

## Helpful Hints About Prejudging Facts

- A. One of the most important ways to uphold impartiality in the Title IX formal grievance process is to avoid prejudging the facts at issue. Prejudgment refers to passing judgment prematurely or without sufficient reflection or investigation.
  - 1. *Example:* An investigator assumes that because the complainant and respondent were previously in a consensual, sexual relationship that the complainant consented to the sexual activity he now alleges is sexual harassment.
- B. A major area where prejudgment occurs in the Title IX context are ingrained sex stereotypes of men and women. The formal grievance process requires a broad prohibition on sex stereotypes so that decisions are made on the basis of individual facts and not stereotypical notions of what “men” or “women” do or do not do.
  - 1. *Example:* A mediator believes that women who complain about sex harassment are just jumping on the “#MeToo” bandwagon.
  - 2. *Example:* Decision-maker believes that men cannot be sexually assaulted.
- C. No complainant or respondent should be met with prejudgment in the Title IX grievance process. Every complainant and respondent must be treated fairly and equally, which includes not prejudging either of their version of events without sufficient investigation.

**Potential for Prejudgment in the Title IX Context:** Prejudgment regularly occurs when allegations involve sexual conduct, sexual history, drugs, and/or alcohol use.

- A. Prejudgment related to sexual conduct - *Example:* The investigator, in an interview with a male respondent, discovers that the respondent identifies as homosexual and typically engages in sexual activity with men. The investigator assumes that the female complainant must be lying about the alleged sexual harassment because the respondent would not be interested in a woman.
- B. Prejudgment related to sexual history - *Example:* The decision-maker assumes that a faculty member did not engage in *quid pro quo* harassment with her secretary because the two used to have a romantic relationship.
- C. Prejudgment related to use of drugs and/or alcohol - *Example:* The Title IX Coordinator assumes that the respondent could not possibly know whether or not he sexually assaulted the complainant because he was drinking and taking drugs when the alleged sexual assault occurred.

**How to Avoid Prejudgment:** The following practices will help you avoid prejudging facts:

- A. Keep an open mind throughout the entire process, and listen to the multiple perspectives of those with whom you speak;
- B. Wait to hear *all* of sides to every story before drawing any conclusions;
- C. If you do not have a fact to support a certain belief, or if you feel yourself jumping to conclusions, seek out additional facts; and,
- D. Be particularly cautious about your thinking in situations involving sexual assault, drugs, or alcohol use.