

What is the Process?

Equity vs. Title IX



University of Missouri System
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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

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2

Policies: Equity vs. Title IX Sexual Harassment

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| <ul style="list-style-type: none"> ▪ Equity Policies <ul style="list-style-type: none"> ○ 600.010 ○ 600.040 ○ 600.050 | <ul style="list-style-type: none"> ▪ Sexual Harassment under Title IX Policies <ul style="list-style-type: none"> ○ 600.020 ○ 600.030 |
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3

Identifying Implicit Bias

Implicit Association Test (IAT)

- Measures the strength of associations between identity characteristics and descriptive terms
 - Identity characteristics – bases for bias
 - Descriptive terms – good, bad, clumsy, smart, etc.
- Limited in that it will only tell you whether on any given day, you have a slight to significant preference for one group over another
- However, the IAT modules will act as a starting point for introspection
 - Both your results and the process of responding to the IAT itself are valuable

Introspection & Mindfulness

- When making decisions in the below situations, observe what you consider as relevant and what weight you place on the information
 - High ambiguity (open to multiple interpretations)
 - Incomplete information
 - Overload of information and steps required to reach a decision
- Practice slowing down and viewing all situations from a variety of perspectives as you make decisions
- Be critical of the information you consume on a daily basis

Addressing Implicit Bias

1. Be informed of the presence of bias and possible affects on decision-making
 - a. Research indicates warning of bias can reduce its affects on the hearing process
 - b. When you become **bias-aware**, you are able to act with less bias **without focusing on being unbiased**
 - i. Using knowledge about your own biases will cause you to review your decisions and course-correct if appropriate, adding accountability and intentionality to the process
2. If you are aware of a bias you have that may influence your ability to act as an equitable and impartial panelist, you should decline to serve for that complaint

Addressing Implicit Bias

3. Provide panelists “decision aids” to assist in making a determination
 - a. Research indicates structured tools used to guide the process of decision-making may reduce the affects of bias
 - i. Provides a guide to logically justify your determinations based on the applicable policies
4. Work with others on the panel to be self-aware
 - a. Be agreeable to reconsidering the evidence and any decisions on its relevancy to the complaint
 - b. If you are the outlier on a decision, reconsider your stance, looking for any evidence of bias influence
 - c. If you are in a “majority rules” decision with one outlier, review the evidence carefully for possible group-think influences

Addressing Implicit Bias

5. Engage in high-effort, deliberate thought processes
 - a. Even if the resolution seems straightforward, consider every piece of evidence and all testimony as you’ll need to indicate how each was included or excluded as part of your resolution
 - b. Credibility determinations should be examined with a critical view to reduce the influence of bias
 - i. Can you objectively illustrate the reason(s) you feel the party or witness is accurately portraying the relevant facts?
 - c. Appreciate that making a decision based on your “gut” or “intuition” increases the likelihood of bias

Assessing Credibility

Fall 2020 Hearing Panelist Training | UM System | Dr. Sybil Wyatt

Opening Thought

“More than analytical rigor, judging credibility requires imagination and empathy for the human condition.”



- Judge John L. Kane
US District Court for the District of Colorado

Role of a Hearing Panelist: Decider of Fact

- You are tasked with deciding the **accuracy** and **truthfulness** of testimony provided
- You are allocating a **level of credibility** to each party and all witnesses
- You must decide **what importance** to assign the testimony within the totality of the complaint
- You are expected to use **your own judgment and intuition** while remaining aware of **your own biases**

Cogs of Credibility





Patience

- Hold off on making any decisions until all testimony has been presented
- Do not attempt to resolve the complaint as each witness testifies
 - Instead, make notes about any statements or behaviors that “set off alarms” and be prepared to ask questions of the witnesses to clarify information and address your concerns



Active Listening

- Listen carefully, staying focused on the facts presented by the testimony
 - Avoid distractions by setting aside electronic devices, closing email/messaging, securing a private space
- Be aware of your nonverbal feedback
 - Exhibit welcoming behaviors such as eye contact, head nods, leaning in, open posture; these will elicit a greater level of trust on the part of the witness and often lead to a higher degree of disclosure
- Do not be swayed by extraneous details
 - Skill level of the advisor
 - Likeability of the witness
 - Emotional nature of the testimony
 - Number of witnesses testifying in support of or against the complaint
 - Quality over quantity



Impartial Review

- Do your best to remain impartial throughout the hearing and in your decision-making
- Acknowledge the effect your biases may have on what you see and hear
- Avoid judgment based on your subjective values, morals, or ethical beliefs
 - Even though you may not agree with the personal choices made by a party or witness, you must stay focused on the truthfulness and accuracy of their testimony and their contributions to the relevant facts rather than your *feelings* about their behaviors
- Check yourself often – “How else could that person, action, or situation be interpreted?”



Consistency

- Does the testimony of the witness align with the information they provided to investigator(s)?
- Is the testimony of the witness consistent with other witnesses regarding the same events?
- Does the testimony seem overly consistent, as if it was rehearsed?
 - If yes, what is more likely: 1) having gone over the events multiple times in preparation for the hearing, or 2) having consulted other witnesses to align testimony?
- If the testimony provided is secondhand information shared with the witness by one of the parties or another witness, are there contradictions in the information when comparing testimony?

If there are inconsistencies, ask yourself:

- Are the differences related to relevant facts?
- What importance will you place on the discrepancies?



Plausibility

- If the witness is providing firsthand testimony, are the facts as they present them plausible?
 - Could they see/hear the events based on their proximity and access, as well as the surrounding environment?
 - Do they seem to be filling in memory gaps rather than recalling events as they occurred?
- Was there any reason the witness would have a diminished capacity to recall events?
 - Physical/mental disabilities
 - Incapacitation due to sleep, medication, alcohol, illicit drugs
 - Substantial length of time has elapsed
 - Information is often forgotten very quickly unless it is recalled frequently
 - Events were of minor significance to the witness at the time
 - Events never made it into long-term memory
 - Other similar events have occurred and may cause “interference”



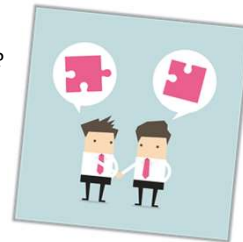
Witness Biases

- To what extent might the background, education, and experiences of the witness affect their testimony?
 - Information may be limited but consider what you do know or can surmise from the investigation report and context testimony
- What factors, if any, might reasonably contribute to any hostility displayed by a witness?
 - Experiences throughout the complaint process?
 - Lack of faith in the reliability or impartiality of the complaint process?
- Does/did the witness have a close relationship, especially of an intimate or romantic nature, with a party or witness?
- Did the witness express or indicate a belief that either party has a pattern or practice of being untruthful?



Motive

- To your knowledge or reasonable inference, did the witness:
 - Evade questions?
 - Decline to respond to questions asked, either in part or in whole?
 - Purposefully omit facts?
 - Provide incomplete responses?
 - Recant their earlier testimony to investigators, in full or in part?
 - Deliberately provide false testimony?
 - Make an admission of partial responsibility?
 - Have a personal interest in the outcome of the complaint?
- If yes, what might be their motivation?
 - Fear? Embarrassment?
 - A need to please?
 - Attempt to influence the outcome of the complaint?
 - To protect self or others?
 - To avoid punishment?



Delivery

Non-verbal behaviors and demeanor should be considered as *minimal* cues to credibility.

- Non-verbal behaviors
 - Folded or open arms?
 - Relaxed or rigid/tense body posture?
 - Frowning? Smiling? Neutral facial expression?
 - Fidgety? Still?
 - Stammering?
 - Hesitation in responding?
 - Tone/pitch of voice or voice pattern shifts/changes?
 - Eye contact – was it overly sustained? Was it rare?
 - Any seemingly nervous gestures or slight or overt repetitive movements?
 - Unreasonable focus on word selection?
 - Clenched or relaxed facial muscles?





Delivery

▪ Demeanor

- Calm? Anxious?
- Upset/angry? Upset/crying?
- Regret?
- Shame? Embarrassment?
- Sad? Sorrowful?
- Disconnected?
- Uncomfortable?



When considering the delivery of testimony by a witness, you should take into account how simply participating in the hearing might reasonably affect their body language and demeanor.

Overall, did the testimony, body language, and emotional state of the witness align for the majority of their testimony?



Questions?

- **Provisions for a Virtual Hearing are as follows:**

- All participants must use the ZOOM platform through a computer. No participants will be allowed to "call in" using their telephone.
- The room link will be sent prior to the hearing.
- The Respondent and Complainant must use the authenticated, licensed ZOOM log in provided by the University.
 - Information on this can be found at <https://it.mst.edu/services/zoom/>
- It is the Respondent and Complainant's responsibility to secure this authenticated program on their own device.
- The Respondent and Complainant will be expected to follow the same procedural processes for a hearing as outlined in CRRs.
- Procedural questions can be submitted directly to the Panel Chair using the "chat" feature of ZOOM.
- All parties except the Panel Chair will remain "muted" unless it is an appropriate moment for them to speak as outlined in the procedures for a hearing, and they will be "unmuted" at those times.
- Advisors to the Respondent and Complainant will be "muted" at all times in the hearing room, it is the parties responsibility to find an alternative method of communication with their advisor through a third party messaging service if need be.
 - During live cross examination, the advisors and responding party will be unmuted to allow for the answering of the question, and any objections to questions.
- The Respondent and Complainant will only be able to message the Panel Chair directly using the chat feature, and are encouraged to do so if they have a procedural question, or general inquiry.
- Witnesses will be held in the waiting room while the hearing proceeds, and be brought into the hearing when called by the chair.
- All parties will be provided separate, private "breakout rooms" where they will be able to confer with their advisor in private, and off the record, and may request a conference at any time by messaging the Panel Chair directly.
- The Title IX Coordinator, or their deputy, will be present in the room to facilitate the technical components of the virtual hearing, and reserves the right at any time to stop the proceedings to adjust the technical aspects of the

meeting space so that it adheres to the UM System Collected Rules and Regulations governing the operations of the hearing. The Title IX Coordinator will be providing no guidance or direction to the Panel when it comes to the subject matter being discussed, or deliberated.

Decision Making/Analysis Flow

Policy Violation	Point of Fact Confirming	Point of Fact Refuting

Analysis/Rationale Questions to Consider:

- Is there a preponderance (51% did happen, or 51% did not happen) of evidence?
 - If there is, explain that.
 - “Quinn, I have thoroughly reviewed the facts at hand as presented in the investigation report and hearing. This included your testimony, the testimony of the complainant, witness testimony and documentary evidence. I have found that there is a preponderance of the evidence that shows you are responsible for violating the University of Missouri Collected Rules and Regulations 600.020: Sexual Misconduct, nonconsensual sexual intercourse.”
 - If there is not, explain that.
 - Identify the facts, one/two sentence paragraphs are okay.
 - “Quinn, text messages provided by Blake have identified that you both had been talking about attending this party for two weeks prior, and in those conversations Blake expressed how they were concerned because they did not drink often, and their tolerance was low. Blake also shared with you that they on a prescription for depression that sometimes had adverse interactions with Alcohol.”
- What’s the respondent’s defense?
 - If the facts at hand support their defense, identify that.
 - If the facts at hand do not support their defense, identify that.
 - “You stated in your interview with the University Investigator that you did not give Blake any drinks, or see Blake drink alcohol on the night the incident occurred, so how would you know how much they had to drink? However, through the course of the investigation multiple witnesses attested to seeing you give Blake drinks which summed to 6 alcoholic beverages, and 3 alcoholic Jell-O shots of unknown strength in the span of two hours, and overheard you actively encouraging Blake to “get wasted”. I have no reason to doubt the credibility of these witnesses, and believe that you are factually incorrect on this point.”
- How would “A Reasonable Person” respond?
 - A Reasonable Person is: a fictional person with an ordinary degree of reason, prudence, care, foresight, or intelligence whose conduct, conclusion, or expectation in relation to a particular circumstance or fact is used as an objective standard by which to measure or determine something (as the existence of negligence)
 - Use “a reasonable person” in your language
 - If the respondent’s behavior was contrary to what “a reasonable person” would do, explain that as well.
 - “You attested to observing Blake not handling the alcohol well. A reasonable person would have been able to tell, after observing Blake’s slurred speech, stumbling, passing in and out of consciousness, and vomiting that they were incapacitated, and as defined by University Policy, unable to provide consent to any sexual activity.
- What is the appropriate Remedy to this situation?
 - Consider the impact to the complainant and/or respondent in your rationale.
 - Weigh the wishes of the complainant.
 - If there is anything else that impacted your thought process, now is the time to include that.
 - “Quinn, the evidence in this matter is substantial, it is also clear that you actively lied to the University Investigator throughout the process, as the majority of your points of fact were debunked by neutral witnesses. Given the significant impact that this incident of non-consensual sexual intercourse has had on Blake, and the predatory nature of your actions leading up to the event, I have determined the only course of action available to me to protect the S&T community is University Expulsion. You are immediately expelled from Missouri University of Science & Technology.”