**AMENDMENTS TO COLLECTED RULES AND REGULATIONS (CRR) TO COMPLY WITH NEW FEDERAL REGULATIONS**

**Executive Summary**

On May 6, 2020, the Department of Education issued final regulations setting out required procedures for grievances brought under Title IX. The University must implement them by August 14, 2020.  A University-wide Title IX Task Force has drafted revisions to the University’s existing CRRs to comply with the new regulations. The revised CRRs have been vetted with the President, Chancellors, Vice Chancellors for Student Affairs, Title IX Coordinators, Intercampus Faculty Council, Intercampus Staff Advisory Council, Intercampus Student Council, Administrative Management Council, Diversity Equity and Inclusion Officers, and the Human Resources Council.  Additionally, the proposed revisions have been reviewed and approved by outside counsel with Title IX expertise.  The revisions now come to the Board for approval.  Included in these materials is a summary of the revised rules, red-lined copies of the rules showing the revisions, and clean copies of the proposed new rules. Also included is a proposed action item which approves the revisions and gives the President authority for the next 12 months to make further revisions without Board approval, provided he gives the Board advance notice and adequate time to object.

Title IX was enacted in 1972 as a follow-up to the Civil Rights Act of 1964, and to subsequent statutes and executive orders, all of which were intended to prohibit various forms of discrimination.  Title IX was designed to address a specific gap in coverage of existing laws by prohibiting discrimination on the basis of sex in federally funded educational programs.

The language of Title IX itself is short and straight forward. It states:

“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 educational program or activity receiving Federal financial assistance.” [20 U.S.C. 1681]

Subsequent to its enactment, regulations were promulgated under Title IX that required “recipients” of federal funding to adopt and publish grievance procedures for the prompt and equitable resolution of complaints of discrimination on the basis of sex.  Later, colleges and universities, including the University of Missouri, structured their Title IX grievance procedures to comply with the 2011 Dear Colleague Letter and the 2014 Question & Answer document, both of which were guidance documents issued under the Obama Administration.

On September 22, 2017, the Trump administration withdrew those guidance documents and indicated that it would be proposing new regulations to govern Title IX. Newregulations were proposed on November 29, 2018, and a 60-day public comment period followed.  During the public comment period, over 100,000 comments were received.

While the public comments were being considered, the University formed a Title IX Task Force to prepare for the new regulations.  The Task Force was chaired by University Counsel Kathy Bunn and included VP Fischer, the Title IX Coordinators from the System and each university, and a representative chosen by each of the Intercampus Faculty Council (IFC), the Intercampus Staff Advisory Council (ISAC), and the Intercampus Student Council (ISC). The Task Force members were:

**Kathy Bunn (Chair),** University Counsel, UM

**Inya Baiye**, Assistant Vice Chancellor for Inclusive Excellence, MU

**Elizabeth Beal**, Manager, Business Administration, Student Affairs, MU

**Dana Beteet Daniels**, Title IX Administrator, Chief Equity Officer, UMSL

**Marsha Fischer**, Associate Vice President for Human Resources, Chief Human

Resources Officer, Interim Chief Equal Opportunity Officer, UM

**Andy Hayes**, Assistant Vice Chancellor for Civil Rights and Title IX, MU

**Cecily Hicks**, UM Deputy Title IX Coordinator and Equity Officer, UM

**Lacy Lugo**, HR Compliance Manager, UMHC

**Dea Marx**, ProRoos Program Director, Senior Student Services Coordinator, UMKC

**Jason W. Miller**, Director of HRIS & Employee Relations, UMHC

**Neil Outar**, Chief Diversity Officer, MS&T

**Pamela Stuerke**, Associate Professor, Accounting, MU

**Avery Welker**, Graduate Student, former Student Representative to the Board of

Curators, MS&T, UM

**Sybil Wyatt**, Title IX Coordinator, ADA Coordinator, and Director of the Office of

Affirmative Action, UMKC

The Task Force received important support from **Brandy Stockton**, Executive Assistant, Human Resources, UM; **Jenelle Beavers**, University Counsel, UM; and **Mark Van Zandt**, University Counsel, UM.

On May 6, 2020, the Department of Education issued the final regulations, totaling over 2,000 pages of regulations and related materials, with an effective date of August 14, 2020. The Title IX Task Force drafted revisions to Chapter 600 of the CRRs relating to the University’s policy on equal employment/educational opportunity and nondiscrimination.  Most of the revisions appear in CRR 600.030 relating to Title IX grievances, although minor changes have been made in other Chapter 600 rules regarding other forms of discrimination (often referred to as “equity” proceedings). A summary of the changes follows.

**SUMMARY OF THE PROPOSED EQUITY AND TITLE IX CRRs**

1. **Overview**

A. The current CRRs are the following:

* + 1. 600.010: Equal Employment/ Educational Opportunity and Nondiscrimination Policy
    2. 600.020: Sex Discrimination, Sexual Harassment and Sexual Misconduct in Employment/ Education Policy
    3. 600.030: Equity Resolution Process for Complaints of Discrimination, Harassment and Sexual Misconduct against a Student and Student Organization
    4. 600.040: Equity Resolution Process for Complaints of Discrimination, Harassment and Sexual Misconduct against a Faculty Member
    5. 600.050: Equity Resolution Process for Complaints of Discrimination, Harassment and Sexual Misconduct against a Staff Member
    6. 600.060: Equity Resolution Process for Complaints of Discrimination, Harassment and Sexual Misconduct against the University

1. The new proposed CRRs are the following:
   * 1. 600.010: Equal Employment/ Education Opportunity and Nondiscrimination Policy
     2. 600.020: Sexual Harassment under Title IX Policy
     3. 600.030: Resolution Process for Resolving Complaints of Sexual Harassment under Title IX
     4. 600.040: Equity Resolution Process for Resolving Complaints of Discrimination and Harassment Against a Faculty Member, a Student or a Student Organization
     5. 600.050: Equity Resolution Process for Resolving Complaints of Discrimination and Harassment Against a Staff Member or the University
2. **Comparison of Selected Revisions to the CRRs**:
3. **Title IX Process for Complaints of Sexual Harassment against All Respondents**. Under our current CRRs, for Equity and Title IX complaints against a student/ student organization or Faculty Member, the process provides for a hearing before a hearing panel. The process for Title IX complaints against staff members does not provide for a hearing before a hearing panel.

Under the proposed CRR 600.030, a hearing with cross-examination before a hearing panel is required, without regard to whether the complaint alleging sexual harassment is against a student/ student organization, a Faculty Member, a Staff Member, or the University. (600.030)

***Rationale:*** *The new Title IX Regulations require a live hearing for all complaints alleging sexual harassment under Title IX for all employees and students.*

1. **Jurisdiction under CRR 600.030**. Under the current CRRs, the University’s jurisdiction was generally limited to conduct occurring on the University’s premises or at University-sponsored/University-supervised functions; however, the University could also take action for off-campus conduct 1) in order to protect the physical safety of students and other members of the University community, or 2) if there were effects of the conduct that interfered with or limited any person’s ability to participate in a University education program, activity or employment.

Under the proposed CRR 600.030, the University’s jurisdiction for an action under Title IX is limited to conduct which occurs in an education program or activity of the University against a person in the United States. Education program or activity includes locations, events or circumstances over which the University exercised substantial control over both the respondent and the context in which the conduct occurs, and includes any building owned or controlled by a student organization that is officially recognized by the University. The University’s Title IX jurisdiction does not extend to sexual harassment that occurs outside the United States, even if that conduct occurs in a University education program or activity. (600.030(B))

The University’s jurisdiction under the Equity policies will continue to extend to off-campus conduct where it is determined that action is necessary 1) in order to protect the physical safety of students and other members of the University community, or 2) there are effects of the conduct that interfere with a person’s ability to participate in an education program or activity, 3) if the conduct is related to a Faculty member’s fitness or performance in the professional capacity of teacher or researcher (600.040 only), or 4) if the conduct occurs when the Faculty or staff member is serving in the role of a University employee. (600.040 (B) and 600.050 (B))

***Rationale****: The Title IX process is limited to Sexual Harassment as defined under the Title IX regulations, and is limited to conduct in an education program or activity against a person in the United States. Under the Title IX regulations, the Department of Education stressed that Title IX legislation expressly states that “[N]o person* ***in the United States*** *shall…” (emphasis added); the new regulations recognize the canon of statutory construction recognized by the Courts that “Congress ordinarily intends its statutes to have domestic, not extraterritorial, application.”*

1. **Scope of CRR 600.010**. Under current CRR 600.010, the Equity process applies to all discrimination and harassment other than sex discrimination, which falls under CRR 600.020.

Under proposed CRR 600.010, the Equity process applies to all discrimination and harassment other than sexual harassment that falls within the definition of sexual harassment under Title IX (600.020); Sex Discrimination falls within the scope of proposed 600.010 (other than Sexual Harassment as defined under Title IX) and includes workplace sexual harassment, sex discrimination that does not involve conduct of a sexual nature, and sexual harassment that is not in an education program or activity of the University or which occurs outside of the United States, but nonetheless has an effect that interferes with or limits a person’s ability to participate in or benefit from the University’s programs, activities, or employment.

***Rationale:*** *The Title IX process requiring a hearing with cross-examination is limited to conduct that falls within the definition of sexual harassment under the Title IX regulations; however, other forms of discrimination and harassment, including sex discrimination and harassment that do not fall within the Title IX process because the conduct is not in an education program or activity, or occurring in the United States, still require a level of due process, but not that required under the new regulations.*

1. **Hearing under Proposed CRR 600.030**. Under the current CRRs, for complaints against students and Faculty members, a hearing is provided, with a decision-maker consisting of 3 members from the University’s Hearing Panel Pool, with one member of the hearing panel designated as the hearing panel chair; that individual presides over the hearing; questions of the relevancy and admissibility of evidence or testimony are determined by the chair, unless referred to the entire hearing panel. Staff respondents do not have access to the hearing process.

Under the proposed CRR 600.030, for Title IX complaints alleging sexual harassment in an education program or activity occurring against a person in the United States, a hearing with a hearing panel is provided; the hearing panel consists of a Hearing Officer and two additional hearing panel members selected from the hearing panel pool. The Hearing Officer will preside over the hearing, and all questions of relevancy and admissibility of the evidence or testimony will be determined by the Hearing Officer. The Hearing Officer will not be selected from the hearing panel pool, but will be a specially trained individual. (600.030 (Q)(2)) We are recommending that the University retain a trained individual such as a retired Judge to act as the Hearing Officer in all 600.030 hearings.

For Equity complaints against students and Faculty members, the process remains the same as the current process (hearing before a panel of three faculty and staff) (600.040) and staff (administrative resolution.) (600.050)

***Rationale****: Under the Title IX Regulations, a live hearing before a hearing panel is required. The Regulations also provide that the decision-maker in a hearing must objectively evaluate all relevant evidence including inculpatory and exculpatory evidence; the decision-maker is required to assess each question asked of a party or witness before it is answered to determine if it is relevant, and if a question is excluded, the decision-maker must provide the parties with an explanation of the basis for excluding the question.* *The decision-maker must be trained on how to determine what questions and evidence are relevant, and must be able to determine the weight or credibility given to each piece of evidence. Additionally, the decision-maker must make additional decisions regarding excluding evidence of the complainant’s prior sexual behavior unless the evidence is being offered to prove that someone other than the respondent committed the conduct alleged by the complainant; evidence concerning specific incidents of the complainant’s prior sexual behavior with regard to the respondent must be excluded unless offered to prove consent, character evidence must be excluded unless it is relevant, evidence of a pattern of misconduct must be excluded unless it is relevant, and medical information of a party or privileged information must be excluded unless there is express consent or waiver.*

1. **Cross-Examination**. Under the current CRRs, the parties are not permitted to directly question or cross-examine each other, but must submit such questions to the hearing panel chair, who may ask the questions if deemed relevant and appropriate.

Under the proposed CRR 600.030, the parties are required to have advisors, who may or may not be attorneys, to conduct all cross-examination on behalf of the parties. The advisors are permitted to directly cross-examine the parties, and may directly question/ cross-examine witnesses. The parties may not directly cross-examine each other. (600.030(K)(2))

In Equity matters where a hearing is provided (student and faculty respondents), the parties must submit questions directed to each other through the hearing panel chair.

***Rationale:*** *Under the Title IX regulations, a live hearing with cross-examination is required. All cross-examination, however, must be conducted by a party’s advisor, who may or may not be an attorney. Cross-examination through advisors is required for the purpose of conducting adversarial cross-examination that ferrets out the truth of the sexual harassment allegations.*

1. **Advisors**. Under the current CRRs, the parties are permitted to have advisors at all stages of the Title IX process; however, these advisors may not directly participate in the process, but may only work with their advisee. The University will provide the parties with advisors, at their request, who are University administrators, staff and faculty trained on the University’s Title IX process.

Under the proposed CRR 600.030, the parties are required to have advisors to directly conduct cross-examination for the parties at the hearing. If a party does not have an advisor of their own choice at a hearing, the University is required to provide an advisor for that party at no cost to the party; the advisor provided by the University may or may not be an attorney. (600.030 (K)(2)) We are recommending that the University retain attorneys to act as advisors when the University must provide them to parties.

In Equity matters, the University may provide student parties with an advisor if requested; the advisor may not directly participate in the proceedings.

***Rationale****: Under the Title IX regulations, the University is required to provide an advisor for any party that does not have an advisor of their own choice at the hearing for the purpose of conducting cross-examination; the advisor provided by the University may or may not be an attorney, but must be provided at no cost to the party.*

1. **Formal Complaints**. Under the current CRRs, the parties are not required to participate in the Title IX process, but the University may still conduct an investigation and move forward to a hearing. If a party or witness fails to participate in a hearing, any statements made by that party to the investigator or other witnesses may still be used as evidence.

Under the proposed CRR 600.030, the parties (and witnesses) may not be compelled to participate in the Title IX process. However, before a formal investigation can be initiated, a complainant is required to file a Formal Complaint, which is a document signed by the complainant alleging sexual harassment against a respondent and requesting a formal investigation. The Title IX Coordinator may sign a Formal Complaint in certain circumstances. At a hearing, if a party or witness fails to submit to cross-examination, whether by failing to appear or refusing to answer questions, any statements made by that party or witness may not be used in making any determination of responsibility; however, the hearing panel may not draw any inference from the fact that the party or witness did not appear or failed to answer questions. (600.030(F))

***Rationale****: The Title IX regulations recognize that complainants may not always want to move forward with an investigation and hearing, and thus, in order to move forward, there must be a specific document from the complainant requesting that the University conduct an investigation. The Title IX Coordinator may sign a Formal Complaint where the Coordinator has determined that a failure to conduct an investigation would constitute deliberate indifference by the University. Further, parties and witnesses cannot be compelled, under the Title IX regulations, to appear at a hearing. However, statements by a party or witness will not be permitted to be used in making a determination of responsibility by the Hearing Panel unless the party or witness submitted to cross-examination during the hearing; however, the Hearing Panel may not draw any inference from the failure of a party or witness to participate in the process.*

1. **Supportive Measures**. Under the current CRRs, the parties are offered interim remedies, such as adjusting course schedules, adjusting work schedules, and suspending respondents on an interim basis if the Title IX Coordinator, in their sole discretion, determines that the presence of the respondent on campus would seriously disrupt the University or constitute a danger to the health, safety or welfare of members of the University community.

Under the proposed CRR 600.030, the parties are offered supportive measures, which are non-disciplinary, non-punitive individualized services offered as appropriate and as available, which are designed to restore or preserve equal access to the University’s education program or activity without unreasonably burdening the other party. Emergency removal of a respondent is available if the Title IX Coordinator determines, after conducting an individualized safety and risk analysis, that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment, justifies removal. An emergency removal is subject to immediate challenge by the respondent by seeking review by the Emergency Removal Appeal Individual/ Committee. An administrative leave for an employee is not an Emergency Removal. (600.030 (H)).

***Rationale:*** *Under the Title IX Regulations, supportive measures must be offered to any complainant, even if the complainant does not seek to file a Formal Complaint; supportive measures must be equally available to both parties if a Formal Complaint has been filed, but neither party may be unreasonably burdened by such supportive measures. An Emergency Removal under Title IX is only available if there is an individualized assessment that the respondent poses an immediate threat to the physical health or safety of someone in the University community, and an immediate challenge/ review of the decision to remove a respondent under this provision must be available to the respondent.*

1. **Academic Medical Center**. Under the current CRRs, the Academic Medical Center (MU Health) is required to provide the same process to parties as the entire University, even where patients are involved.

Under the proposed CRR 600.030, the Academic Medical Center is not required to provide a live hearing with cross-examination for allegations of sexual harassment occurring in an education program or activity against a person in the United States, but instead allows the parties to meet with a decision-maker, submit questions for the other party through the decision-maker, and provide the names of witnesses and documentary evidence to the decision-maker. Upon reviewing the investigative report and meeting with the parties, the decision-maker will provide their determination as to responsibility of the respondent for violation of University policy, and where applicable, will determine sanctions and remedial actions. (600.030(R))

***Rationale****: The Title IX regulations permit Academic Medical Centers to opt out of the Title IX live hearing with cross-examination process, and follow the process for elementary and secondary schools, which is where a single decision-maker meets with the parties, and the parties provide that decision-maker with questions for each other, lists of witnesses and documentary evidence.*

1. **Mandated Reporters**. Under the current CRRs, employees of the University are mandated reporters for conduct that may or does constitute sex discrimination, sexual harassment and sexual misconduct.

Under proposed 600.020, employees remain mandated reporters for all conduct that may or does constitute sexual harassment as defined in the Title IX regulations. Under proposed 600.010, employees are now mandated reporters for all conduct that may or does constitute any type of discrimination or harassment.

***Rationale****: Mandated reporting is no longer required under the Title IX regulations for all employees. However, the Title IX Coordinators have indicated that mandated reporting is the most successful method to get reports of sexual harassment. As a result, we are recommending that we not only continue to require employees to be mandated reporters for sexual harassment under Title IX, but that employees become mandated reporters for all forms of discrimination or harassment.*

1. **CRR 600.060.** CRR 600.060 sets forth the current process for resolving complaints of discrimination and harassment against the University.

We are requesting that CRR 600.060 be withdrawn at this time.

***Rationale:*** *Current CRR 600.060 is no longer needed as this process has been included in proposed CRR 600.050.*