

Title IX Advisor Training

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Title IX

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance."



Title IX of the Education Amendments of 1972

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600.020 Sexual Harassment under Title IX - for matters involving conduct alleged to have occurred on or after August 14, 2020

Executive Order 40, 4-8-14; Revised 6-19-14; Revised 9-22-14 by Executive Order 41. Revised 2-9-17 with an effective date of 3-1-17; Revised 7-28-20 with effective date of 8-14-20; Revised 9-7-23; Revised 6-27-24; Revised 9-12-24.

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Prohibited Conduct

University policy “prohibits all students, employees, volunteers and visitors at the University from engaging in sexual harassment in a University education program or activity against a person in the United States.”

CRR 600.020.A

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Sexual Harassment: Conduct on the basis of sex that satisfies one or more of the following:

- **Hostile Environment**
 - Severe *and*
 - Pervasive *and*
 - Objectionably offensive *and*
 - Denies equal access
- **Quid Pro Quo**
- **Dating Violence**
- **Domestic Violence**
- **Sexual Assault**
 - Rape
 - Sodomy
 - Sexual Assault with an Object
 - Fondling
 - Incest
 - Statutory Rape
- **Stalking**



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CRR 600.020.B.1

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Advisors

Advisors. The individuals selected by the Complainant and the Respondent, or if a Party does not have their own Advisor, selected by the University, to conduct all cross-examination and other questioning on behalf of a Party at a hearing.

- An Advisor may, but is not required to, be an attorney.



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CRR 600.030.C.4

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Role of Advisors

- **Conduct cross-examination and other questioning for that Party.** A Party may not directly question any other Party or any witness; all cross-examination and other questioning on behalf of a Party must be conducted by their Advisor.
- **Ask the other Party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.** An Advisor may conduct cross-examination and other questioning for a Party, and object to questions on limited grounds as specified in the Rules of Decorum.
- **The Advisor may not make a presentation or otherwise represent the Complainant or the Respondent during the hearing.**
- **The Advisor may consult with the Party** quietly or in writing, or outside the hearing during breaks, but may not speak on behalf of the Party, other than to conduct cross-examination or other questioning for the Party.



CRR 600.030.K.2

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Title IX Flow

1. Complaint
2. Notice of Allegations
3. Investigation ← Or maybe here
4. Resolution
 1. Informal
 2. Administrative
 3. Hearing Panel ← Here's where you come in



CRR 600.030

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Title IX Pre-Hearing Process

▪ Notice of Hearing

- 20 business days before hearing
- Description of alleged violation
- Copy of final investigative report and evidence
- Notice of how to request evidence not in the report
- Panel members



CRR 600.030.Q.3

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Title IX Pre-Hearing Process

At least 15 business days before hearing provide investigator:

▪ Witness List & Documentary Evidence

- list of all names of proposed witnesses intends to call at the hearing
- Copies of all exhibits intends to use at the hearing

▪ Objection to Panel Members



CRR 600.030.Q.4 5

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The Hearing

1. CP may give a statement
 - Panel asks questions
 - Cross Exam by RP's advisor
 2. CP calls witnesses
 - Panel asks questions
 - Cross Exam by RP's advisor
 3. RP may give a statement
 - Panel asks questions
 - Cross Exam by CP's advisor
 4. RP calls witnesses
 - Panel asks questions
 - Cross Exam by CP's advisor
 5. Investigator answers questions
 - Panel asks questions
 - Cross Exam by CP's advisor
 - Cross Exam by RP's advisor
 6. Investigator calls witnesses
 - Panel asks questions
 - Cross Exam by CP's advisor
 - Cross Exam by RP's advisor
- * All parties can submit documentary evidence



CRR 600.030.Q.10.a

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Hearing Process Rules

- **The formal rules of evidence shall not apply**
- **Relevancy and admissibility of any evidence shall be determined by the Hearing Officer, whose ruling shall be final**
- **Advisors may object to questions on limited grounds as specified in the Rules of Decorum**
- **Procedural questions not covered by CRR will be decided by the Hearing Officer**

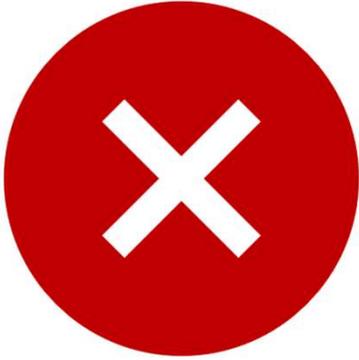


CRR 600.030.Q.11

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Title IX No-Nos



- **Not Subject to Cross = No Reliance**

“If a Party or witness does not submit to cross-examination at a hearing, the Hearing Panel must not rely on any statement of that Party or witness in reaching a determination regarding responsibility, but no inference can be drawn from the fact that a Party or witness failed to submit to cross-examination.”

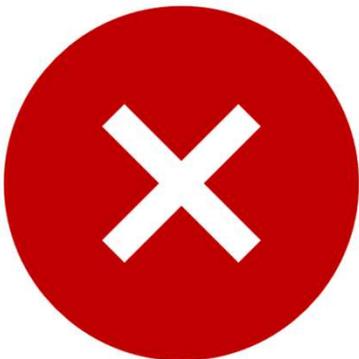


CRR 600.030.Q.11.1

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Title IX No-Nos



- **Not Subject to Cross = No Reliance**

- **No Character Evidence**
- **No Other Bad Acts (unless shows pattern)**
- **No Dr/Patient Records**
- **No Privileged Records**
- **No Violation of Rules of Decorum**



CRR 600.030.Q.11.1

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Burden of Proof

The standard of proof will be “preponderance of the evidence,” defined as determining whether the evidence shows it is more likely than not that a policy violation occurred.

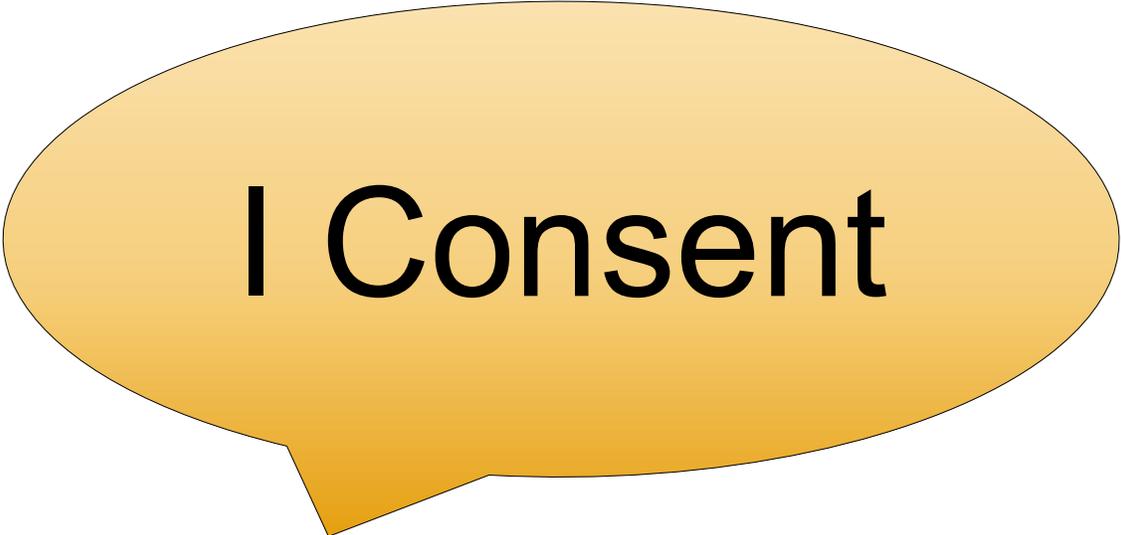
Presumed Not Responsible



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I Consent



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Scenario

- CP is a 19-year-old Freshman sorority member
- RP is a 19-year-old Freshman fraternity member
- CP and RP meet at a party at his fraternity
- Both consume 4-5 cups of the “social drink”
- CP & RP go to RP’s room and have sex
- CP files a Title IX complaint, claiming she was too intoxicated to consent



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Consent

Consent to sexual activity is knowing and voluntary.

No consent if:

- Younger than legal age (17 years-old)
- Incapacitated
- Coercion, force, or threat of either

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



CRR 600.020.B.2 3

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Consent

- Consent, lack of consent, or withdrawal of consent:
 - Words
 - Non-Verbal Acts
- Silence or absence of resistance does not establish consent.
- Current or former relationship or activities does not alone indicate consent
- Consent to one activity does not imply consent to other activities



CRR 600.020.B.2

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Consent - Incapacitation

- Incapacitation: rational decision-making is rendered impossible
 - Drugs
 - Alcohol
 - Disability
 - Sleep
 - Unconsciousness
 - Illness
- Respondent knew or should have known



CRR 600.020.B.3

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Indicators of incapacity

- Lack of awareness of circumstances or surroundings (e.g., an inability to understand, either temporarily or permanently, the who, what, where, how and/or why of the circumstances; blackout state)
- Inability to physically or verbally communicate coherently, particularly with regard to consent (e.g., slurred or incoherent speech)
- Lack of full control over physical movements (e.g., difficulty walking or standing without stumbling or assistance)
- Physical symptoms (e.g., vomiting or incontinence).



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Consider the Evidence - Object?

- CP flirted with multiple men at the party
- Someone took pictures of CP making out with RP at the party and sent them to her boyfriend
- CP goes to parties every weekend and consistently drinks multiple drinks
- CP went to the hospital the next day to get a tox screen and a rape kit completed
- Witness who took the pictures does not attend the hearing
- RP invokes the 5th amendment – appears but does not answer questions
- RP answers questions, but states he was too drunk to remember anything, so gives no substantive answers



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Scenario Twists

- CP vomits on RP's floor
- Alternatively: RP doesn't know CP vomited.
- While being cleaned up, CP tells bystander she knows where she is and wants to stay
- CP & RP walk up two flights of stairs to RP's room
- CP & RP have sex 30 minutes after vomiting
- CP & RP have sex 6 hours after vomiting
- Witness: No protests/both participate


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Resources

- <https://equity.missouri.edu/reporting-and-policies/>
- Guide to Understanding the Title IX Process
- CRR 600.020, 600.030
- <https://www.umsystem.edu/ums/equity/titleix>
- Andy Hayes – MU Title IX Coordinator
- Charvel Vizitei – OGC: charvel.vizitei@umsystem.edu
- Cheryl Schuetze – OGC: cheryl.schuetze@umsystem.edu


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Questions





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