

What is the Process? Equity vs. Title IX



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The Revised CRRs

- 600.010: Equal Employment/ Educational Opportunity and Nondiscrimination Policy
- 600.020: Sexual Harassment under Title IX
- 600.030: Resolution Process for Resolving Complaints of Sexual Harassment under Title IX
- 600.040: Equity Resolution Process for Resolving Complaints of Discrimination and Harassment against a Faculty Member or Student or Student Organization
- 600.050: Equity Resolution Process for Resolving Complaints of Discrimination or Harassment against a Staff Member or the University of Missouri

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Policies: Equity vs. Title IX Sexual Harassment

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| ▪ Equity Policies | ▪ Sexual Harassment under Title IX Policies |
| ○ 600.010 | ○ 600.020 |
| ○ 600.040 | ○ 600.030 |
| ○ 600.050 | |

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What are the differences between 600.010(Equity) and 600.020(Sexual Harassment under Title IX)?

- 600.010 pertains to Equity complaints; these are complaints of discrimination or harassment based on an individual's race, color, national origin, ancestry, religion, sexual orientation, age disability, protected veteran status, sex discrimination as defined in 600.010, and any other status protected by law.
- Sex discrimination under 600.010 means: sexual harassment that falls outside the definition of sexual harassment under 600.020, and includes workplace sexual harassment and sex discrimination that does not involve conduct of a sexual nature.
- 600.020 applies to sexual harassment occurring in an education program or activity of the University against a person in the United States.
- "Sexual Harassment" under 600.020 means conduct on the basis of sex that is:
 - Quid pro quo
 - Hostile environment
 - Sexual assault
 - Dating Violence
 - Domestic violence
 - Stalking

For Conduct Falling under 600.020, the Resolution Process is 600.030.

600.030: The Resolution Process for complaints of sexual harassment under Title IX.

This process is available to students and all employees who are named as respondents.

Under this process, the parties have a right to a hearing with cross-examination and other questioning conducted by Advisors.

The decision-maker for the hearing process is a hearing panel consisting of a Hearing Officer and two individuals randomly chosen from the Equity Resolution Hearing Panel Pool; will try to have panel consist of a faculty member and staff member/administrator from the Pool.

For Conduct Falling under 600.010, the Resolution Process is either 600.040 or 600.050.

600.040: For complaints of discrimination or harassment against a faculty member, student or student organization.

600.050: For complaints of discrimination or harassment against a staff member or the University.

Jurisdiction of the University under 600.030

- Jurisdiction of the University under this policy is limited to sexual harassment which occurs in an education program or activity of the University against a person in the United States.
- "Does not apply to sexual harassment occurring outside of the United States, even where the conduct occurs in an education program or activity of the University.

Jurisdiction of the University under 600.040 or 600.050

- Limited to conduct which occurs on University premises or at University-sponsored or University-supervised functions. However, the University may take action for conduct occurring in other settings, including off-campus under certain circumstances.

Process: Equity vs. Title IX Sexual Harassment

- | | |
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| <ul style="list-style-type: none"> ▪ Equity: <ul style="list-style-type: none"> ○ Faculty and Students as Respondents: <ul style="list-style-type: none"> ▪ Conflict Resolution ▪ Administrative Resolution ▪ Hearing Resolution Process <ul style="list-style-type: none"> ○ Hearing panel consists of 3 panelists chosen from the Equity Resolution Hearing Panel Pool ○ Staff and University as Respondents: <ul style="list-style-type: none"> ▪ Conflict Resolution ▪ Administrative Resolution | <ul style="list-style-type: none"> ▪ Title IX Sexual Harassment: <ul style="list-style-type: none"> ○ Faculty, Staff and Students as Respondents: <ul style="list-style-type: none"> ▪ Informal Resolution, including Administrative Resolution ▪ Hearing Resolution Process with Cross-Examination <ul style="list-style-type: none"> ○ Hearing panel consists of Hearing Officer and 2 panelists chosen from the Equity Resolution Hearing Panel Pool |
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Pre-Hearing Process under 600.030 (Sexual Harassment under Title IX)

- Report of sexual harassment is made to the Title IX Coordinator.
- Supportive Measures are offered to the Complainant.
- A Formal Complaint is filed.
- A Notice of Allegations is provided to the parties.
- An Investigation is performed.
- The parties may choose Informal Resolution.
- The Hearing Panel Resolution Process.
- Appeal.

Hearing Panel Resolution under 600.030

The Equity Resolution Hearing Panelist Pool

- A pool of not less than 5 faculty and 5 administrators and/or staff.
- Selected by the Chancellor.
- Serve a renewable one-year term.
- Selection to be made with an attempt to recognize the diversity of the University community.
- Hearing Panel members from one university may be asked to serve on a hearing panel involving another university.

The Title IX Hearing Panel

- Consists of the Hearing Officer and two randomly selected individuals from the Hearing Panelist Pool.
- The Hearing Officer is a trained individual appointed by the Chancellor to preside over a hearing and act as a member of the Hearing Panel, and to rule on objections and the relevancy of questions and evidence during the hearing.

The Role of Advisors at a 600.030 Hearing

- Each party shall have an Advisor present at a Hearing under 600.030. If a party does not have an Advisor, the University is required to provide an Advisor of the University's choice for that party.
- An Advisor may be, but is not required to be, an attorney.
- All questioning and cross-examination of the parties and witnesses is conducted by the parties' Advisors.
- The Advisors may object to questions on limited grounds as set forth in the Rules of Decorum.

The Role of the Hearing Officer at a 600.030 Hearing

- The Hearing Officer presides at the Hearing, acts as a member of the Hearing Panel, and determines the relevancy of questions posed by the Advisors.
- If the Hearing Officer determines that a question is excluded because it is not relevant, the Hearing Officer must explain the decision to exclude the question.
- Where the Hearing Officer permits a question to be answered, there is a presumption that the Hearing Officer found the question to be relevant.

What if a Party or Witness does not submit to Cross-Examination at a Hearing?

- No party or witness can be forced to participate in the 600.030 process, including testifying at a hearing.
- If a party or witness fails to submit to cross-examination at a hearing, the Hearing Panel shall not rely on any statement of that party or witness in reaching a determination regarding responsibility.
- The Hearing Panel shall not draw any inference about the determination regarding responsibility based solely on a party's or witness's failure to submit to cross-examination.

The order of the evidence in a hearing under 600.030

The Complainant will go first and may give a verbal statement; the Hearing Panel will then ask questions of the Complainant; the Respondent's advisor may then cross-examine the Complainant. The Complainant may present witnesses who are subject to questioning by the parties' advisors and the Hearing Panel.

The Respondent will proceed next and may give a verbal statement; the Hearing Panel will then ask questions of the Respondent; the Complainant's advisor may then cross-examine the Respondent. The Respondent may present witnesses who are subject to questioning by the parties' advisors and the Hearing Panel.

The Investigator will then be available to answer questions of the Hearing Panel, and the parties' advisors. The Investigator may also call witnesses who will be subject to questioning by the parties' advisors and the Hearing Panel.

The Hearing Panel may ask questions of the parties or any witnesses at any time during the hearing.

The Hearing is done; what happens next...

Following the completion of the hearing, the Hearing Panel will meet, with no others present except the legal advisor, to deliberate.

The Hearing Panel will need to make a determination of responsibility based on a preponderance of the evidence.

If a Respondent is found to be responsible for a violation of policy by a majority vote of the Hearing Panel, the Hearing Panel will next decide, again by majority vote, the appropriate sanction(s) and if any remedial actions are needed.

The Hearing Officer will then prepare a written determination reflecting the decision of the Hearing Panel.

Appeals under 600.030; 600.040 and 600.050

Both Parties are allowed to appeal the dismissal of all or part of a Formal Complaint or complaint, or the findings of the Hearing Panel or Administrative Resolution Decision.

Appeals are limited to the following grounds:

- a. A procedural irregularity;
- b. To consider new evidence that was not reasonably available;
- c. Conflict of interest or bias; or
- d. The sanctions fall outside the range typically imposed.

The decision of the Equity Resolution Appellate Officer is final.

Retaliation

- No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under the policies.
- Under 600.040 and 600.050, employees are required to cooperate with University Officials in proceedings involving discrimination or harassment other than sex discrimination.
- The exercise of rights protected under the First Amendment does not constitute prohibited retaliation.

Presumption of Not Responsible & Preponderance of Evidence

Presumption of Not Responsible

- The Respondent is presumed not responsible for a policy violation.
- A determination regarding responsibility is made at the conclusion of the Title IX/ Equity process; the Respondent remains not responsible for a violation until they have been proven responsible.

What is the Standard of Proof?

The standard of proof is the level of certainty and the degree of evidence necessary to establish a violation of policy.

Common Standards of Proof

- Beyond a Reasonable Doubt: "firmly convinced of the defendant's guilt"
- Clear and Convincing: "substantially more likely than not"
- Preponderance of the Evidence: "more likely than not"
- Some evidence...

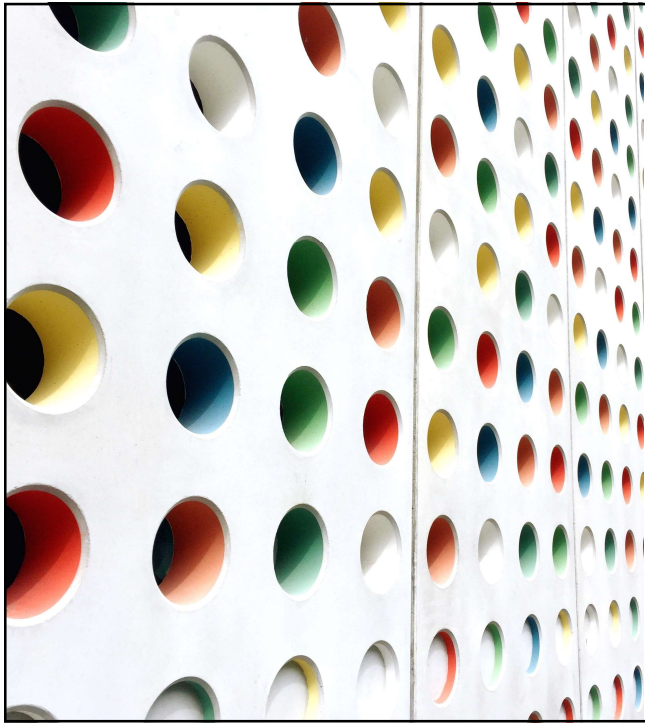
Standard of Proof under Equity and Title IX Resolution Processes

- The University has chosen "preponderance of the evidence" as the standard of proof for the Equity and Title IX Resolution processes.
- This is the standard of proof for proceedings involving respondents who are students, faculty or staff.
- Preponderance of the evidence means more likely than not; the greater weight of the evidence; tipping the scale ever so slightly; 50%+.
- Refers to the quality of the evidence, not the quantity.

Questions?



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Implicit Bias

HEARING PANELIST TRAINING
FALL 2020
DR SYBIL WYATT

Fact:

Hearing panel resolutions are not based on reality.



Reality or Perception?

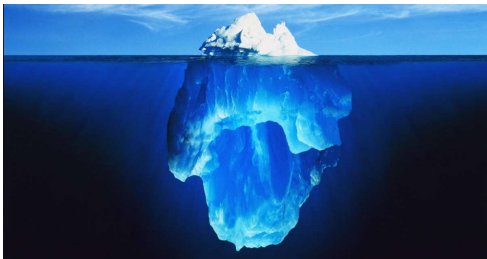
Reality cannot be known by a panelist unless they actually experienced the events firsthand.

Instead, a panelist bases their decisions upon their perceptions of reality.

Theoretically, perceptions are derived through evidence and testimony as presented by the investigation report and exhibits and during the hearing itself.

However, panelists enter the hearing with biases and preloaded perceptions that may be very influential on the decision-making process.

Perception, Defined



Perception is our **own vision or version** of reality.

We see the world not as it is, but **as we are**.

If our senses **can be misled into perceiving** that something is so, we will believe it.

Once we believe that something is so, even though it is not, **we accept it**.

Perceptions of reality often prevail over reality.

Challenges of Perception

We are sponges, **constantly absorbing new information** and sifting it through our extensive assortment of biases to reduce our situational anxiety.

Preconceived notions, ideas, generalizations, and stereotypes which make up the collective biases of a panelist are a very important source of information which is used in decision-making.

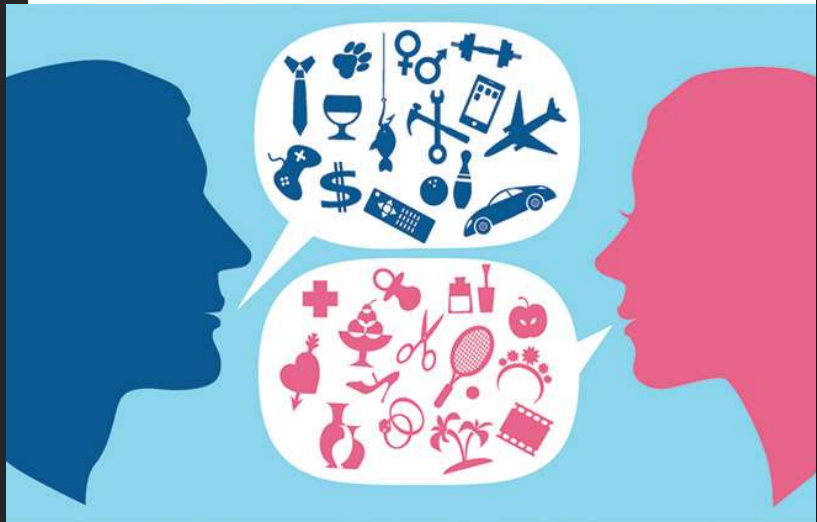
Why does this matter?

Decision-makers often see **evidence that aligns with their beliefs** in a **positive** manner and **ignore evidence that does not**.

In some instances, decision-makers might **disregard and distort evidence** that does not confirm their own beliefs.

Fact:

We all bring biases to the table.



Fact:

Implicit biases are nearly impossible to eliminate but their effects can be reduced.



“Bias isn’t like an upset stomach that an individual can take an antacid to fix... The outcome of any implicit bias training shouldn’t be to cure people’s bias or make them more objective—it should be to make people bias-aware.”

Identifying Implicit Bias

Implicit Association Test (IAT)

- Measures the strength of associations between identity characteristics and descriptive terms
 - Identity characteristics – bases for bias
 - Descriptive terms – good, bad, clumsy, smart, etc.
- Limited in that it will only tell you whether on any given day, you have a slight to significant preference for one group over another
- However, the IAT modules will act as a starting point for introspection
 - Both your results and the process of responding to the IAT itself are valuable

Introspection & Mindfulness

- When making decisions in the below situations, observe what you consider as relevant and what weight you place on the information
 - High ambiguity (open to multiple interpretations)
 - Incomplete information
 - Overload of information and steps required to reach a decision
- Practice slowing down and viewing all situations from a variety of perspectives as you make decisions
- Be critical of the information you consume on a daily basis

Addressing Implicit Bias

1. Be informed of the presence of bias and possible affects on decision-making
 - a. Research indicates warning of bias can reduce its affects on the hearing process
 - b. When you become **bias-aware**, you are able to act with less bias **without focusing on being unbiased**
 - i. Using knowledge about your own biases will cause you to review your decisions and course-correct if appropriate, adding accountability and intentionality to the process
2. If you are aware of a bias you have that may influence your ability to act as an equitable and impartial panelist, you should decline to serve for that complaint

Addressing Implicit Bias

3. Provide panelists “decision aids” to assist in making a determination
 - a. Research indicates structured tools used to guide the process of decision-making may reduce the affects of bias
 - i. Provides a guide to logically justify your determinations based on the applicable policies
4. Work with others on the panel to be self-aware
 - a. Be agreeable to reconsidering the evidence and any decisions on its relevancy to the complaint
 - b. If you are the outlier on a decision, reconsider your stance, looking for any evidence of bias influence
 - c. If you are in a “majority rules” decision with one outlier, review the evidence carefully for possible group-think influences

Addressing Implicit Bias

5. Engage in high-effort, deliberate thought processes
 - a. Even if the resolution seems straightforward, consider every piece of evidence and all testimony as you’ll need to indicate how each was included or excluded as part of your resolution
 - b. Credibility determinations should be examined with a critical view to reduce the influence of bias
 - i. Can you objectively illustrate the reason(s) you feel the party or witness is accurately portraying the relevant facts?
 - c. Appreciate that making a decision based on your “gut” or “intuition” increases the likelihood of bias

Assessing Credibility

Fall 2020 Hearing Panelist Training | UM System | Dr. Sybil Wyatt

Opening Thought

“More than analytical rigor, judging credibility requires imagination and empathy for the human condition.”



- Judge John L. Kane
US District Court for the District of Colorado

Role of a Hearing Panelist: Decider of Fact

- You are tasked with deciding the **accuracy** and **truthfulness** of testimony provided
- You are allocating a **level of credibility** to each party and all witnesses
- You must decide **what importance** to assign the testimony within the totality of the complaint
- You are expected to use **your own judgment and intuition** while remaining aware of **your own biases**

Cogs of Credibility





Patience

- Hold off on making any decisions until all testimony has been presented
- Do not attempt to resolve the complaint as each witness testifies
 - Instead, make notes about any statements or behaviors that “set off alarms” and be prepared to ask questions of the witnesses to clarify information and address your concerns



Active Listening

- Listen carefully, staying focused on the facts presented by the testimony
 - Avoid distractions by setting aside electronic devices, closing email/messaging, securing a private space
- Be aware of your nonverbal feedback
 - Exhibit welcoming behaviors such as eye contact, head nods, leaning in, open posture; these will elicit a greater level of trust on the part of the witness and often lead to a higher degree of disclosure
- Do not be swayed by extraneous details
 - Skill level of the advisor
 - Likeability of the witness
 - Emotional nature of the testimony
 - Number of witnesses testifying in support of or against the complaint
 - Quality over quantity



Impartial Review

- Do your best to remain impartial throughout the hearing and in your decision-making
- Acknowledge the effect your biases may have on what you see and hear
- Avoid judgment based on your subjective values, morals, or ethical beliefs
 - Even though you may not agree with the personal choices made by a party or witness, you must stay focused on the truthfulness and accuracy of their testimony and their contributions to the relevant facts rather than your *feelings* about their behaviors
- Check yourself often – “How else could that person, action, or situation be interpreted?”



Consistency

- Does the testimony of the witness align with the information they provided to investigator(s)?
- Is the testimony of the witness consistent with other witnesses regarding the same events?
- Does the testimony seem overly consistent, as if it was rehearsed?
 - If yes, what is more likely: 1) having gone over the events multiple times in preparation for the hearing, or 2) having consulted other witnesses to align testimony?
- If the testimony provided is secondhand information shared with the witness by one of the parties or another witness, are there contradictions in the information when comparing testimony?

If there are inconsistencies, ask yourself:

- Are the differences related to relevant facts?
- What importance will you place on the discrepancies?



Plausibility

- If the witness is providing firsthand testimony, are the facts as they present them plausible?
 - Could they see/hear the events based on their proximity and access, as well as the surrounding environment?
 - Do they seem to be filling in memory gaps rather than recalling events as they occurred?
- Was there any reason the witness would have a diminished capacity to recall events?
 - Physical/mental disabilities
 - Incapacitation due to sleep, medication, alcohol, illicit drugs
 - Substantial length of time has elapsed
 - Information is often forgotten very quickly unless it is recalled frequently
 - Events were of minor significance to the witness at the time
 - Events never made it into long-term memory
 - Other similar events have occurred and may cause “interference”

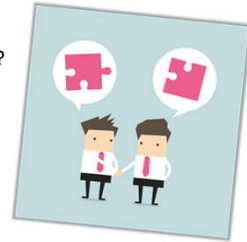



Witness Biases

- To what extent might the background, education, and experiences of the witness affect their testimony?
 - Information may be limited but consider what you do know or can surmise from the investigation report and context testimony
- What factors, if any, might reasonably contribute to any hostility displayed by a witness?
 - Experiences throughout the complaint process?
 - Lack of faith in the reliability or impartiality of the complaint process?
- Does/did the witness have a close relationship, especially of an intimate or romantic nature, with a party or witness?
- Did the witness express or indicate a belief that either party has a pattern or practice of being untruthful?

Motive

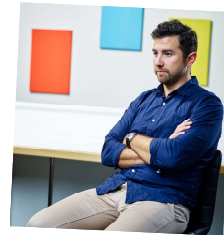
- To your knowledge or reasonable inference, did the witness:
 - Evade questions?
 - Decline to respond to questions asked, either in part or in whole?
 - Purposefully omit facts?
 - Provide incomplete responses?
 - Recant their earlier testimony to investigators, in full or in part?
 - Deliberately provide false testimony?
 - Make an admission of partial responsibility?
 - Have a personal interest in the outcome of the complaint?
- If yes, what might be their motivation?
 - Fear? Embarrassment?
 - A need to please?
 - Attempt to influence the outcome of the complaint?
 - To protect self or others?
 - To avoid punishment?



Delivery

Non-verbal behaviors and demeanor should be considered as *minimal* cues to credibility.

- Non-verbal behaviors
 - Folded or open arms?
 - Relaxed or rigid/tense body posture?
 - Frowning? Smiling? Neutral facial expression?
 - Fidgety? Still?
 - Stammering?
 - Hesitation in responding?
 - Tone/pitch of voice or voice pattern shifts/changes?
 - Eye contact – was it overly sustained? Was it rare?
 - Any seemingly nervous gestures or slight or overt repetitive movements?
 - Unreasonable focus on word selection?
 - Clenched or relaxed facial muscles?





Delivery

- Demeanor

- Calm? Anxious?
- Upset/angry? Upset/crying?
- Regret?
- Shame? Embarrassment?
- Sad? Sorrowful?
- Disconnected?
- Uncomfortable?



When considering the delivery of testimony by a witness, you should take into account how simply participating in the hearing might reasonably affect their body language and demeanor.

Overall, did the testimony, body language, and emotional state of the witness align for the majority of their testimony?



Questions?

I'm in the Hearing Panelist Pool: Now What?



Hearing Panelist Training
September 2020

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Hearing Panel

- What is a Hearing Panel?
 - Panel of three members that make a recommendation or finding on each of the alleged University policy violations and sanctions and remedial actions after consideration of evidence presented at a hearing
- Available for both Title IX (600.030) & Equity (600.040) Processes
- How are they similar?
 - Used when a specific complaint is not resolved through an alternate resolution process
 - Comprised of three (3) members
 - Designated Hearing Officer or Chair of Hearing Panel will be selected
 - University Panelists will be selected from the Hearing Panelist Pool
 - Annual training will be required for all Panelists
 - Recommendations or determinations regarding responsibility, sanctions and remedial actions will require a majority vote by the Hearing Panel

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Who are the Panel members?

- Title IX Hearing Panel
 - Hearing Officer
 - 2 University members randomly selected from Hearing Panelist pool
 - Good faith attempt will be made for Hearing Panel to include at least one faculty member and one administrator or staff member
 - Up to 2 alternates may be designated
- Equity Hearing Panel
 - 3 University members randomly selected from Hearing Panelist pool
 - Chair of the Hearing Panel as designated by the Hearing Panel Pool Chair
 - Good faith attempt will be made for Hearing Panel to include at least one faculty member and one administrator or staff member
 - Up to 2 alternates may be designated

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Hearing Panelists

- Hearing Panelists must be fair, impartial and unbiased
- Must be able to approach the hearing with an open mind
- Maintain a neutral and unbiased position throughout the hearing while considering the testimony and evidence that is presented

Fairness

- Treat both Parties equitably and with respect
- Do not base credibility determinations on whether an individual is a Complainant or Respondent
- Provide equal opportunity for the Parties to present witnesses and other evidence
- Allow both Parties to exercise their rights under the CRRs

Impartiality

- Only form an opinion *after* the hearing process is complete
- If you have had prior dealings with either Party, let the Title IX Coordinator or Equity Officer know
- Do not let personal feelings and/or prior dealings with either Party or a witness affect the way you treat the individual
- Ask questions in a non-accusatory manner

Recusal of a Hearing Panel Member

- Hearing Panel members, including the Hearing Officer, **shall not have a Conflict of Interest or Bias** for or against Complainants or Respondents generally or an individual Complainant or Respondent.
- If a Hearing Panel member or Hearing Officer feels that they have a Conflict of Interest or Bias, or cannot make an objective determination, **they must recuse themselves.**
- **Not every case is right for you ... and that is okay!**

Objection to a Hearing Panel Member

- Parties must raise all objections to any panelist in writing to the Title IX Coordinator or Equity Officer at least 15 business days prior to the hearing.
- Hearing Panel members will only be unseated and replaced if the Title IX Coordinator or Equity Officer concludes that **good cause** exists for the removal.
 - Good cause may include, but is not limited to, bias that would preclude an impartial hearing or circumstances in which the Hearing Panel member's involvement could impact the Party's work or learning environment due to current or potential interactions with the Hearing Panel member (e.g., a panel member being in the same department as either Party).
- The Title IX Coordinator or Equity Officer will provide a written response to all Parties addressing any objections to the Hearing Panel members, including the Hearing Officer.

TITLE IX:
For conduct falling under 600.020, the resolution process is 600.030.

- For complaints of sexual harassment against any Respondent, including any employee of the University.

Hearing Process Rules under 600.030 Hearing Officer Role - Procedurally

- *Hearing Officer* shall participate on the Hearing Panel and preside at the hearing, call the hearing to order, call the roll of the Hearing Panel and alternates in attendance, ascertain the presence or absence of the Investigator, the Complainant and the Respondent, confirm receipt of the Notice of Allegations and Notice of Hearing by the Parties, report any extensions requested or granted and establish the presence of any Advisors.
- The *Hearing Officer* may dismiss any person from the hearing who interferes with or obstructs the hearing, fails to adhere to the Rules of Decorum, or fails to abide by the rulings of the *Hearing Officer*.
- Procedural questions which arise during the hearing and which are not covered by these general rules shall be determined by the *Hearing Officer*, whose ruling shall be final.
- The *Hearing Officer* will prepare a written determination reflecting the decision of the Hearing Panel regarding responsibility, sanctions and remedial actions, if any ("Hearing Panel Decision"), and deliver it to the Title IX Coordinator.

Hearing Process Rules under 600.030 Hearing Officer Role – Substantively

- The relevancy and admissibility of any evidence offered at the hearing shall be determined by the *Hearing Officer*, whose ruling shall be final.
- Before a Party or witness answers a question, the *Hearing Officer* must determine whether the question is relevant. If a question is excluded as not relevant, the *Hearing Officer* must explain the decision to exclude that question. Where the *Hearing Officer* permits a question to be answered, there is a presumption that the *Hearing Officer* found the question to be relevant.
- The Parties' Advisors may object to questions on limited grounds as set forth in the Rules of Decorum. The *Hearing Officer* will rule on such objections and that ruling shall be final.

Hearing Process Rules under 600.030 Hearing Panelists' Role

- At least five (5) business days prior to the hearing date, the final investigative report and all exhibits will be provided to the **Hearing Panel** members.
- The **Hearing Panel** may ask questions of the Parties or any witnesses including the Investigator at any time during the hearing.
- The **Hearing Panel** will deliberate with no others present, except any legal advisor to the Hearing Panel, to find whether the Respondent is responsible or not responsible for the policy violation(s) in question.
 - Finding(s) based on a preponderance of the evidence
 - If a Respondent is found responsible by a majority of the **Hearing Panel**, the **Hearing Panel** will determine appropriate sanctions and remedial actions by a majority vote.

EQUITY:
For conduct falling under 600.010, the hearing resolution process is 600.040.

- For complaints of discrimination or harassment (non-Title IX) against a Faculty member, Student or Student organization.

Hearing Process Rules under 600.040 Hearing Panel Chair Role - Procedurally

- The *Hearing Panel Chair* shall preside at the hearing, call the hearing to order, call the roll of the Hearing Panel and alternates in attendance, ascertain the presence or absence of the Investigator, the Complainant and the Respondent, confirm receipt of the Notice of Allegations and Notice of Hearing by the Parties, report any extensions requested or granted, and establish the presence of any Equity Support Persons.
- The *Hearing Panel Chair* shall arrange for recording of the hearing, whether by audio, video, digital or stenographic means.
- The *Hearing Panel Chair* will prepare a written determination regarding responsibility ("Hearing Panel Decision") and deliver it to the Provost (or Designee) (for Faculty Respondents) or the Equity Officer (for Student Respondents).

Hearing Process Rules under 600.040 Hearing Panel Chair Role – Substantively

- The relevancy and admissibility of any evidence offered at the hearing shall be determined by the *Hearing Panel Chair*, whose ruling shall be final, unless the *Chair* shall present the question to the Hearing Panel at the request of a member of the **Hearing Panel**, in which event, the ruling of the **Hearing Panel** by majority vote shall be final.
- Procedural questions which arise during the hearing and which are not covered by these general rules shall be determined by the *Hearing Panel Chair*, whose ruling shall be final unless the *Chair* shall present the question to the Hearing Panel at the request of a member of the **Hearing Panel**, in which event, the ruling of the **Hearing Panel** by majority vote shall be final.

Hearing Process Rules under 600.040 Hearing Panelists' Role

- At least five (5) business days prior to the hearing date, the final investigative report and all exhibits will be provided to the **Hearing Panel** members.
- A **Hearing Panel** may question witnesses or evidence introduced by the Investigator, the Complainant or the Respondent at any time during the hearing process.
- A **Hearing Panel** may call additional witnesses and submit documentary evidence.
- A **Hearing Panel** may exclude a witness proposed by the Investigator, the Complainant or the Respondent if it is determined their testimony would be redundant or not relevant.
- A **Hearing Panel** may dismiss any person from the hearing who interferes with or obstructs the hearing or fails to abide by the rulings of the Hearing Panel Chair.
- The **Hearing Panel** will deliberate with no others present, except any legal advisor to the Hearing Panel, to find whether the Respondent is responsible or not responsible for the policy violation(s) in question.
 - Finding based on a preponderance of the evidence
 - If a *Student or Student Organization Respondent* is found responsible by a majority of the Hearing Panel, the **Hearing Panel** will determine the appropriate sanctions which will be imposed by the Equity Officer.
 - If a *Faculty Respondent* is found responsible by a majority of the Hearing Panel, the **Hearing Panel** will recommend appropriate sanctions to the Provost, who will determine and impose the appropriate sanctions.

Questions?





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Relevancy of Questions and Evidence



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Important Considerations

- Fact-finders are not charged with finding a *particular* outcome.
- Fact-finders should avoid pre-conceived notions and consider *only* the information provided during the process.

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Relevancy and Evidence

- Fact-finders should focus on evidence that is most relevant to making a determination.
- Fact-finders **must** address conflicting evidence that bears on the outcome of the proceeding.
- The Hearing Officer or Panel Chair **has the discretion** to determine the relevance of any witness or documentary evidence and may exclude information that is **irrelevant, immaterial, cumulative, or more prejudicial than informative.**
- The relevancy and admissibility of any evidence offered at the hearing shall be determined by the Hearing Officer, whose ruling shall be final. In equity proceedings, the Chair shall present the question to the Hearing Panel at the request of a member of the Hearing Panel, in which event, the ruling of the Hearing Panel by majority vote shall be final.

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What Evidence Should be Considered?

- The formal rules of evidence do not apply; but the evidence must be relevant.
- Questions and evidence about the Complainant's pre-disposition or prior sexual behavior are not relevant, unless offered to prove that someone other than the Respondent committed the alleged conduct.
- Evidence concerning specific incidents of the Complainant's prior sexual behavior with respect to the Respondent is not relevant unless it is offered to prove consent.
- Character evidence is of limited utility and should not be admitted unless relevant.
- Incidents or behaviors of a party not directly related to the alleged conduct should not be considered unless it shows a pattern of related misconduct that is deemed relevant.
- Records of a party made or maintained by a physician or similar professional in connection with the provision of treatment to a party may not be used without the party's express consent.
- Information protected under a legally recognized privilege shall not be allowed, relied upon or otherwise used unless the person holding the privilege has waived that privilege.

Gathering Evidence

Cross-examination and questioning of parties and witnesses under 600.030

- No party or witness can be forced to participate in the 600.030 process, including testifying at a hearing.
- If a party or witness fails to submit to cross-examination at a hearing, the Hearing Panel shall not rely on any statement of that party or witness in reaching a determination regarding responsibility.
- The Hearing Panel shall not draw any inference about the determination regarding responsibility based solely on a party's or witness's failure to submit to cross-examination.

Gathering Evidence

Questioning of a Party under 600.040

- Under the 600.040 hearing process:
 - The parties will be provided the opportunity to present facts and arguments in full and question all present witnesses during the hearing.
 - The parties may submit questions for each other to the Hearing Panel Chair, who will determine if the questions are relevant and appropriate, and if so, will ask the questions on behalf of the submitting party.
 - If both parties request the opportunity, direct questioning between the parties will be permitted.
 - Advisors are present solely to advise their party, and may not participate directly in the hearing.
 - The Chair of the Hearing Panel, in consultation with the Parties and investigators, may decide in advance of the hearing that certain witnesses do not need to be physically present if their testimony can be adequately summarized by the investigator(s) in the investigative report or during the hearing. All Parties will have ample opportunity to present facts and arguments in full and question all present witnesses during the hearing, though formal cross-examination is not used between the Parties.

Findings, Decision Writing, Sanctions and Remedial Actions



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Findings of the Hearing Panel under 600.030 and 600.040

- Hearing panel will deliberate with no others present, except legal advisor.
- Majority decision required.
- Keep in mind standard of proof.
- Within 5 days of the end of deliberations the Hearing Officer or Panel Chair will prepare a written determination reflecting the decision of the Hearing Panel regarding responsibility, sanctions and remedial actions, if any ("Hearing Panel Decision"), and deliver it to the Title IX Coordinator (or Provost if faculty) detailing the following:
 - Identification of the allegations;
 - A description of the procedural steps;
 - Findings of fact supporting the determination;
 - Conclusions regarding the application of the policies to the facts;
 - Statement of and rationale for the result as to each on each allegation
 - If panel finds Respondent responsible, report should include sanctions and remedies, if any.
 - The procedures and permissible bases for the Complainant and the Respondent to appeal.

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Possible Findings

- There is sufficient evidence to find Respondent responsible for the policy violation based on the preponderance of the evidence.
 - It is more likely than not that Respondent violated the policy.
- There is insufficient evidence to find Respondent responsible for the policy violation based on the preponderance of the evidence.
 - It is not more likely than not that Respondent violated the policy.

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Sanctions and Remedial Actions

- Factors to consider when finding sanctions or remedial actions include:
 - The nature, severity of, and circumstances surrounding the violation;
 - The disciplinary history of the Respondent;
 - The need for sanctions/ remedial actions to bring an end to the conduct;
 - The need for sanctions/ remedial actions to prevent the future recurrence of the conduct; and
 - The need to remedy the effects of the conduct on the Complainant and the University community.
- Findings and sanctions are subject to appeal

Types of Sanctions for Student Respondents

- Warning
- Probation
- Loss of Privileges
- Restitution
- Discretionary Sanctions such as work assignments, services to the University or other related discretionary assignments
- Residence Hall Suspension
- Resident Hall Expulsion
- Campus Suspension
- University System Suspension
- University System Expulsion (not eligible for online courses)

Sanctions for Employees who are Respondents

- Warning
- Performance improvement Plan
- Required counseling
- Required training or education
- Loss of annual pay increase
- Loss of supervisory responsibility
- Recommendation of discipline in a training program
- For Non-Regular Faculty, immediate termination of term contract and employment;
- For Regular, Untenured Faculty, immediate termination of term contract and employment;
- Suspension without pay;
- Non-renewal of appointment;
- For Regular, Tenured faculty, suspension without pay, removal from campus and referral to the Chancellor to initiate dismissal for cause;
- For staff, demotion;
- For staff, termination.

Remedial Actions

- If Complainant is a student:
 - Permitting the student to retake courses;
 - Providing tuition reimbursement;
 - Providing additional academic support;
 - Removal of a disciplinary action; and
 - Providing educational and/or on-campus housing accommodations.
- If Complainant is an employee:
 - Removal of a disciplinary action;
 - Modification of a performance review;
 - Adjustment in pay;
 - Changes to the employee's reporting relationships; and
 - Workplace accommodations.

Questions?



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- **Provisions for a Virtual Hearing are as follows:**
 - All participants must use the ZOOM platform through a computer. No participants will be allowed to "call in" using their telephone.
 - The room link will be sent prior to the hearing.
 - The Respondent and Complainant must use the authenticated, licensed ZOOM log in provided by the University.
 - Information on this can be found at <https://it.mst.edu/services/zoom/>
 - It is the Respondent and Complainant's responsibility to secure this authenticated program on their own device.
 - The Respondent and Complainant will be expected to follow the same procedural processes for a hearing as outlined in CRRs.
 - Procedural questions can be submitted directly to the Panel Chair using the "chat" feature of ZOOM.
 - All parties except the Panel Chair will remain "muted" unless it is an appropriate moment for them to speak as outlined in the procedures for a hearing, and they will be "unmuted" at those times.
 - Advisors to the Respondent and Complainant will be "muted" at all times in the hearing room, it is the parties responsibility to find an alternative method of communication with their advisor through a third party messaging service if need be.
 - During live cross examination, the advisors and responding party will be unmuted to allow for the answering of the question, and any objections to questions.
 - The Respondent and Complainant will only be able to message the Panel Chair directly using the chat feature, and are encouraged to do so if they have a procedural question, or general inquiry.
 - Witnesses will be held in the waiting room while the hearing proceeds, and be brought into the hearing when called by the chair.
 - All parties will be provided separate, private "breakout rooms" where they will be able to confer with their advisor in private, and off the record, and may request a conference at any time by messaging the Panel Chair directly.
 - The Title IX Coordinator, or their deputy, will be present in the room to facilitate the technical components of the virtual hearing, and reserves the right at any time to stop the proceedings to adjust the technical aspects of the

meeting space so that it adheres to the UM System Collected Rules and Regulations governing the operations of the hearing. The Title IX Coordinator will be providing no guidance or direction to the Panel when it comes to the subject matter being discussed, or deliberated.

Decision Making/Analysis Flow

Policy Violation	Point of Fact Confirming	Point of Fact Refuting

Analysis/Rationale Questions to Consider:

- Is there a preponderance (51% did happen, or 51% did not happen) of evidence?
 - If there is, explain that.
 - “Quinn, I have thoroughly reviewed the facts at hand as presented in the investigation report and hearing. This included your testimony, the testimony of the complainant, witness testimony and documentary evidence. I have found that there is a preponderance of the evidence that shows you are responsible for violating the University of Missouri Collected Rules and Regulations 600.020: Sexual Misconduct, nonconsensual sexual intercourse.”
 - If there is not, explain that.
 - Identify the facts, one/two sentence paragraphs are okay.
 - “Quinn, text messages provided by Blake have identified that you both had been talking about attending this party for two weeks prior, and in those conversations Blake expressed how they were concerned because they did not drink often, and their tolerance was low. Blake also shared with you that they on a prescription for depression that sometimes had adverse interactions with Alcohol.”
- What’s the respondent’s defense?
 - If the facts at hand support their defense, identify that.
 - If the facts at hand do not support their defense, identify that.
 - “You stated in your interview with the University Investigator that you did not give Blake any drinks, or see Blake drink alcohol on the night the incident occurred, so how would you know how much they had to drink? However, through the course of the investigation multiple witnesses attested to seeing you give Blake drinks which summed to 6 alcoholic beverages, and 3 alcoholic Jell-O shots of unknown strength in the span of two hours, and overheard you actively encouraging Blake to “get wasted”. I have no reason to doubt the credibility of these witnesses, and believe that you are factually incorrect on this point.”
- How would “A Reasonable Person” respond?
 - A Reasonable Person is: a fictional person with an ordinary degree of reason, prudence, care, foresight, or intelligence whose conduct, conclusion, or expectation in relation to a particular circumstance or fact is used as an objective standard by which to measure or determine something (as the existence of negligence)
 - Use “a reasonable person” in your language
 - If the respondent’s behavior was contrary to what “a reasonable person” would do, explain that as well.
 - “You attested to observing Blake not handling the alcohol well. A reasonable person would have been able to tell, after observing Blake’s slurred speech, stumbling, passing in and out of consciousness, and vomiting that they were incapacitated, and as defined by University Policy, unable to provide consent to any sexual activity.
- What is the appropriate Remedy to this situation?
 - Consider the impact to the complainant and/or respondent in your rationale.
 - Weigh the wishes of the complainant.
 - If there is anything else that impacted your thought process, now is the time to include that.
 - “Quinn, the evidence in this matter is substantial, it is also clear that you actively lied to the University Investigator throughout the process, as the majority of your points of fact were debunked by neutral witnesses. Given the significant impact that this incident of non-consensual sexual intercourse has had on Blake, and the predatory nature of your actions leading up to the event, I have determined the only course of action available to me to protect the S&T community is University Expulsion. You are immediately expelled from Missouri University of Science & Technology.”