

Due Process and Other Legal Considerations

Equity and Title IX Annual Training

Cheryl Schuetze

Senior Counsel, Office of the General Counsel



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Due Process

Fair and rule-based process by which a person has notice of the allegations and potential consequences before the Government deprives them of liberty or property.



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Notice

Notice of Hearing

- Outlines what you will need to decide
- Identifies the specific policy violations alleged
- Sent in advance so all parties can prepare
- Your decision is limited to what the notice charges

Exhibit 4: EC Notice of Hearing 7.16.2026

UNIVERSITY of MISSOURI OFFICE of INSTITUTIONAL EQUITY

July 2, 2026

VIA ELECTRONIC MAIL
Ethan Caldwell
ethanc@tigermail.com

RE: Notice of Hearing

Dear Ethan Caldwell:

This letter is to inform you that the University will proceed with Hearing Panel Resolution to address your alleged violations of the University of Missouri Collected Rules and Regulations.

Please read the contents of this letter and associated information carefully.

Section I: Hearing Date and Location

Section II: Hearing Panelist Information

Section III: Investigative Report and Relevant Materials

Section IV: Timeline and Deadlines

Section V: Title IX Resolution Process and Applicable Policies

Section VI: Procedural Information

Privacy: In order to protect the integrity of the investigation and to respect all parties involved, please keep this information private, except for discussions with your support person.

Disability Accommodation: If you are a person with a disability and believe you may need accommodations for any part of the process, please reach out to the investigator of your case for assistance with your request.

Sincerely,



Andy Hayes
Assistant Vice Chancellor & Title IX Coordinator

Enclosures

cc: Ross Brown, Respondent Advisor
Heidi Shearer, Senior Investigator
KC Atkinson, Hearing Officer



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Opportunity to be Heard

Both parties get an equal opportunity

- Neither party is given an advantage in the process
- They don't have to take the opportunity – can refuse to participate or answer questions which **will not be held against them**



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Proving the Case

Presumptions
Standard of Proof
Evidence



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Starting Point: Presumption of Non-Responsibility



“The Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Equity Resolution process.”

CRR 200.040.P.2



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What the Presumption Means

1

Don't pre-judge the case

Come to the hearing with an open mind about the outcome.

2

Don't decide too early

Reach no conclusion until you have heard all of the evidence.

3

Ties go to the Respondent

If the evidence is evenly balanced, the Respondent is not responsible.



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Before the Hearing

Review all evidence and the Investigative Report

- Read the full report and every exhibit
- Note inconsistencies and open questions

Consider what you still need to know

- Draft questions for the parties and witnesses
- Identify the gaps the hearing must fill



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During the Hearing: Burden of Proof

The level of certainty and degree of evidence necessary to establish a policy violation.

Preponderance of the Evidence

More likely than not — a greater than 50% chance the Complainant is correct.

Weigh the credibility, relevance, and overall weight of the evidence to determine which side is more likely correct.



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The Spectrum of Proof Standards

Beyond a Reasonable Doubt

Firmly convinced

Clear and Convincing

Substantially more likely than not

Preponderance of the Evidence

More likely than not — greater than 50% chance the Complainant is correct (our standard)

Reasonable Suspicion

Fair probability



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Weighing the Evidence

- **Credibility**

Is the account consistent, plausible, and supported?

- **Relevance**

Does it bear on a fact that actually matters here?

- **Weight**

How much does it move the analysis one way or the other?

Together, these determine which side is more likely correct.



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Types of Evidence

Direct Evidence



Directly proves a fact at issue

- Video of the incident
- A photograph of the scene

Circumstantial Evidence



Creates an inference as to a fact at issue

- Observed injuries, but no one saw the fight
- Wet pavement, but no one saw it rain



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Evidence Must Be Relevant

- Helps prove or disprove a point
- The point should actually matter to the issue at hand

If it does not make a fact that matters more or less likely, it should not be considered.



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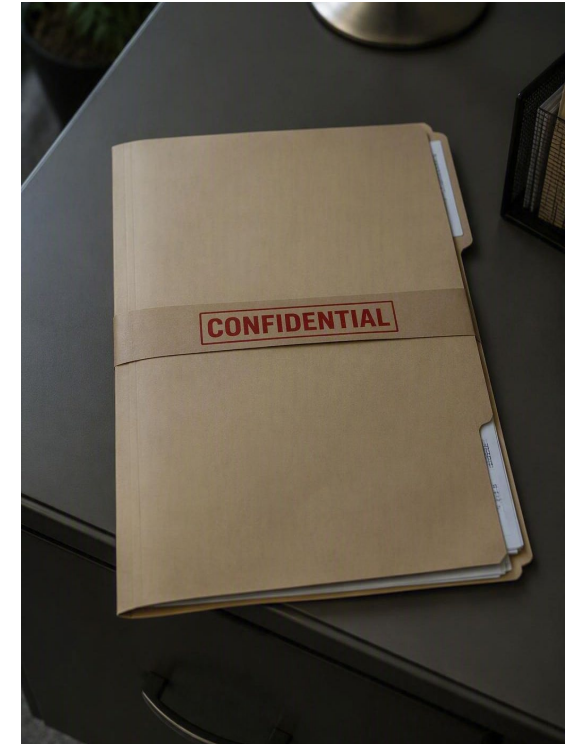
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Evidence That Is Not Allowed

- Character evidence
- Other bad acts
- Privileged or confidential records
- In Title IX: statements by a witness who is not subject to cross-examination
- Irrelevant or immaterial evidence
- Evidence that is more prejudicial than probative
- Prior sexual history

Two narrow exceptions apply — see the next slide.



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Prior Sexual History: Two Narrow Exceptions

Generally not admissible, except:

- To show that someone other than the Respondent committed the conduct alleged by the Complainant
- When the party's history is offered to demonstrate consent



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“It is the responsibility of each person to ensure they have the consent of all others engaged in the sexual activity.”

CRR 600.010.B.2



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Consent

- Consent to sexual activity is knowing and voluntary.
- There is no consent if a person is:
 - Younger than the legal age of 17
 - Incapacitated
 - Subject to coercion, force, or the threat of either



How Consent Is Communicated

- Consent, lack of consent, or withdrawal of consent may be expressed by words
- It may also be expressed by non-verbal acts
- Silence or the absence of resistance does not establish consent
- A current or former relationship, or prior activities, does not alone indicate consent
- Consent to one activity does not imply consent to other activities



Incapacitation

1

What it means

Rational decision-making is rendered impossible.

2

Common causes

Drugs, alcohol, disability, sleep, unconsciousness, or illness.

3

The standard

The Respondent knew or should have known the person was incapacitated.



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Indicators of Incapacity

- Lack of awareness of circumstances or surroundings — inability to understand the who, what, where, how, or why; blackout state
- Inability to communicate coherently, particularly as to consent — slurred or incoherent speech
- Lack of full control over physical movements — difficulty walking or standing without stumbling or assistance
- Physical symptoms — vomiting or incontinence



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Discussion

Five scenarios

Is the evidence admissible?

What weight should it carry?



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Discussion: Scenario 1

- **The claim:** Sexual assault Title IX claim by a female student Whitaker against a male student Caldwell (Mock Hearing).
- **The evidence offered:** The Caldwell wants to introduce evidence of their past hook-ups.
- **Admissible?** What weight should it carry?



Discussion: Scenario 2

- **The claim:** Sexual assault Title IX claim by a female student Whitaker against a male student Caldwell (Mock Hearing).
- **The evidence offered:** The Whitaker wants to introduce evidence of her ability to handle alcohol.
- Admissible? What weight should it carry?



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Discussion: Scenario 3

- **The claim:** Race discrimination Equity claim by a student against a faculty member.
- **The evidence offered:** The student wants to introduce evidence of their grades.
- Admissible? What weight should it carry?



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Discussion: Scenario 4

- **The claim:** National origin discrimination Equity claim by an employee against their supervisor.
- **The evidence offered:** The supervisor wants to introduce evidence of the employee's visa status.
- Admissible? What weight should it carry?



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Discussion: Scenario 5

- **The claim:** Pregnancy discrimination Equity claim by an employee against the University.
- **The evidence offered:** The employee wants to introduce her own medical records related to the pregnancy.
- Admissible? What weight should it carry?





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