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Equity

Discrimination & Harassment

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Scenario for Equity

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



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Equity

University of Missouri Statement of Non-discrimination, CRR 600.010

"The University of Missouri does not discriminate on the basis of:

- race,
- color,
- national origin,
- ancestry,
- religion,
- sex,
- pregnancy,
- sexual orientation,
- gender identity,
- gender expression,
- age,
- disability,
- protected veteran status, and
- any other status protected by applicable state or federal law.



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Equity – Discrimination & Harassment

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

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



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Equity – Discrimination & Harassment

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

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

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

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



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Title IX

Sexual Harassment

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Scenario for Title IX

Wilma met Fred over snapchat. They decide to meet downtown at Harpos. Prior to going out, Wilma has 5 Truly's and 2 shots of vodka. Fred doesn't drink beforehand. Once at Harpo's they both use their fake id's to purchase drinks. Wilma has 2 mixed drinks and Fred has 3 beers. Wilma didn't eat that day and around 10:30 pm starts to feel sick. Fred offers to walk her back to her dorm room. Wilma is stumbling during their walk and even gets confused about which residence hall she lives in. Fred gets in her purse to get her keycard out to swipe so they can enter the residence hall. Once in Wilma's room they begin kissing. When Wilma wakes up the next morning she is only wearing a t-shirt. She doesn't remember anything after kissing, but notices a used condom in the trash can. She immediately snaps Fred and asks if they had sex. He responds, yes.



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Title IX

Title IX of the Education Amendments of 1972

"No person in the United States shall, on the basis of **sex**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."



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Title IX Sexual Harassment

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



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Title IX Sexual Harassment

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



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Jurisdiction

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

EQUITY

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

TITLE IX

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



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Process and Procedure

Report & Intake

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How Reports are Made

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



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Supportive Measures

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



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Process and Procedure

Investigation

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Who's Who?

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



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Investigation Process

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



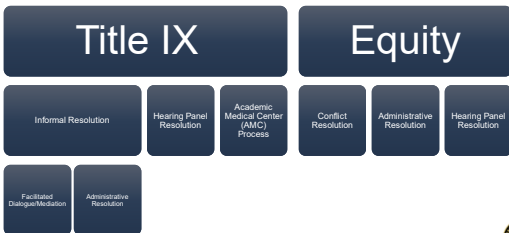
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Process and Procedure

Which process?

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The Processes



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Available Process

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

- Academic Medical Center Process (Title IX)**
- Used to resolve Formal Complaints that arise from a University of Missouri Hospital and Clinic or other designated facility
 - Process similar to administrative resolution
 - Single decision-maker

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

- Hearing Panel Resolution**
- 3-person decision-maker (majority vote)
 - Live hearing with testimony and opportunity for questions to be asked of Parties/witnesses
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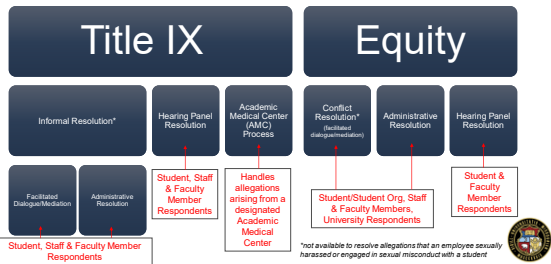
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Who is Entitled to What Process?



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Process and Procedure

Review & Appeal

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Dismissal & Summary Determination

Title IX

- **Mandatory Dismissal:**
 - Conduct alleged does not constitute sexual harassment, even if proved
 - Conduct alleged did not occur in University's education program or activity
 - Conduct alleged did not occur against a person in US
- **Permissive Dismissal:**
 - Complainant wants to withdraw Formal Complaint or any allegations
 - Respondent no longer enrolled/employed
 - Specific circumstances prevent University from gathering sufficient evidence to reach determination
- Either Party can **appeal** this decision

Equity

- Equity Officer will review evidence gathered to determine if there is a sufficient basis to proceed with the Complaint that the Respondent is responsible for violating university policy
- If so, the process will continue.
- If not, the process will end and Parties will be provided notice of the Equity Officer's decision.
- Either Party can **request reconsideration** of the Equity Officer's summary determination
- If requested, Equity Resolution Appellate Officer will review Equity Officer's finding and send notice of their findings.
- Equity Resolution Appellate Officer's decision is final.



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Appeals

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



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Questions?



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