

I'm Doing this Again?

Understanding Equity & Title IX

August 2022



University of Missouri System
COLUMBIA | KANSAS CITY | ROLLA | ST. LOUIS

QUESTION 1

- Which option best describes your role working in the area of Equity & Title IX?
 - ☐ Staff member in an Equity & Title IX Office
 - ☐ Support Person
 - ☐ Advisor
 - ☐ Hearing Panelist
 - ☐ Appellate Officer



QUESTION 2

- If you are or have been appointed as a hearing panelist, please describe your level of experience on Hearing Panels in the chat.
 - ☐ First appointment
 - ☐ Trained but never served
 - ☐ Served previously
 - ☐ Served as hearing panel chair



Equity

Discrimination & Harassment

Equity

University of Missouri Statement of Non-discrimination, CRR 600.010

"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.



Equity – Discrimination & Harassment

Discrimination or Harassment. Conduct that is based upon protected class that:

1. **Adversely affects** a term or condition of employment, education, living environment or participation in a University activity; or
2. **Creates a hostile environment** by being sufficiently severe or pervasive and objectively offensive that it interferes with, limits, or denies the ability to participate in or benefit from the University's educational programs, activities, or employment.



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Equity – Discrimination & Harassment

Discrimination: Treating someone differently based on a protected class or status

- A professor not excusing a pregnant student's absence from class despite the absence being medically necessary due to the student's pregnancy.
- An employee is not permitted to dress in religious garb as per the employee's religious beliefs because the employer believes it might send the wrong image to its customers.
- A job applicant is not given an interview because the application indicates that the applicant graduated from college in 1974.

Harassment: Engaging in conduct that creates a hostile environment for another because of their protected class

- Jokes, pranks, or negative comments that are hostile or demeaning with regards to a protected category
- Racial slurs
- Repeated requests for dates
- Giving sexually suggestive looks such as staring, winking, and licking lips or touching yourself sexually in front of others
- Symbols that are offensive based on race or religion
- Obscene or offensive e-mails, phone call, or text messages including "sexting"



Title IX

Sexual Harassment

Title IX

Title IX of the Education Amendments of 1972

"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 education program or activity receiving Federal financial assistance."



Title IX Sexual Harassment

- Categories of Prohibited Conduct (that occurs on the basis of sex):
- **Quid Pro Quo**
- **Hostile Environment**
- **Sexual Assault**
- **Dating Violence / Domestic Violence**
- **Stalking**



Title IX Sexual Harassment

- Categories of Prohibited Conduct (that occurs on the basis of sex):
- **Quid Pro Quo**
 - Employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in an **unwelcome sexual conduct**
 - EX: Faculty member conditions a student's grade on whether or not the student will engage in sexual intercourse, despite the student's previous rejection of this idea
- **Hostile Environment**
 - Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the University's education program or activity
 - EX: Student repeatedly makes lewd and offensive comments to another student about the other student's sexual orientation such that it causes the other student to transfer to another residential hall
- **Sexual Assault**
 - rape, sodomy, sexual assault with an object, **fondling**, incest, statutory rape
 - **Coercion** = forcing of the private body parts of another person for the purpose of sexual gratification, without consent
- **Dating Violence / Domestic Violence**
 - current/former relationship, current/former spouse, child in common, roommate
- **Stalking**
 - **Course of conduct** directed at a specific person that would cause a reasonable person to fear for safety or suffer substantial emotional distress



Jurisdiction

Power / authority for the University to take action over prohibited conduct

EQUITY

- Occurs on the UM premises or at University sponsored or University supervised functions
- Off-campus:
 - To protect physical safety of students, employees, and visitors or other members of University community
 - If effects of conduct interfere with or limit any person's ability to participate in or benefit from the University's educational programs, activities or employment
 - If conduct is related to a faculty member's fitness or performance in the professional capacity of teacher or researcher
 - If conduct occurs when a faculty member is serving in role of a University employee

TITLE IX

- Occurs in an education program or activity
 - Locations, events, or circumstances over which University exercised substantial control over both Respondent and context in which conduct occurs
 - Any building owned or controlled by a student organization that is officially recognized by University
- Occurs against a person in the US



Process and Procedure

Report & Intake

How Reports are Made

- Any person can make a report to the Equity / Title IX Offices
- Reports can be made:
 - In person
 - By mail
 - By telephone
 - By email
 - On-line
- University employees (unless exempted) are **mandated reporters** – required to report any form of discrimination or harassment of which they are aware to the Equity / Title IX Office.



Supportive Measures

- Upon receipt of a report, the Equity / Title IX Office will reach out to the Complainant, if known, to offer **supportive measures**
 - Offered to either Party at no cost
 - Non-disciplinary & non-punitive
 - *Examples:* mutual restrictions on contact, counseling/support services, adjusting course, assignment and/or exam schedules, altering on-campus housing assignment
- Balancing act:
 - Restore or preserve equal access to the University program or activity the Party was previously enjoying prior to the alleged incident
 - Not unreasonably burdensome to the other Party
 - Protect safety of all Parties
 - Deter future occurrences of discrimination or harassment



Process and Procedure

Investigation

Who's Who?

- **Complainant:** Individual alleged to have been subjected to conduct that may constitute discrimination or harassment.
- **Respondent:** Individual who has been reported to be the perpetrator of conduct that could constitute discrimination or harassment.
- **(Equity) Support Person:** Individual selected by a Party to provide support and guidance throughout the Title IX or Equity Process.
- **Advisor:** Individual who will conduct cross-examination and other question on behalf of a Party at a hearing.
- **Hearing Officer:** Individual who will preside over and rule on objections and the relevancy of questions and evidence during a Title IX hearing.
- **Hearing Panel Chair:** Individual who will preside over an Equity hearing.
- **Equity Resolution Appellate Officer:** Individual appointed to review a prior decision of a decision-maker(s).



Investigation Process

- Report is made
 - Intake by Equity & Title IX Office personnel
-
- **Filing of (Formal) Complaint**
 - Notice of Allegations provided to known Parties & Investigation plan developed
 - Fact gathering
 - Parties interviewed
 - Witnesses interviewed
 - Evidence collected
 - Analysis of Information & Report Writing
 - Dismissal / Summary determination
 - Case Resolution/Adjudication



QUESTION

- Chandler tells Joey that Taylor touched his genitals while he was getting his suit altered. Joey reports this to the University Title IX and Equity Office.
- Who is the Complainant?
 - Chandler
 - Joey
 - Taylor
- Who is the Respondent?
 - Chandler
 - Joey
 - Taylor



ANSWER

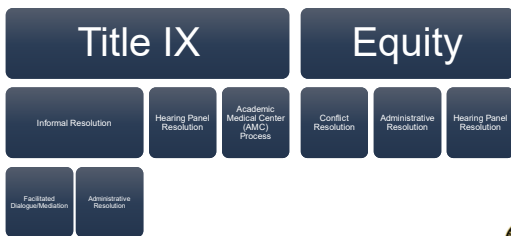
- Chandler tells Joey that Taylor touched his genitals while he was getting his suit altered. Joey reports this to the University Title IX and Equity Office.
- Who is the Complainant?
 - **Chandler**
 - Joey
 - Taylor
- Who is the Respondent?
 - Chandler
 - Joey
 - **Taylor**



Process and Procedure

Which process?

The Processes



Available Process

Conflict Resolution / Informal Resolution

- Parties must voluntarily agree to use this process in writing
- Available at any time during the process
- Can stop this process at any time and move into the other available processes
- Neutral facilitator will foster dialogue with the Parties to an effective resolution, if possible – includes mediation.
- Never available to resolve allegations that an employee sexually harassed or engaged in sexual misconduct with a student

Academic Medical Center Process (Title IX)

- Used to resolve Formal Complaints that arise from a University of Missouri Hospital and Clinic or other designated facility
- Process similar to administrative resolution
- Single decision-maker

Administrative Resolution

- Single or joint decision-maker
- Both Parties must elect to use this process
- Decision-maker can meet with Parties
- Parties may provide questions for decision-maker to ask the other Party
- Decision-maker will render a decision on responsibility and a decision or recommendation on sanction(s)
- Either Party may appeal

Hearing Panel Resolution

- 3-person decision-maker (majority vote)
- Live hearing with testimony and opportunity for questions to be asked of Parties/witnesses
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Appeals

- Grounds for Appeal:
 1. Procedural irregularity that affected outcome
 2. To consider new evidence that was not reasonably available previously and could affect the outcome
 3. Title IX Coordinator, Investigator, or Decision-maker had a conflict of interest or bias against a Party specifically or generally against Complainants or Respondents
 4. Sanctions fell outside the range typically imposed for the offense or for the cumulative record of the Respondent
- Either Party may appeal to Equity Resolution Appellate Officer within 5 days of receiving decision
- Decision of Equity Resolution Appellate Officer is final



Scenario 1

- Faculty member was reported to have asked a student to stay after class multiple times so he could "help" the student with the course. When the student repeatedly declined the faculty member's request, he advised that the student would not receive the same grade unless the student continued to visit him after class – that he liked the attention and had thought there was something special between them.



Scenario 2

- Dana has been working for University Hospital's IT department for 15 years and is 57 years old. She reports that her supervisor has made multiple comments about how great it is when "freshblood" gets into the department, since the millennials are not old dogs and *can* learn new tricks. Dana reports that she has requested to attend various IT trainings but is repeatedly turned down and has not received more than a 1% merit raise in 3 years. Dana also reports that new hires are typically between 22-25 years old.



Scenario 3

- Co-worker A leaves around the breakroom memes that include racial and ethnic stereotypes even after Co-worker B asked Co-worker A to stop, resulting in Co-worker B to no longer use the breakroom.



Scenario 4

- Gerry put in for a promotion. At the same time that Gerry was being considered for the promotion, it was discovered by Gerry's co-workers that Gerry was gay and in a relationship with his partner of fifteen years, Justin. The next week, Gerry is informed that he did not receive the promotion, but instead it went to someone else in the department that had also applied for it.
- Gerry files a complaint that he was discriminated against on the basis of his sexual orientation.
- What information will you be looking for as a decision-maker?



Scenario 5

- Complainant reports that she ended her long-term relationship with Respondent a month ago but Respondent won't leave her alone. She provides screenshots of 100 text messages from Respondent. In one of the text messages, Respondent says that she looked pretty in that red dress. Complainant reported that the day she received that text, she was wearing a red dress. Complainant says that she is scared to come to class now because Respondent is also a student and is worried about running into Respondent on campus.



Scenario 6

- Employee reported that her supervisor near the end of the day would come to her cubicle to discuss the schedule for the next day. While doing this, he would often ask to view the calendar. As she would pull up the calendar, supervisor would stand behind her and massage her shoulders. Despite her pulling away and telling him that she did not need a massage, the supervisor continued to rub her shoulders while "checking the schedule." The supervisor also asked this employee (no others) to come in on Sundays to help him prepare for the week and he would pay her overtime. Employee started feeling anxiety when getting ready for work and sought medical treatment.



Scenario 7

- Employee worked in a customer-service position on campus that typically required she stand. Due to her pregnancy causing swelling and back pain, she requested to use a stool when not serving customers and performing other tasks that required standing. Her request was initially granted, but after some customers complained that she was "sitting on the job," her supervisor advised her that she could no longer use the stool and needed to stand. She provided a doctor's note to her supervisor advising the need for the stool. The supervisor advised that if she would not agree to stand, she would be terminated. Should this be reported?



Scenario 8A

- Bob reports that he was discriminated against due to his disability (OCD) when he was not hired to work at the University Bookstore. The position he applied for was the day shift manager. Job responsibilities would include opening the store at 7AM. Investigation revealed that Bob's disability sometimes could result in it being difficult for him to leave his house on-time due to a need to wash and clean himself, his home, and his vehicle, if circumstances arose the morning of his shift. The University – after engaging in the appropriate interactive process with Bob – would not be able to accommodate his needs without a resulting substantial hardship and offered Bob a different position in a different department which Bob did not accept.



Scenario 8B

- What if the investigation determined that another day shift manager was permitted to come into work late on some mornings, in order to take her children to school – would this impact your decision? If so, why? If not, why?



Questions?