

Making the Decision: Equity & Title IX Panel Chair Training

Cheryl Schuetze & Charvel Vizitei
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Decision Making Process



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Decision Making Process

- 1 Receive Evidence**
- 2 Determine Responsibility**
- 3**
- 4**



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Decision Making Process

- 1 Receive Evidence**
- 2 Determine Responsibility**
- 3 Sanctions & Remedial Measures**
- 4**



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Decision Making Process

- 1 Receive Evidence**
- 2 Determine Responsibility**
- 3 Sanctions & Remedial Measures**
- 4 Draft Decision**



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The Panel's Job

Mission: Determine whether the Respondent is responsible for any violations of University policies and, if so, what sanctions and/or remedial actions are appropriate.

In the room where it happens

Two-Step Process

1. Responsibility
2. Sanctions & Remedial Actions



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Standard: Preponderance of the Evidence



Facts: Whether each fact is more likely true than not.

Responsibility: Whether, given the facts found, the Respondent is more likely responsible than not for violating a University Rule.



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1 Receive Evidence

1. Before the Hearing

- Read, listen, or watch all the evidence
- Consider what else you'd like to know
- Note issues, but keep an open mind

2. At the Hearing

- Read, listen, or watch all the evidence
- ASK QUESTIONS
- Note issues, but keep an open mind



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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."



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Evidence – Title IX

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

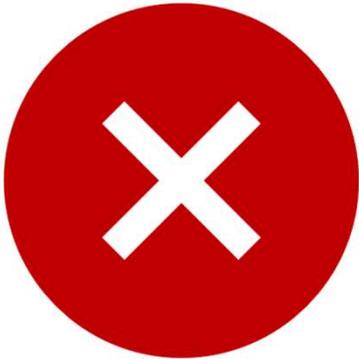


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Title IX No-Nos



- **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.I

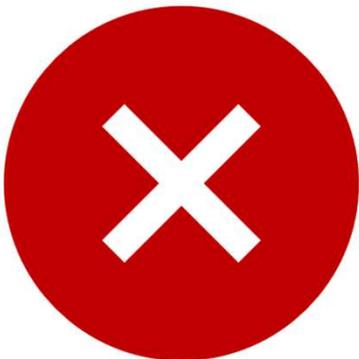


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Title IX No-Nos



- **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**



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Title IX Objections

- Hearing Officer decides:
 - “The **relevancy and admissibility of any evidence** offered at the hearing shall be determined by the Hearing Officer, whose ruling shall be final.”
 - “The Party’s Advisors may object to questions on limited grounds as specified in the **Rules of Decorum**. The Hearing Officer will rule on such objections and that ruling shall be final.”
 - “A Party’s Advisor will be permitted to ask the other Party and any witnesses relevant questions and follow-up questions, including those challenging credibility. **Before a Complainant, Respondent or witness answers a cross-examination or other question, the Hearing Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.** Where the Hearing Officer permits a question to be answered, a presumption shall be made that the Hearing Officer determined that the question was relevant.”



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Equity

"The University of Missouri does not discriminate on the basis of race, color, national origin, ancestry, religion, sex, pregnancy, sexual orientation, gender identity, gender expression, age, disability, protected veteran status, and any other status protected by applicable state or federal law."



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Evidence – Equity

1. **Investigator's Report & Testimony**
 - Panel asks questions
 - CP asks questions
 - RP asks questions
2. **Investigator calls witnesses**
 - Panel asks questions
 - CP asks questions
 - RP asks questions
3. **CP's Testimony**
 - Panel asks questions
 - RP's questions are read to CP by panel
4. **CP's Witnesses**
 - CP asks questions
 - RP asks questions
 - Panel asks questions
 - Investigator asks questions
5. **RP's Testimony**
 - Panel asks questions
 - CP's questions are read to CP by panel
6. **RP's Witnesses**
 - RP asks questions
 - CP asks questions
 - Panel asks questions
 - Investigator asks questions

* All parties can submit documentary evidence

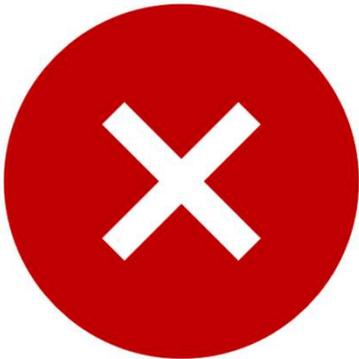


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Equity No-Nos



▪ **No Direct Questioning**

“The Respondent may not directly question the Complainant and the Complainant may not directly question the Respondent. However, if both Complainant and Respondent request the opportunity, direct questioning between the Parties will be permitted in the Hearing Panel Resolution Process. Otherwise written questions will be directed to Hearing Officer, and those questions deemed appropriate and relevant will be asked on behalf of the requesting Party.”

CRR 600.040.R.4

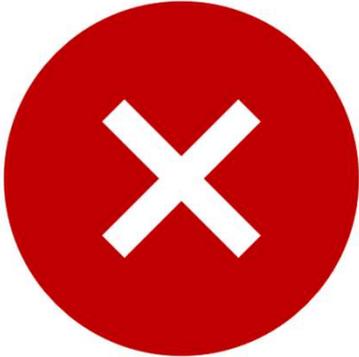


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Equity No-Nos



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



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Equity Objections

- Hearing Officer decides unless a panel member request they presents the question to the panel for decision.
 - Majority vote is final



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2 Responsibility

1. Find Facts
 - Credibility
 - Incomplete information (did you ask questions during the hearing?)
2. Apply Facts to Policy
 - Consider each element of the policy
 - Quid Pro Quo – An **employee of the University** **conditioning** the provision of an **aid, benefit, or service** of the University **on an individual's participation in unwelcome sexual conduct**. CRR 600.020(B)(1)(a)
 - If found facts supporting each element of policy by a preponderance of the evidence, find responsible.






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3 Sanctions & Remedial Measures

1. Sanctions:
 - Applies to the Respondent
 - To prevent and eliminate impermissible discrimination and harassment in our educational programs, activities, and employment.
2. Remedial Measures:
 - Applies to the Complainant
 - To address the effects of the violation(s) of the University's Anti-Discrimination Policies on the Complainant.






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Who Decides the Sanctions?

Title IX		Equity	
▪ Students	} Hearing Panel	▪ Students	→ Hearing Panel
▪ Faculty		▪ Faculty	→ Provost
▪ Non-MUHC Staff		▪ Staff	→ Equity HR & Supervisor
▪ MUHC Staff	→ AMC	▪ University	→ Equity Officer & Administrator

CRR 600.030(S)

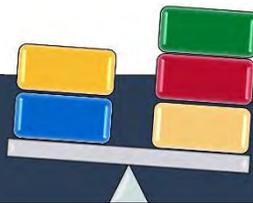
CRR 600.040(S); 600.050(R)



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Sanctions: Factors to be Considered

1. Nature, severity of, and circumstances surrounding the violation
2. Disciplinary history of the Respondent
3. Need for sanctions to bring an end to the conduct
4. Need for sanction to prevent future recurrence of the conduct
5. Need to remedy the effects of the conduct on the Complainant or University community



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Examples of Mitigating vs Aggravating Factors

- Genuine remorse.
- The conduct was committed in error, by mistake, or was clearly unintentional.
- A request for leniency by the Complainant.
- Conduct was an error in judgment.

- Lack of contrition.
- The Respondent has prior conduct violations.
- The Respondent was in a position of power or authority over the Complainant.
- Conduct included the use of force or physical violence, or the intentional administration of a drug or substance to the Complainant.



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Examples of Student Sanctions

Added Requirements

- Warning
- Probation
- Restitution to University
 - Service, money, or materials
- Discretionary Work
 - Work Assignment/Essay
 - Community Service
 - Educational Programming
 - Counseling
- Non-Contact



Exclusions

- Loss of Privilege(s)
 - Access to campus email, parking, rec center, dining, etc.
- Suspension from:
 - Residence Hall
 - Specific Campus
 - Entire System
- Expulsion from:
 - Residence Hall
 - Entire System
- Withdraw of Recognition



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Examples of Faculty Sanctions

Added Requirements

- Warning
- Written reprimand in personnel file
- PIP
- Training/Education
- Counseling
- Move Office/Workspace
- Non-Contact



Losses

- Loss of annual pay increase
- Loss of privileges/duties
- Suspension
- Excluded from areas of campus
- Non-Renewal (NTT)
- Recommend termination (Tenured)



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Examples of Staff Sanctions

Added Requirements

- Warning
- Written reprimand in personnel file
- PIP
- Training/Education
- Counseling
- Move Office/Workspace
- Non-Contact



Losses

- Loss of annual pay increase
- Loss of privileges/duties
- Demotion
- Suspension
- Excluded from areas of campus
- Termination



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Remedial Actions

Student Complainant

- Retake a course
- Tuition reimbursement
- Remove a disciplinary action
- Educational accommodation
- On-Campus housing accommodation

Employee Complainant

- Remove disciplinary action
- Modify a performance review
- Adjustment in pay
- Change reporting relationship
- Workplace accommodation

Offer or require training and/or monitoring as appropriate to address effects of violations



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The Written Determination

4 Draft Decision

- The basic practice is largely the same with Equity hearings and TIX hearings.
- You should be provided with a decision template from the Equity or TIX Officer of the campus where the incident occurred.



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What Makes A Good Written Determination?

- Identifies the allegations as defined in CRR 600.010 or CRR600.020
- A description of the procedural steps taken
- Findings of Fact—what the panel believes happened
- Rational—why the panel came to its decision
- Sanctions/Remedial Actions



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Allegations
and
Procedure

- The Good News: This is usually already part of the decision template.



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<p>Findings of Fact</p>	<ul style="list-style-type: none"> • The more particular the better. • This is a description of what Facts the panel found to be more likely than not true. <ul style="list-style-type: none"> • I am keeping notes of the pieces of evidence or testimony which were of particular interest to the panelists during the closed session discussion. If you feel you need that information I will get it to you.
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<p>Findings of Fact</p>	<p>Title IX has a small difference from Equity decisions in that:</p> <p>The written determination must include how the Universities TIX policy are applied to each of the supporting facts.</p> <p>If you did this in an Equity Determination no harm will come—it just has to be written into a TIX determination</p>
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The Rational

For the most salient facts state the reasons why the panel found them to be “more likely than not” true.

Examples:

- “The video taken on the night of the incident shows that respondent was present...”
- “The testimony of multiple witnesses with similar observations caused the panel to find that more likely than not the complainant was not where he said he was...”



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The Rational

Often you will hear cases where there isn't a lot of direct evidence so the panel will be making credibility determinations on the testimony they hear.

Some Example Statements:

- “The panel did not find Respondent’s explanation for X to be credible...”
- “The panel found that complainant’s changing story made her claim that X occurred less credible.”



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<h2>The Rational</h2>	<p>If the Panel decided to disregard a piece of evidence note why they came to this decision.</p> <p>Example Statement: “The video was too grainy to rely upon” etc.</p>
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<h2>Sanctioning</h2>	<ul style="list-style-type: none"> • If there is some mitigating or aggravating factors state what those factors were and how it influenced the sanctioning decision. • Example statement: <ul style="list-style-type: none"> • “the panel found that Respondent was sincerely remorseful and has already taken steps to correct the behavior, therefore the panel imposes X sanction. • If remedial measures were discussed and decided on by the panel include them here. Remedial measures are those which apply to complaining party.
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This is a Team Effort

- When the decision is drafted, the Panel Chair will send the letter out to the panelists and the panel advisor for comment.
- When the panelists and panel advisor agree that the letter accurately reflects their deliberation process the letter will go to the Equity Officer or TIX Coordinator and they will read it over.
- With so many eyes on the document, we will find any pressing issues before it is ever sent to the parties!



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Appeals

Once the Decision letter is issued the parties have an opportunity to appeal.

There are only 4 grounds for appeal

1. A procedural irregularity that affected the outcome of the matter (e.g., material deviation from established procedures, etc.)
2. To consider new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter;
3. The Equity Officer, Investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; or--
4. The sanctions fall outside the range typically imposed for this offense, or for the cumulative conduct record of the Respondent.



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“Sanctions
fall outside
the range
typically
imposed for
this offense”

Tips to avoid this on appeal:

- We have a sanctioning guide to follow; the panel advisor can speak to the risks associated with a particular sanction.
- Because the PAO has significantly more information on past actions and administrative resolution sanctions, it is good practice to ask them after the closing statement if they have a recommended sanction.
- It is also reasonable to ask the respondent if they have a recommended sanction in the event that they are found responsible. These data points can narrow down the kind of sanctions the panel wishes to impose.



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