



Office for Civil Rights
& Title IX
University of Missouri

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

EXHIBITS DOCUMENT

Winters v. Stein

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

FORMAL COMPLAINT

May 6, 2021

On this date, I am writing to state that I would like to file a complaint against Mike Stein for events that occurred on or around May 1, 2021, which constituted harassment on the basis of my: Sex/Gender.

On May 1, 2021, the following incidents occurred at Mike's house at 155 Main St., Columbia, MO 65201.

I went to a party at Mike's house. I got there around 10:00 p.m. with my friend, Nikki. Nikki and I had some drinks at her apartment before leaving to go to Mike's. When we were at the party, I played beer pong and drank a lot because I kept losing. I started feeling sick, so I went to sit down in the living room. I remember talking to Nikki and Mike in the living room but don't remember much more. I remember being in the living room and the next thing I know I am in Mike's room. I came to on his bed and he was on top of me. He didn't have a shirt on, and I didn't either. We were kissing and he was touching my breasts. I don't remember getting to his room or taking off my shirt. I remember trying to pull away but I couldn't. The next thing I remember is waking up the next morning and didn't have any clothes on. I was confused and when I got up, I saw a condom wrapper and used condom in the trash can. I then realized we had sex but I don't remember any of it.

I am giving the Office for Civil Rights & Title IX permission to contact witnesses and proceed with an investigation.

Below are some witnesses who might have information about this:
Nikki McKnight

Sincerely,

Claire Winters

Exhibit 2

Subject: *Correspondence from the Office for Civil Rights & Title IX (Meeting Request)*
Date: Wednesday, May 19, 2021 at 1:12:08 PM Central Standard Time
From: Amanda Hardin
To: Michael Stein (MU-Student)
CC: Hayes, Andy

Attachments: MS Notice of Investigation.pdf, MS_No Contact Directive.pdf, 600.010 Sex Discrimination, Sexual Harassment and Sexual Misconduct in Education and Employment Policy.pdf, 600.030 ERP Student.pdf, ERP Flowchart - Student.pdf

Dear Michael Stein,

Please see the attached correspondence from the Office for Civil Rights & Title IX. This is a Notice of Investigation based on a report we received.

Sincerely,
Amanda

Amanda Hardin, MBA, JD
Equity Consultant and Investigator
University of Missouri
[Office for Civil Rights and Title IX](#)
145 Heinkel Building
HardinAC@missouri.edu
573.884.7526
Pronouns: she/her



Office for Civil Rights & Title IX

University of Missouri

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

May 19, 2021

VIA ELECTRONIC MAIL

Michael Stein
[REDACTED]

RE: Notice of Allegations of Potential Violation of University Policy

Dear Michael Stein:

I write to inform you that our office received a report 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 violations, and you 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 hardinac@missouri.edu or 573-882-6204 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,

Amanda Hardin
Equity Consultant & Investigator

Enclosures

cc: Andy Hayes, Assistant Vice Chancellor for Civil Rights & Title IX

SECTION I

ALLEGATIONS

Claire Winters reported that, in the overnight hours of May 1-2, 2021, you engaged in nonconsensual sexual intercourse (sexual assault: rape) with her while she was incapacitated due to alcohol consumption and thus unable to consent to sexual activity, as defined by University policy.

Specifically, Winters reported the following:

1. Winters reported arriving at a party at your off-campus house at 155 Main Street in Columbia, Missouri, around 10:00 p.m. She reported that she consumed alcohol and played games with her friend and other party attendees, and that you were present at the party as well.
2. Winters reported feeling dizzy and nauseous after consuming approximately two shots of vodka prior to arriving at your house and an unknown amount of alcohol while playing beer pong. She reported that, due to feeling sick, she sat down on the couch in the living room. She stated that she does not recall much more of the evening because she was in and out of consciousness due to alcohol intoxication.
3. Winters said that she remembers being in the living room and then being on your bed in your bedroom but has no memory of how she got to your bedroom. She alleges that when she regained consciousness, you were allegedly on top of her. She stated that you did not have a shirt on, and her shirt was also removed, but she does not recall removing it. She alleges that you were kissing her and touching her breasts over her bra. She reportedly tried to pull away but was unable to move very much, due to her level of intoxication.
4. She reported that she does not remember anything else about the night. Winters stated the next morning, she woke up in your bed around 8:30 a.m. and she was fully naked. She reported that she saw a condom wrapper and used condom in the trash can. She reported immediately getting dressed and leaving before you woke up. Based on her intermittent memories from that night, waking up naked in your bed, and finding the used condom the next morning, Winters alleges that you engaged in nonconsensual sexual intercourse (rape) with her while she was incapacitated and unable to consent to sexual activity.

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 600.040\(H\)](#) of the Collected Rules and Regulations (CRR)). If, at any time, you need to review the availability of supportive measures, please contact your Investigator.

1. A 'No Contact Directive' has been issued. Please read it carefully and contact me with any questions. I will inform you of any additional interim measures that may impact you.

SECTION III

RESOLUTION PROCESS

I will conduct the investigation pursuant to: Equity Resolution Process for Resolving Complaints of Discrimination and Harassment against a Faculty Member or Student or Student Organization (CRR [600.040](#)). Under this procedure, you have the following Equity Resolution Processes available:

Conflict Resolution: A voluntary resolution process using alternative dispute resolution mechanisms such as mediation, facilitated dialogue, or restorative justice. (CRR 600.040(O))

Administrative Resolution: A voluntary 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. (CRR 600.040(Q))

Hearing Panel Resolution: An Equity Resolution Hearing Panel makes a finding on each of the alleged policy violations. In faculty matters, the Hearing Panel will make recommendations as to any sanctions, if applicable, and the Provost will make the finding on sanctions. In matters involving students or student organizations, the Hearing Panel will make a finding on sanctions and remedial actions. (CRR 600.040(R))

APPLICABLE POLICIES

The alleged conduct may violate the following provisions of the University's Nondiscrimination Policies:

Equal Employment/Educational Opportunity and Nondiscrimination Policy ([600.010](#))

B. Definition of Discrimination and Harassment.

...

1. **Sex Discrimination.** Sex discrimination is conduct that is based upon an individual's sex, pregnancy, gender identity, or gender expression that adversely affects a term or condition of an individual's employment, education, living environment, or participation in a University education program or activity. Sex discrimination under this policy includes the following:

...

- a. Sexual Harassment, as defined in CRR 600.020, is governed exclusively by CRR 600.020 and CRR 600.030. *All other forms of sex-based discrimination are governed by this policy, including sex-based harassment that does not rise to the level of Sexual Harassment as defined in CRR 600.020, and conduct that*

meets the substantive definition of Sexual Harassment as defined in CRR 600.020 that occurs outside the University's education programs, activities, or employment, or occurs outside the United States, but nonetheless has an effect that interferes with or limits any person's ability to participate in or benefit from the University's education programs, activities or employment;

...

The applicable definition from 600.020:

"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.

...

- 3. **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.

- 4. **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 Equity Resolution 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 Equity Resolution 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 interviews and meetings. You may select whomever you wish, including an attorney.

If you are a student who does not have a Support Person and would like one, you may submit a request to the Office for Civil Rights & Title IX. Upon receipt of your request, the Office for Civil Rights & Title IX 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.

Review of Evidence: As a Party to the 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 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 Equity Resolution 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, 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.

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. 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 IV **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 an Equity Support Person of the Party's choice accompany the Party to all interviews, meetings, and proceedings throughout the Equity Resolution Process.
6. To refuse to have an allegation resolved through Conflict or Administrative 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 Complaints heard in substantial accordance with these procedures.
10. To receive written notice of any delay of the process or limited extension of time frames.
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 a summary determination ending the process, and appeal the determination of a hearing panel or decision-maker.
14. When the Complainant is not the reporting Party, the Complainant has full rights to participate in any Equity Resolution Process.
15. Additional Rights for Students as a Party:
 - a. To request reasonable housing, living and other accommodations and remedies consistent with Section 600.040.H.
 - b. To receive amnesty for minor student misconduct that is ancillary to the incident, at the discretion of the Equity Officer.
16. Additional Rights for Hearing Panel Resolution:
 - a. To receive notice of a hearing.
 - b. To have the names of witnesses that 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 Panel Chair or by failure to appear.
 - d. To have present an Equity Support Person during the hearing and to consult with such Equity Support Person during the hearing.
 - e. To request to have an Equity Support Person of the University's selection appointed for a Student Party where the Student Party does not have an Equity Support Person of their own choice at a hearing.

- f. To testify at the hearing or refuse to testify at the hearing.
- g. To have an equal opportunity to present witnesses and documents deemed relevant by the Hearing Panel Chair, and to question witnesses present and testifying at the hearing.
- h. To request that the hearing be held virtually, with technology enabling participants simultaneously to see and hear each other.

Exhibit 3



Office for Civil Rights & Title IX

University of Missouri

May 19, 2021

VIA ELECTRONIC MAIL

Michael Stein
[REDACTED]

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

RE: NO CONTACT DIRECTIVE

Dear Michael Stein:

The Office for Civil Rights & Title IX received a complaint containing allegations that you may have engaged in discriminatory behavior, in violation of University Policy (CRR 600.010). As a supportive measure, you are now being directed to abide by the contact restriction below:

Contact Restriction: This letter serves as an official directive that you have no contact with Claire Winters. 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 Winters, you are to do so via this office. Winters has been notified of this directive and has been asked to follow the same instructions.

Further contact may result in immediate disciplinary action and the possible involvement of law enforcement.

Non-Retaliation: At no time should you engage in any type of retaliation against anyone who participates in the investigation 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 the investigation, testifying, etc.).

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

Sincerely,

Amanda Hardin
Equity Consultant & Investigator

Enclosures

cc: Andy Hayes, Assistant Vice Chancellor for Civil Rights & Title IX

Exhibit 4

Subject: *Case Update: Matter Moving Forward*

Date: Wednesday, June 23, 2021 at 3:02:22 PM Central Standard Time

From: Amanda Hardin

To: Michael Stein (MU-Student)

Dear Michael Stein,

This email is to inform you of the status of my Investigation. Andy Hayes, Assistant Vice Chancellor for Civil Rights & Title IX, has reviewed notes of my interviews, as well as other pertinent documentary evidence obtained during the investigation. Based on that review, Ms. Hayes has determined that there *is* sufficient information to move the complaint forward to the resolution phase of the Equity Resolution Process.

The complaint will proceed as to the following potential violation:

Equal Employment/Educational Opportunity and Nondiscrimination Policy ([600.010](#))

B. Definition of Discrimination and Harassment.

...

1. **Sex Discrimination.** Sex discrimination is conduct that is based upon an individual's sex, pregnancy, gender identity, or gender expression that adversely affects a term or condition of an individual's employment, education, living environment, or participation in a University education program or activity. Sex discrimination under this policy includes the following:

...

- a. Sexual Harassment, as defined in CRR 600.020, is governed exclusively by CRR 600.020 and CRR 600.030. All other forms of sex-based discrimination are governed by this policy, including sex-based harassment that does not rise to the level of Sexual Harassment as defined in CRR 600.020, and conduct that meets the substantive definition of Sexual Harassment as defined in CRR 600.020 that occurs outside the University's education programs, activities, or employment, or occurs outside the United States, but nonetheless has an effect that interferes with or limits any person's ability to participate in or benefit from the University's education programs, activities or employment;

3. **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.

4. **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)

Next Steps: Please choose how you would like to resolve the complaint and notify me by **Thursday, June 30**. The resolution choices are outlined below.

Conflict Resolution: Provides an opportunity for both parties to reach a mutually agreed upon result. Either party may request this option but both parties must agree to participate *and* is subject to approval by the Assistant Vice Chancellor for Civil Rights and Title IX. At any time, either party can stop the Conflict Resolution Process and request to move to either the Administrative Resolution or Hearing Panel process. ([600.040 O](#))

Administrative Resolution: The Assistant Vice Provost for Civil Rights and Title IX Administrator will review the investigative report and meet with relevant parties to render a finding of whether a policy violation occurred and appropriate sanctions, if applicable. ([600.040 P, Q](#))

Hearing Panel Resolution: A 3-person Hearing Panel will review the investigative report and conduct a formal hearing where it will hear from both parties as well as any applicable witnesses. Both the complainant and respondent can question each other by directing their questions through the Hearing Panel Chair. The Hearing Panelists will make a finding of responsibility and prepare a written report detailing the findings and sanctions (if applicable), how each member voted, and information cited by the panel in support of its determination. ([600.040 P, R](#))

Exhibit 5

Subject: **Correspondence from the Office for Civil Rights & Title IX** Notice of Hearing
Date: Monday, July 12, 2021 at 1:12:08 PM Central Standard Time
From: Zufall, Elisabeth A. on behalf of Hayes, Andy
To: Michael Stein (MU-Student)
CC: Amanda Hardin
Attachments: 600.010 Equal Employment/Educational Opportunity and Nondiscrimination Policy.pdf, 600.040 ERP Student.pdf, MS Notice of Hearing.pdf, Preparing for a Zoom Hearing.pdf

Dear Michael Stein,

Please read the attached documents carefully.

Very truly yours,

Andy Hayes
University of Missouri Division of Inclusion, Diversity and Equity
Assistant Vice Chancellor for Civil Rights & Title IX
Title IX Administrator
202 Jesse Hall
Columbia, MO 65211
573.882.2824
<http://civilrights.missouri.edu/>

UNIVERSITY *of* MISSOURI

OFFICE FOR CIVIL RIGHTS & TITLE IX

July 12, 2021

VIA ELECTRONIC MAIL

Michael Stein
[REDACTED]

RE: Notice of Hearing

Dear Michael Stein:

This letter is to inform you that the University will proceed with Hearing Panel Resolution to address 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: Equity 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 advisor.

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,



Andy Hayes

Assistant Vice Chancellor & Title IX Administrator

Enclosures

cc: Amanda Hardin, Investigator and Outreach Coordinator

SECTION I HEARING DATE AND LOCATION

Date	Start Time	Location
Thursday, August 12, 2021	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 Chair of the Hearing Panel may grant requests to reschedule the hearing date.

Please review the included "Preparing for a Zoom Hearing" document. It provides an overview of the hearing itself, measures we are taking regarding privacy, and what you can do to prepare.

SECTION II HEARING PANELIST INFORMATION

Panel Members	Alternate Panelists
Amber Lammers* Liz Zufall Lisa Taylor	Marie Panjabi Jack Jennings

*Amber Lammers has been designated as the Chair of the Hearing Panel, 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 OneDrive folder. Shortly, you will receive a link from Amanda Hardin to access the documents. If you do not receive a link within 24 hours or have trouble accessing the folder, please contact Ms. Hardin.

SECTION IV TIMLINE AND DEADLINES

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

PRE-HEARING DEADLINES

- **Additional Evidence or Witnesses.** At this point, both parties have been invited to attend the hearing, and you are each welcome to bring one advisor. If you want any witnesses to also be present to testify at the hearing, you must provide a list of those proposed witnesses to the investigator, who will then notify the other party and the hearing panelists. You may also request that the panel consider additional evidence that has not already been included in the investigation materials.

The Chair of the Hearing Panel, in consultation with the parties and investigator(s), may decide in advance of the hearing that certain witnesses do not need to be physically present if their testimony can be adequately summarized by the investigator in the investigation report or during the hearing. All parties will have ample opportunity to present facts and arguments in full and question all present witnesses during the hearing, though formal cross-examination is not used between the parties.

Deadline: Thursday, July 22, 2021, at 5:00 p.m. Please submit any proposed additional evidence or witnesses to Investigator, Amanda Hardin, at hardinac@missouri.edu.

- **Objection to Panelists.** You must raise such objection(s) in writing to the Equity Officer. Hearing panel members will only be unseated and replaced if the Equity Officer 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 Hearing Panel member's involvement could impact the Party's work or learning environment due to current or potential interactions with the Hearing Panel member (e.g., a panel member being in the same department as either Party). If the Equity Officer determines that a Hearing Panel member should be unseated and replaced, then the Equity Officer will ask the Hearing Panel Pool Chair to randomly select another member from the pool to serve on the Hearing Panel. The Equity Officer will provide a written response to all Parties addressing any objections to the Hearing Panel members. 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 22, 2021, at 5:00 p.m. Please submit your objection(s) to the Equity Officer, Andy Hayes, at hayesas@missouri.edu.

- **Request for Alternative Attendance.** This hearing will take place over Zoom and will be conducted live, enabling the Hearing Panel and their legal advisor, if any, the parties and their Equity Support Person, and the investigator, to simultaneously see and hear the party or the witness answering questions. The University will make reasonable accommodations for the parties in keeping with the principles of equity and fairness.

To ensure adequate time to review and consider any request for a reasonable accommodation, we ask that you submit your request, if any, by Tuesday, August 10, 2021, at 5:00pm. Please submit your request(s) to Hearing Panel Chair, Amber Lammers, at lammersa@missouri.edu.

POST-HEARING

- **Hearing Panel Report.** The Equity Resolution Hearing Panel Chair will prepare a written panel report and deliver it to the Equity Officer or Title IX Coordinator detailing the finding, how each member voted, the information cited by the panel in support of its determination and any information the Equity Resolution Hearing Panel excluded from its consideration and why. If a party is found responsible, the report should conclude with sanctions. This report will be delivered to you within 10 business days following the end of deliberations.
- **Appeal Rights.** Both parties are allowed to appeal the decision of the Equity Resolution Panel, but appeals are limited to the following reasons:

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.

All requests for appeal on these grounds must be submitted in writing to the Equity Resolution Appellate Officer **within five (5) business days** of the delivery of the findings.

SECTION V EQUITY RESOLUTION PROCESS AND APPLICABLE POLICIES

Equal Employment/Educational Opportunity and Nondiscrimination Policy ([600.010](#))

B. Definition of Discrimination and Harassment.

...

1. **Sex Discrimination.** Sex discrimination is conduct that is based upon an individual's sex, pregnancy, gender identity, or gender expression that adversely affects a term or condition of an individual's employment, education, living environment, or participation in a University education program or activity. Sex discrimination under this policy includes the following:

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- a. Sexual Harassment, as defined in CRR 600.020, is governed exclusively by CRR 600.020 and CRR 600.030. *All other forms of sex-based discrimination are governed by this policy, including sex-based harassment that does not rise to the level of Sexual Harassment as defined in CRR 600.020, and conduct that meets the substantive definition of Sexual Harassment as defined in CRR 600.020 that occurs outside the University's education programs, activities, or employment, or occurs outside the United States, but nonetheless has an effect that interferes with or limits any person's ability to participate in or benefit from the University's education programs, activities or employment;*

...

The applicable definition from 600.020:

"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.

...

3. **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.

4. **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)

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

SECTION VI PROCEDURAL INFORMATION

Please be aware that the following procedural details apply to the Hearing.

Prior sexual history. Questioning or evidence about prior sexual conduct is not permitted, though the Chair may grant a limited exception in regards to the sexual history between the parties, if deemed relevant. CRR 600.040(P)(3)(a).

Character evidence is not admitted unless deemed relevant by the Chair. CRR 600.040(P)(3)(b).

Method of Questioning. Parties may not directly question each other, unless they both agree to do so. Otherwise, written questions will be directed to the Chair. CRR 600.040(P)(4).

The following is a brief description of the procedure to be used at the upcoming hearing.¹

An Equity Resolution Hearing Panel (composed of three faculty, administrators, and/or staff) will assemble at a formal hearing. First, the investigator will present the written Investigative Report and be subject to questions. Next, the parties will take turns giving testimony and asking and answering questions.

Panel Deliberations. After the hearing concludes, the panel will deliberate with no others present, except a legal advisor, to determine whether the parties are responsible or not responsible for the policy violation(s) in question. The panel will base its determination on a preponderance of the evidence (i.e., whether it is more likely than not that the parties committed each alleged violation).

Sanctions. Potential sanctions made in the determination of responsibility include a written warning; probation; loss of privileges; restitution to compensate the University for loss, damage, or injury; discretionary sanctions such as work assignments, service to the University, or completion of educational programs or counseling; residence hall suspension or expulsion; campus suspension, University dismissal; University suspension; withdrawal of recognition for University organizations; or University expulsion.

Support Person. The procedures provide that parties may have one Equity Support Person ("Support Person") of their choice present during the hearing. The parties may select whomever they wish to serve as their Support Person, including an attorney or parent. Support Persons may not make a presentation or represent the parties during the hearing. At the hearing, the parties are expected to ask and respond to questions on their own behalf, without representation by their Support Person. The Support Person may consult with the advisee quietly or in writing, or outside the hearing during breaks, but may not speak on behalf of the advisee to the hearing panelists. If the Support Person fails to follow these guidelines, they will be warned or dismissed from the hearing at the discretion of the Hearing Panel Chair.

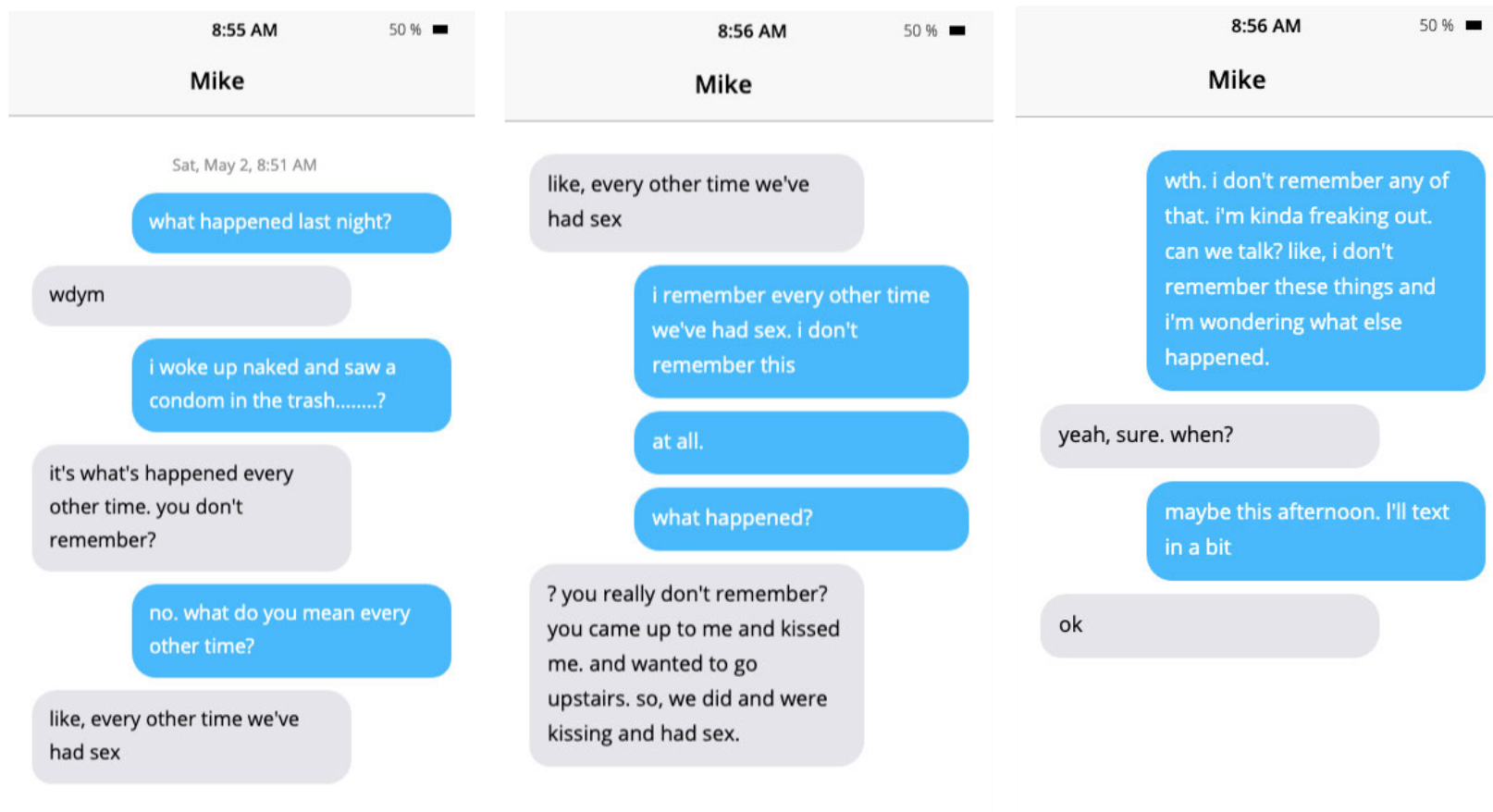
Retaliation. Please be advised that retaliation is any adverse action taken against a person because of that person's participation in protected activity. The University strictly prohibits retaliation against any person for making any good faith report of discrimination, harassment, or sexual misconduct or for filing, testifying, assisting, or participating in any investigation or proceeding involving allegations of discrimination, harassment, or sexual misconduct. This includes, but is not limited to, any hostile actions such as verbal or visible threats to the wellbeing of an individual, any

¹ For a complete description of the Equity Resolution Process, go to: [CRR 600.040](#): Equity Resolution Process for Resolving Complaints of Discrimination and Harassment against a Faculty Member or Student or Student Organization - for matters involving conduct alleged to have occurred on or after August 14, 2020.

threat to spread false information about a person, or any such action that would deter reasonable people from pursuing their rights.

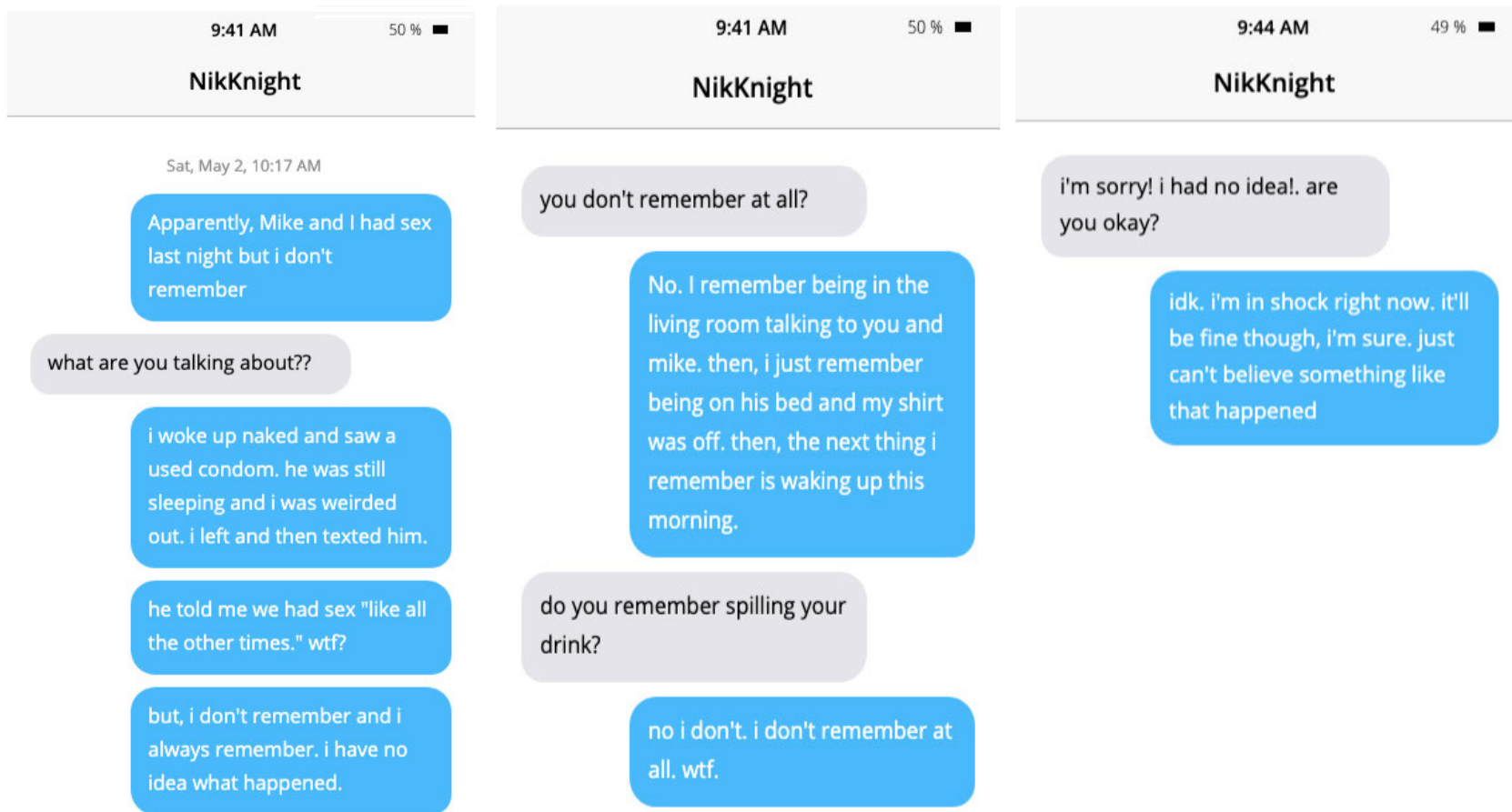
Any person who engages in such retaliation shall be subject to disciplinary action, up to and including expulsion or termination, in accordance with applicable procedures. Any person who believes they have been subjected to retaliation is encouraged to promptly notify the Equity Officer or Title IX Coordinator. The University will promptly investigate all complaints of retaliation.

Exhibit 6



Screenshots of text messages between Winters and Stein, provided by Winters.

Exhibit 7



Screenshots of text messages between Winters and McKnight, provided by Winters.