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Reducing Bias in Sanctioning

Tibisay Hernandez
Manager of Diversity,
Equity, and Inclusion
Solutions

Jody Shipper
Co-Founder
and Managing Director

Your Facilitators

Tibisay Hernandez
(she/her/ella)

Manager of DEI
Solutions

Jody Shipper
(she/her/hers)

Co-Founder
and Managing Director

Bias In Our Systems

National Disciplinary Data

- Public K-12 systems are required via government reporting to provide demographic information for disciplinary cases.

- Research in the penal system is conducted to find bias in various points of the process including sentencing.

- Higher education institutions are NOT required via government reporting to provide demographic information for students facing discipline.

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Implicit Bias in Early Education

- Teachers watched a video of a classroom and were asked to identify challenging behaviors.

- Eye tracking showed the amount of time they spent watching each child.

Implicit Bias in Early Education (Gilliam, Maupin, Reyes, Accavitti, & Shic, 2016)
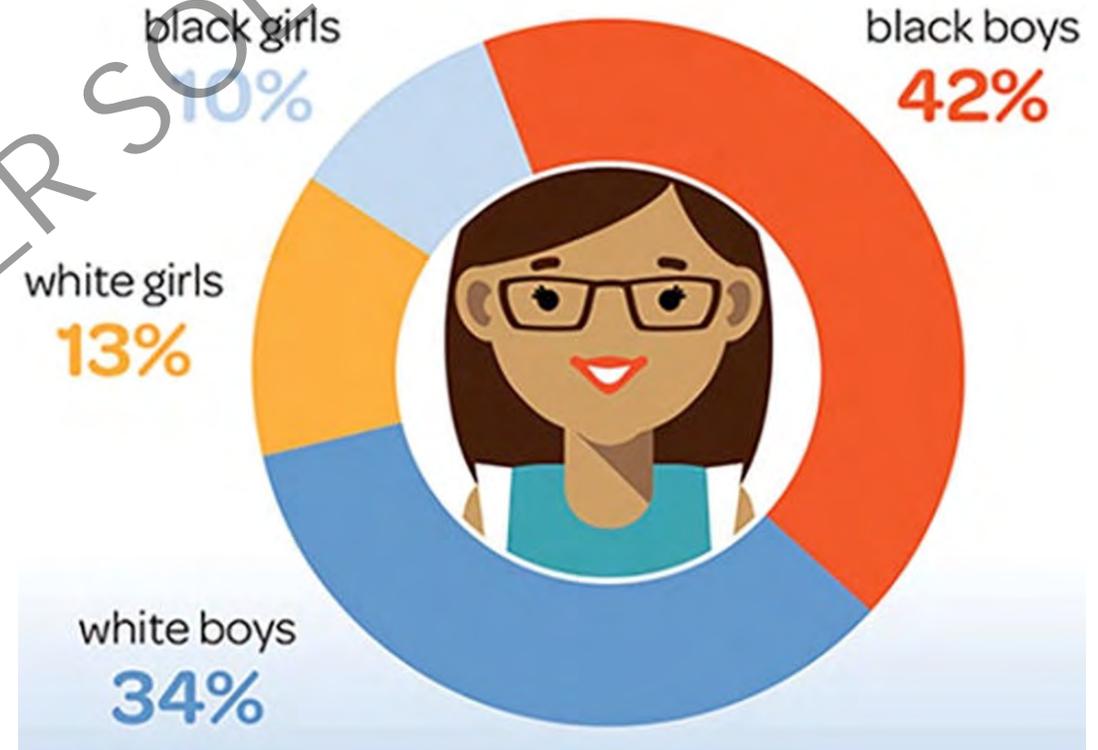
black girls
10%

black boys
42%

white girls
13%

white boys
34%

Expulsions Among Pre-School Students in 2017-18

School Expulsions Among Students Served Under IDEA (2017-2018)

- Students with disabilities served under IDEA represented 13.2% total enrollment.

- Received 23.3% of all expulsions with educational services.

- Received 14.8% of expulsions without education services.

School Climate and Safety Report, Office Civil Rights, 2018
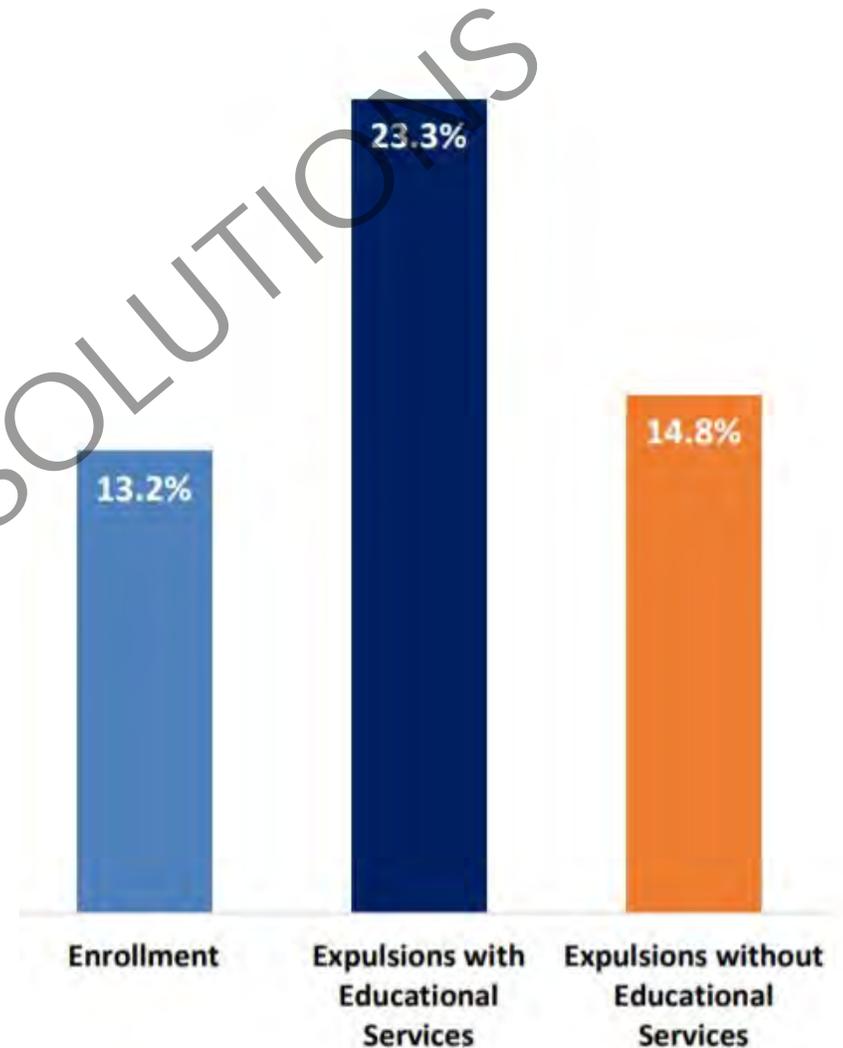
School-Related Arrests and Referrals to Law Enforcement in 2017-18

- Black students accounted for 15.1% of total student enrollment and 28.7% of all students referred to law enforcement.

- Black students were 31.6% of all students arrested at school or during a school-related activity— double their rate of enrollment.

- Similar patterns of disparities were observed for Black students served under IDEA who accounted for 2.3% of total student enrollment.

  - 8.4% of students referred to law enforcement

  - 9.1% of students who were arrested

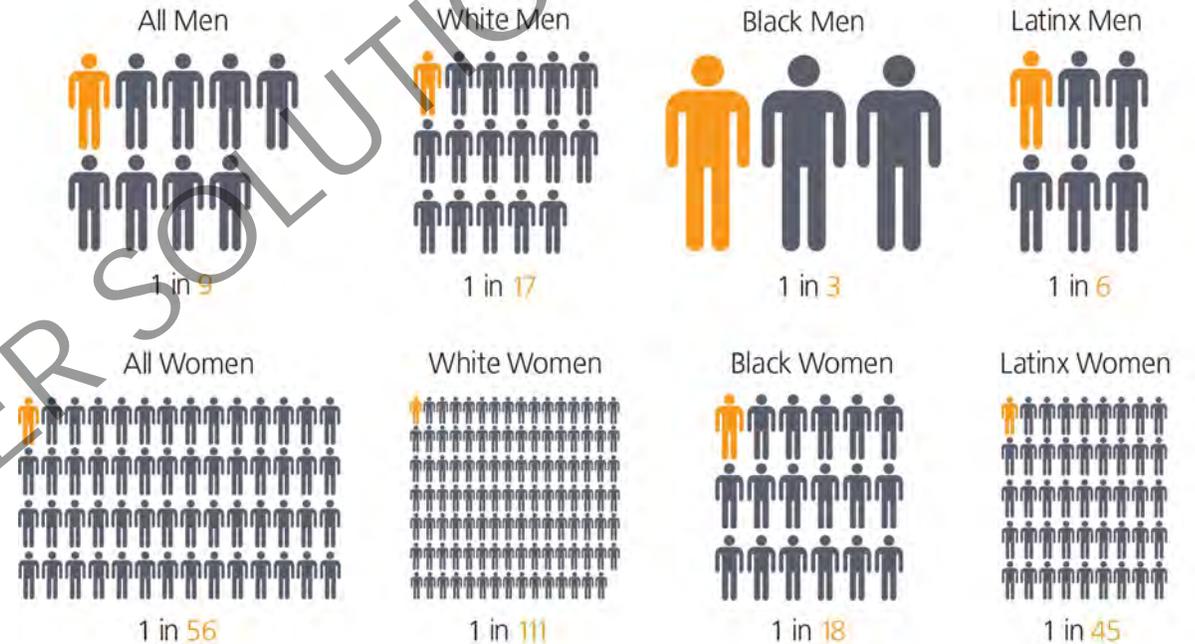School Climate and Safety Report, Office Civil Rights, 2018
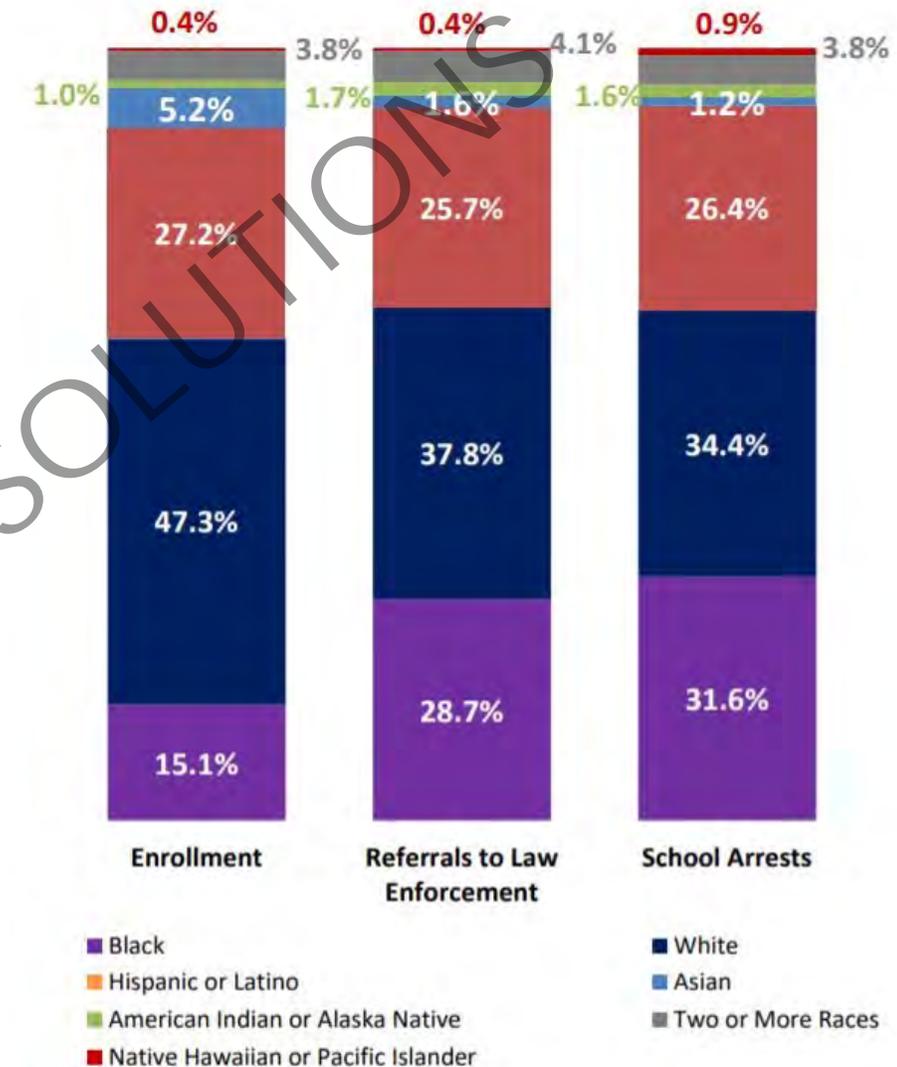
Penal System Data

- Of the 277,000 people imprisoned nationwide for a drug offense, over half (56%) are African American or Latino.

- Nearly half (48%) of the 206,000 people serving life and "virtual life" prison sentences are African American and another 15% are Latino.

Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System, The Sentencing Project, 2018

Lifetime Likelihood of Imprisonment of U.S. Residents Born in 2001

All Men	White Men	Black Men	Latinx Men
1 in 9	1 in 17	1 in 3	1 in 6

All Women	White Women	Black Women	Latinx Women
1 in 56	1 in 111	1 in 18	1 in 45

THE SENTENCING PROJECT

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Algorithms vs. Humans

- Algorithms are more accurate than humans in predicting recidivism.

- Algorithm-based tools in some tests approached 90% accuracy.

- Human prediction had a 60% accuracy rate.

Lin, Jung, Goel, & Skeem, "The limits of human predictions of recidivism", 2020

"Pre-sentence investigation reports, attorney and victim impact statements, and an individual's demeanor all add complex, inconsistent, risk-irrelevant, and potentially biasing information."

Applying Theory to Practice

Why Sanction?

Once a determination is made and the institution has determined that conduct did violate its values (as set forth in its policies), the institution needs to decide what to do in response:

- Educate
- Rehabilitate
- Punish
- Set conditions
- Reparations
- Remediation

Goals of Sanctions/Discipline

End	Prevent	Remedy
End the harassment	Prevent the recurrence	Remedy the harm

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Holding People and Institutions Accountable

"Rules of the road" (policy)

School expects community to follow the policy

Community expects school to follow the policy

Poor policy/poor practices → lack of enforcement → lack of accountability

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What Does the Sanction Say?

Who is valued? Who is not?

Community values?

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Sanctioning and Foreseeability

- Regents of the University of California v. Superior Court of Los Angeles County (Rosen), S230568, 2018 WL 1415703, (Cal. March 22, 2018)

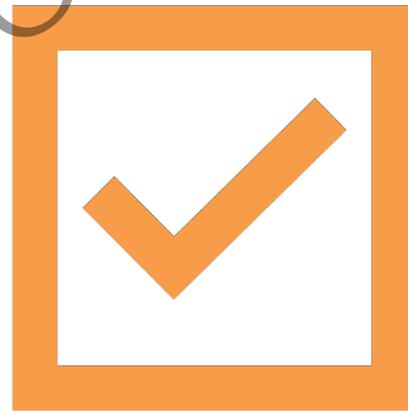- Schaefer v. Fu , 322 F. Supp. 3d 207 (D. Mass. 2018)

Sanctioning is Not...

A way to indicate disagreement with the findings.

BEWARE
RISK

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The Sanction Does Not Undo the Finding

No lesser sanction if you disagree with findings.

Sanctioning officer must assume findings are correct.

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Articulating the Rationale as a way to Reduce Bias?

Does everyone have to get fired/expelled? (Hint: NO)

Can you articulate why the action taken is reasonably calculated to end the harassment?

Can you articulate why the action is reasonably calculated to prevent the recurrence?

Remedy: To restore or preserve equal access; implemented by Title IX Coordinator.

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Determining the Sanction

Five Methods

Sanctioning

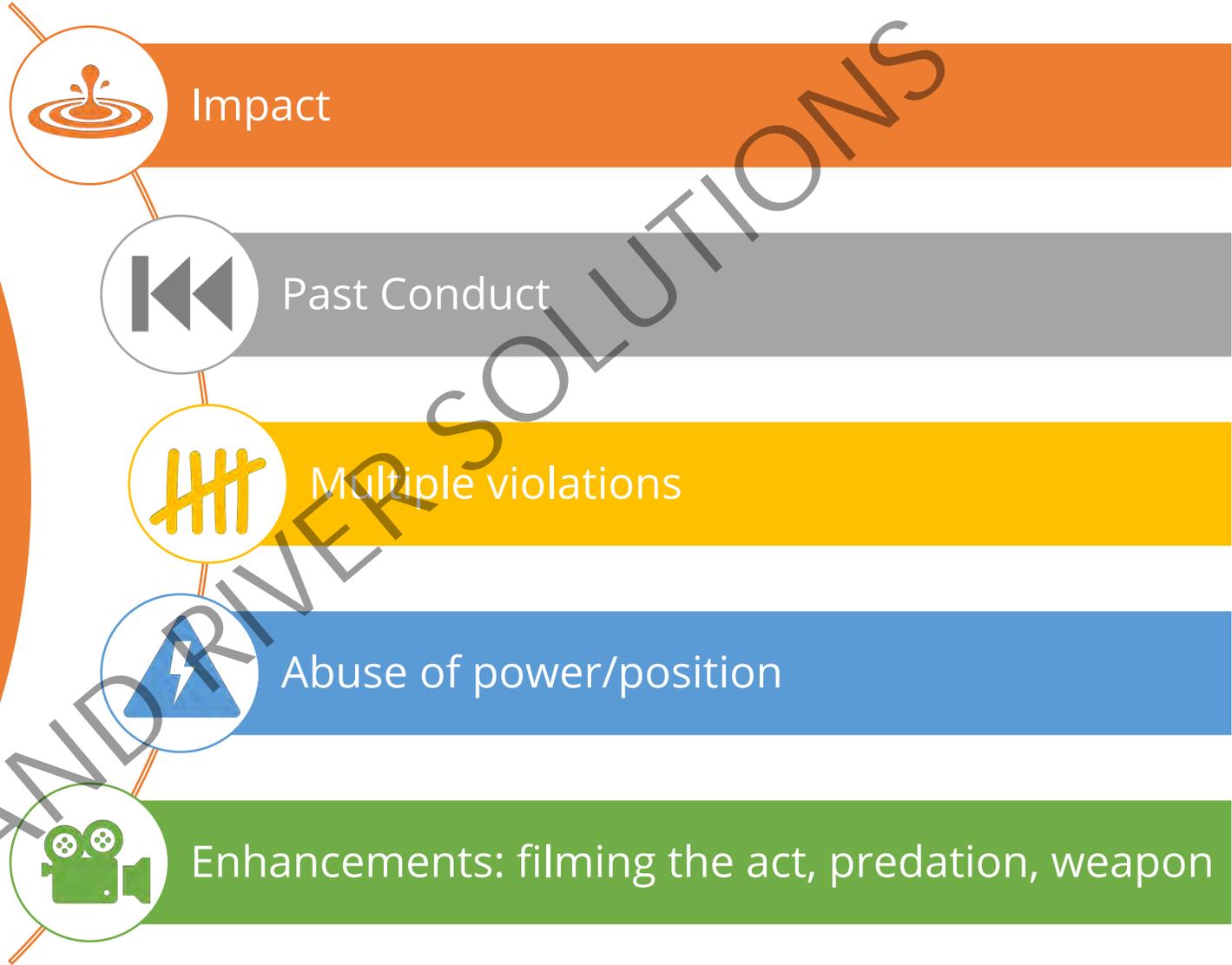Start from scratch each time – no system.

Expel for all violations .

- Variation: Expel only for those that are in most egregious category.

Never expel; this is a learning environment.

Start at expulsion as default and work down.

Start at some floor (1 year? 2 years? 5 years?) and work up.

Factors to Consider Considering

- **Impact**
- **Past Conduct**
- **Multiple violations**
- **Abuse of power/position**
- **Enhancements:** filming the act, predation, weapon

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Determining Proper Sanction

Factors to consider?

Consistency

Foreseeability of repeated conduct

Past conduct

Does bias creep in?

Remorse?

Victim impact?

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Aggravating Circumstances

Premeditation

Predation

Physical violence

Multiple policy violations in one incident

Harm to others, impact on complainant and/or community

Did the behavior continue after intervention?

Effort to conceal or hide the incident?

Refusal to attend past trainings

Past failures to comply with directives

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Mitigating Circumstances

- Remorse

- Owns responsibility for the act and its impact

- NOT Mitigating: Respondent could not think rationally at the time due to drugs or alcohol

- NOT Mitigating: Respondent disagrees with conclusions

- NOT Mitigating: Complainant's behavior

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Don't Get Personal

Personal feelings

Personal views

Personal bias

Decision Making Biases

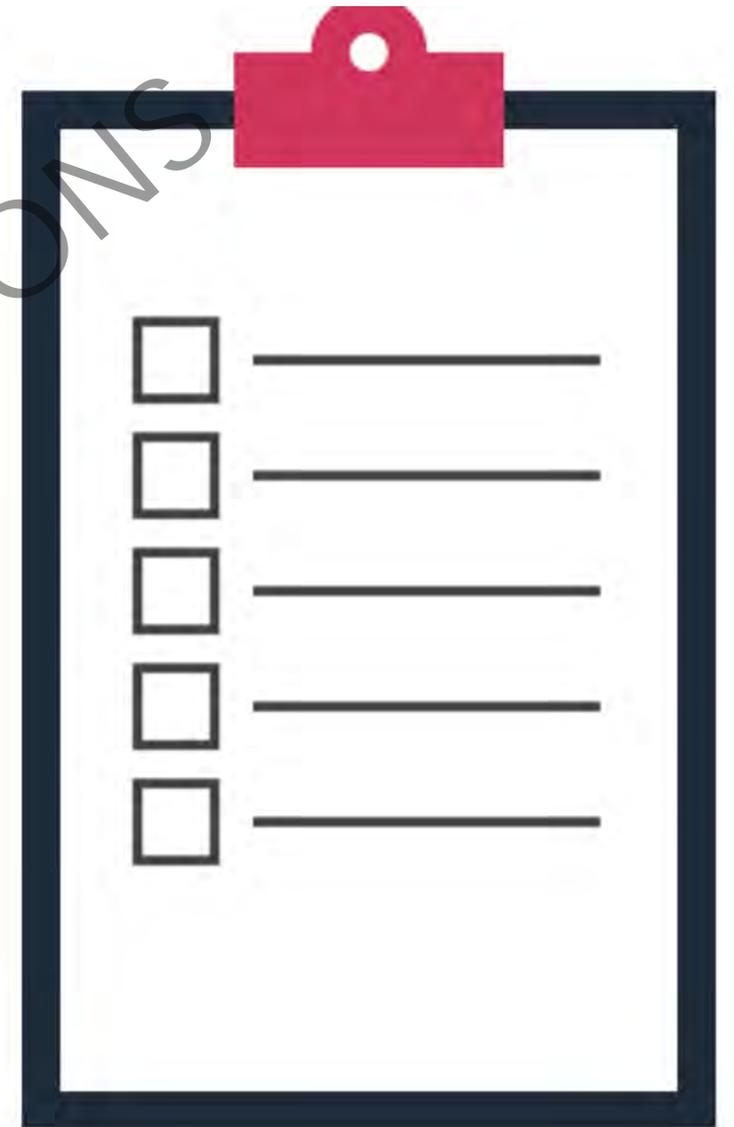|	
Affinity Bias	Affect Bias
Confirmation Bias	Overconfidence Bias
Anchoring Bias	

What Can We Do?

- Acknowledge bias within our systems.
- Collect the data.
- Check data for inconsistencies.
  - Can inconsistencies be explained?
- Check policies to ensure they lead to equitable outcomes.
- Create robust processes with bias checkpoints.

Thank you for attending this series!
See you in 2022!
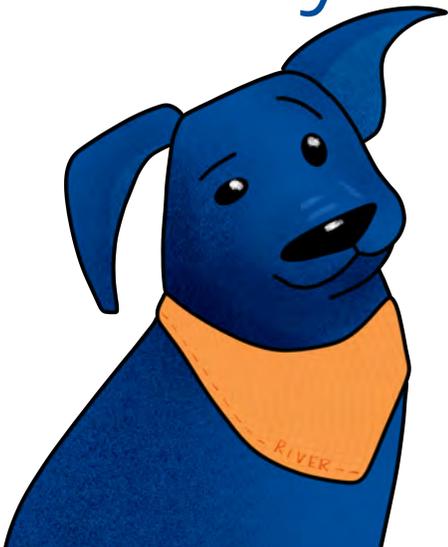
Email Us:

thernandez@grandriversoluions.com
jody@grandriversolutions.com
info@grandriversolutions.com

@GrandRiverSols

Grand River Solutions