



Institutional Equity
University of Missouri

EXHIBITS DOCUMENT

Aubrey Palmer v. Phillip Fizer

The information contained in this report is intended solely for its authorized recipient(s). If you are not an intended recipient, please contact us immediately at (573) 882-3880.

EXHIBIT 1: Incident Report 4.5.2022

University of Missouri System Residential Life OIE Incident Report Form

Submitted on April 5, 2022 at 08:12:40 pm CDT

Nature	Incident Report
Urgency	Normal
Incident Date and Time	2022-04-02
Incident Location	On Campus Violette Hall

Reported by

Name:	Jamie Anderson
Title:	Resident Assistant
Email:	jlab7t@mail.missouri.edu
Phone	573-123-4567
Address:	

Involved Parties

Audrey Palmer ()

Complainant	MU Student
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Phillip Fizer ()

Respondent	MU Student
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About the Incident(s)

Please indicate the basis of concern:

(Select those that apply)

Sexual Misconduct/Sexual Assault

Please provide a detailed description of the incident(s) below. NOTE: You can describe more than one incident in this box; if doing so, please include dates, names, and locations, (if known) for each incident.

Resident Assistant (RA) Jamie Anderson was in her room in Violette Hall on April 5, 2022. Around 7:30pm, RA Anderson heard on a knock on the door to her room. When RA Anderson opened the door, Resident Audrey Palmer was standing outside in the hallway. RA Anderson asked Resident Palmer if she needed help with something, and Resident Palmer asked if they could go talk somewhere private. RA Anderson and Resident Palmer went to a private study room in Violette Hall. Resident Palmer asked RA Anderson how a resident could move to a different room in the residence hall. RA Anderson began discussing the options to submit a room move request with Resident Palmer. After discussing the options, Resident Palmer asked RA Anderson if there was a different process to move rooms if the reason for wanting to move was related to a sexual assault. At that time, RA Anderson reminded Resident Palmer that RA Anderson is a mandated reporter and would have to report to the Office of Institutional Equity (OIE), and asked if Resident Palmer wanted to share more information about the incident. Resident Palmer told RA Anderson that three days ago (April 2, 2022), she had invited MU student Phillip Fizer to her room in Violette Hall to hang out, and while together in Resident Palmer's room, MU Student Phillip Fizer had raped Resident Palmer. Resident Palmer did not share any additional details with RA Anderson. RA Anderson informed Resident Palmer that an incident report would be submitted to OIE, and that OIE would reach out to Resident Palmer to discuss her options and could discuss Resident Palmer's room move request. RA Anderson and Resident Palmer also discussed additional resources including RSVP, the Care Team, and the Counseling Center. Resident Palmer thanked RA Anderson for all her help and they both exited the study room around 8:00 pm.

Indicate anywhere else that you have reported this information:

If other, please indicate here:

EXHIBIT 2: Palmer Formal Complaint 4.11.2022

University of Missouri System MU Office of Institutional Equity Formal Complaint Form

Submitted on April 11, 2022 at 10:48:25 am CDT

Nature	Formal Complaint
Urgency	Normal
Incident Date and Time	2022-04-02
Incident Location	Violette Hall

Reported by

Name:	Audrey Palmer
Title:	she/her
Email:	
Phone	
Address:	

Involved Parties

Phillip Fizer

Respondent (person being accused)

Stephen Smithton

Witness

Macy White

Witness

Incident and Complaint Information

I believe the event(s) that occurred constituted discrimination/harassment on the basis of:

(Select those that apply)

To learn more about definitions related to sex discrimination, sexual harassment, sexual misconduct, as well as all other forms of harassment and discrimination covered under the University's Non-Discrimination Policies, please visit equity.missouri.edu.

Sexual Misconduct/Sexual Assault

I believe the event(s) that occurred constituted retaliation (place checkmark in space provided, if applicable).

Incident(s) Date(s):

April 2, 2022

Incident(s) Location(s):

Violette Hall

Please provide a detailed description of the incident(s) below. NOTE: You can describe more than one incident in this box; if doing so, please include dates, names, locations, and witnesses (if known) for each incident. If you already have this information prepared in a Word document, enter "See Attached" in the box below and attach the document in the next section.

Phillip Fizer was a friend of mine, and we hung out on April 2nd in my dorm room. I was drinking and had an edible with another friend, Stephen Smithton, before Phillip came over, and he knew I was intoxicated. Phillip and I had never had sex before, and I did not want to have sex with him; we are just friends. We had hung out many times before, as friends. That night, he wanted to stay in the dorm, instead of going out. So, we watched TV and drank more alcohol. By then, I was very intoxicated and really started feeling the effects of the alcohol and edible, and I blacked out. I thought I was safe with Phillip, in my own room. I trusted him, and I never expected that he would take advantage of me.

But when I woke up later, I was naked and his penis was inside of me. I felt confused and scared. I had not consented to have sex with him, and I don't remember how that happened. I told him that I felt sick and wanted to sleep, and I moved away from him. He followed me and pushed himself against me and asked about getting a condom. I specifically said NO. I could not believe what was happening, and I did not want to have sex with him. I just wanted to sleep and escape that moment. But he didn't listen to me. He continued to have sex with me; he put his penis inside me again, without my permission. He was behind me, and it hurt. I blacked out again and didn't wake up until the next morning. When I woke up, he was still in my bed, and we were both still naked. I still felt sick. I went down the hall to shower and text my friend, Macy White. When I got back to my room, he was gone. I felt so disoriented from blacking out. I sent him a message on Snapchat later that day, and he admitted that we had sex. He knew I was intoxicated, and I asked him why he would have sex with me when I couldn't consent. He wasn't taking it seriously, and he tried telling me that I wasn't too intoxicated. He was gaslighting me. He was not as drunk as me. He knew what he was doing, and he raped me.

E-Agreement University policy requires that we send some official documents to your University email address AND mailing address. You may request to receive these documents via email only, rather than U.S. Mail. Please indicate your preference below.

I wish to receive documents to my email address ONLY

Support Person/Advisor

I understand that it is my right to have a support person (or advisor) of my choosing throughout the process who can help me making decisions and accompany me to any meetings or proceedings. I acknowledge that my support person should not be someone who may serve as a witness in my case.

Investigation Acknowledgment

I have reviewed my rights and options and wish to file this formal complaint of discrimination against the person(s) named in my complaint. The information provided is complete and accurate to the best of my knowledge. I understand by submitting this form, I give authorization for the Office of Institutional Equity to initiate an investigation into the incidents I have described. This will include contacting the Respondent and any Witnesses that may be identified. I understand that this formal complaint may be shared with the Respondent. I understand that, should it be determined that my complaint does not state a potential policy violation within the scope of the Office of Institutional Equity's authority, my complaint may be referred to another office for review.

If you are a person with a disability and believe you may need an accommodation, please indicate below. You may also contact us directly to discuss.

Electronic Signature (Typing my name in the box below serves as my electronic signature.)

Audrey Palmer



145 Heinkel Building
201 South 7th Street
Columbia, MO 65211
573-882-3880

April 18, 2022

VIA ELECTRONIC MAIL

Phillip Fizer
ptfpt5@mail.missouri.edu

RE: Notice of Allegations of Potential Title IX Violation

Dear Mr. Fizer:

I write to inform you that our office received a Formal Complaint containing allegations that you may have engaged in discriminatory behavior in violation of University policy. I have been assigned to investigate this matter in a thorough, reliable, and impartial manner.

Please understand, at this point, these are only allegations. At this stage in the process you are presumed to be not responsible for any violation and will be given an opportunity to respond to each allegation.

Please read the contents of this letter and associated information carefully.

- Section I: Allegations
- Section II: Supportive Measures
- Section III: Resolution Process and Applicable Policies
- Section IV: Participation in the Process
- Section V: Your Rights in the Process

Next Steps: Please contact me at shearerh@missouri.edu or 573-884-7065 to confirm receipt of this Notice and to schedule a time to meet. During our meeting, we will review the process, I will answer any questions you have, and you will have an opportunity to respond to the allegations.

Sincerely,

Heidi Shearer

Heidi Shearer
Equity Consultant and Investigator

Enclosures

cc: Andy Hayes, Assistant Vice Chancellor & Title IX Coordinator

SECTION I ALLEGATIONS

Aubrey Palmer reported that, during the evening hours of Saturday, April 2, 2022, Phillip Fizer engaged in nonconsensual sexual intercourse with her (sexual assault in the form of rape, as defined by MU policy), while she was incapacitated due to alcohol consumption and thus unable to consent to sexual activity.

Specifically, Palmer reported the following:

1. Palmer reported that Fizer arrived at her room in Violette Hall (123 4th Street in Columbia, Missouri) around 9:00pm. Palmer alleges that she and Fizer consumed alcohol while watching television together.
2. Palmer reported consuming two White Claw Hard Seltzers and a cannabis edible before Fizer arrived and then two shots of vodka and part of a bottle of wine with Fizer, prior to blacking out due to intoxication.
3. Palmer alleges that, when her memory resumed, she and Fizer were naked in her bed. She alleges that she does not recall removing her clothing or consenting to its removal.
4. Palmer reported that she was positioned on top of Fizer when she came to, with his penis inside her vagina, but then she felt dizzy and fell onto the bed next to Fizer.
5. While lying beside Fizer on the bed, Palmer allegedly said she felt sick and wanted to sleep, and then she turned away from Fizer toward the wall.
6. Palmer reported that Fizer then positioned himself behind her with his penis near her vagina, before pausing to ask if he needed to put on a condom. Palmer allegedly said, "No."
7. Palmer alleges that Fizer then inserted his penis into her vagina without consent, and she blacked out again. She reported that her next memory is waking up in bed at 6:30am the next morning.

SECTION II SUPPORTIVE MEASURES

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent. (Section 600.030(H)). If, at any time, you need to review the availability of supportive measures, please contact your Investigator.

Measures in Place: A No Contact Directive has been issued. Please read it carefully. I will inform you of any additional supportive measures that may impact you.

SECTION III RESOLUTION PROCESS

I will conduct the investigation pursuant to: Equity Resolution Process for Resolving Complaints of Sexual Harassment under Title IX ([Section 600.030](#)).

Informal (Conflict) Resolution: A voluntary resolution process using alternative dispute resolution mechanisms such as mediation, facilitated dialogue, administrative resolution, or restorative justice. (600.030(O))

Administrative Resolution: A voluntary informal resolution process where a decision-maker makes a finding on each of the alleged policy violations in the complaint and a finding on sanctions and remedies without a hearing. (600.030(P))

Hearing Panel Resolution: An Equity Resolution Hearing Panel makes a finding on each of the alleged policy violations and sanctions. (600.030(Q))

APPLICABLE POLICIES

The alleged conduct may violate the following provisions of [CRR 600.020](#), which is the University's Sexual Harassment under Title IX policy.

Sexual Harassment under Title IX Policy (600.020):

1. **Sexual Harassment.** Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
 - c. **"Sexual assault"** - Any sexual act that constitutes rape, sodomy, sexual assault with an object, fondling, incest, and statutory rape, as defined below:
 - (i) **"Rape"** is the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. There is "carnal knowledge" if there is the slightest penetration of the vagina or penis by the sex organ of the other person. Attempted Rape is included.
2. **Consent to Sexual Activity.** Consent to sexual activity is knowing and voluntary. Consent to sexual activity requires of all involved persons a conscious and voluntary agreement to Palmer v. Fizer Investigative Report Not Intended for Distribution 4 engage in sexual activity. Each person engaged in the sexual activity must have met the legal age of consent. It is the responsibility of each person to ensure they have the consent of all others engaged in the sexual activity. Consent must be obtained at the time of the specific activity and can be withdrawn at any time. Consent, lack of consent, or withdrawal of consent may be communicated by words or non-verbal acts.

Someone who is incapacitated cannot consent. Silence or absence of resistance does not establish consent. The existence of a dating relationship or past sexual relations between the Parties involved should never by itself be assumed to be an indicator of consent. Further,

consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Coercion and force, or threat of either, invalidates consent.

3. **Incapacitated or incapacitation.** A state in which rational decision-making or the ability to consent is rendered impossible because of a person's temporary or permanent physical or mental impairment, including but not limited to physical or mental impairment resulting from drugs or alcohol, disability, sleep, unconsciousness or illness. Consent does not exist when the Respondent knew or should have known of the other individual's incapacitation. Incapacitation is determined based on the totality of the circumstances. Incapacitation is more than intoxication but intoxication can cause incapacitation.

Factors to consider in determining incapacity include, but are not limited to, the following:

- a. 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)
- b. Inability to physically or verbally communicate coherently, particularly with regard to consent (e.g., slurred or incoherent speech).
- c. Lack of full control over physical movements (e.g., difficulty walking or standing without stumbling or assistance)
- d. Physical symptoms (e.g., vomiting or incontinence)

SECTION IV PARTICIPATION IN THE PROCESS

Nothing in the Title IX process is intended to supersede or expand any rights you may have under applicable state or federal statutory laws, or the U.S. Constitution.

Presumption of Non-Responsibility: At this stage in the process, these are only allegations and you are presumed not responsible for any policy violation. You will maintain this presumption until the conclusion of the Title IX process, where a determination regarding responsibility is made. During this investigation, you will be given an opportunity to respond to each allegation.

Support Person: You may have a Support Person of your choice present with you for all Title IX Process interviews and meetings. You may select whomever you wish, including an attorney or parent. The Support Person may not attend the hearing unless they are acting as your Advisor during the hearing.

If you are a student who does not have a Support Person and would like one, you may submit a request to the Office of Institutional Equity. Upon receipt of your request, the Office of Institutional Equity may assign a trained Support Person to explain the Equity Resolution Process and attend interviews and meetings with you. University Trained Support Person(s) are administrators, faculty, or staff at the University, who have been trained on the Equity Resolution Process. A Trained Support Person cannot be called upon as a witness in a hearing to testify about matters learned while they were acting in their capacity as a Trained Support Person.

Advisor During the Hearing: Each Party must have an Advisor at the hearing to conduct cross-examination and other questioning on your behalf. You may not directly question any other Party or witness during the hearing; all cross-examination and other questioning on your behalf must be conducted by your Advisor.

Your Advisor can be of your choosing and may be, but is not required to be, an attorney. If you do not have an Advisor of your choice present at the hearing, the University will provide one to you at no fee or charge. You may not require that the assigned Advisor have specific qualifications, such as being an attorney.

Review of Evidence: As a Party to the Title IX proceedings, you will be permitted to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding any responsibility and inculpatory and exculpatory evidence whether obtained from a Party or other source.

False Statements: Throughout the Title IX process, when making any statement or providing any information or evidence to the University, you must be truthful, and all documentary evidence must be genuine and accurate. False statements and fraudulent evidence may be the basis for personnel action pursuant to applicable HR policies (CRR 370.010 or HR 601), or if by a student, may be the basis for student conduct action pursuant to the provisions of Section 200.010 of the University's Collected Rules and Regulations.

Respondent Right to File a Complaint: You have the right to file a report or Formal Complaint if you believe you have experienced harassment or discrimination. If you file a Formal Complaint against the Complainant within ten (10) business days of the date of the Notice of Allegations, where the allegations of sexual harassment in both Formal Complaints arise out of the same facts or circumstances, the University will consolidate the Formal Complaints for purposes of investigation and resolution in accordance with this policy.

Retaliation: Retaliating, or taking adverse action, against anyone who participates in the process is strictly prohibited and may result in disciplinary action, up to and including expulsion or termination. Please contact me immediately if you believe you are experiencing retaliation.

Privacy: In order to protect the integrity of the investigation and to respect the privacy of those involved, we ask all Parties and witnesses to keep this information as private as possible. This request for discretion is not a mandate or prohibition from discussing the allegations, or from gathering relevant evidence.

Contact Information: All future notices regarding this matter will be sent to your University-issued email account, unless you provide an alternate method of notification to the Title IX Coordinator. If you do not have a University-issued email account, all future notices will be sent via U.S. Mail unless you provide a preferred method of notification.

Disability Accommodation: If you are a person with a disability and believe you may need accommodations for any part of the process, please reach out to me for assistance with your request.

SECTION V
YOUR RIGHTS IN THE PROCESS

1. To be treated with respect by University officials.
2. To be free from retaliation.
3. To have access to University support resources (such as counseling and mental health services and University health services).
4. To request a no contact directive between the Parties.
5. To have a Support Person of the Party's choice accompany the party to all interviews and meetings (excluding hearings) throughout the Title IX Process.
6. To refuse to have an allegation resolved through the Informal Resolution Processes.
7. To receive prior to a hearing or other time of determination regarding responsibility, an investigative report that fairly summarizes the relevant evidence in an electronic format or hard copy for their review and written response.
8. To have an opportunity to present a list of potential witnesses and provide evidence to the Investigator.
9. To have Formal Complaints heard in substantial accordance with these procedures.
10. To receive written notice of any delay of this process or limited extension of time frames for good cause which may include considerations such as the absence of a Party, a Party's Advisor or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
11. To be informed of the finding, rationale, sanctions and remedial actions.
12. To report the matter to law enforcement (if applicable) and to have assistance in making that report.
13. 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.
14. Additional Rights for Students as a Party:
 - a. To request reasonable housing, living and other accommodations and remedies consistent with Section 600.030.H.
 - b. To receive amnesty for minor student misconduct that is ancillary to the incident, at the discretion of the Title IX Coordinator.
15. Additional Rights for Hearing Panel Resolution:
 - a. To receive notice of a hearing.
 - b. To have the names of witnesses who may participate in the hearing and copies of all documentary evidence gathered in the course of the investigation and any investigative report prior to the hearing.
 - c. To be present at the hearing, which right may be waived by either written notification to the Hearing Officer or by failure to appear.
 - d. To have present an Advisor during the hearing and to consult with such Advisor during the hearing, and have the Advisor conduct cross-examination and other questioning on behalf of the Party at the hearing.
 - e. To have an Advisor of the University's selection appointed for a Party where the Party does not have an Advisor of their own choice at a hearing.
 - f. To testify at the hearing or refuse to testify at the hearing; however, if a Party or witness fails to submit to cross-examination at the 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.

- g. To have an equal opportunity to present and question witnesses, including fact and expert witnesses, and present relevant evidence.
 - h. To request that the hearing be held virtually, with technology enabling participants simultaneously to see and hear each other.
16. Additional Rights for Academic Medical Center Process:
- a. To receive notice of the meeting with the decision-maker.
 - b. To submit written, relevant questions that a Party wants asked of any Party or witness and to be provided with the answers to such questions.
 - c. To be allowed additional, limited follow-up questions.



145 Heinkel Building
201 South 7th Street
Columbia, MO 65211
573-882-3880

April 18, 2022

VIA ELECTRONIC MAIL

Phillip Fizer
ptfpt5@mail.missouri.edu

RE: NO CONTACT DIRECTIVE

Dear Mr. Fizer:

The Office of Institutional Equity has received a report alleging that you may have engaged in behaviors which could constitute a violation of the University's Sexual Harassment Under Title IX policy ([CRR 600.020](#)). As a supportive measure, you are now being directed to abide by the contact restriction below:

Contact Restriction: You are not to have contact with Aubrey Palmer. Contact includes, but is not limited to, communication in person; by telephone, email, text message, social media, or other electronic means of communication; or through a third party (other than an attorney). This also prohibits physical contact.

If you need to contact Palmer, you are to do so via this office. Palmer has been notified of this directive and has been asked to follow the same instructions.

Further contact may result in disciplinary proceedings through the University.

Please note: You are presumed to be not responsible for any of the reported behaviors and this mutual contact restriction is non-disciplinary and non-punitive.

Non-Retaliation: At no time should you engage in any type of retaliation against anyone who has made a report, filed a complaint, or is otherwise participating in a Title IX or Equity Resolution Process. Retaliation is strictly prohibited and would constitute a separate policy violation. Retaliation is any adverse action taken against a person because of that person's participation in protected activity (making a good faith report of discrimination, participating in an investigation, testifying, etc.).

Thank you for your cooperation and if you have any questions, please contact me.

Sincerely,

Heidi Shearer

Heidi Shearer
Equity Consultant and Investigator

Cc: Andy Hayes, Assistant Vice Chancellor & Title IX Coordinator



145 Heinkel Building
201 South 7th Street
Columbia, MO 65211
573-882-3880

July 14, 2022

VIA ELECTRONIC MAIL

Phillip Fizer
ptfpt5@mail.missouri.edu

RE: Notice of Hearing

Dear Mr. Fizer:

This letter is to inform you that the University will proceed with Hearing Panel Resolution to address your alleged violations of the University of Missouri Collected Rules and Regulations.

Please read the contents of this letter and associated information carefully.

Section I: Hearing Date and Location

Section II: Hearing Panelist Information

Section III: Investigative Report and Relevant Materials

Section IV: Timeline and Deadlines

Section V: Title IX Resolution Process and Applicable Policies

Section VI: Procedural Information

Privacy: In order to protect the integrity of the investigation and to respect all parties involved, please keep this information private, except for discussions with your support person.

Disability Accommodation: If you are a person with a disability and believe you may need accommodations for any part of the process, please reach out to the investigator of your case for assistance with your request.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Att' or 'Andy', enclosed in a light blue rectangular box.

Andy Hayes

Assistant Vice Chancellor & Title IX Coordinator

Enclosures

cc: Mindy Wirges, Respondent Advisor
Heidi Shearer, Equity Consultant and Investigator
Amber Lammers, Hearing Officer

**SECTION I
HEARING DATE AND LOCATION**

Date	Start Time	Location
Thursday, August 11, 2022	9:00am	Zoom

If any party does not appear at the scheduled hearing, **it will be held, as scheduled, in their absence.** For good cause, the Hearing Officer may grant requests to reschedule the hearing date.

Pre-Hearing Meeting. Unless otherwise agreed by the Parties and the Hearing Officer, a pre-hearing meeting may be scheduled one hour prior to the start of the hearing between the Hearing Officer and Parties' Advisors. Parties may, but are not required to be, in attendance at this meeting. The Pre-Hearing Meeting will be scheduled for 8:00 a.m., August 11.

**SECTION II
HEARING PANELIST INFORMATION**

Panel Members	Alternate Panelists
Amber Lammers* Liz Zufall Kelli Foster	Tracy Turnblad Corny Collins

*Amber Lammers has been designated as the Hearing Officer, and they may be reached at lammersa@missouri.edu. Those designated as alternates will attend the hearing in the event that one of the panelists is unable to attend.

**SECTION III
INVESTIGATIVE REPORT AND RELEVANT MATERIALS**

All pertinent documentary evidence and the investigative report for the case have been saved in a One Drive folder. Shortly, you will receive a link from Heidi Shearer to access the documents. If you do not receive a link within 24 hours or have trouble accessing the folder, please contact Heidi Shearer.

SECTION IV TIMELINE AND DEADLINES

Please carefully read the following timeline and make note of the deadlines provided.

PRE-HEARING DEADLINES

- **Pre-Hearing Witness List and Documentary Evidence**

At least fifteen (15) business days prior to the hearing, the Complainant and Respondent will provide to the Investigator a list of the names of the proposed witnesses and copies of all proposed documentary evidence that a Party intends to call or use at the hearing.

Deadline: Thursday, July 21, 2022, at 5:00 p.m. Please submit any proposed additional evidence or witnesses to Investigator, Heidi Shearer, at shearerh@missouri.edu.

- **Objection to Panelists.** If you object to any panelist, you must raise such objection(s), in writing, to the Title IX Coordinator. Hearing Panel members will only be unseated and replaced if the Title IX Coordinator concludes that good cause exists for the removal of a panel member. Good cause may include, but is not limited to, bias that would preclude an impartial hearing or circumstances in which the panel member's involvement could impact the Party's work or learning environment due to current or potential interactions with the panel member (e.g., a panel member being in the same department as either Party). Additionally, any panel member or Chair of the Hearing Panel who feels they cannot make an objective determination must recuse themselves from the proceedings in advance of the hearing.

Deadline: Thursday, July 21, 2022, at 5:00 p.m. Please submit your objection(s) to the Title IX Coordinator, Andy Hayes, at hayesas@missouri.edu.

- **Advisor During the Hearing:** Each Party must have an Advisor at the hearing to conduct cross-examination and other questioning on your behalf. You may not directly question any other Party or witness during the hearing; all cross-examination and other questioning on your behalf must be conducted by your Advisor.

At least ten (10) business days prior to the hearing date, you must inform the Title IX Coordinator whether you intend to bring an Advisor of your choice to the hearing. Your Advisor can be of your choosing and may be, but is not required to be, an attorney. If you do not have an Advisor of your choice present at the hearing, the University will provide one to you at no fee or charge. You may not require that the assigned Advisor have specific qualifications, such as being an attorney.

Deadline: Thursday, July 28, 2022, at 5:00 p.m. Please submit your request to the Title IX Coordinator, Andy Hayes, at hayesas@missouri.edu.

- **Accommodations.** At least ten (10) business days prior to the hearing date, you must inform the Title IX Coordinator whether you are requesting accommodations for the hearing.
Deadline: Thursday, July 28, 2022, at 5:00 p.m. Please submit your request to the Title IX Coordinator, Andy Hayes, at hayesas@missouri.edu.

POST-HEARING

- **Hearing Panel Report.** The Hearing Officer will prepare a written determination reflecting the decision of the Hearing Panel regarding responsibility, sanctions, and remedial actions, if any, and deliver it to the Title IX Coordinator. This report will be delivered to you within 10 business days following the end of deliberations. Any deviations from this timeline will be communicated to the parties.
- **Appeal Rights.** Both parties are allowed to appeal the findings of the Hearing Panel Resolution Process, but appeals are limited to the following reasons:
 - a. A procedural irregularity that affected the outcome of the matter (e.g., material deviation from established procedures, etc.);
 - b. 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;
 - c. 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
 - d. The sanctions fall outside the range typically imposed for this offense, or for the cumulative conduct record of the Respondent.

SECTION V

TITLE IX HEARING PANEL RESOLUTION PROCESS AND APPLICABLE POLICIES

You have been accused of engaging in behaviors that may violate the following provisions of University policy.

Sexual Harassment under Title IX Policy (600.020)

B. Definitions

1. **Sexual Harassment.** Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
 - c. **“Sexual assault”** - Any sexual act that constitutes rape, sodomy, sexual assault with an object, fondling, incest, and statutory rape, as defined below:
 - (i) **“Rape”** is the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or

permanent mental or physical incapacity. There is “carnal knowledge” if there is the slightest penetration of the vagina or penis by the sex organ of the other person. Attempted Rape is included.

...

The following definition from CRR 600.020(B) may also be relevant to the allegations:

...

2. **Consent to Sexual Activity.** Consent to sexual activity is knowing and voluntary. Consent to sexual activity requires of all involved persons a conscious and voluntary agreement to engage in sexual activity. Each person engaged in the sexual activity must have met the legal age of consent. It is the responsibility of each person to ensure they have the consent of all others engaged in the sexual activity. Consent must be obtained at the time of the specific activity and can be withdrawn at any time. Consent, lack of consent, or withdrawal of consent may be communicated by words or non-verbal acts.

Someone who is incapacitated cannot consent. Silence or absence of resistance does not establish consent. The existence of a dating relationship or past sexual relations between the Parties involved should never by itself be assumed to be an indicator of consent. Further, consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Coercion and force, or threat of either, invalidates consent.

3. **Incapacitated or incapacitation.** A state in which rational decision-making or the ability to consent is rendered impossible because of a person’s temporary or permanent physical or mental impairment, including but not limited to physical or mental impairment resulting from drugs or alcohol, disability, sleep, unconsciousness or illness. Consent does not exist when the Respondent knew or should have known of the other individual’s incapacitation. Incapacitation is determined based on the totality of the circumstances. Incapacitation is more than intoxication but intoxication can cause incapacitation.

Factors to consider in determining incapacity include, but are not limited to, the following:

1. 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)
2. Inability to physically or verbally communicate coherently, particularly with regard to consent (e.g., slurred or incoherent speech)
3. Lack of full control over physical movements (e.g., difficulty walking or standing without stumbling or assistance)
4. Physical symptoms (e.g., vomiting or incontinence).

...

Copies of the applicable anti-discrimination policies and procedures are enclosed for your convenience.

SECTION VI PROCEDURAL INFORMATION

The Hearing is being conducted pursuant to Equity Resolution Process for Resolving Complaints of Sexual Harassment under Title IX ([Section 600.030](#)). For a list of Hearing Process Rules, refer to 600.030(Q)(11).

Attendance and Cross-Examination. If a Party or witness does not submit to cross-examination at the hearing, the decision-maker(s) 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.

Informal Resolution. If either Party wishes to engage in Informal Resolution (Conflict Resolution or Administrative Resolution), please contact your Investigator as soon as possible, and before the hearing date, to discuss those options.



EXHIBIT 7: Texts between Palmer and White 4.3.2022, provided by Palmer

