

Title IX Basics

Equity & Title IX Volunteer Training

August 2024



UMKC

MISSOURI
S&T

UMSL

University of Missouri System

What is Title IX?

“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....”

20 U.S.C. 1681



UMKC

MISSOURI
S&T

UMSL

University of Missouri System

CRR 600.020

Sexual Harassment under Title IX

- “The University is committed to affording equal employment and education opportunities to its employees and students, and to creating an environment free from discrimination and harassment. In furtherance of these commitments, both University policy and applicable state and federal law, prohibit all students, employees, volunteers and visitors at the University from engaging in sexual harassment in a University education program or activity against a person in the United States.”



UMKC

MISSOURI
S&T

UMSL

Definition of Sexual Harassment:

- Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
- Quid Pro Quo
- Hostile Environment
- Sexual Assault (Rape; Sodomy; Sexual Assault with an Object; Fondling; Incest; Statutory Rape)
- Dating Violence
- Domestic Violence
- Stalking



UMKC

MISSOURI
S&T

UMSL

University of Missouri System

Quid Pro Quo

“something for something”

- An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual’s participation in unwelcome sexual conduct.
 - *Elements that must be established by preponderance of the evidence:*
 - *Respondent is an employee of the University*
 - *Conditioning the provision of an aid, benefit, or service of the University*
 - *On complainant’s participation in unwelcome sexual conduct.*



UMKC

MISSOURI
S&T

UMSL

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.
- *Elements that must be established by a preponderance of the evidence:*
 - *Unwelcome conduct on the basis of sex*
 - *As judged from the perspective of a reasonable person in the complainant's position*
 - *that is so severe, pervasive **and** objectively offensive*
 - *Effectively denies a person's ability to participate in or benefit from a University program or activity.*



UMKC

MISSOURI
S&T

UMSL

Sexual Assault: *Rape*

- Rape: **New Definition**
- penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, or by a sex-related object, without the consent of the victim. This definition also includes instances in which the victim is incapable of giving consent because of a temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent. Attempted Rape is included.



UMKC

MISSOURI
S&T

UMSL

Sexual Assault:

Sodomy

- “Oral or anal sexual intercourse with another 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.”



UMKC

MISSOURI
S&T

UMSL

Sexual Assault:

Sexual Assault with an Object

- Using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another 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.
- An “object” or “instrument” is anything used by the offender other than the offender’s genitalia.



UMKC

MISSOURI
S&T

UMSL

Sexual Assault:

Fondling

- The touching of the private body parts of another person for the purpose of sexual gratification, 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.



UMKC

MISSOURI
S&T

UMSL

Sexual Assault:

Incest/ Statutory Rape

- Incest is “sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Missouri law.
- Statutory rape is “sexual intercourse with a person who is under the statutory age of consent as defined by Missouri law.”



UMKC

MISSOURI
S&T

UMSL

Dating Violence

- Violence committed by a person –
 - A. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - B. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - (i) The length of the relationship;
 - (ii) The type of relationship;
 - (iii) The frequency of interaction between the persons involved in the relationship.



UMKC

MISSOURI
S&T

UMSL

University of Missouri System

Domestic Violence

Includes felony or misdemeanor crimes of violence committed by:

- A current or former spouse or intimate partner of the victim;
- A person with whom the victim shares a child in common;
- By a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
- By a person similarly situated to a spouse of the victim, under the domestic or family violence laws of Missouri; or
- By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Missouri.



UMKC

MISSOURI
S&T

UMSL

Stalking

- Engaging in a course of conduct directed at a specific person knowing or consciously disregarding a substantial and unjustifiable risk that the course of conduct would cause a reasonable person to—(A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.
- Elements:
 - 1. a course of conduct
 - 2. directed at a specific person
 - 3. knowing or consciously disregarding a substantial and unjustifiable risk that this conduct would cause a reasonable person to
 - i. fear for their safety or the safety of others or
 - ii. Suffer substantial emotional distress.



UMKC

MISSOURI
S&T

UMSL

University of Missouri System

Consent to Sexual Activity

- ✓ An Agreement between participants to engage in sexual activity.
- ✓ Consent must be knowing and voluntary.
- ✓ Consent must be obtained at the time of the specific activity and can be withdrawn at any time.
- ✓ Consent or lack of consent may be communicated by words or non-verbal acts.



UMKC

MISSOURI
S&T

UMSL

Consent...

- Cannot be coerced or compelled by force, threat, deception or intimidation.
- Cannot be given by someone who is incapacitated.
- Cannot be assumed based on silence, the absence of “no” or “stop,” the existence of a prior or current relationship, or prior sexual activity.
- To one form of sexual activity does not imply consent to other forms of sexual activity.



UMKC

MISSOURI
S&T

UMSL

What it means to be Incapacitated:

- A person is incapable of consent if they are unable to understand the facts, nature, extent, or implications of the situation due to drugs, alcohol, a mental disability, being asleep or unconscious, or based on their age.
- Factors to consider in determining incapacity:
 - Lack of awareness of circumstances or surroundings;
 - Inability to physically or verbally communicate coherently, particularly with regard to consent;
 - Lack of full control over physical movements;
 - Physical symptoms.



UMKC

MISSOURI
S&T

UMSL

Quick Process Summary

1. Report.
2. Supportive Measures.
3. Formal Complaint.
4. Notice of Allegations.
5. Investigation.
6. Dismissal.
7. Informal Resolution.
8. Hearing.
9. Decision/ Sanctions/ Remedies.
10. Appeal.



UMKC

MISSOURI
S&T

UMSL

Important Terms to Know

- Complainant
- Respondent
- Hearing Officer
- Hearing Panel
- Advisor
- Support Person
- Equity Resolution Appellate Officer



UMKC

MISSOURI
S&T

UMSL

Selection of Hearing Panel

- 1. Hearing Panelist Pool: individuals selected to serve as hearing panel members.
 - ❖ Renewable **two year terms**.
- ❖ Hearing Panel consists of three individuals as follows:
 - ❖ Two members shall be randomly selected from the Hearing Panelist Pool by the Hearing Panel Pool Chair.
 - ❖ **One member shall be the Hearing Officer.**
 - ❖ Up to two alternates may be designated to sit in throughout the process as needed.
- ❖ University attorney will be present to advise the Hearing Panel.
- ❖ Hearing Panel members from one University may be asked to serve on a hearing panel involving another University.



UMKC

MISSOURI
S&T

UMSL

Conflicts and Objections to the Hearing Panel Members

- Hearing Panel members, including the Hearing Officer, shall not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.
- Parties will be given the names of the Hearing Panel members; will have to make any objections to the Hearing Panel members at least 15 business days before the hearing.
- 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.



Conduct of the Hearing

- The Hearing Officer shall preside at the hearing.
- Order of Evidence:
 - Complainant
 - Verbal statement.
 - Hearing Panel Questions.
 - Questioning by Advisor for the Respondent.
 - Complainant's Witnesses.
 - Respondent
 - Verbal Statement.
 - Hearing Panel Questions.
 - Questioning by Advisor for the Respondent.
 - Respondent's Witnesses.
 - Investigator
 - Available to answer questions; may call witnesses.



Important:

The Hearing Panel may ask questions of the Parties or any witnesses including the Investigator at any time during the hearing.



UMKC

MISSOURI
S&T

UMSL

University of Missouri System

Hearing Process Rules

1. Questions and evidence about the Complainant's pre-disposition or prior sexual behavior are generally not relevant.
2. Evidence concerning a Party's character is of limited utility.
3. Incidents or behaviors of a Party not directly related to the possible violation(s) will not be considered unless they show a pattern of related misconduct.
4. A Party's medical records may not be used without that Party's express consent.
5. Information protected under a legally recognized privilege is not admissible, unless the privilege has been waived.
6. The Hearing Officer shall determine the relevancy and admissibility of any evidence offered at the hearing.
7. Procedural questions which arise during the hearing and which are not covered by the general rules shall be determined by the Hearing Officer.
8. The Parties' Advisors may object to questions on limited grounds as specified in the Rules of Decorum; such objections will be ruled on by the Hearing Officer.



UMKC

MISSOURI
S&T

UMSL

University of Missouri System

Special Rules for Title IX Proceedings

- Each Party has an Advisor to conduct all questioning at a hearing, including cross-examination of the other Party.
- If a Party or witness does not submit to cross-examination at a hearing, the hearing panel may not rely on any statement by that Party or witness in reaching a conclusion about whether a violation of policy occurred.
- However, the hearing panel may not draw any inference, good or bad, from the failure of a party or witness to submit to cross-examination.



UMKC

MISSOURI
S&T

UMSL

Findings of the Hearing Panel

- The hearing panel will deliberate with no others present, except the legal advisor to the hearing panel.
- The hearing panel's determination will be based on a preponderance of the evidence.
- A determination requires a majority of the hearing panel; each member of the hearing panel has an equal vote.
- If the Respondent is found responsible for a violation of University policy, the hearing panel will determine appropriate sanctions and remedial actions by a majority vote.
- The Hearing Officer will prepare a written determination reflecting the decision of the hearing panel.



UMKC

MISSOURI
S&T

UMSL

The Appeal Process:

Grounds for Appeal

- Either or both Parties may appeal the findings of a hearing panel.
- Appeals are limited to the following grounds:
 - A procedural irregularity that affected the outcome of the matter.
 - To consider new evidence that was not reasonably available at the time the determination regarding responsibility was made, that could affect the outcome of the matter.
 - There was a conflict of interest on the part of the Title IX Coordinator, the Investigator or the decision-makers that affected the outcome of the matter.
 - The sanctions fall outside the range typically imposed for the offense, or for the cumulative conduct record of the Respondent.



UMKC

MISSOURI
S&T

UMSL

The Appeal Process: *The Request*

All requests for appeal must be submitted in writing to the Equity Resolution Appellate Officer within five business days of delivery of the hearing panel decision.

When one Party requests an appeal, the other Party will be notified and will receive a copy of the request for appeal.

The non-appealing Party may file a response to the appeal request within five business days of delivery of the request for appeal.



The Appeal Process:

Review of the Request for Appeal

- The Equity Resolution Appellate Officer will make an initial review of the Request for Appeal to determine whether:
 - The request is timely, *and*
 - The appeal is on the basis of one or more of the articulated grounds for appeal, *and*
 - When viewed in the light most favorable to the appealing Party, the appeal states grounds that could result in an adjusted finding or sanction.



UMKC

MISSOURI
S&T

UMSL

The Appeal Process:

Review of the Appeal

- Appeals are not intended to be full re-hearings of the Formal Complaint and will be deferential to the original findings.
- Most appeals are confined to a review of the written documentation and the Record of the Case, and relevant documentation of the grounds for Appeal.
- Appeals granted on the basis of new evidence will normally be remanded to the original decisionmaker(s) for reconsideration.
- The Equity Resolution Appellate Officer's written decision is final.



UMKC

MISSOURI
S&T

UMSL

University of Missouri System



————— University of Missouri System —————