

What is the Process?

Equity vs. Title IX



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

What are the differences between 600.010 and 600.020?

- 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.

600.040 vs. 600.050 Process

- 600.040 provides for a resolution process that includes the following:
 - Conflict Resolution
 - Administrative Resolution
 - Hearing Panel Process
- The Hearing Panel under 600.040 is a three-person panel with panel members randomly chosen from the Equity Resolution Hearing Panel Pool. One member of the Hearing Panel is the Chair.
- 600.050 provides for a resolution process that includes the following:
 - Conflict Resolution
 - Administrative Resolution
- The decision-maker for Administrative Resolution for a staff member respondent is a joint decision by the Equity Officer and the Supervisor of the staff member.

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.

Making a report and Preliminary Contact under 600.030:

- Any person may report sexual harassment to the Title IX coordinator.
- The Complainant is the individual who is alleged to be the victim of the conduct that could constitute sexual harassment.
- Upon receiving a report of sexual harassment, the Title IX Coordinator shall promptly contact the Complainant to discuss the availability of Supportive Measures with or without the filing of a Formal complaint, and explain the process for filing a Formal Complaint.

Supportive Measures under 600.030

- Supportive Measures: non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent before or after the filing of a Formal Complaint, or where no Formal Complaint has been filed.
- Supportive Measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening either Party.

Formal Complaints

- A Formal Complaint must be filed in order for the University to move forward under 600.030 with an investigation.
- A Formal Complaint is a written document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the University investigate the allegation of sexual harassment.

Notice of Allegations under 600.030

- Upon receipt of a Formal Complaint, a **Notice of Allegations** will be sent to the Parties that includes:
 - A description of the University's Title IX process.
 - Notice of the allegations of sexual harassment, including sufficient details known at the time.
 - A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Title IX process.
 - Notifying the Parties of their right to have an Advisor of their choice at the hearing, who may, but is not required to be an attorney.

Rights of the Parties...

These are some of the rights of the parties under 600.030:

- To be treated with respect and to be free from retaliation.
- To have access to University support resources.
- To request a no contact directive between the Parties.
- To have a support person of their choice accompany them to all interviews and meetings, excluding the hearing unless the support person is also the party's advisor.
- To receive an investigative report that fairly summarizes the relevant evidence.
- To have an opportunity to present a list of potential witnesses and provide evidence to the Investigator.
- To be informed of the finding, rationale, sanctions and remedial actions.
- To have an opportunity to appeal the dismissal of all or a portion of a Formal Complaint, and appeal the determination of a Hearing Panel or other decision-maker.

Support Person(s)/ Advisor(s) under 600.030

- **Support Person:** Each Party is allowed one support person of their choice present for all interviews and meetings. The Support person may act as the party's Advisor.
- **Trained Support Person:** Administrators, faculty or staff at the University trained on the Title IX process; any student who is a party may request to have a Trained Support Person assigned to them.
- **Advisor(s):** Each party may have an advisor of their choice at the hearing to conduct all cross-examination and other questioning for that party.
- The Advisor may, but is not required to be, an attorney.
- If a party does not have an advisor of their choice at a hearing, the University is required to provide an advisor of the University's choosing, at no cost to the party, to conduct all cross-examination and questioning on behalf of that party.

600.030 Investigations

- **Investigation:** Upon receipt of a Formal Complaint, the Title IX Coordinator will promptly appoint a trained investigator to investigate the allegations of sexual harassment.
- The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University.
- The final investigative report will fairly summarize the relevant evidence; all investigations will be thorough, reliable and impartial.

Dismissal under 600.030

Dismissal of a Formal Complaint:

A Formal Complaint **shall** be dismissed if:

- a. The conduct alleged would not constitute sexual harassment under 600.020 even if proved;
- b. The conduct alleged did not occur in an education program or activity of the University; or
- c. The conduct alleged did not occur against a person in the United States.

A Formal Complaint **may** be dismissed if:

- a. The Complainant notifies the Title IX Coordinator that they would like to withdraw the Formal Complaint or any allegations therein;
- b. The Respondent is no longer enrolled or employed by the University; or
- c. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination.

Informal Resolution under 600.030

■ Informal Resolution:

- A party's decision to engage in Informal Resolution must be voluntary, informed and in writing.
- Mediation, facilitated dialogue
- Requires a neutral facilitator
- The parties have the right to withdraw from the process any time prior to agreeing to a final resolution.

■ Administrative Resolution:

- A type of Informal Resolution under 600.030
- Decision-maker is the Title IX Coordinator, except for Faculty Respondents where the final decision-maker is the Provost.
- Standard of proof is preponderance of the evidence.
- Parties may withdraw at any time prior to the rendering of the decision.
- Parties may appeal from the decision.

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.

Questioning of parties and witnesses at a hearing under 600.030

- A party is subject to direct cross-examination by the other party's advisor; the parties may not directly question each other.
- 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 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.

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.

Questioning of a Party under 600.040 or 600.050

- 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.
- Under the 600.050 process, there is no hearing; parties may submit questions for the other party to be asked by the decision-makers.

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.

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”; 50% +
This is the standard of proof in the Title IX and Equity Resolution processes.

Questions?



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