



LET'S SHINE A LIGHT ON

# TITLE IX

Serving Impartially in the Title IX Sexual Harassment Formal Grievance Process





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## On-Demand





LET'S SHINE A LIGHT ON

# TITLE IX

Serving Impartially in the Title IX Sexual Harassment Formal Grievance Process

TITLE IX  
COORDINATOR

TITLE IX  
INVESTIGATOR

TITLE IX  
DECISION-MAKERS

TITLE IX  
FACILITATORS OF  
INFORMAL  
RESOLUTIONS  
PROCESSES





LET'S SHINE A LIGHT ON

# TITLE IX

Serving Impartially in the Title IX Sexual Harassment Formal Grievance Process



NOT LEGAL ADVICE

CONSULT A LICENSED ATTORNEY







# Serving Impartially

Topics to be Covered

**Title IX Statute and Preamble**

**What is Impartiality?**

**What Influences Impartiality?**

**Examples and Reflection of Impartiality**

**How to Serve Impartially**

**Consequences for Not being Impartial**





# Title IX References of Impartiality

Title IX provisions are rooted in the importance of an impartial process before unbiased officials to ...

“

(1) Improve **perceptions** that Title IX sexual harassment allegations are resolved fairly and reliably,

(2) **Avoid intentional or unintentional injection** of sex-based biases and stereotypes into Title IX proceedings, and

(3) Promote accurate, reliable **outcomes**

”



# Title IX References to Impartiality

“

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*Require that any individual designated by a recipient as a **Title IX Coordinator, Investigator, Decision-maker**, or any person designated by a recipient to facilitate an informal resolution process, **not have a conflict of interest or bias***

---

”







# Title IX References to Impartiality

**Title IX's separation of the Decision-Maker role from the Title IX Coordinator role & Investigator role to:**

*Prevent influence on a decision by bias  
or non-relevant information gleaned in  
the coordination or investigation process.*

“

*Not separating the roles, risks the person(s)  
involved improperly relying on information  
**gleaned** during one role to affect decisions  
made while performing a different role.*

”





# Title IX References to Impartiality

“

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*A Title IX Coordinator may have a **history of communications with the complainant** before any formal complaint has been filed (for instance, due to implementing supportive measures for the complainant), which may **influence the Title IX Coordinator's perspective** about the complainant's situation before the Title IX Coordinator (if allowed to be the “decision-maker”) has even spoken with the respondent.*

---

”



# Title IX References to Impartiality

“

---

*An Investigator may obtain information from a party that is not related to the allegations under investigation during an interview with a party, and if the investigator also serves as the decision-maker, such **unrelated information may influence that person's decision making***

---

”



# Title IX References to Impartiality

“

---

*Separating the roles of investigation from adjudication therefore protects both parties by making a fact-based determination regarding responsibility based on **objective evaluation** of relevant evidence more likely.*

---

”





# What is Impartiality?



- ✓ NEUTRAL
- ✓ EQUITABLE
- ✓ FAIR IN ACTIONS
- ✓ OBJECTIVE CRITERIA

“

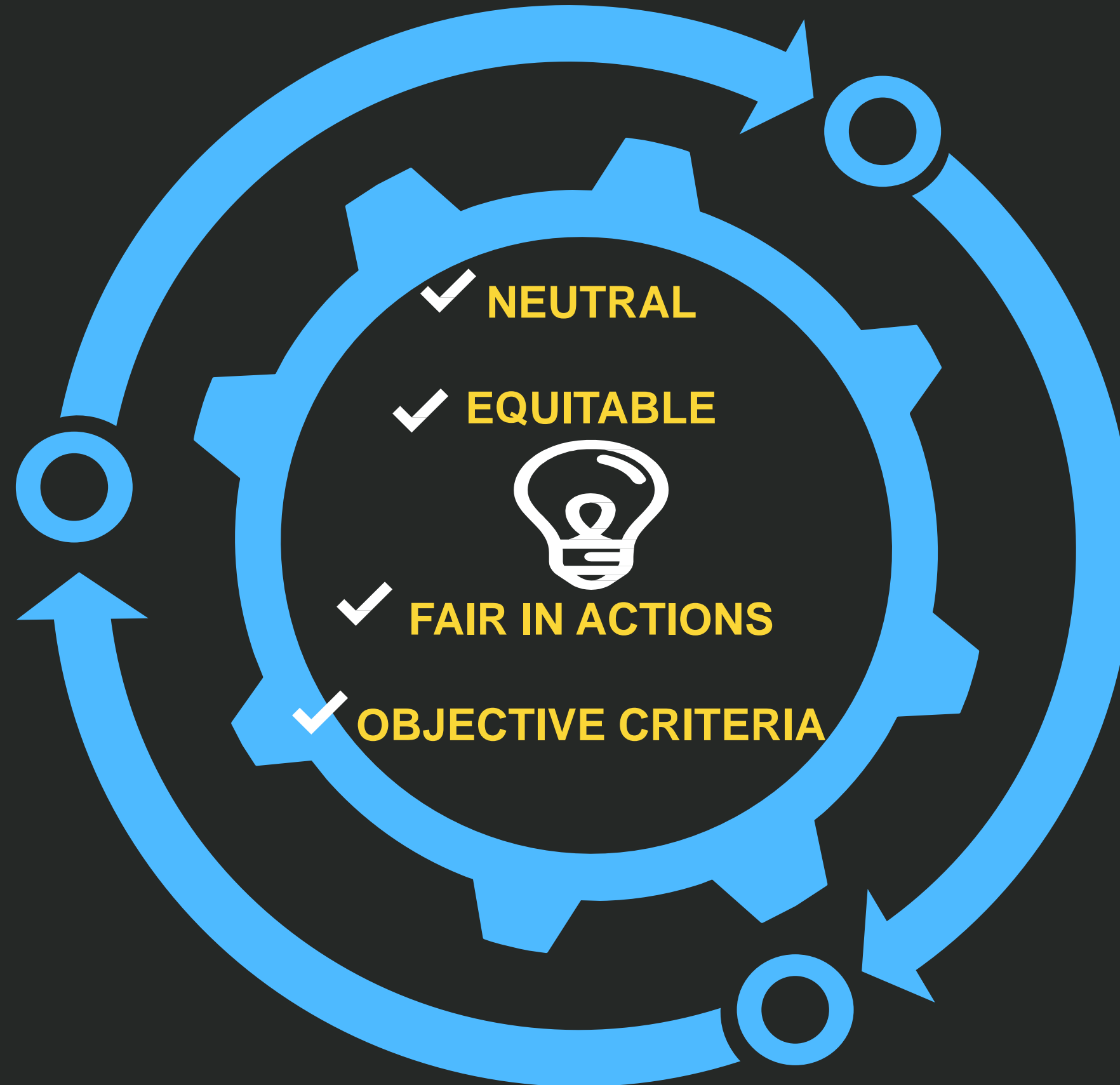
*This approach reflects the reality that recipients are not courts, yet do need to apply a fair, truth-seeking process to resolve factual allegations of Title IX sexual harassment.*

”

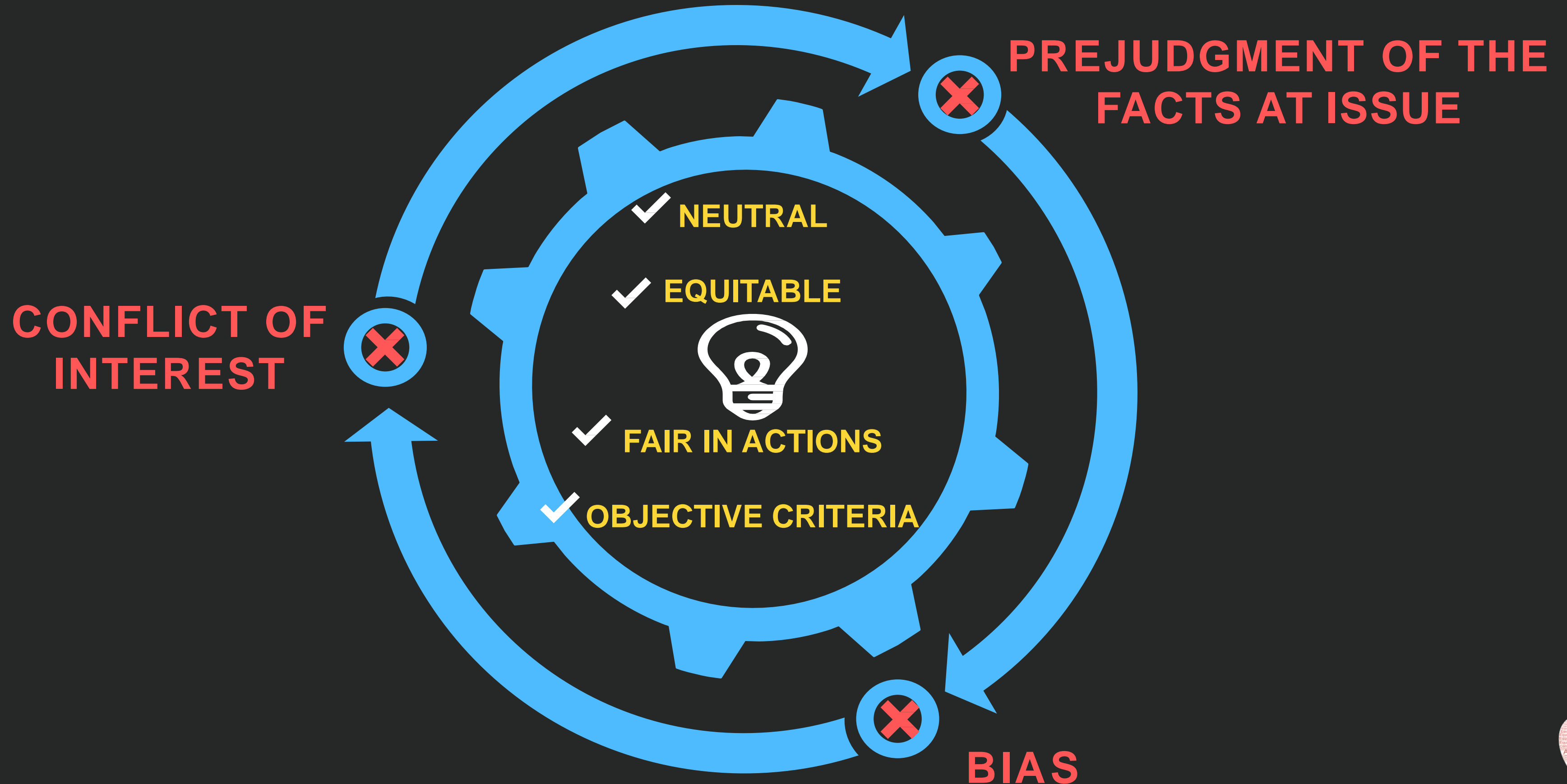
Preamble 30226



# What Influences Impartiality?

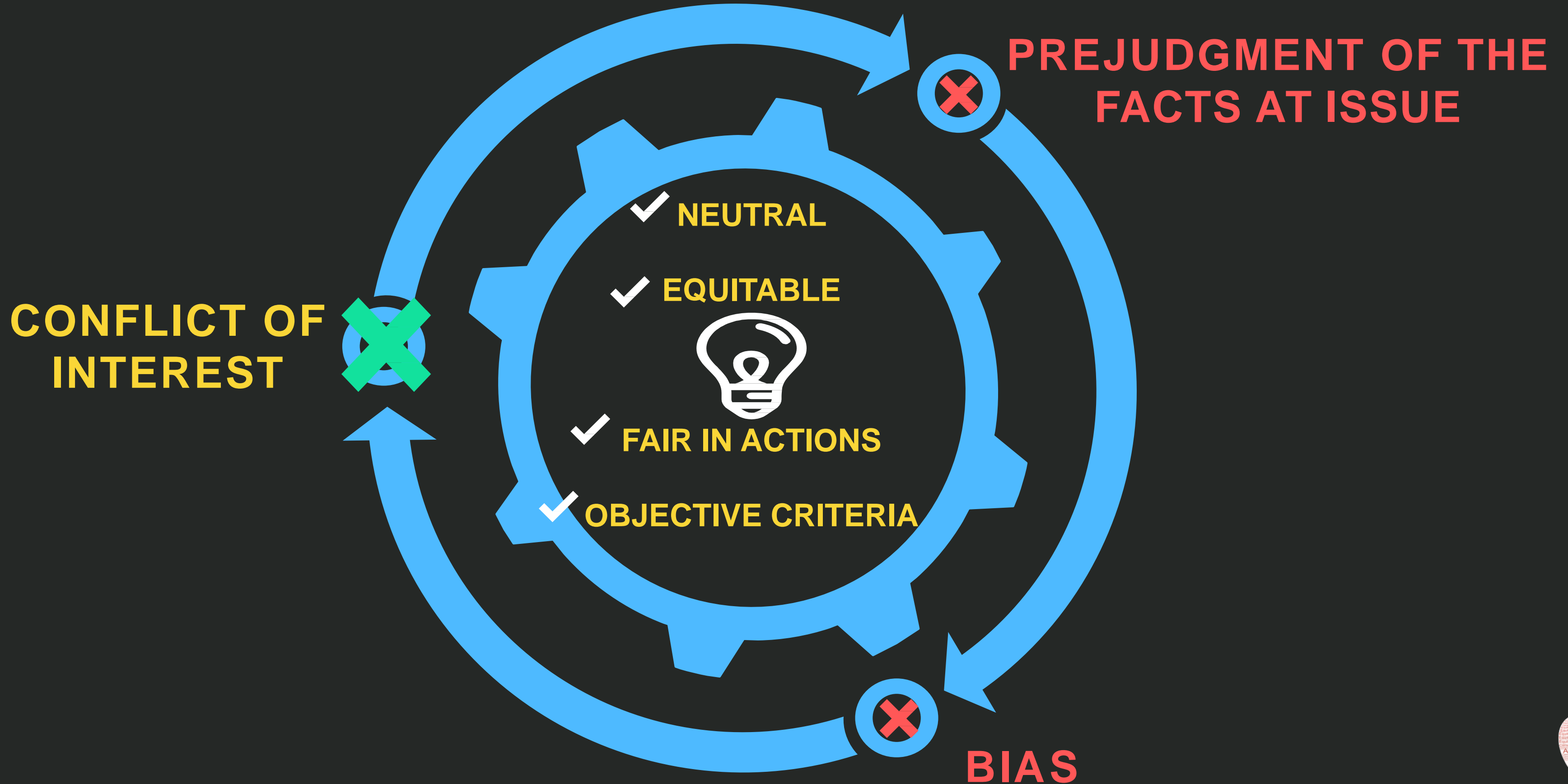


# What Influences Impartiality?

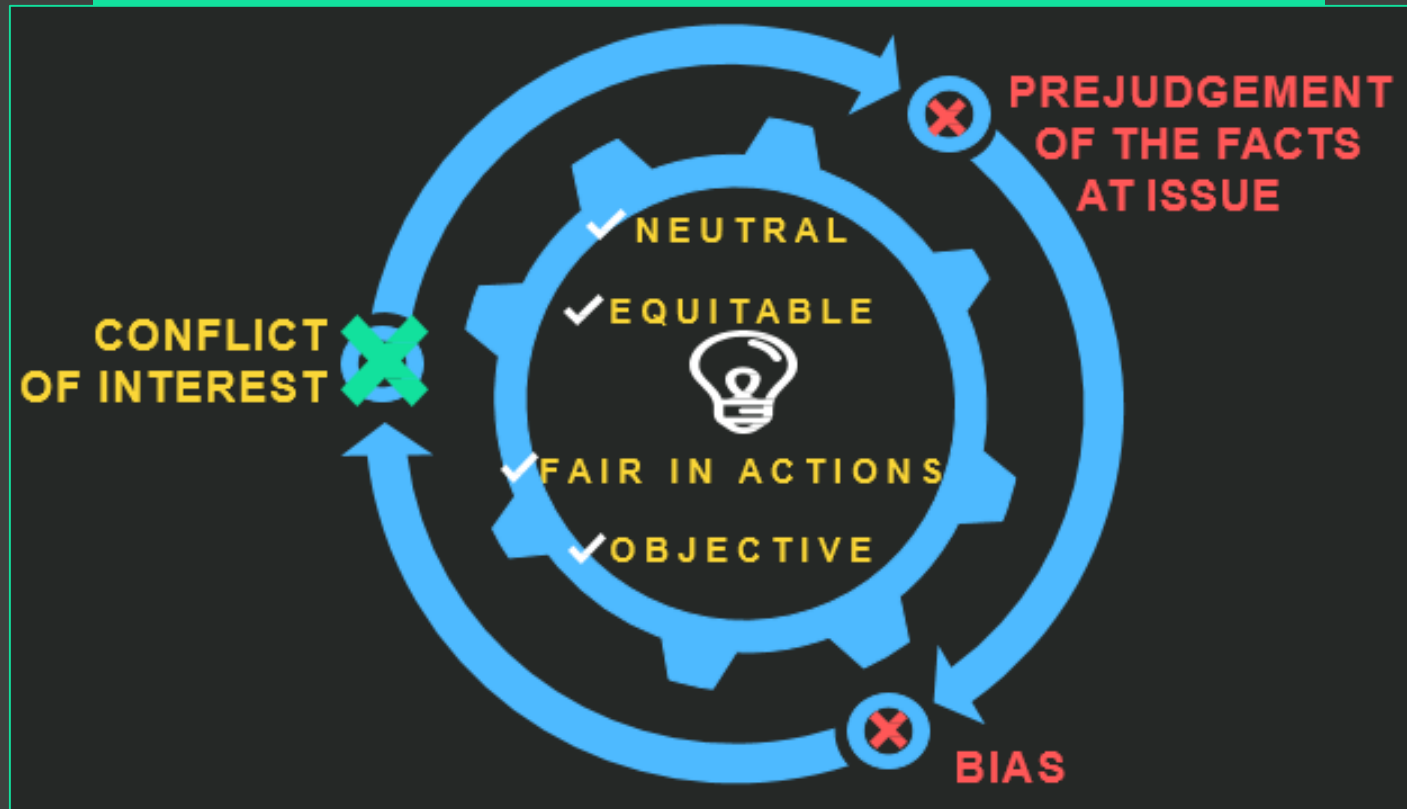




# What Influences Impartiality?



# CONFLICT OF INTEREST



## Definition

An actual or perceived clash between our professional duties and our personal interest

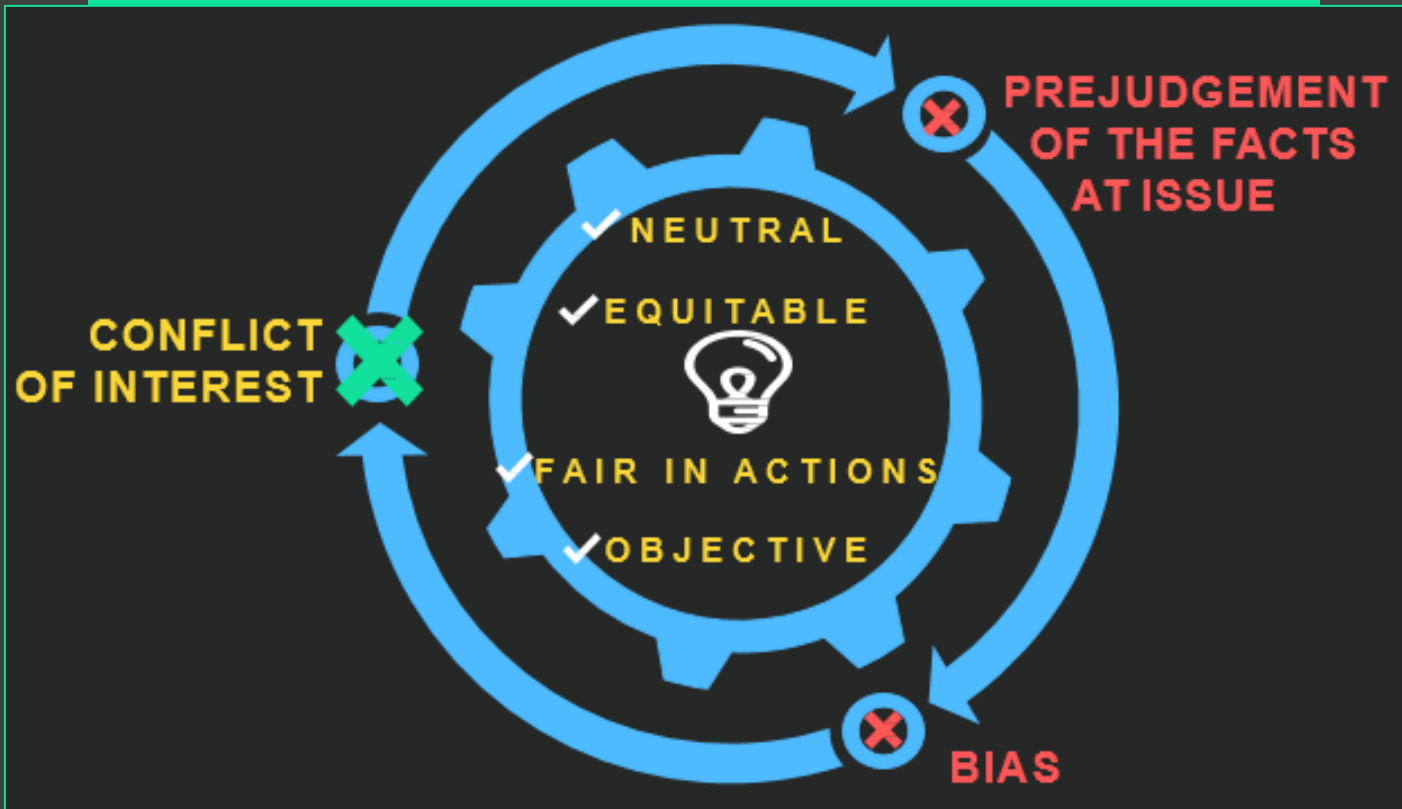
Preferences for one person/group over another

Direct or indirect impact on ourselves

Perceived by a reasonable person

Present even if we do not gain from the conflict





# CONFLICT OF INTEREST

## Examples

- Title IX Investigator's child is close friends with the respondent
- A personal or professional relationship with a colleague
- A sense of loyalty to the school

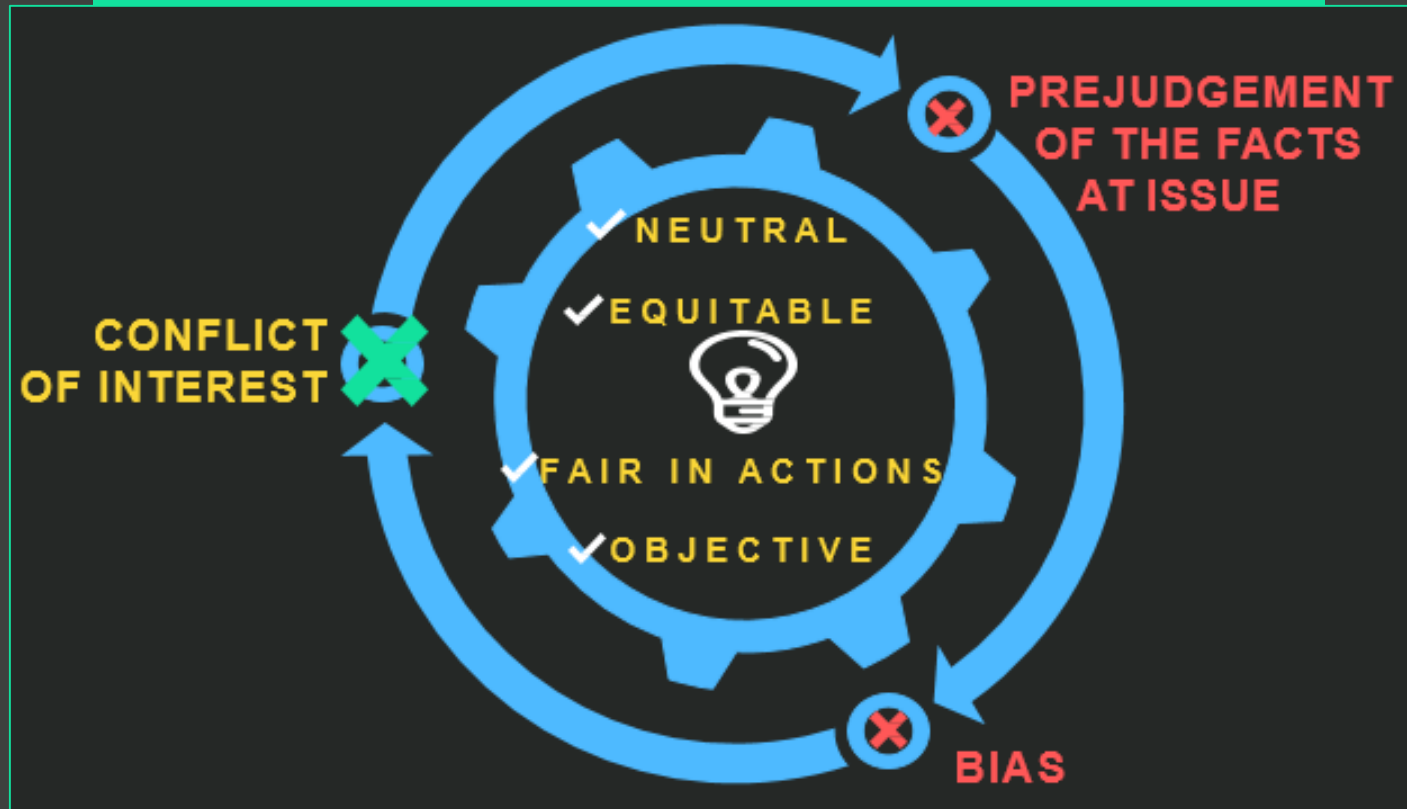
“

*The Department declines to define certain employment relationships or administrative hierarchy arrangements as per se prohibited conflicts of interest.... The Department will hold a recipient accountable for the end result of using Title IX personnel free from conflicts of interest and bias, regardless of the employment or supervisory relationships among various Title IX personnel.*

”



# CONFLICT OF INTEREST



## Examples

- Title IX Coordinator called as a witness (allowable)

“

*Even where the Title IX Coordinator testifies as a witness, the Title IX Coordinator is still expected to serve impartially without prejudgment of the facts at issue.*

”

- Title IX Coordinator signs a formal complaint on the school's behalf (allowable)

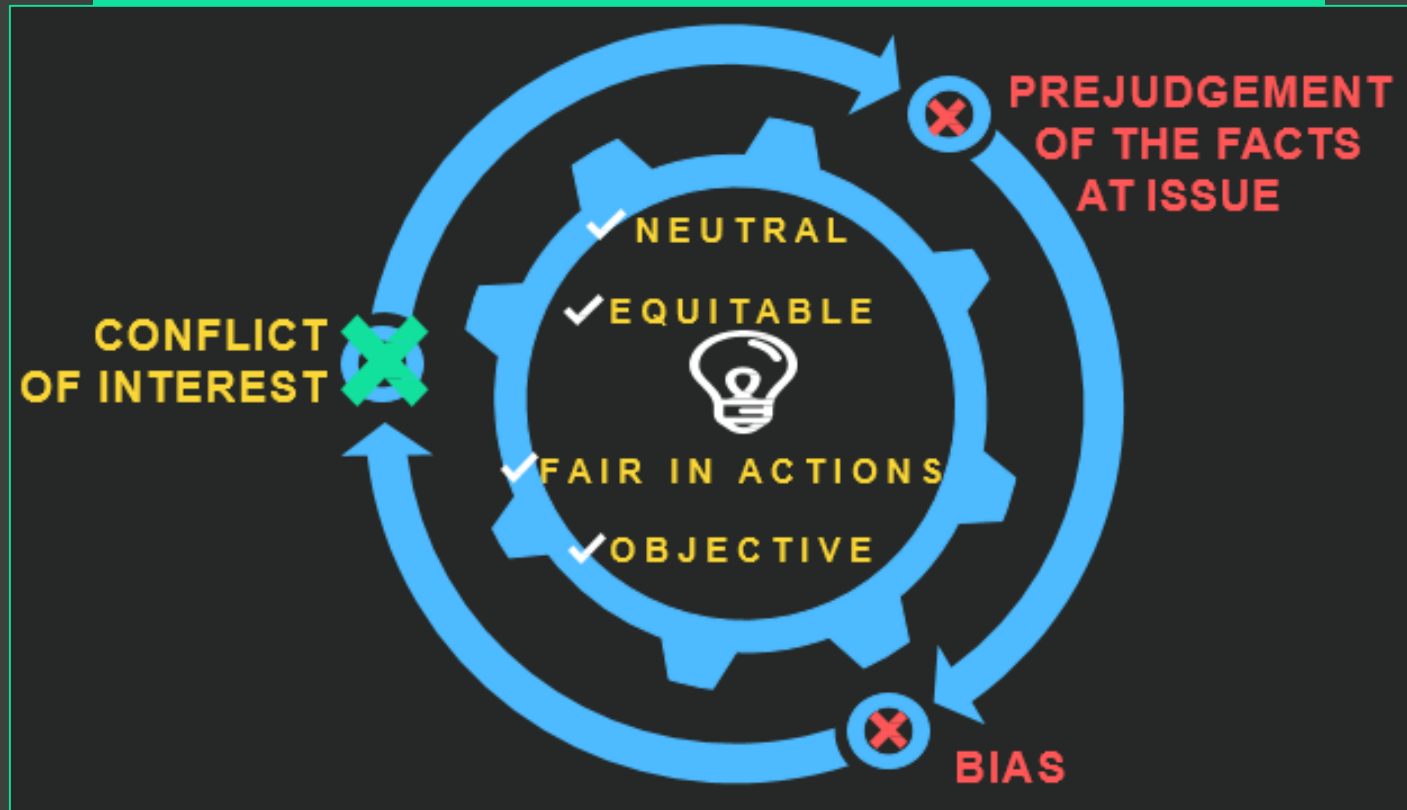
“

*Title IX Coordinator does not lose impartiality solely due to signing a formal complaint on the recipient's behalf.*

”



# CONFLICT OF INTEREST

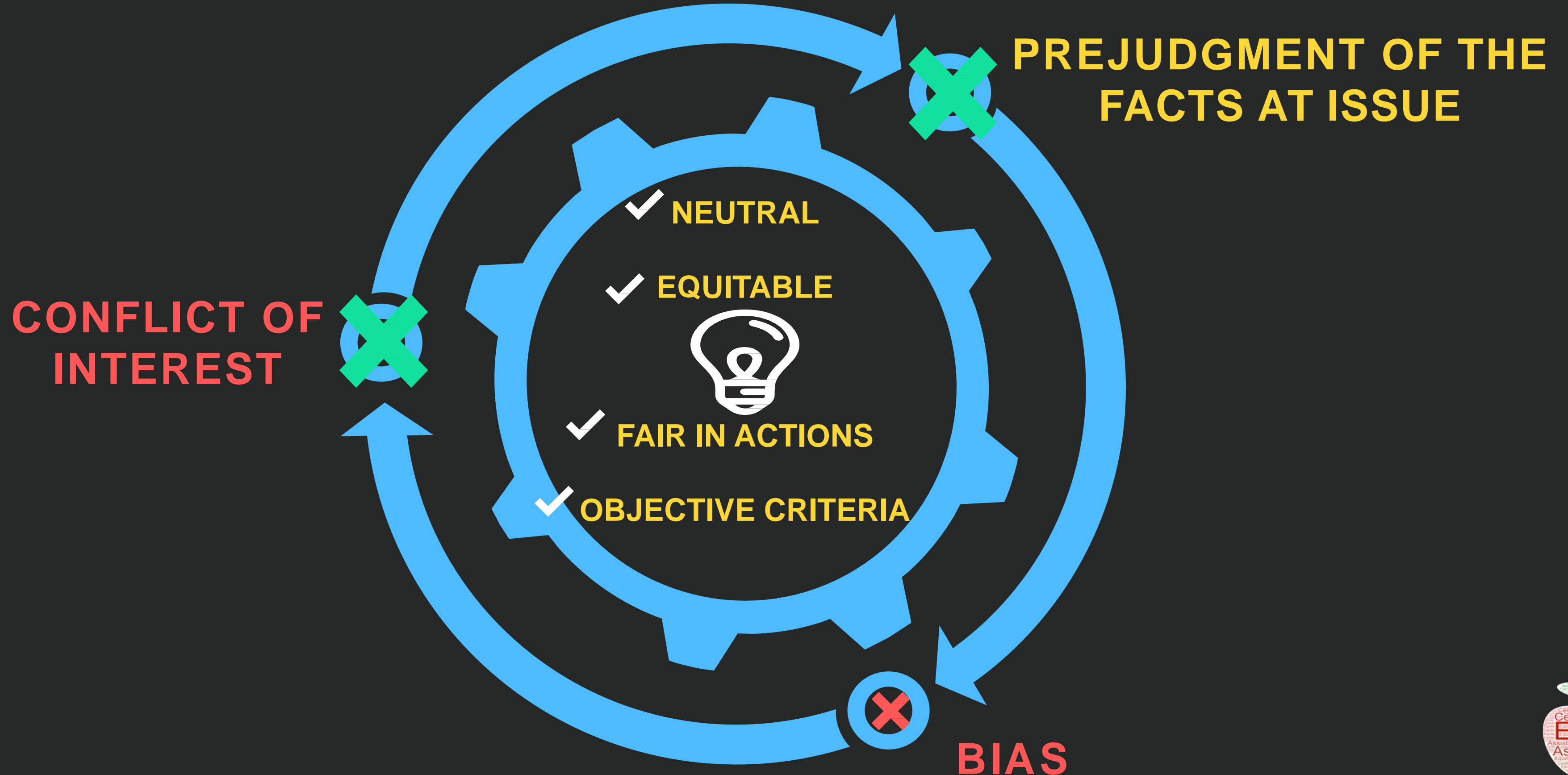


## Reflection

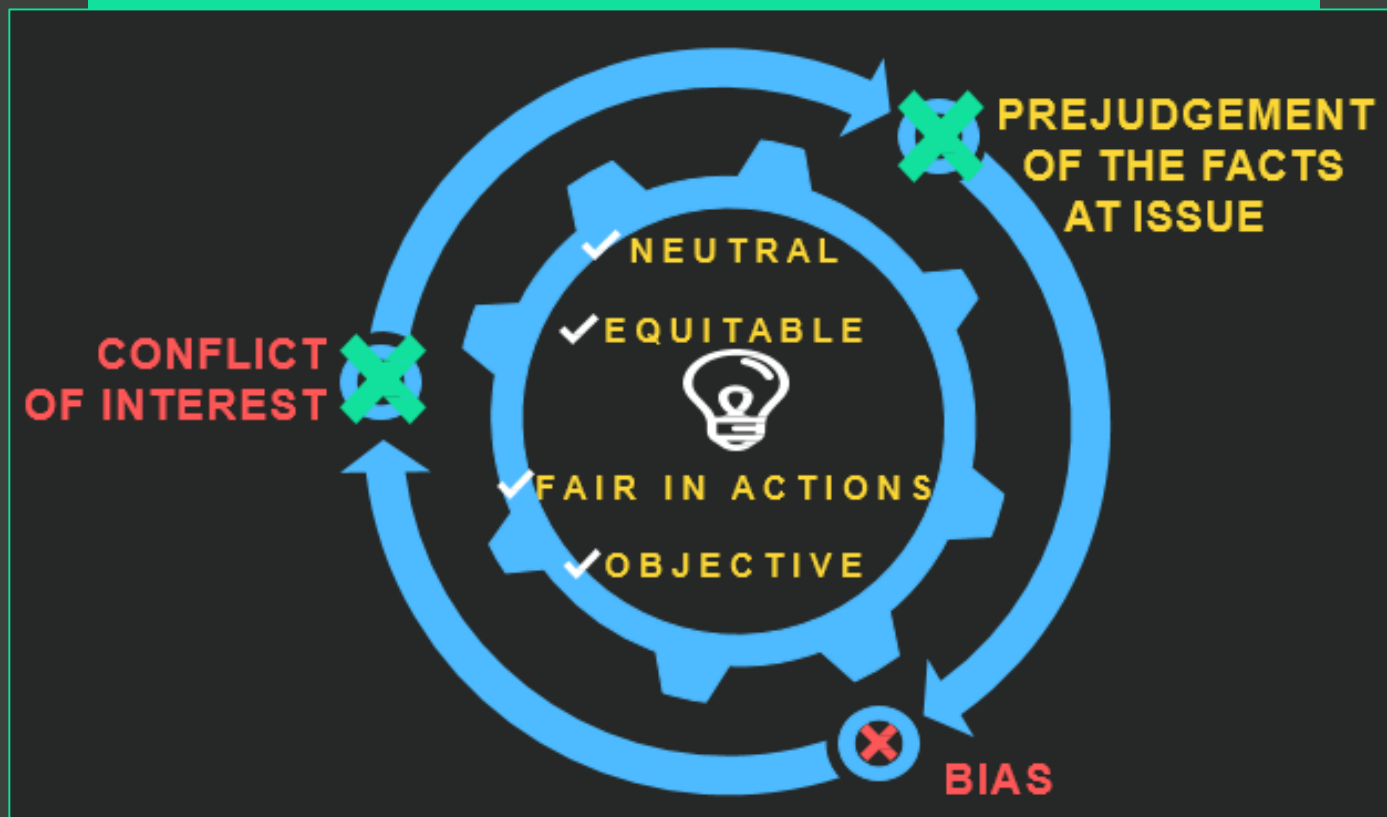
- “Would I be comfortable if this conflict appeared publically/media in regards to this complaint?”
- “Would a reasonable person perceive this as a conflict of interest?”
- “If I saw someone else in a similar situation – would I think there was a conflict of interest?”
- Consider if there is any overlap between any of our personal interests and our Title IX duties



# What Influences Impartiality?







# PREJUDGMENT OF THE FACTS AT ISSUE

## Definition

To pass judgment too early without adequate consideration on a fact that is at the center of a dispute

Premature judgement

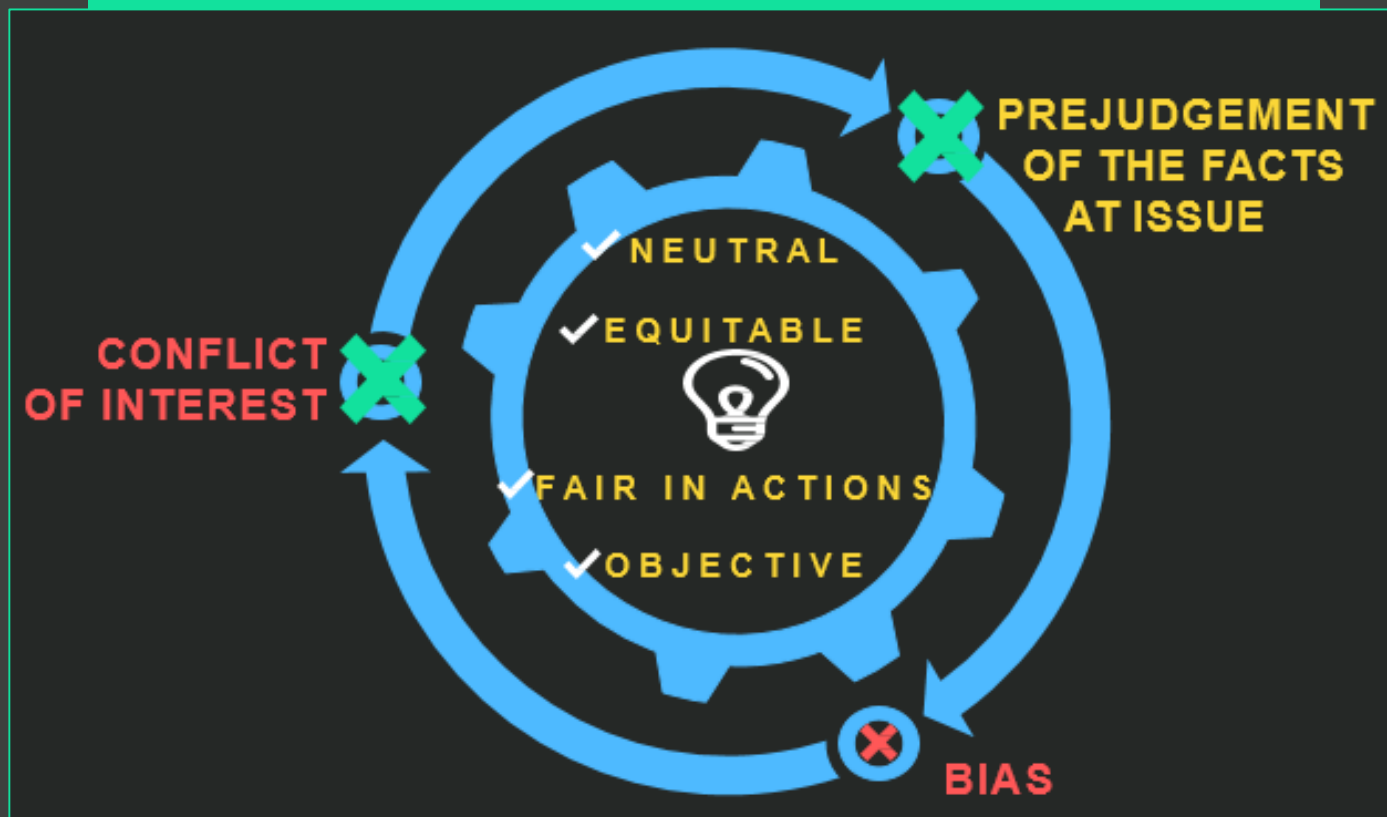
Insufficient gathering and evaluation of evidence

“

*Title IX personnel to maintain impartiality and avoid bias and conflicts of interest, so that no complainant or respondent is automatically believed or not believed.*

*No complainant reporting Title IX sexual harassment should be ignored or met with judgment or disbelief...*

”



# PREJUDGMENT OF THE FACTS AT ISSUE

## Definition

To pass judgment too early without adequate consideration on a fact that is at the center of a dispute

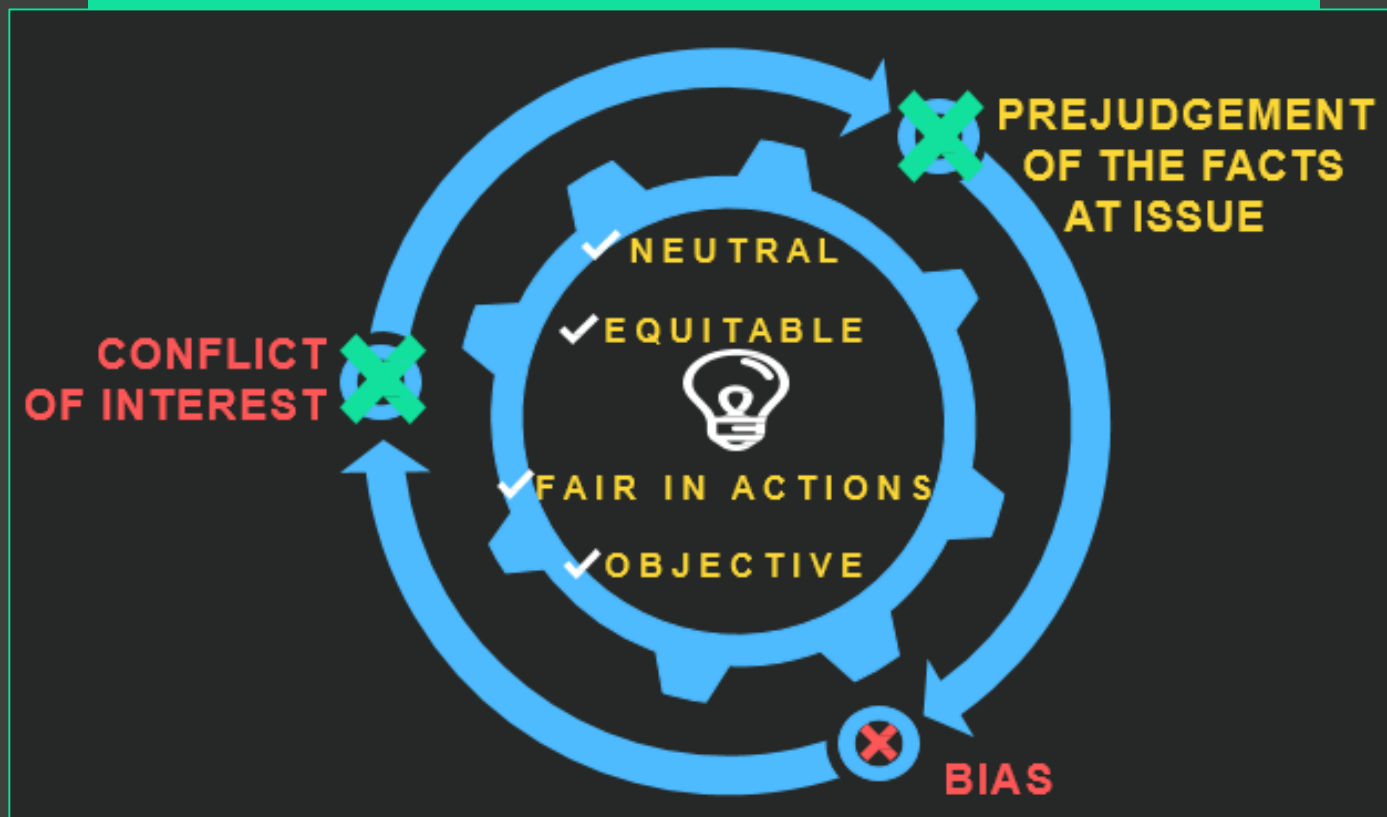
Presumption of non-responsibility

“

*A presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process*

”





# PREJUDGMENT OF THE FACTS AT ISSUE

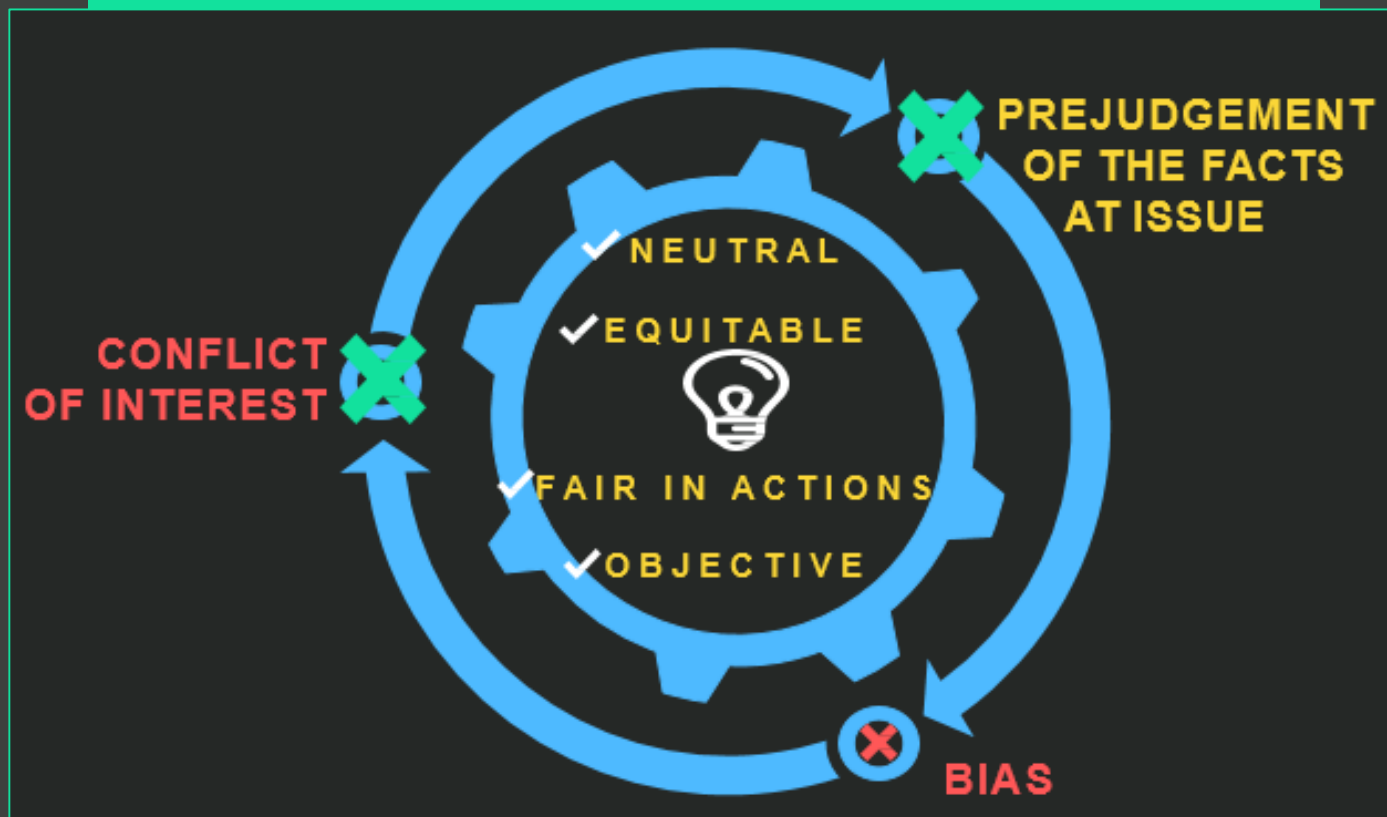
## Definition

“

*Treating the respondent as not responsible until the conclusion of the grievance process does not mean considering the respondent truthful or credible;*

”





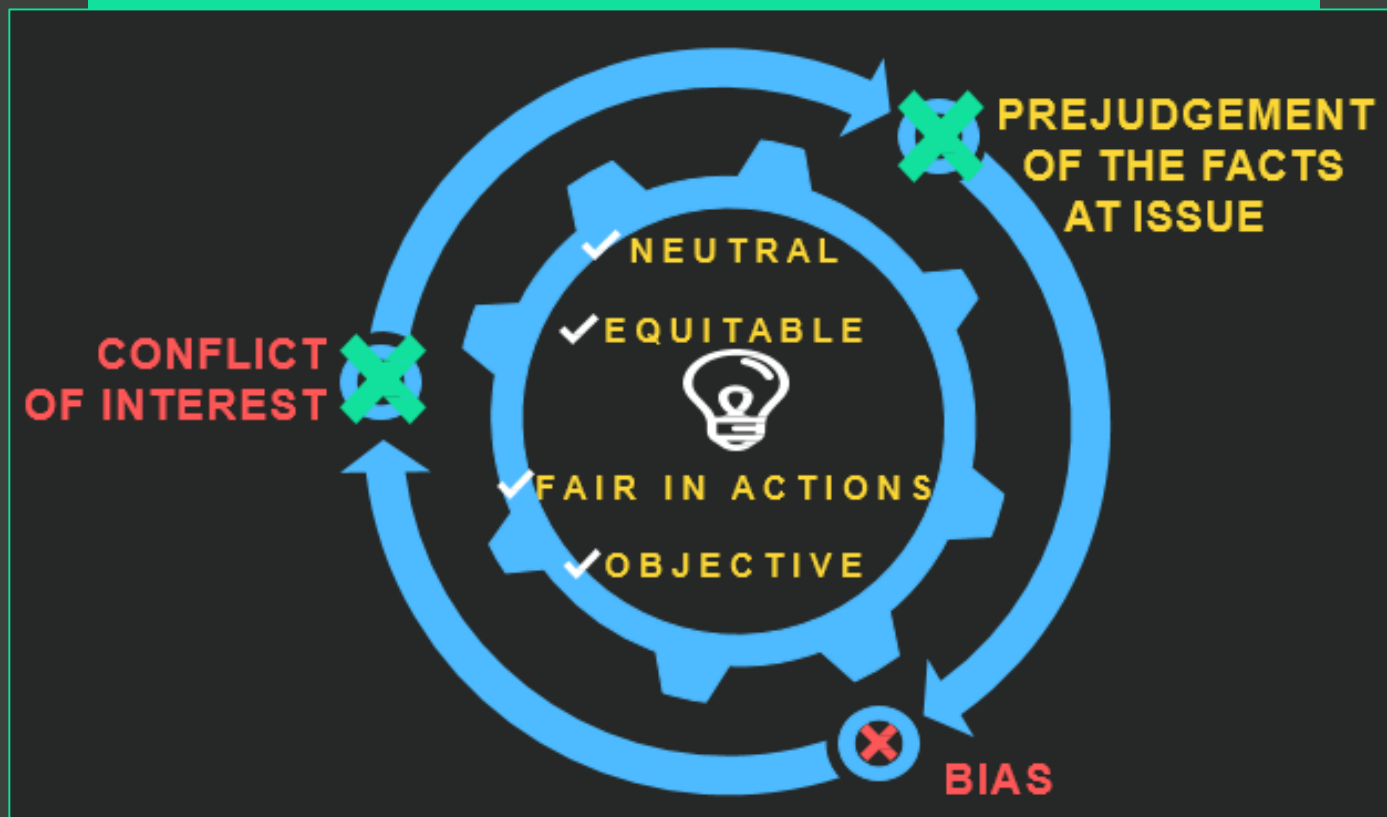
# PREJUDGMENT OF THE FACTS AT ISSUE

## Examples

- Video or audio recording evidence
- When interviewing the complainant we refer to
  - the respondent as the “perpetrator” rather than “alleged perpetrator”
  - The complainant as “victim” rather than “alleged victim”





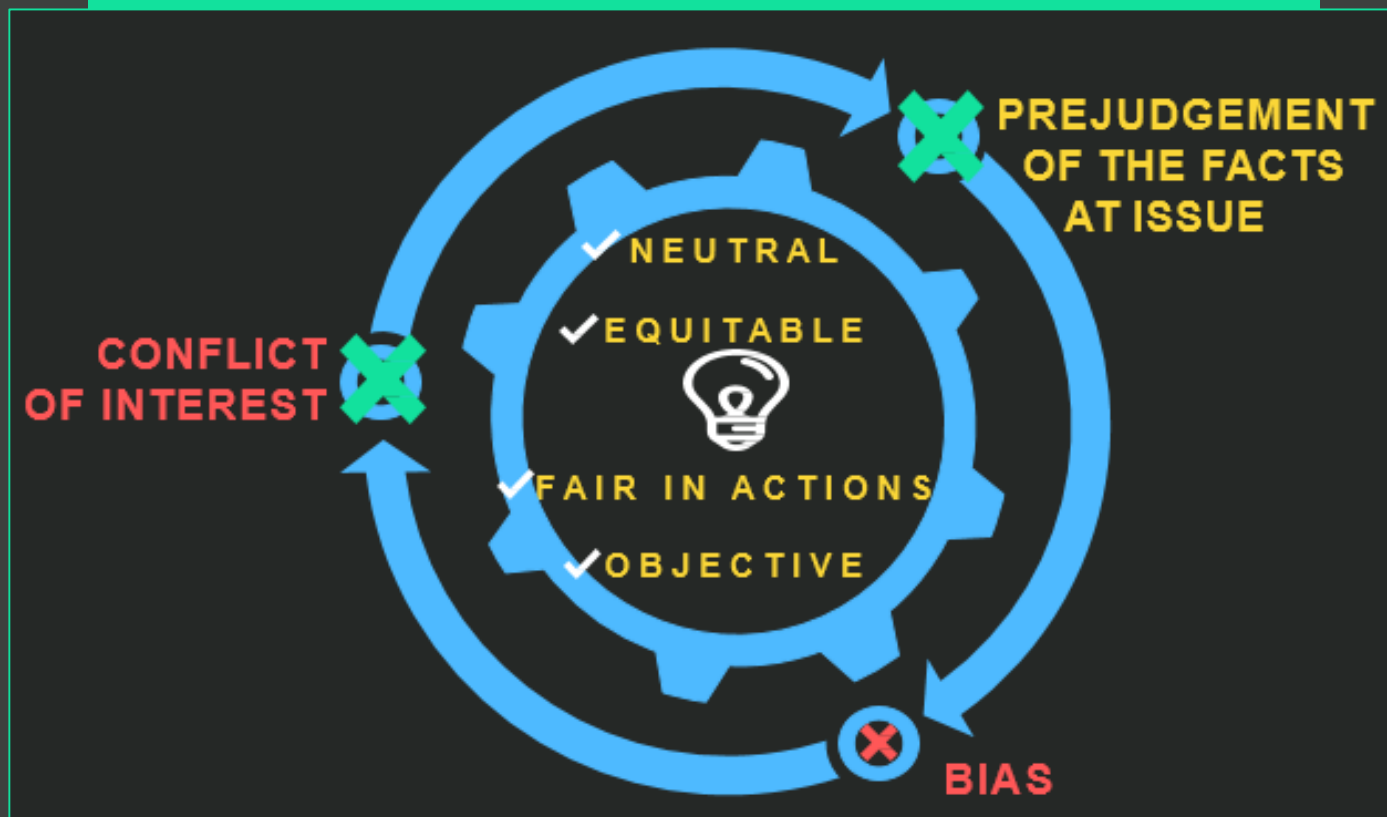


## Reflection

# PREJUDGMENT OF THE FACTS AT ISSUE

- Keep an open mind
- Remain in investigation mode
  - Seek out all facts
  - Continually ask questions
  - Dig deep in the details
  - Stay engaged when listening
  - Gain a deep understanding
  - Capture their words/perspectives (not self)
- Do not
  - Jump to conclusions
  - Offer advice
- Know that there is a determination stage





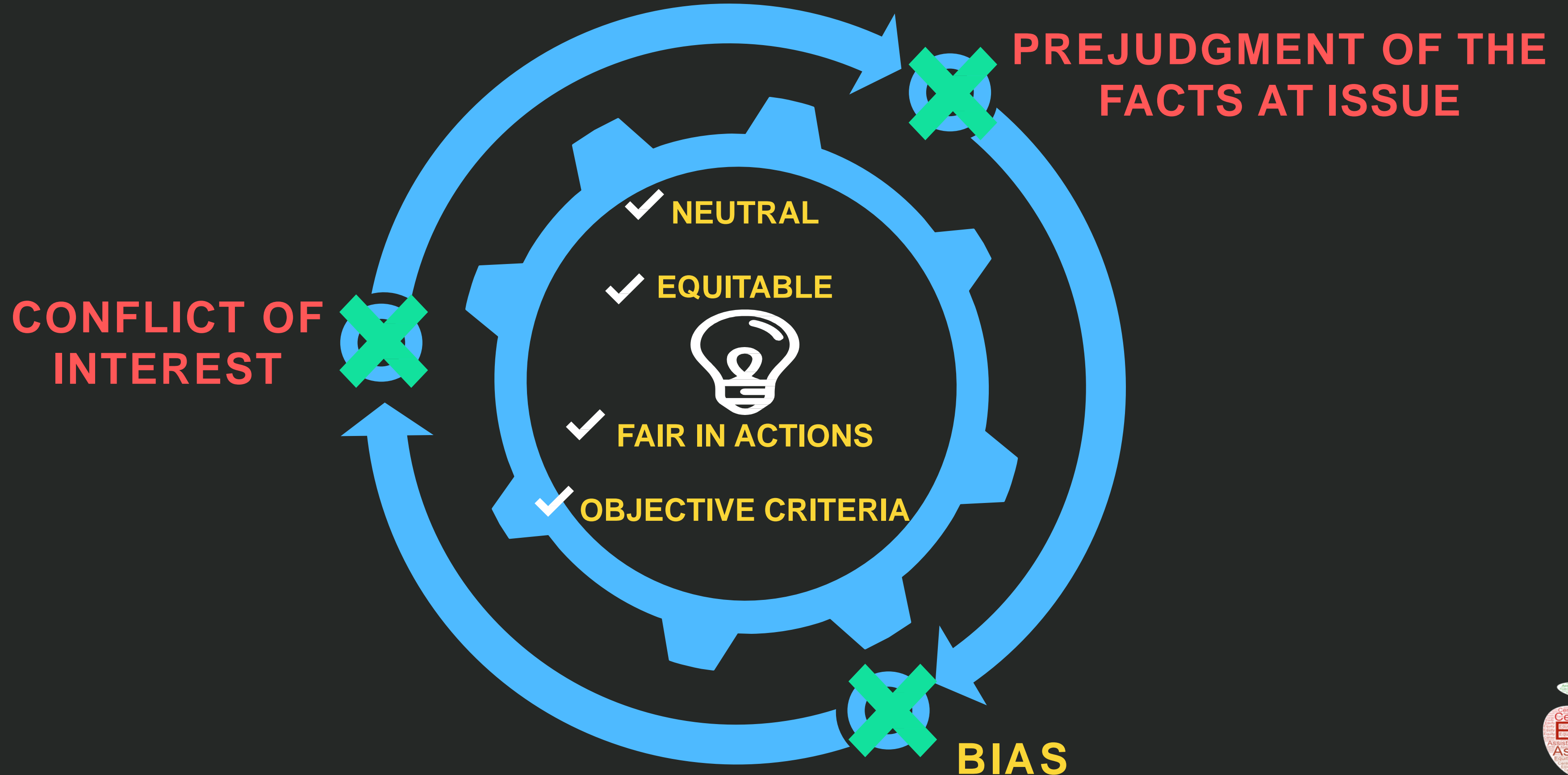
# PREJUDGMENT OF THE FACTS AT ISSUE

## Reflection

- “Why did I gather the evidence in that way?”
- “Was the gathering and interview process equitable to both parties?”
- “Why did I reach the decision that I did?”

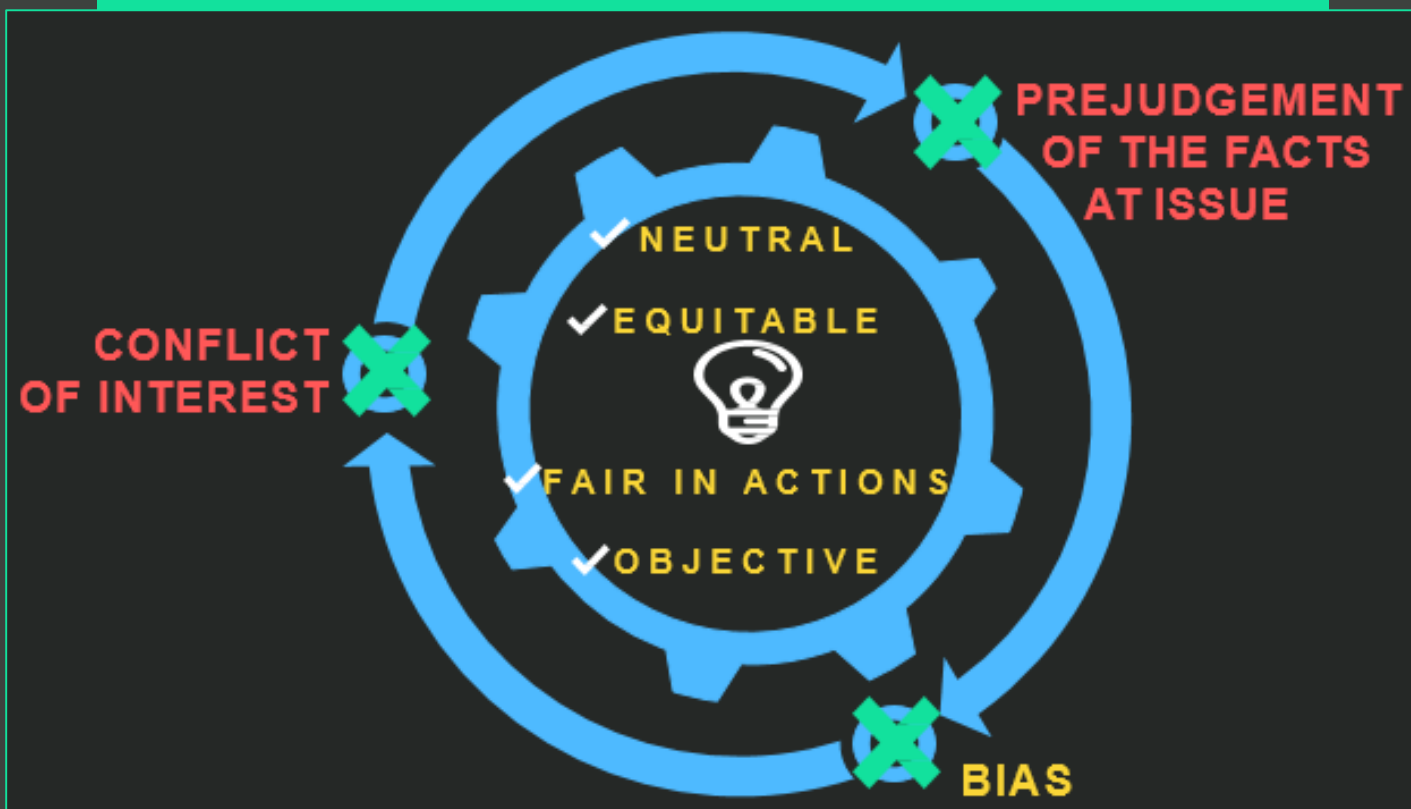


# What Influences Impartiality?





# BIAS



## Definition

**Tendencies to think a certain way – that can result in prejudgments.**

Personal feelings or attitudes

Often based on stereotypes

Can be held without the individual's full awareness

Impact actions, interpretations, conversations, and decisions – in an unconscious manner

Varying types of bias



# BIAS

Varying types of biases



Confirmation Bias

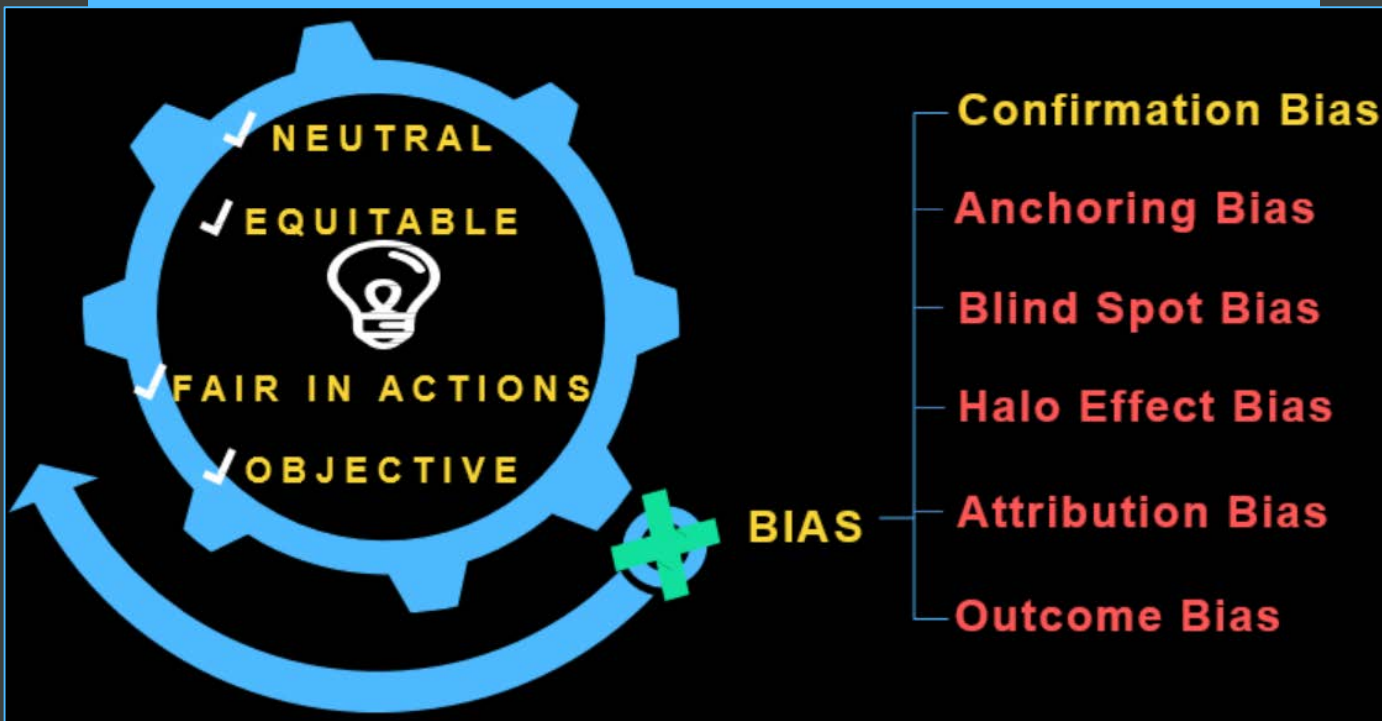
Anchoring Bias

Blind Spot Bias

Halo Effect Bias

Attribution Bias

Outcome Bias



## Definition

# CONFIRMATION BIAS

Tendency to seek out/interpret information that confirms our thinking

Strongest in emotionally charged issues

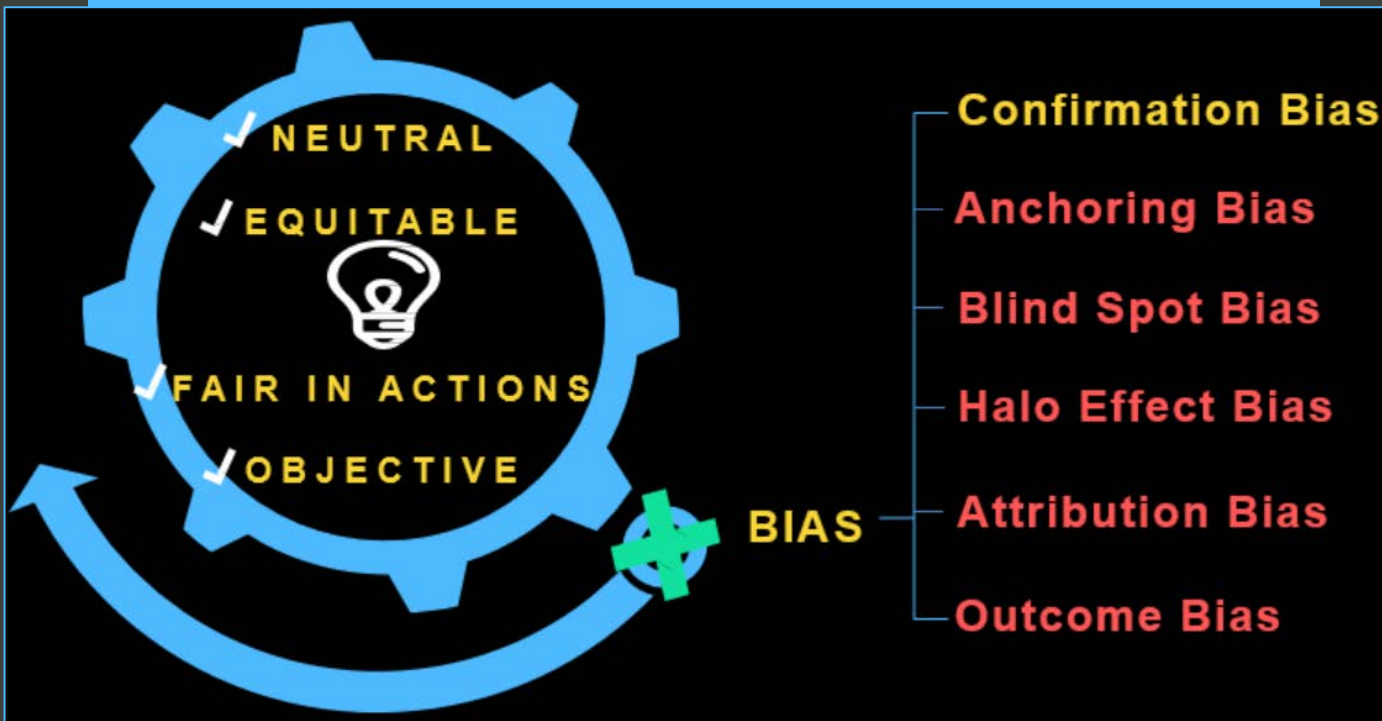
Status in the allegations, Gender, Race, Sexual Orientation, English as a Second Language status, Disability status, Immigration status, Economic status, Community status, Prior discipline status, Academic status, etc.

“

*Treating all parties impartially without ... bias against an individual's sex, race, ethnicity, sexual orientation, gender identity, disability or immigration status, financial ability, or other characteristic. Any person can be a complainant, and any person can be a respondent, and every individual is entitled to impartial, unbiased treatment regardless of personal characteristics.*

”





# CONFIRMATION BIAS

## Definition

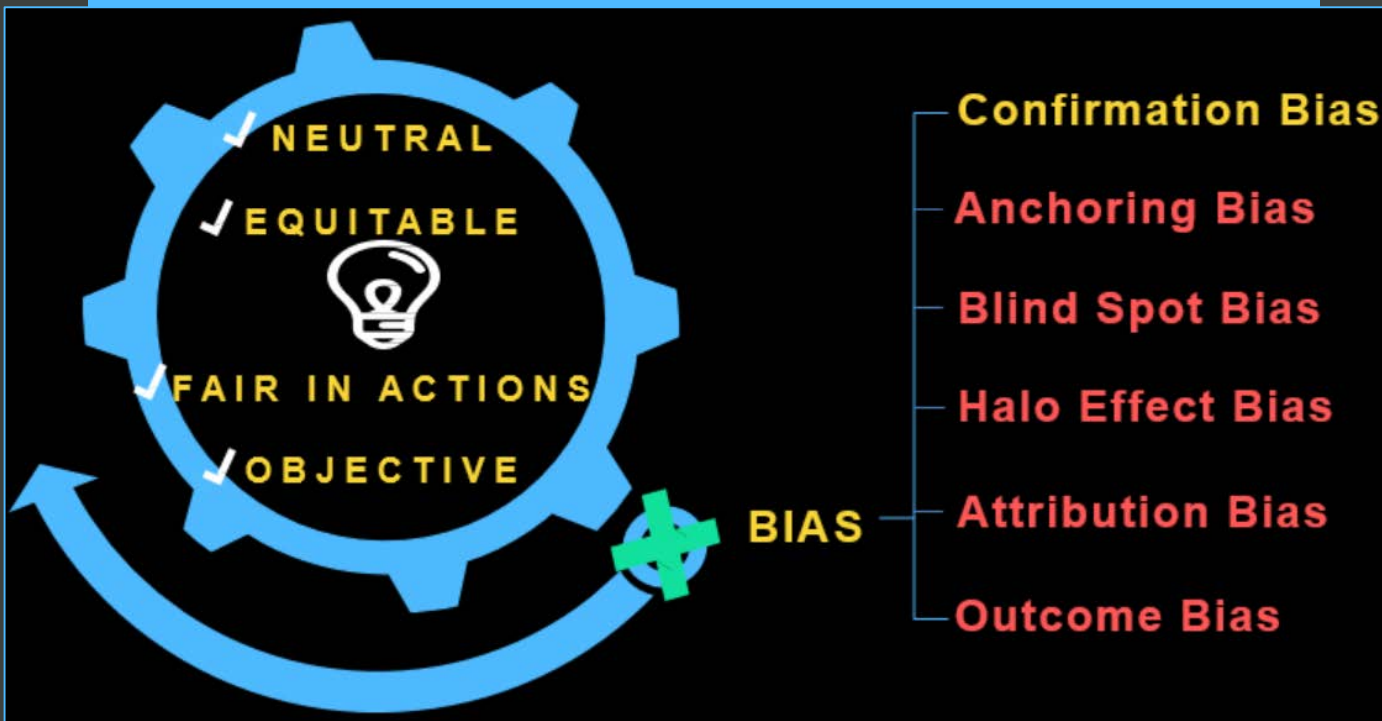
Tendency to seek out/interpret information that confirms our thinking

To confirm what we already “know”

Discounts evidence that does not reaffirm what we “know”

Studies show that brain pleasure centers respond when beliefs are confirmed





## Bias Examples

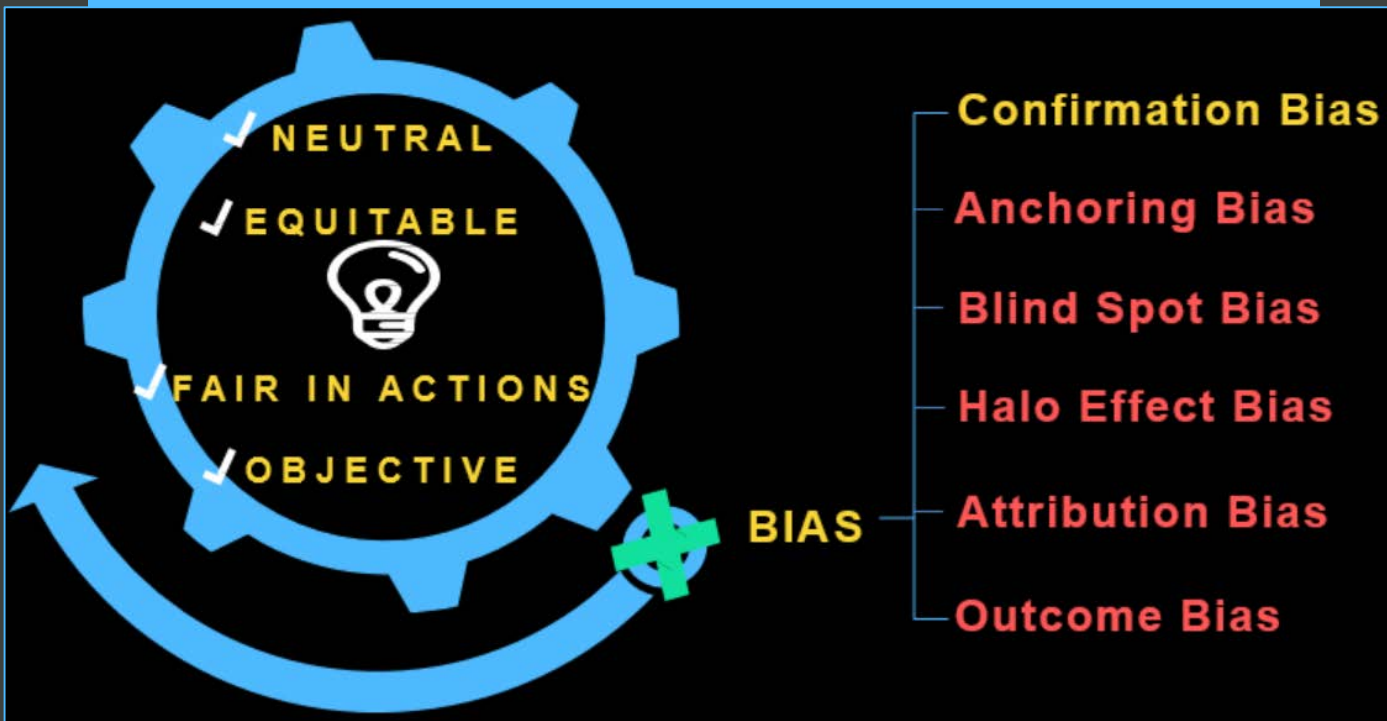
# CONFIRMATION BIAS

- Title IX Investigator seeks out only information that shows the respondent as responsible
- Title IX Investigator only interviews witnesses suggested by the respondent because they feel that individual is being railroaded

“

*Require an objective evaluation of all relevant evidence — including both inculpatory and exculpatory evidence*

”

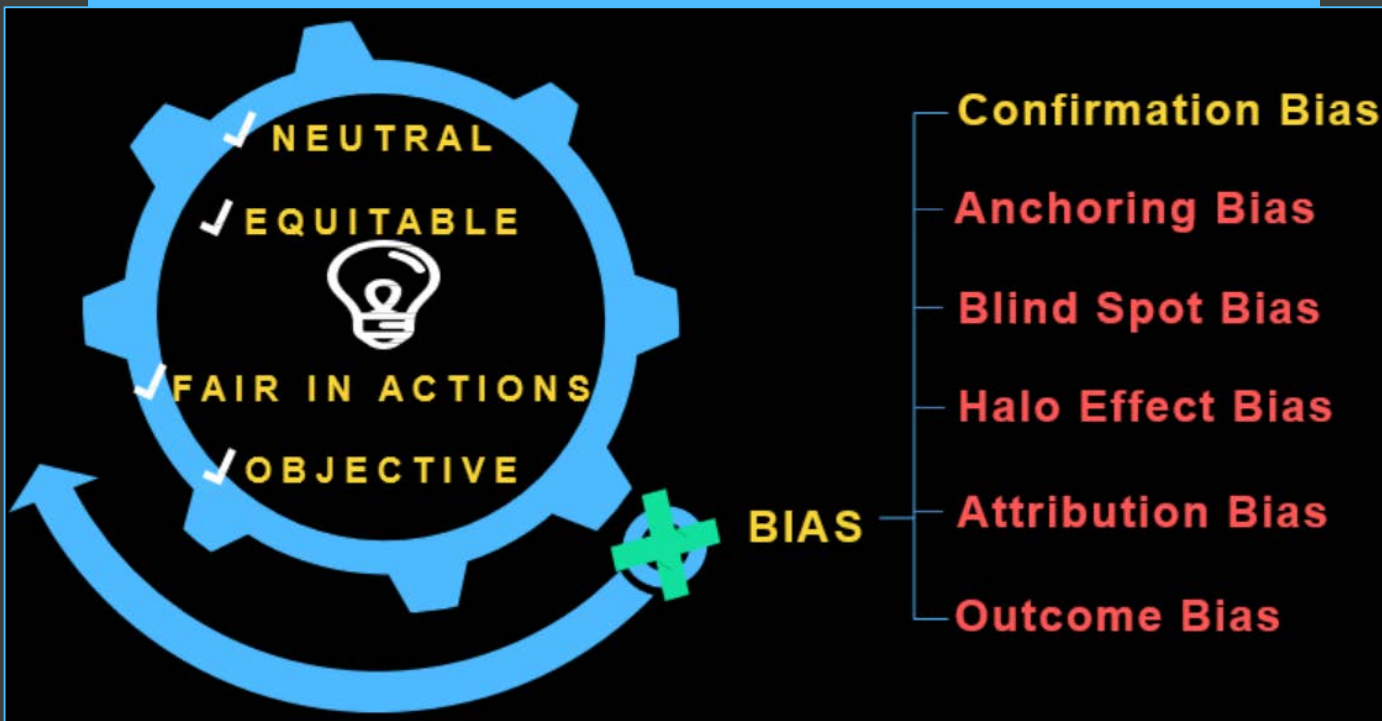


## Bias Examples

# CONFIRMATION BIAS

- Believing that women recent allegations are because of the "#MeToo movement" and not because of an actual experience
- Feeling that men are more sexually aggressive than women
- Title IX Decision-Maker finds a respondent as more credible than the complainant because the complainant speaks English as a second language





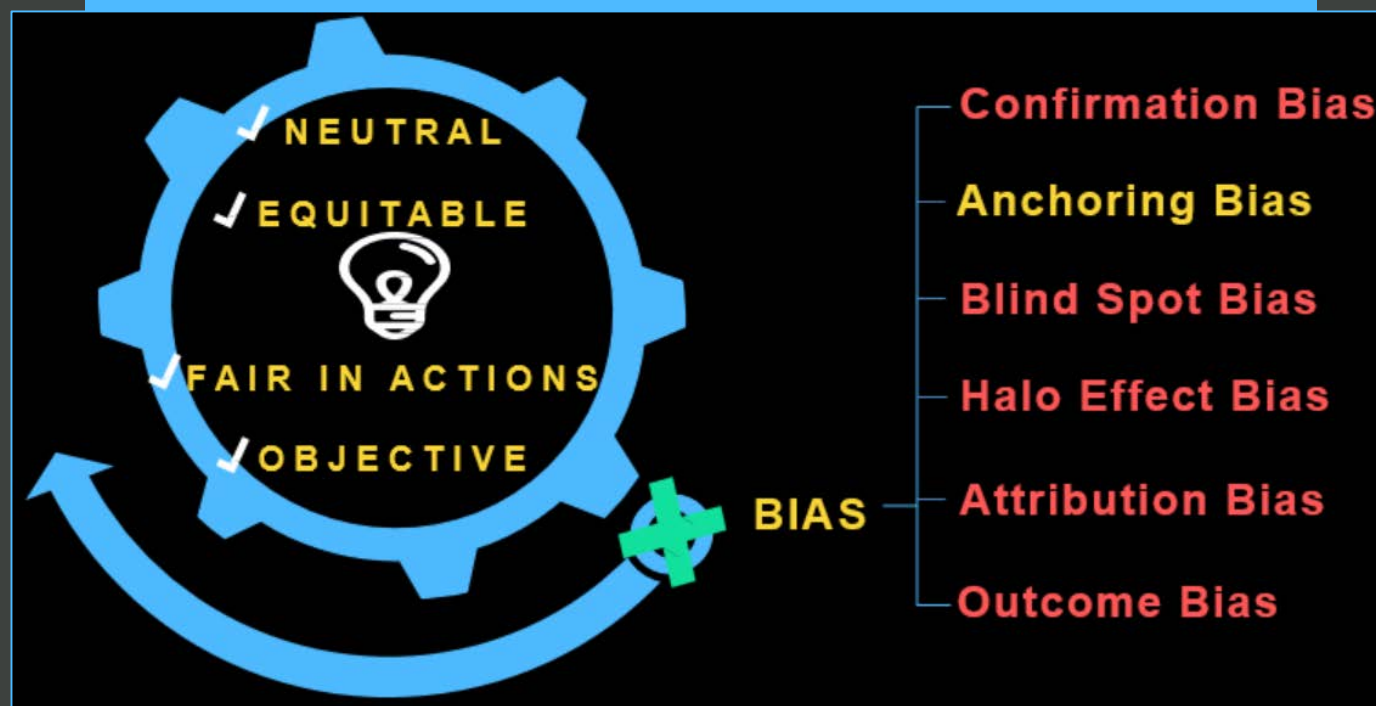
## Reflection

# CONFIRMATION BIAS

- Gather information from varied sources
- Focus on the facts and not our personal opinions
- Don't rely on cultural stereotypes about how men or women supposedly behave
- "Am I assuming things or am I relying on the facts?"
- Consider a different perspective and determine if actions would remain unchanged
- Do not disregard evidence that is opposite your expectations







# ANCHORING BIAS

## Definition

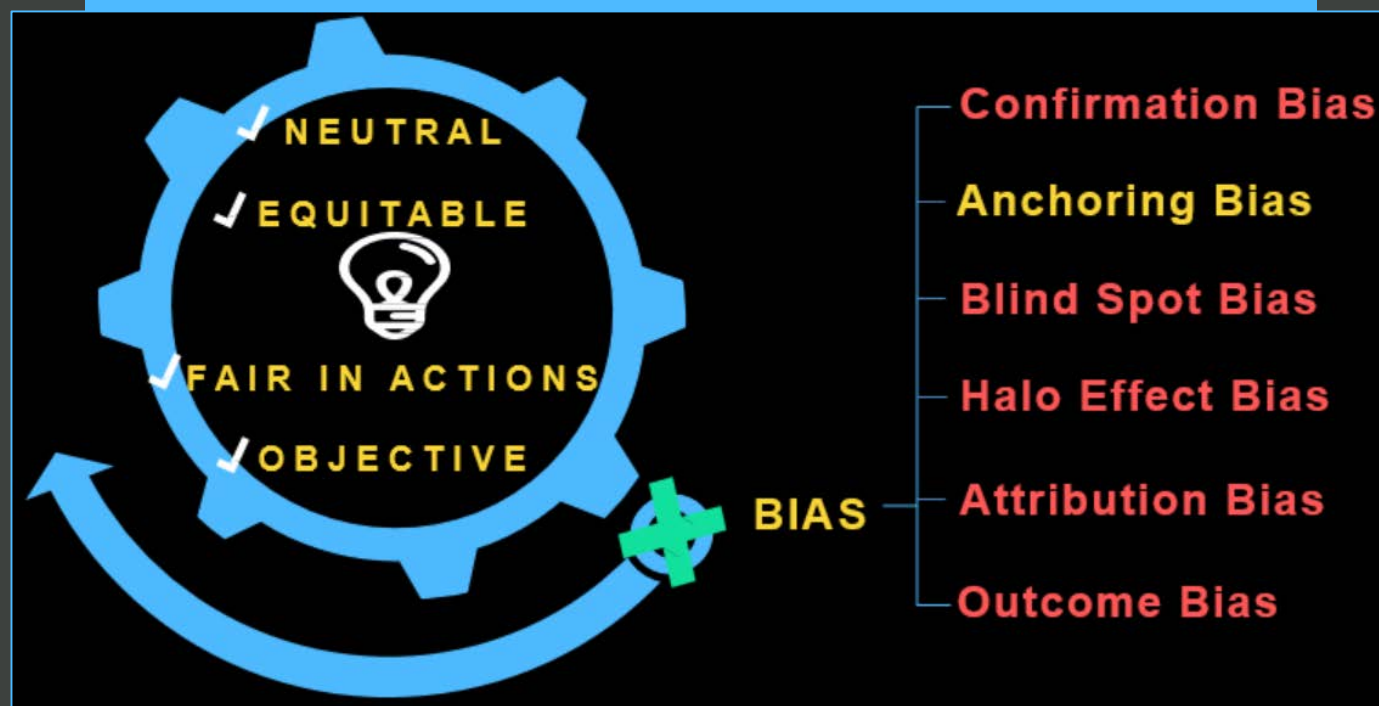
Tendency to rely on the 1<sup>st</sup> received information

Feeling or attitude is set based on initial interactions or evidence

Actions or decisions are made based or anchored on how we feeling about that information

Evidence is given more importance than other evidence



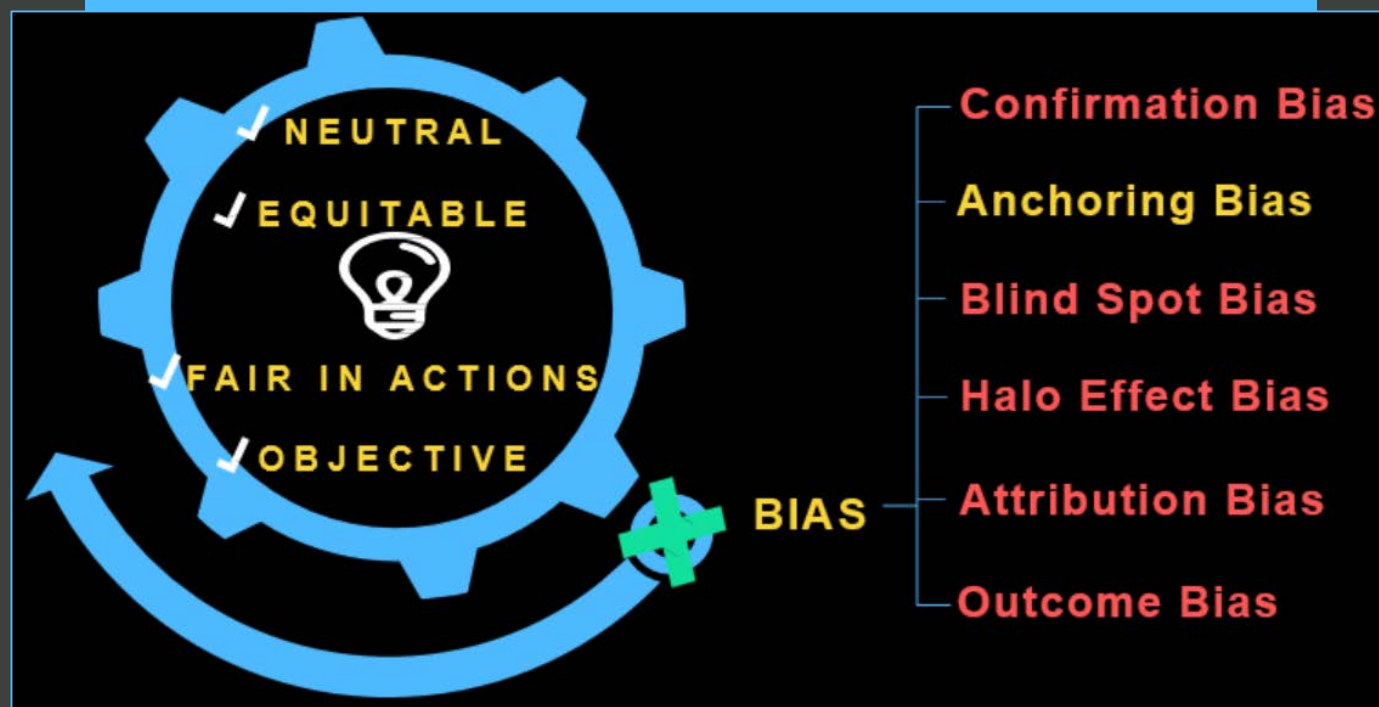


## Bias Examples

# ANCHORING BIAS

- Title IX Investigator after reading the submitted formal complaint poses no questions-believing that the complainant listed all information in the formal complaint
- Title IX Decision-Maker reviewing the investigative report and the order the evidence is listed allows this to determine the weight and relevance each evidence will receive.
- Title IX Investigator after viewing video footage, ignores witnesses statements



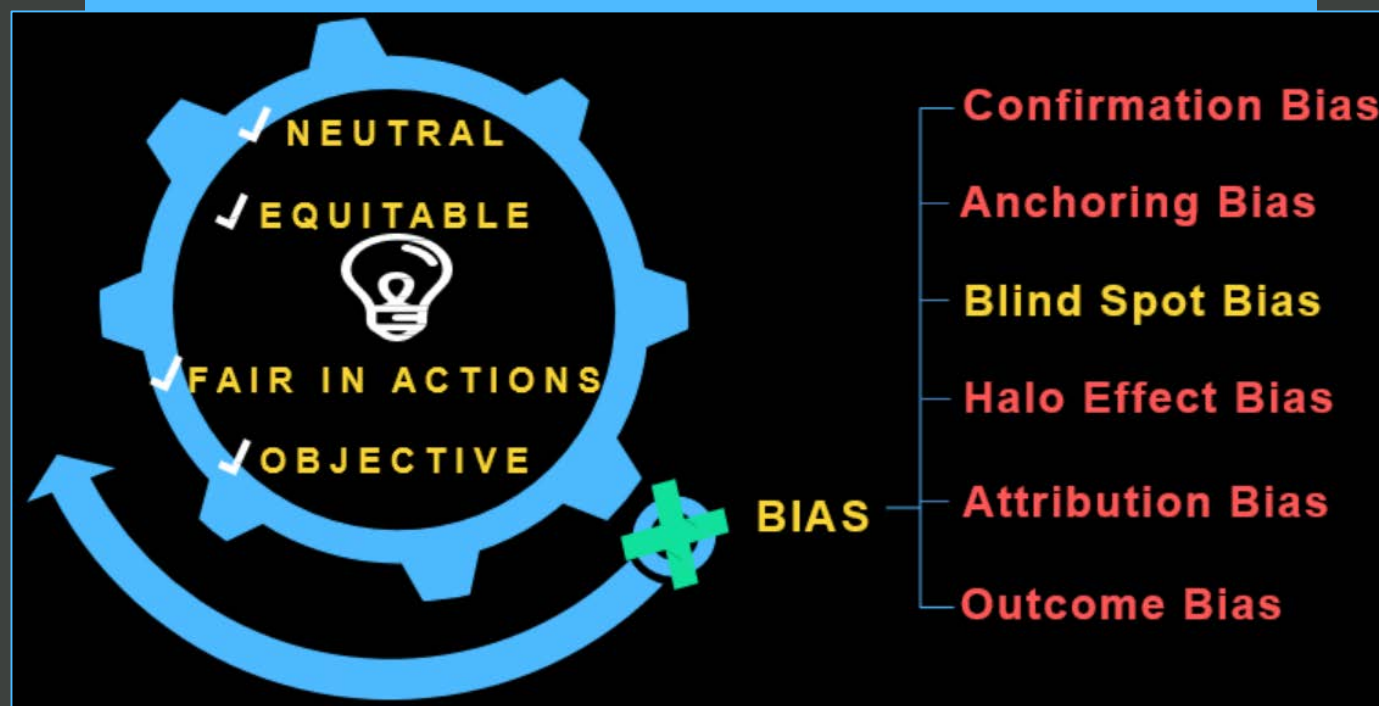


# ANCHORING BIAS

## Reflection

- “Have I sought out evidence that differed from the initial evidence collected?”
- “Was evidence collection impacted by my initial experience in working on the complaint?”
- “Why did I place so much value (or no value) on a particular piece of evidence?”
- Slow down if you are feeling rushed – feeling hurried may cause you to rely on the 1st piece of information.





# BLIND SPOT BIAS

## Definition

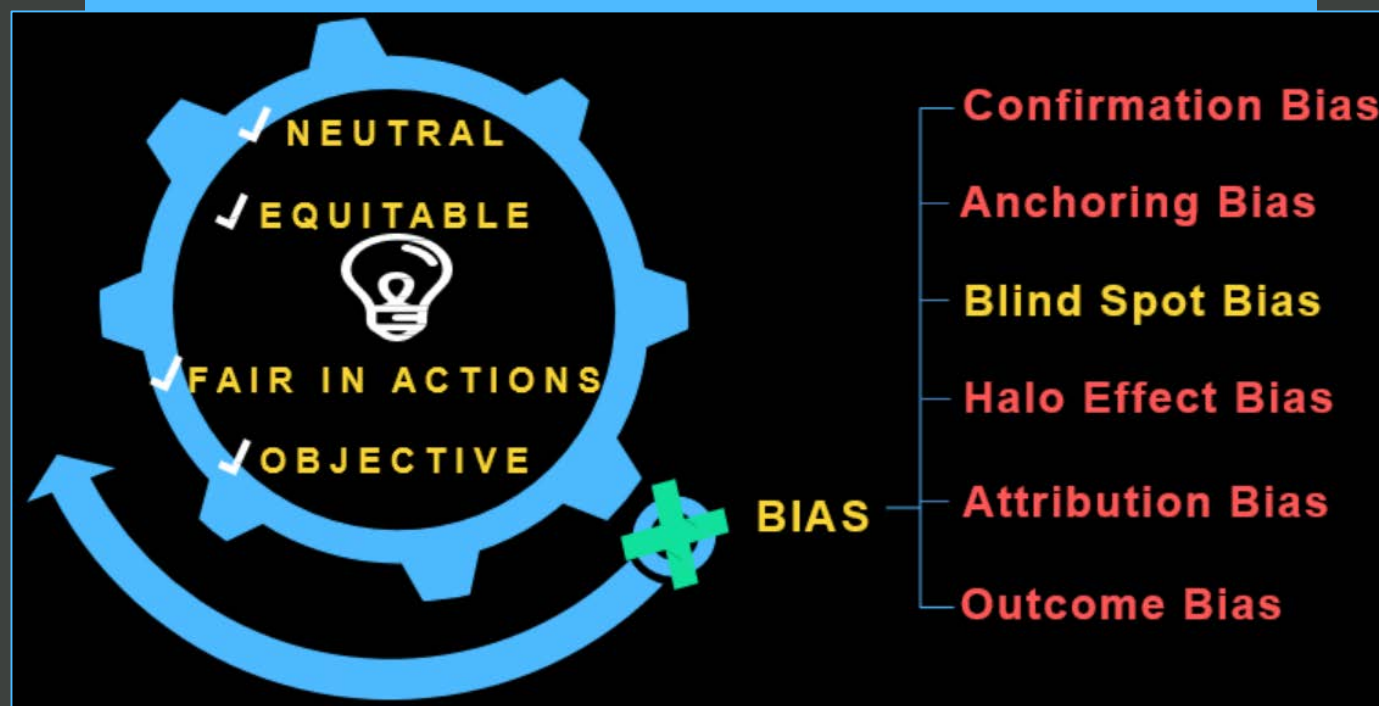
Tendency to think that we are least likely to be bias

Monitor our bias less when we feel like we are less bias than others

Studies show that this has detrimental consequences on judgments and behaviors





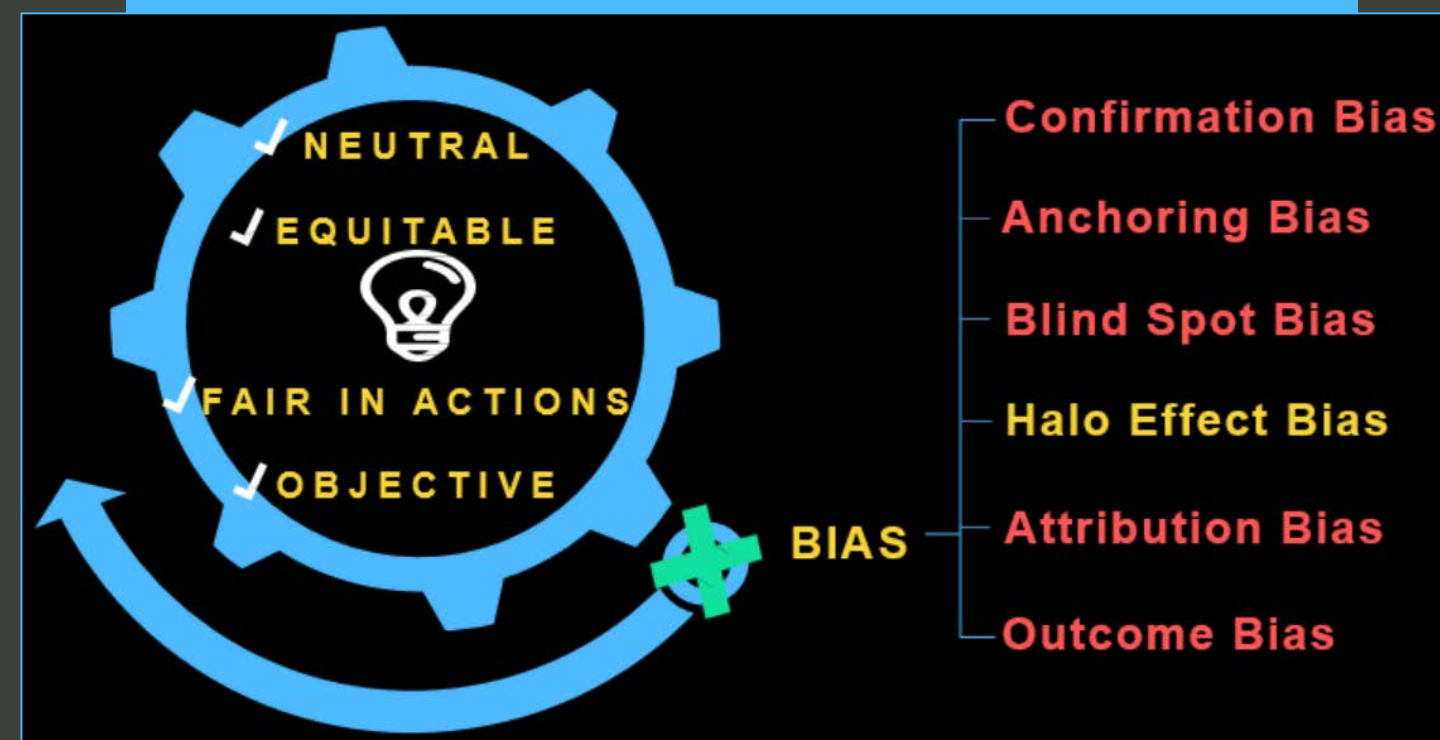


# BLIND SPOT BIAS

## Reflection

- Recognize that even the most objective one of us has a bias
- Actively listen and review information
- Stay out of the bias “comfort zone”
- Be mindful of any feelings/attitudes that might keep us from being neutral





# HALO EFFECT BIAS

## Definition

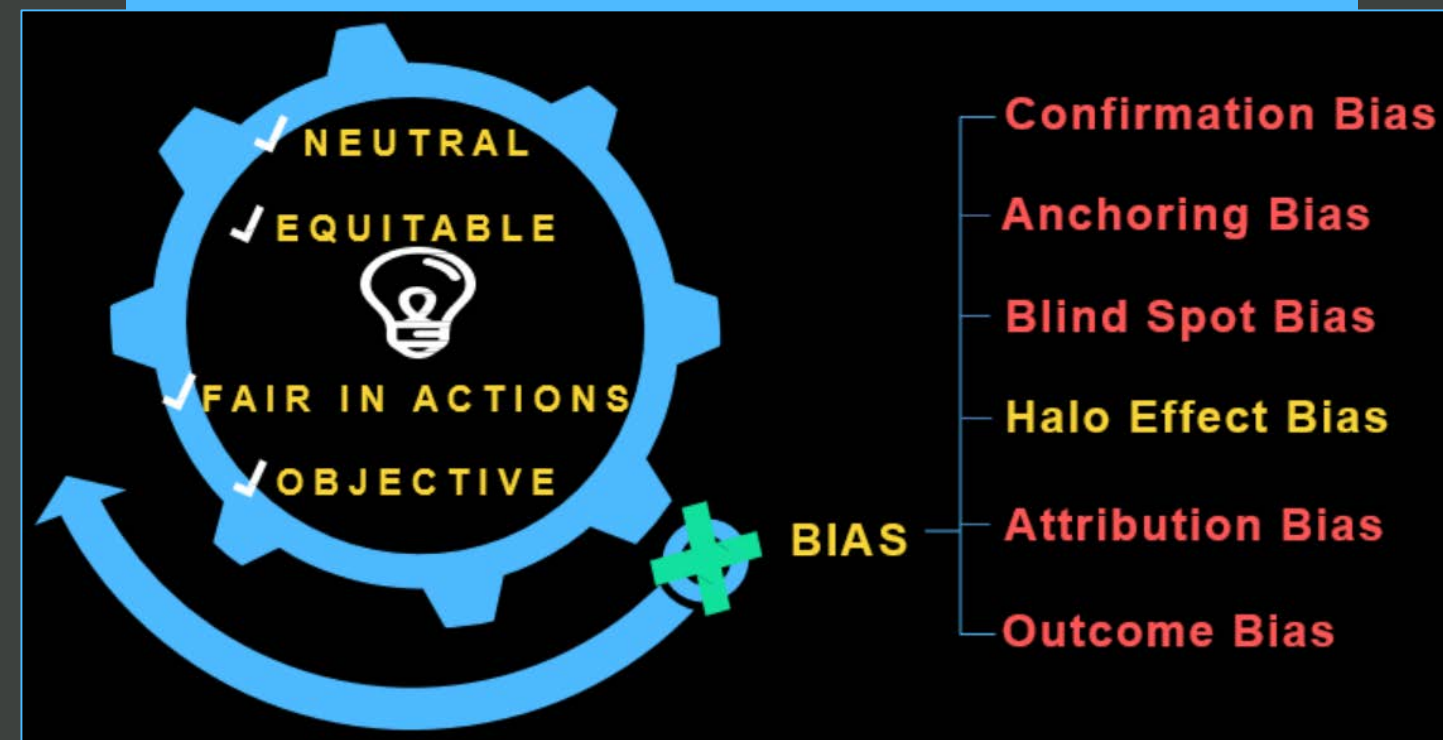
Tendency to allow positive impressions of an individual, influence our beliefs of the individual in other areas

Positive impressions in one area might influence overall impression

Unrelated impressions of the individual might impact credibility determinations

Impressions can be unfounded or not based on fact



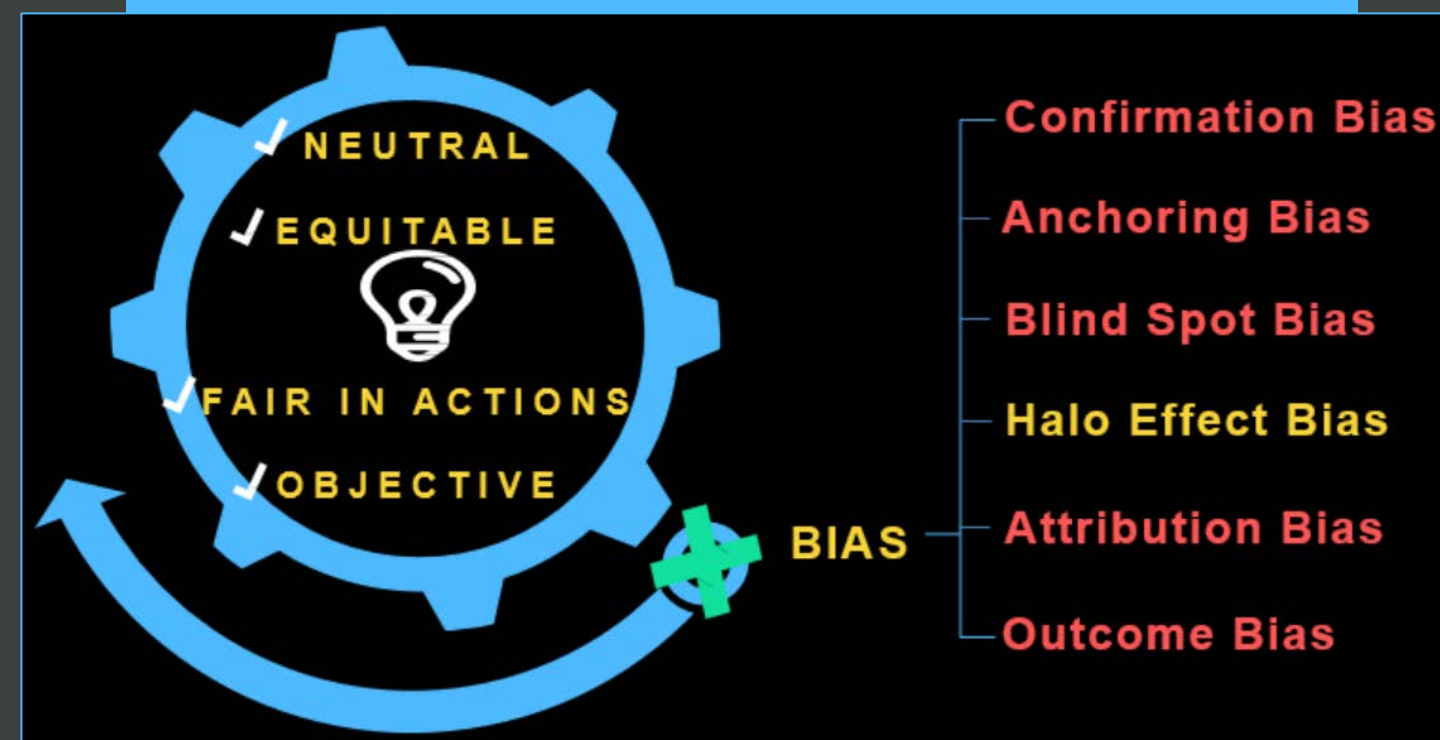


## Bias Examples

# HALO EFFECT BIAS

- We perceive that a person performing very well in spelling, will automatically perform well at writing.
- A photograph may show an attractive, well groomed individual. This leads to the assumption that the individual in the picture is an honest person.
- We discover that a complainant or respondent earned high marks on the ACT exam, and prejudge their credibility based on their academic merit.
- Because the complainant or respondent's family are well-respected in the community, the Title IX Investigator relies on leading questions during the interview.





## Bias Examples

# HALO EFFECT BIAS

The Title IX Coordinator states, while comforting a complainant with zero discipline referrals:

– “He/she will be punished for doing that.”

AS OPPOSE TO

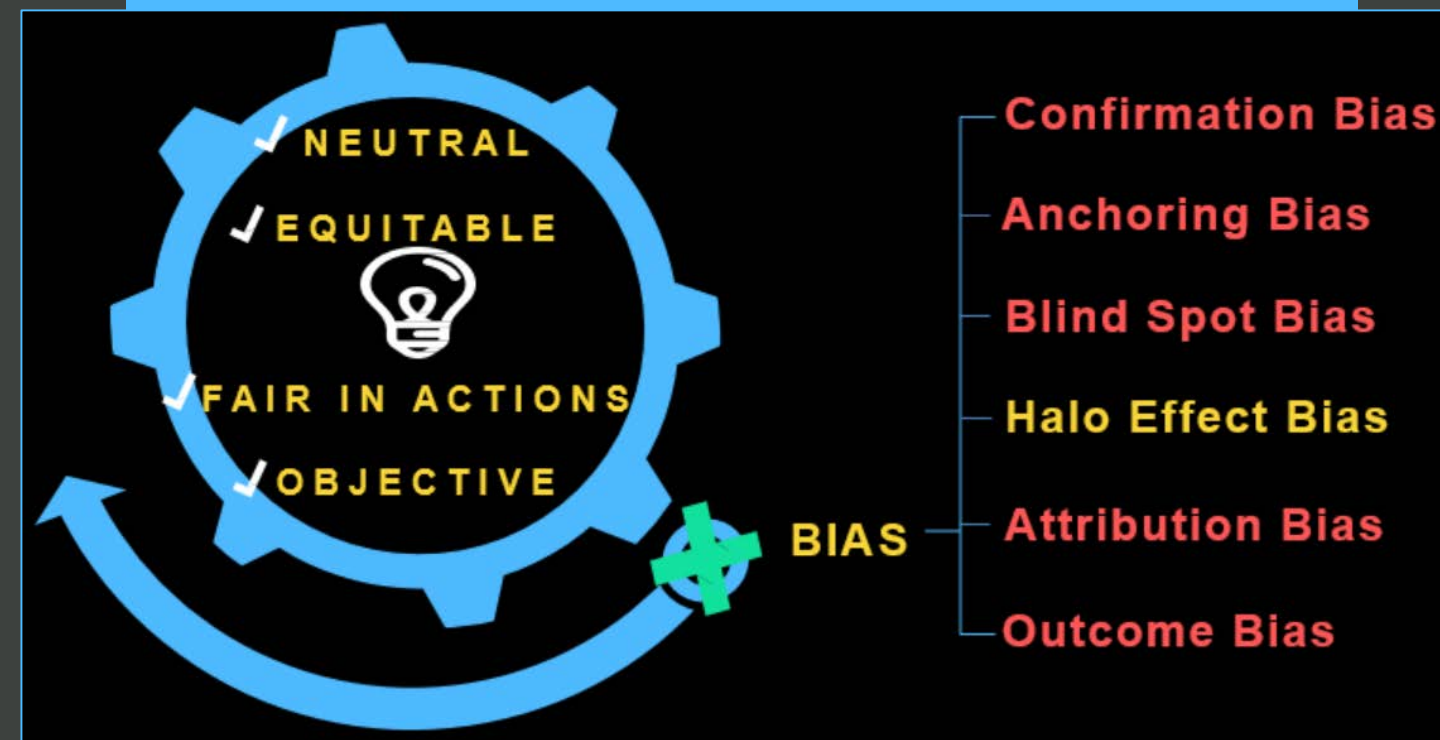
– “If he/she did that, then he/she will be punished.”

“

*Being sensitive to the trauma a complainant may have experienced does not violate....so long as ‘being sensitive’ does not lead [them] to lose impartiality*

”



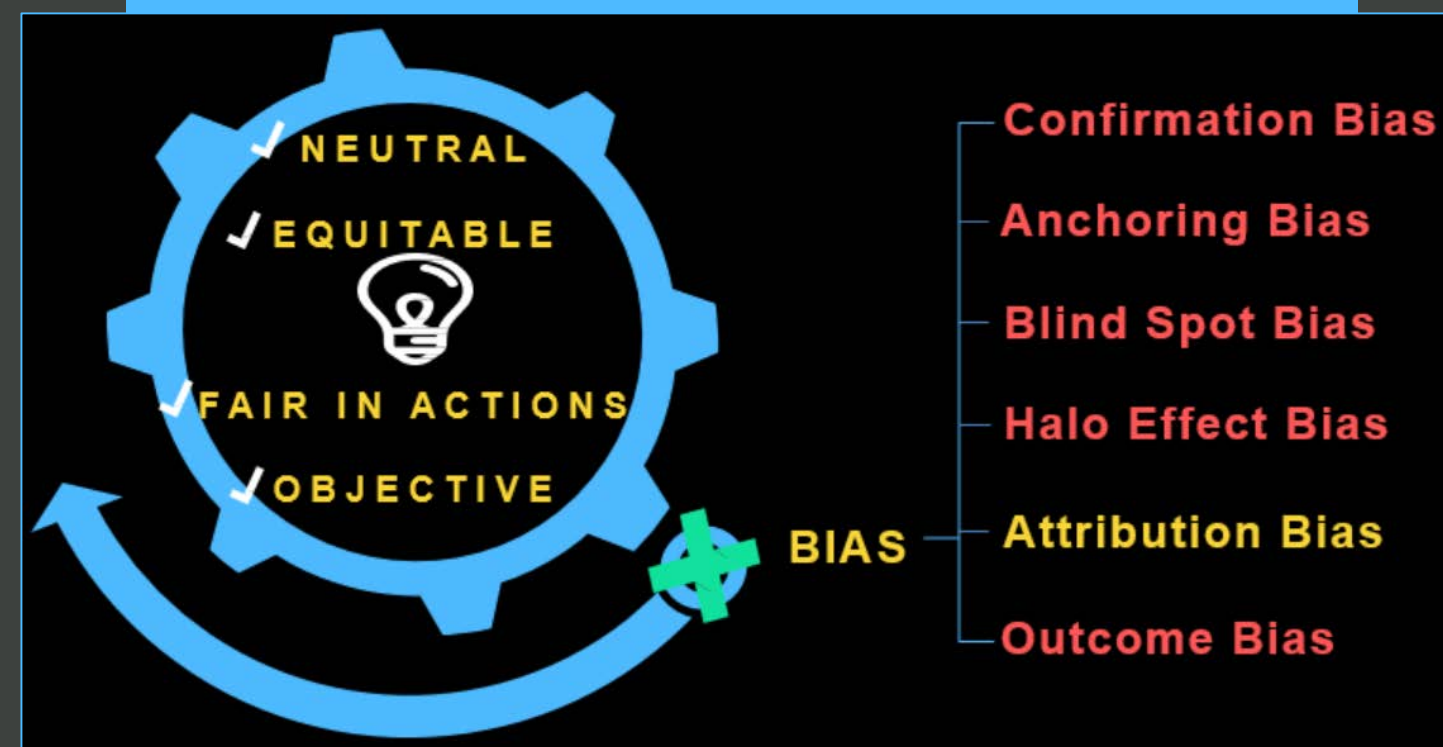


# HALO EFFECT BIAS

## Reflection

- Consider the facts without the gleaming attribute
- “How might the facts appear if they had a lower ACT score?”
- “Would my questions be posed differently if they were from a different family?”





# ATTRIBUTION BIAS

## Definition

**Tendency to assume why an individual acts in a certain way**

Credibility is weakly based on our observations or interactions rather than objective facts

Observations or interactions can be misinterpreted

Attributions do not always accurately reflect reality

Impressions can be unfounded or not based on fact

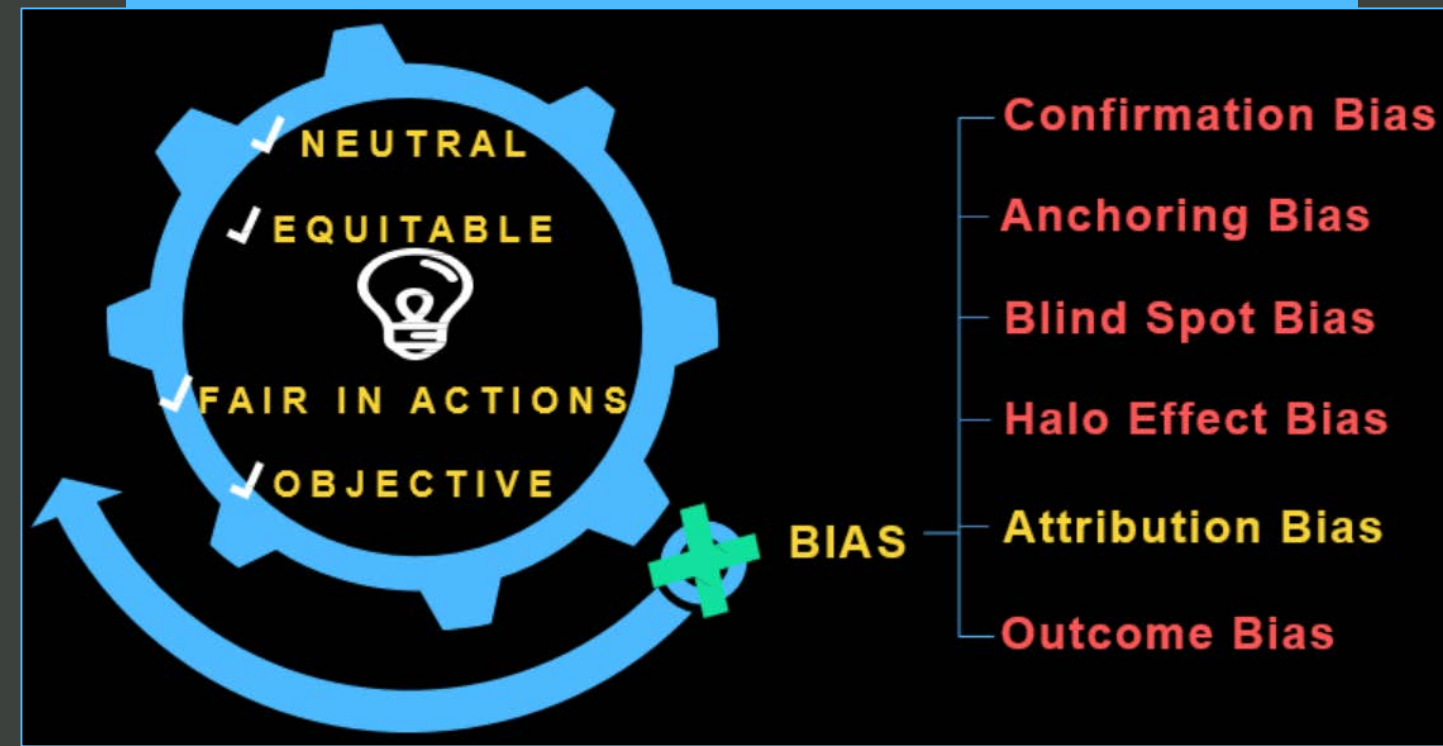
Perceptions based on how we expect individuals to behave

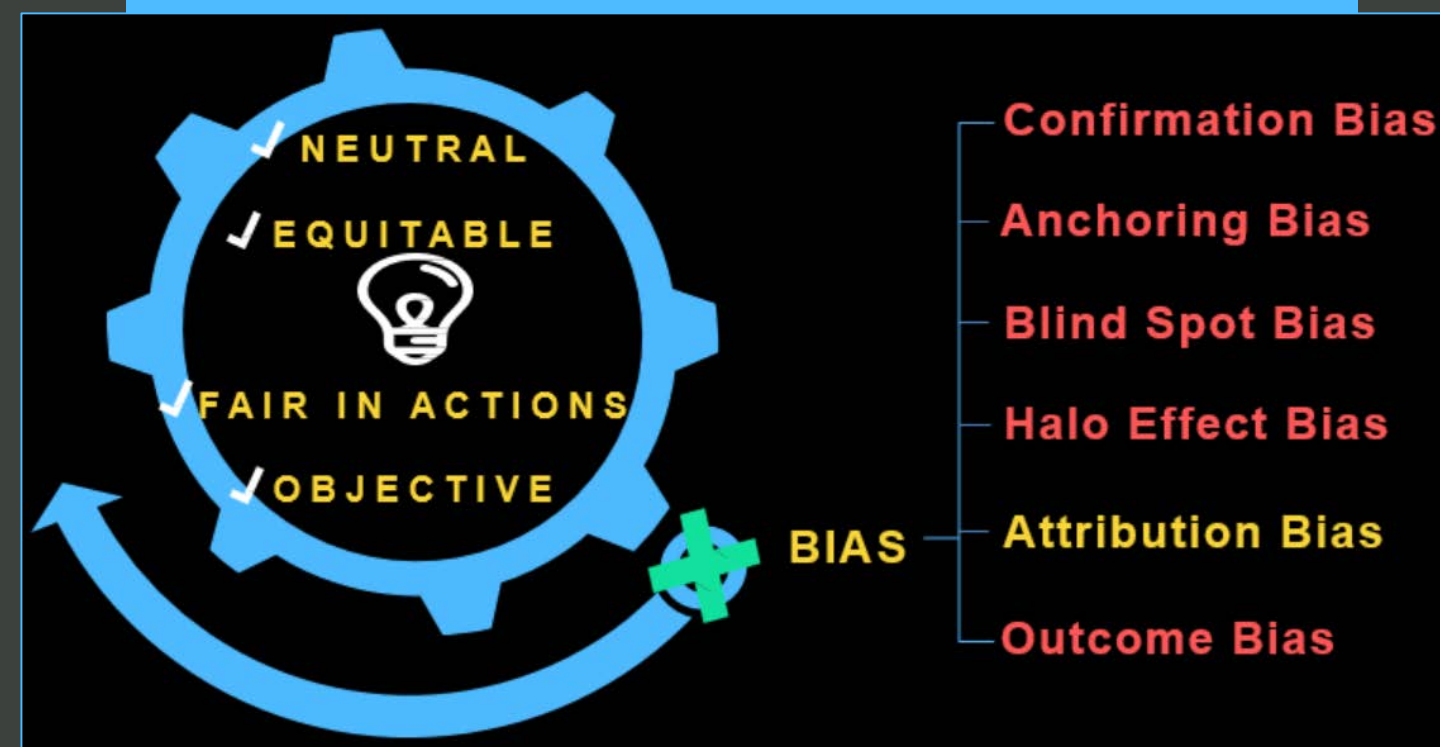


# ATTRIBUTION BIAS

- Title IX Investigator believes that an individual is untruthful during an interview because they were late for the interview.
- Title IX Decision-Maker felt that the person was not being honest in the hearing because they fidgeted.
- Interviewee who initially had a calm demeanor, grows frustrated following a particular question. We automatically judge the response to be a false statement.
- When a student is crying during questioning, we prematurely conclude in our thoughts that they are telling the truth.

## Bias Examples





# ATTRIBUTION BIAS

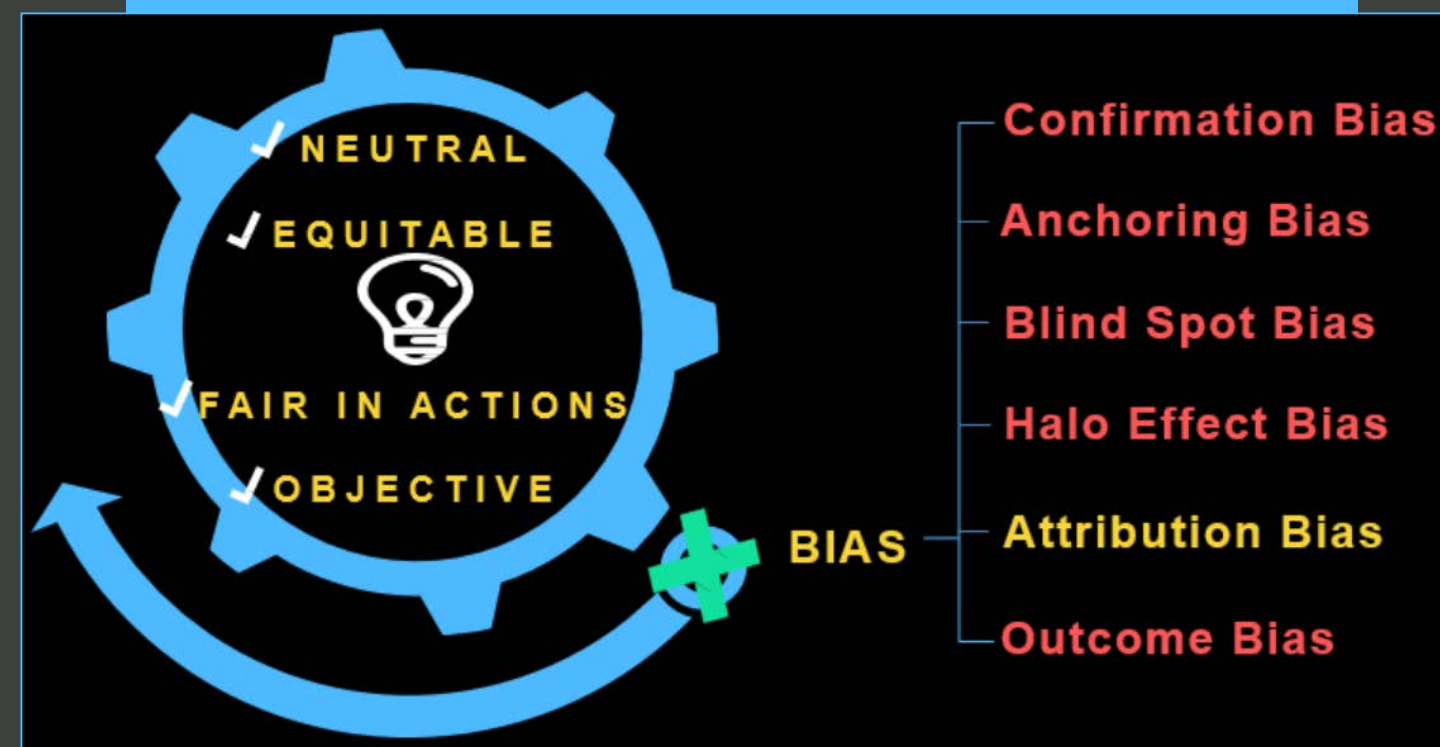
## Bias Example

“

*the decision-maker(s) cannot draw an inference about the determination regarding responsibility based **solely** on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.*

”





## Bias Examples

# ATTRIBUTION BIAS

- Title IX Decision-Maker judges a parties statements as not credible due to not remembering the specific time an incident occurred.

“

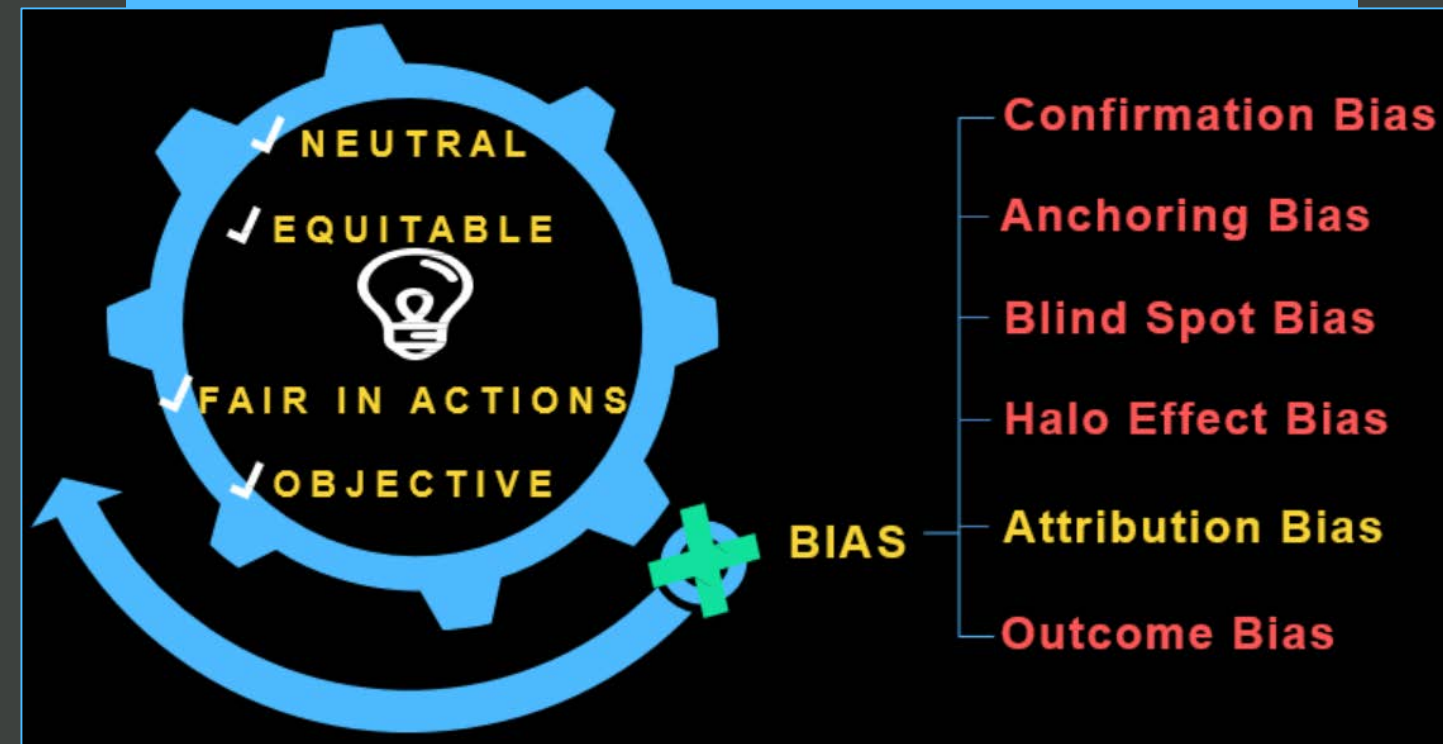
*the final regulations protect against a party being unfairly judged due to inability to recount each specific detail of an incident in sequence, whether such inability is due to trauma, the effects of drugs or alcohol, or simple fallibility of human memory*

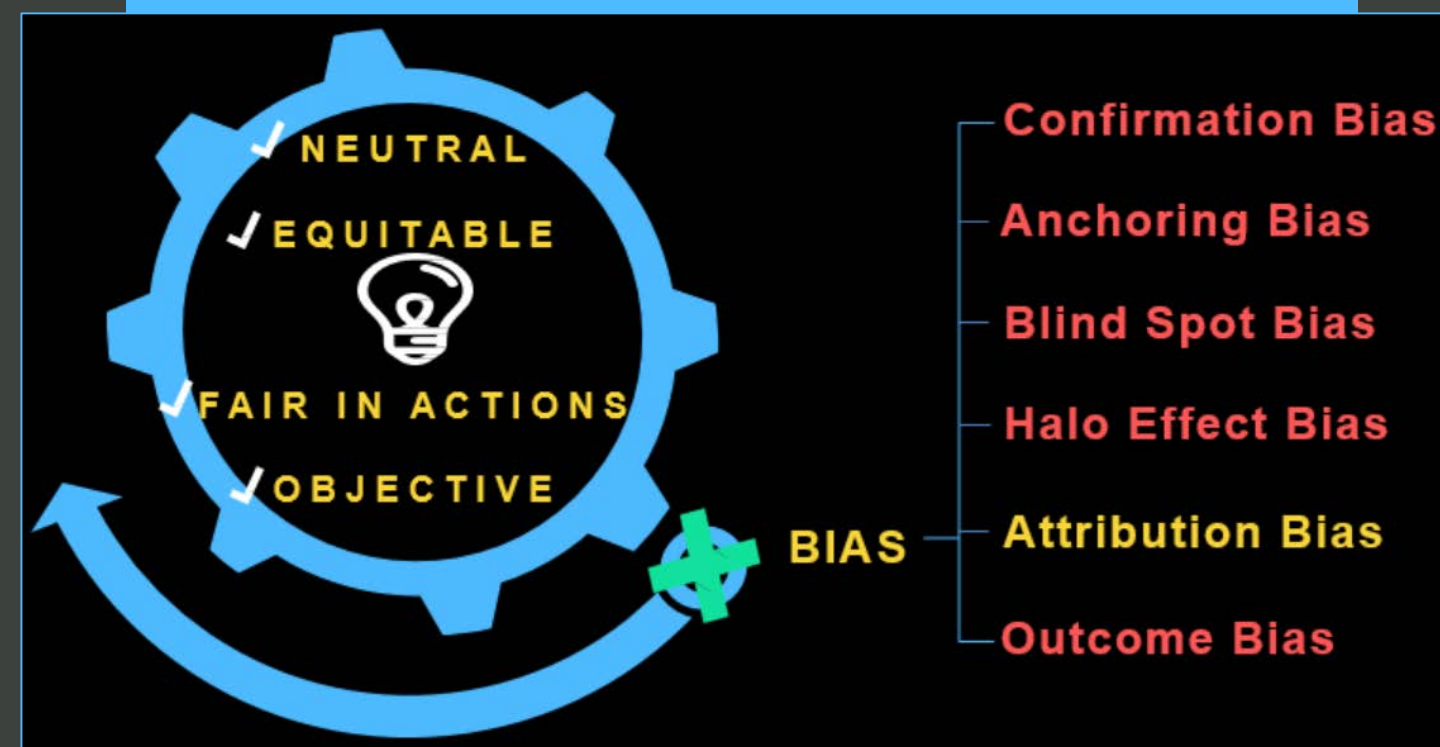
”

# ATTRIBUTION BIAS

- Be objective observers
- Recognize that perceptions are prone to errors
- Ask about what you are seeing, rather than assuming and attributing behavior to a particular reason
- Avoid generalizations about the individual because of outside non-related (external) behaviors
- Keep non-related exchanges separate from the collected facts and evidence
- “Am I basing this on the evidence collected or presented or on my observed interactions with the individual?”

## Reflection





## Reflection

# ATTRIBUTION BIAS

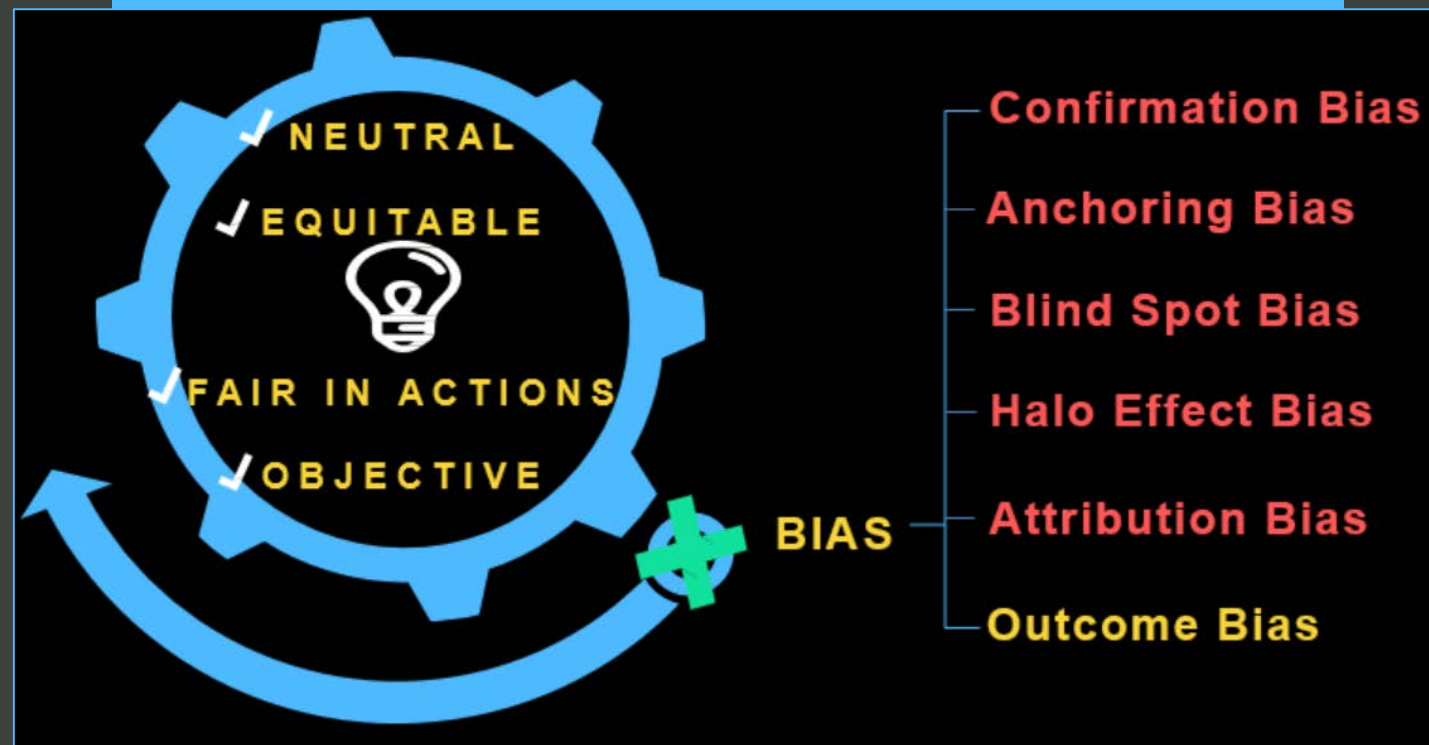
- Title IX Decision-Makers should assess demeanor along with consistency, plausibility and reliability.

“

*For the same reasons that judging credibility solely on demeanor presents risks of inaccuracy, the Dept. cautions that judging credibility based on a complainant's demeanor through the lens of whether observed demeanor is ‘evidence of trauma’ presents similar risks of inaccuracy...while assessing demeanor is one part of judging credibility, other factors are consistency, plausibility, and reliability.*

”

# OUTCOME BIAS



## Definition

**Tendency to evaluate a decision based on the results of that decision rather than an objective process**

Accuracy is determined by a previous end result

Places too much value on how things turned out in a situation

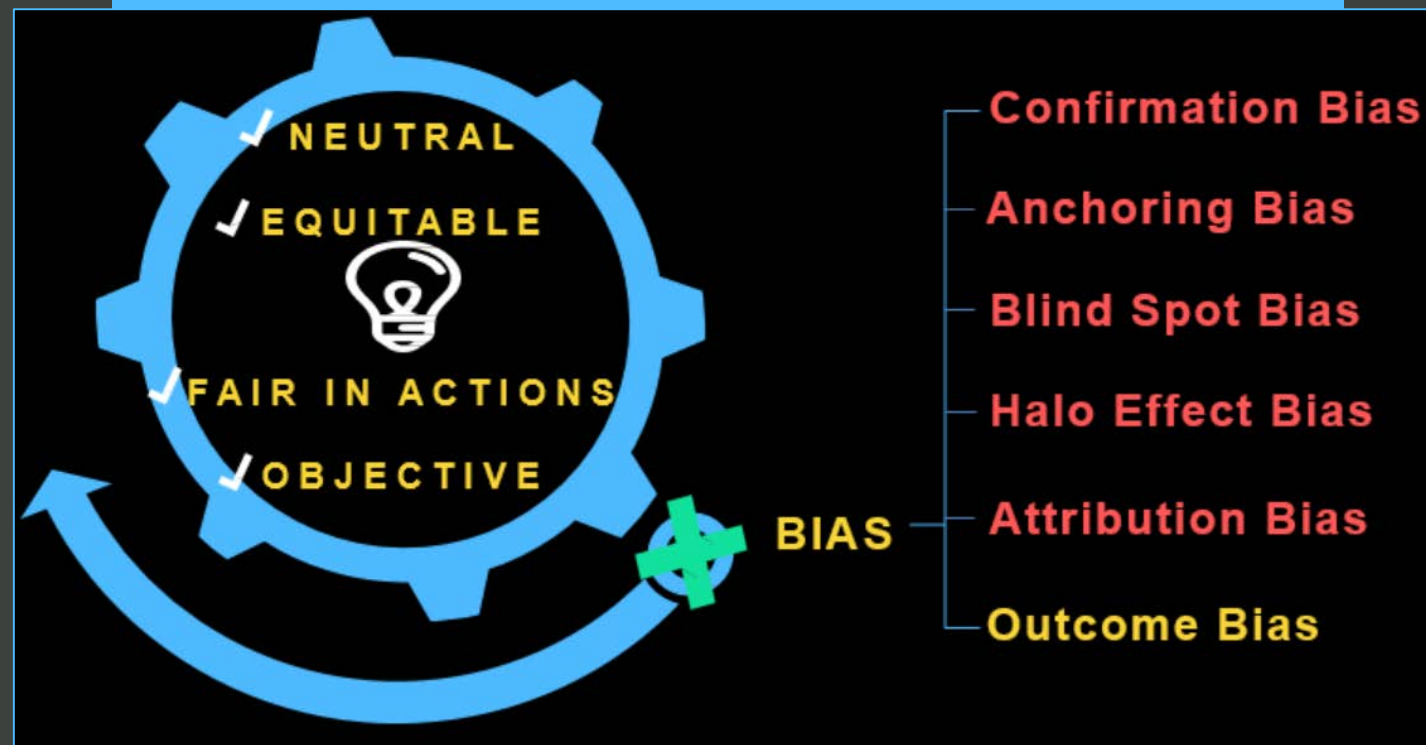
Weighs the past outcome heavier than other pieces of information

Occurs most often when the effects are negative





# OUTCOME BIAS



## Bias Examples

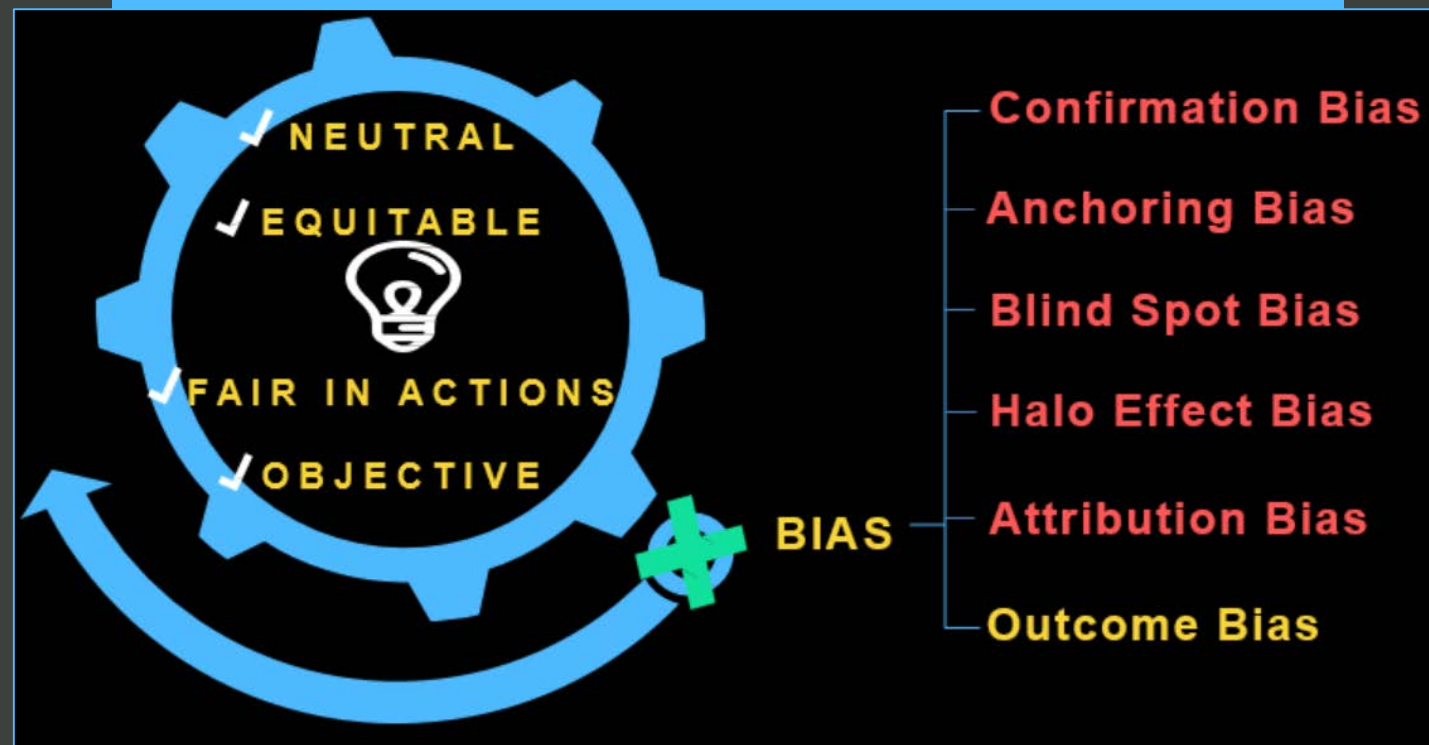
- Title IX Appeal Decision-Maker determines that the initial decision was appropriate because most people appeared to agree with it.
- It is implied that Title IX Personnel are biased because a large number of decisions find the respondent as not responsible.

“

*the mere fact that a certain number of outcomes result in determinations of responsibility, or non-responsibility, does not necessarily indicate or imply bias on the part of Title IX personnel*

”

# OUTCOME BIAS

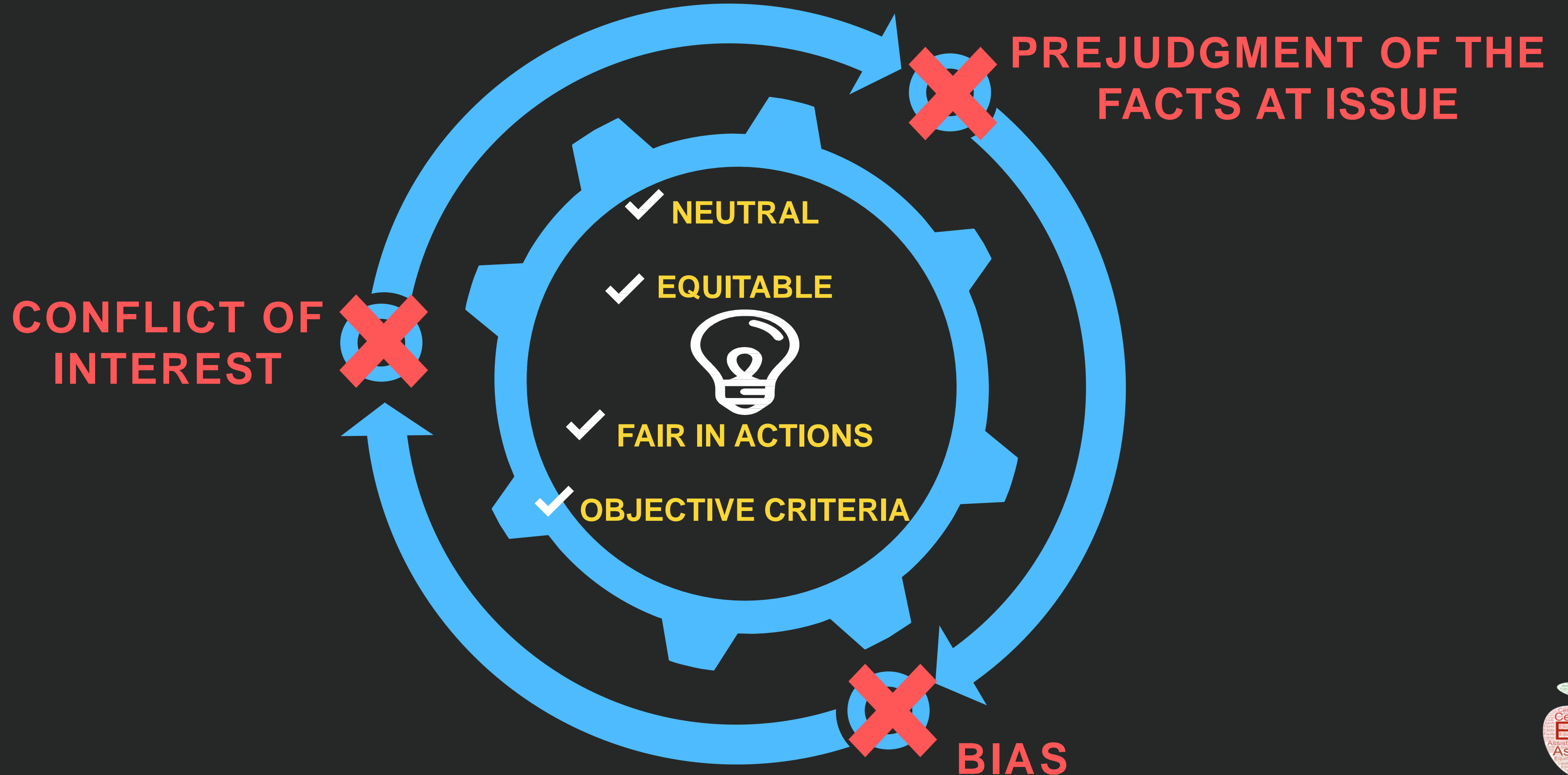


## Reflection

- “Am I depending on the determination made by the previous Title IX Decision-Maker?”
- As an Appeal Title IX Decision-Maker do not be driven by the results of the previous decision
- As an Appeal Title IX Decision-Maker focus on examining the facts and merits of each formal complaint
- Acknowledge the distinction between a good outcome and a good decision based on fairness, the objective standard, and in accordance with §106.45(b)(8) and the school board approved Title IX policy



# What Influences Impartiality?



# Serving Impartially



DESIGNATED INDIVIDUALS MUST

“

*be trained "how to serve impartially, including by avoiding **prejudgment of the facts at issue, conflicts of interest, and bias**"*

”

“

*Whether or not a recipient has complied with § 106.45(b)(1)(iii) is **not determined by the source of the training** materials or training presentations utilized by a recipient.*

”





# Serving Impartially



DESIGNATED INDIVIDUALS MUST

“

*be trained "how to serve impartially, including by avoiding **prejudgment of the facts at issue, conflicts of interest, and bias**"*

”



DESIGNATED INDIVIDUALS SHOULD

Be self-aware

- Assess actual or perceived conflicts of interest
- Acknowledge possible biases
- Private experiences and understanding
- Mindfulness – increased awareness of our emotions and thoughts



# Serving Impartially



DESIGNATED INDIVIDUALS MUST

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”



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# Serving Impartially



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DESIGNATED INDIVIDUALS SHOULD

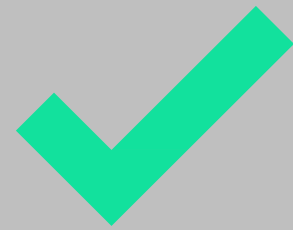
Be self-aware

State when we cannot be  
impartial

- “I know this person personally.”
- “I know the respondent has had similar allegations in the past and I can’t be impartial.”
- Notify Title IX Coordinator



# Serving Impartially



DESIGNATED INDIVIDUALS MUST

“

*be trained "how to serve  
impartially, including by avoiding  
**prejudgment of the facts at  
issue, conflicts of interest, and  
bias"***

”



DESIGNATED INDIVIDUALS SHOULD

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State when we cannot be  
impartial

- Not have an unfettered duty when they cannot be impartial





# Serving Impartially



DESIGNATED INDIVIDUALS MUST

“

*be trained "how to serve impartially, including by avoiding **prejudgment of the facts at issue, conflicts of interest, and bias**"*

”



DESIGNATED INDIVIDUALS SHOULD

Be self-aware

State when we cannot be impartial

“

*Recipients **should have objective rules** for determining when [Title IX Coordinator Personnel are] biased, and the Department leaves recipients discretion to decide how best to implement the prohibition on conflicts of interest and bias....*

”



# Serving Impartially



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*be trained "how to serve impartially, including by avoiding **prejudgment of the facts at issue, conflicts of interest, and bias**"*

”



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“

*Whether bias exists requires examination of the **particular facts of a situation** and the Department encourages recipients to apply an objective (**whether a reasonable person would believe bias exists**), common sense approach to evaluating whether a particular person serving in a Title IX role is biased.*

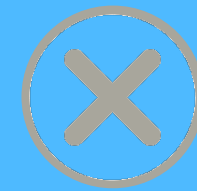
”



**Consequences for**



**Not being**



**Impartial**



# Confidence held by others

Failure to be impartial may negatively affect the confidence held by others in the institution's Title IX processes or the district or school as a whole.

PREAMBLE - *A fair grievance process will lend greater **legitimacy** to the resolution of complainants' allegations, which will improve the environment for complainants rather than perpetuate a **hostile environment** or increase negative social reactions to complainants, such as disbelief and blame (30259).*

## Ethical expectations

Taking advantage of a conflict of interest might be viewed as poor professional conduct - in violation of ethical expectations.

AR CODE OF ETHICS Standard  
5 - *An educator maintains integrity regarding the acceptance of any gratuity, gift, compensation or **favor that might impair, or appear to influence** professional decisions or actions and shall refrain from using the educator's position for personal gain.*

## Grounds for appeal

Issues related to conflict of interest or bias may be grounds for appeal.

34 CFR 106.45(b)(8)(i)(C)







# EQUITY ASSISTANCE CENTER

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<http://dese.ade.arkansas.gov/divisions/legal/equity-assistance/title-ix>

