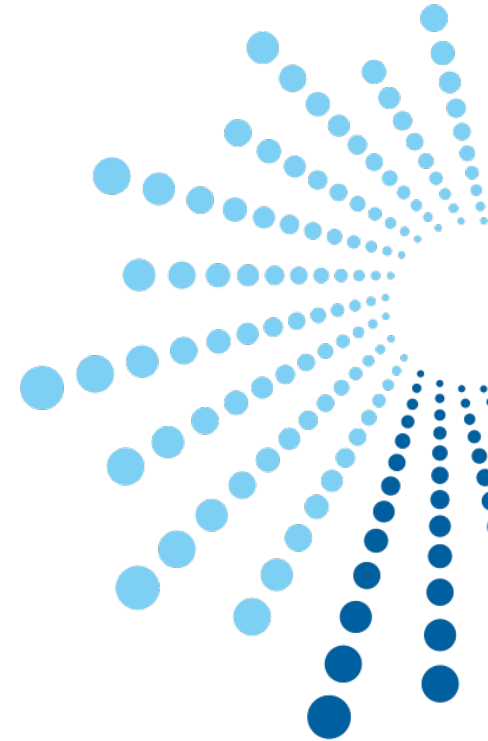
## The Hearing

- 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**



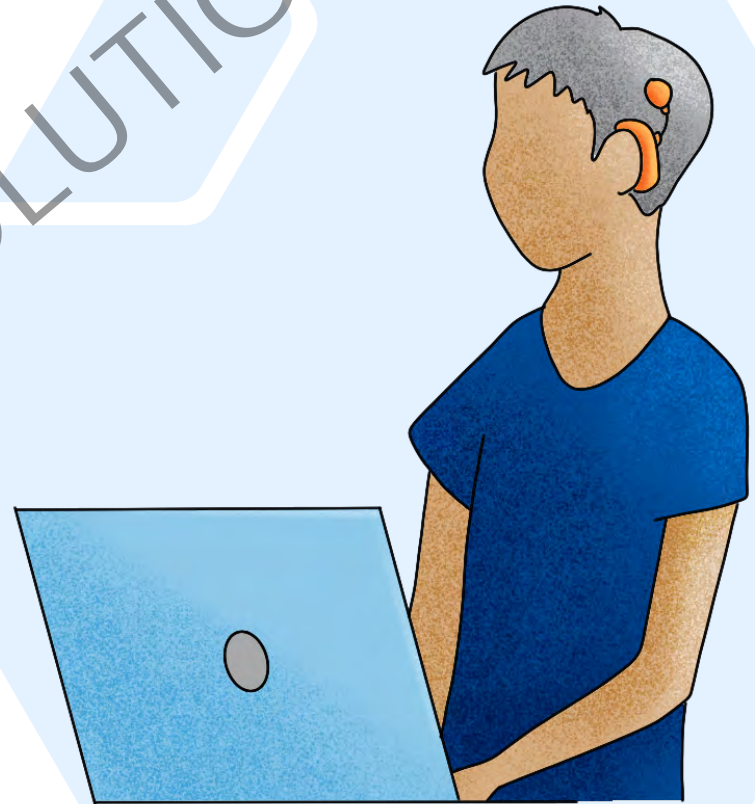
# The Hearing

- 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.

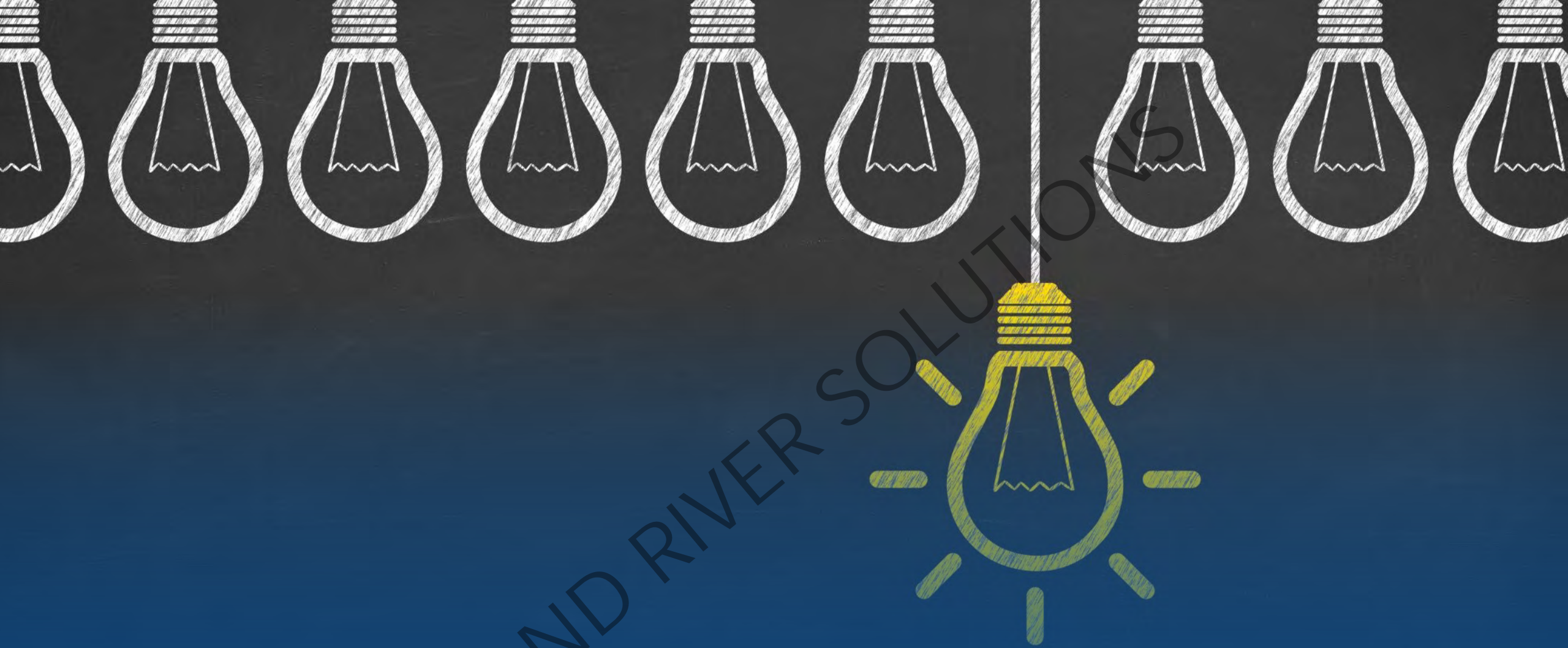
B.E. FOR DOGS:

**HALO EFFECT**

Duke



BERMAN, FOEHL, TROWER 2018



# Relevancy Determinations

# Relevancy Determination

In-the-moment decisions

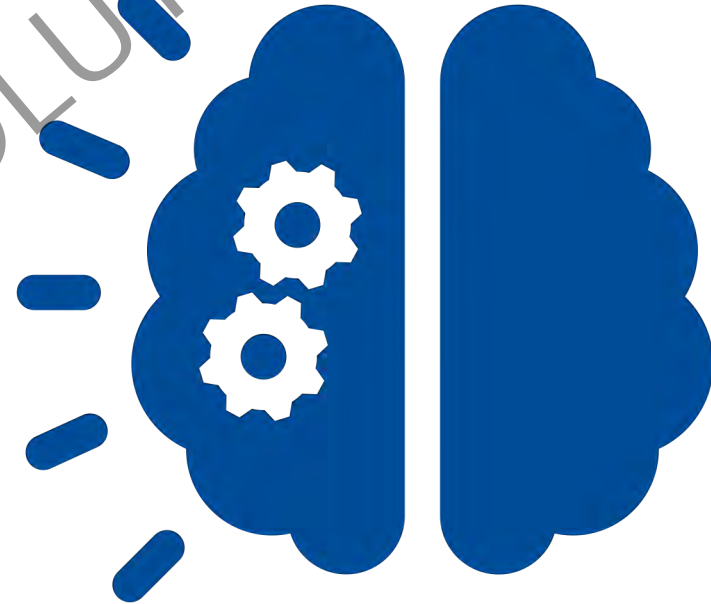
Broad definition

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!



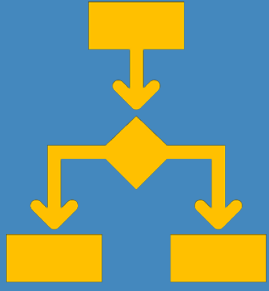
You have the opportunity to slow things down.



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

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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

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Break down the policy into elements.

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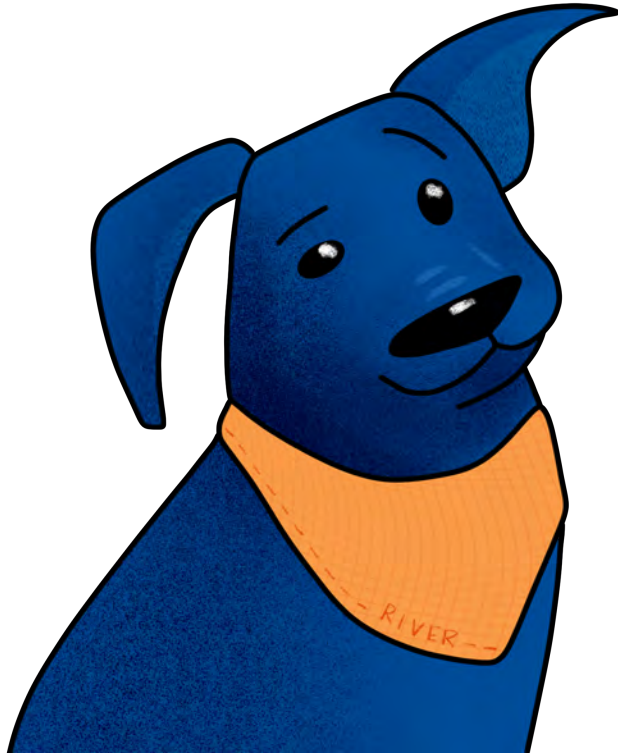
Organize the facts by the element to which they relate.



# 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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