

University of Missouri Equity Investigator Training

July 2022

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University of Missouri System
COLUMBIA | KANSAS CITY | ROLLA | ST. LOUIS

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Agenda

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Agenda

- Scope of Discussion
- Early Issues
- Gathering Information – Best Practices (and quick case study!)
- Report Writing – Best Practices
- Case Studies



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Scope of Discussion

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Nondiscrimination Policy (Equity Investigations)

600.010 Equal Employment/Educational Opportunity and Nondiscrimination Policy - for matters involving conduct alleged to have occurred on or after August 14, 2020

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

600.050 Equity Resolution Process for Resolving Complaints of Discrimination and Harassment against a Staff Member or the University of Missouri - for matters involving conduct alleged to have occurred on or after August 14, 2020



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Broader Scope. . .

Further, if a Complainant simultaneously alleges or the investigation suggests that violations of the University's Anti-Discrimination Policies and disagreements arising from working relationships, working conditions, employment practices, or differences of interpretation of a policy, the University shall have the authority to investigate and take appropriate action regarding each of the Complainant's allegations pursuant to this Equity Resolution Process. In conducting such investigations, the Equity HR Officer or Equity Officer, and/or the Investigator may consult with and/or seek guidance from Human Resources staff or appropriate administrators as necessary.



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Early Issues

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E. Preliminary Contact and Inquiry. Upon receiving a report, the Equity Officer shall promptly contact the Complainant to discuss the availability of supportive measures as defined herein, consider the Complainant's wishes with respect to supportive measures, inform the Complainant of availability of supportive measures with or without the filing of a Complaint, and explain to the Complainant the process for filing a Complaint. If the identity of the Complainant is unknown, the Equity Officer may conduct a limited investigation sufficient to identify the Complainant to the extent possible.

In addition to making preliminary contact, the Equity Officer shall conduct a preliminary inquiry to gather enough information to make a threshold decision regarding whether the report describes a possible violation of the University's anti-discrimination policies.

If the report describes a possible violation, the Equity Officer will refer the matter to the appropriate procedural process and provide appropriate supportive measures. If the report does not describe a possible violation, the matter will be referred to the appropriate non-Equity process. Under those circumstances, the Equity Officer may counsel and suggest monitoring or training opportunities to correct for inappropriate behavior that does not rise to the level of a violation.

The preliminary inquiry shall be conducted promptly (typically within 7-10 business days) of receiving the report.



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- What is a “limited investigation”?
- What is a “preliminary inquiry”?
- What if the complaint is anonymous? Or indirect?



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Considerations

- Once an allegation is reported, regardless of the source, the first task is to determine – ***WHAT IS BEING ALLEGED?***
 - Is it a discrete issue? (e.g., promotion question, single comment, etc.)
 - Is it a pattern of behavior?
- ***WHO*** is alleged to have engaged in the behavior?
 - Is it an individual?
 - A group decision/recommendation?
 - An organizational decision?
 - The University?
- ***WOULD*** the alleged behavior violate policy?



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Considerations

- Once you understand the allegations, then consider - ***is there information that might support the allegations beyond the complaint/report itself?***
- If so, ***what type of information*** would be necessary to determine whether a potential policy violation has occurred –
 - Is the information publicly available (e.g., available on the University’s website, subject to a Sunshine Act request, etc.)?
 - Would gathering information require interviews or other methods that would necessarily make more individuals aware of the allegations?



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Tips and Tools

- Be aware of the information publicly available on the University’s websites; some examples include –
 - Pay matrices:
https://www.umsystem.edu/totalrewards/compensation/pay_matrices
 - Salary information:
<https://collaborate.umsystem.edu/sites/hrpublic/documents/GEN/CURRENT/annual-salary-report.pdf>
 - Job codes and position descriptions:
<https://compsearch.umsystem.edu/>



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Gathering Information – Best Practices

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Develop Plan of Investigation

- **Who** will you interview?
- **What** questions will you ask?
- **What** documents do you need to review?
- **Where** will you interview each person?
- **When** will you interview each person?
- **Why** will each person be important to your investigation?
- **How** will you order your interviews?



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Always remember the “why”

- There is an allegation.
- A decision-maker will have to fairly and objectively review information to determine whether –
 - Alleged behavior occurred;
 - A policy violation occurred.
- An investigation is the vehicle to **identify** and **gather** the information that allows for a fair, unbiased, and objective determination.



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Items to consider early and often

- Clarify allegations – they may change over time as more information is available
- Understand the complexity – how many decisions, individuals, etc. are involved?
- Identify and understand factual disputes – are those disputes material?
- Ask yourself – what information would assist a decision-maker?
 - Consider if comparator data exists.



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If a discrete decision is at issue. . .

- Gather information about how the decision was made –
 - Who was/were the decision-maker(s)?
 - What information was available to them?
 - What is the stated reason for the decision?
 - What information is available to document the response to each of these questions?



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Comparator Evidence

- From the EEOC:

C. General Investigative Requirements

The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred; the treatment of members of the complainant's group as compared with the treatment of other similarly situated employees, if any; ^[2] and any policies and/or practices that may constitute or appear to constitute discrimination, even though they have not been expressly cited by the complainant.



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Comparator Evidence

- Requires identifying whether there are others who are “similarly situated” (comparators).
 - This is a very fact-intensive inquiry.
 - Some courts have identified the following criteria to consider:
 - Engaging in the similar conduct (or misconduct);
 - Being subject to the same employment requirements, policies, procedures, or rule;
 - Same reporting structure;
 - Similar employment or disciplinary history.



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Other sources of information

- As parties or witnesses identify potential information, consider how you might obtain it –
 - Ask the person identifying the information if it is in their possession; if so, will they share it?
 - Do they know who might have the information?
- Don't forget about information the University makes publicly available.
- Work to understand how the University (departments, units, etc.) maintain information. (Where does the information live?)



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Interviews – the parties

- Acknowledge the difficulty of the situation and explain that your goal is to understand what happened
- Let the party give a statement in his/her own words without interruption before asking follow-up questions
- Ask for clarification; don't interrogate
 - Stress that you want to get it right
 - Seek clarification for inconsistencies and explanations that don't make sense



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Interviews – the parties

- For complainants, ensure you have up to date understanding of allegations;
- For respondents, ensure the respondent has the most up to date notice and consider whether the notice needs to be updated –
 - Make sure to fully understand the complaint so that the individual has opportunity to address all allegations
- Give both parties opportunities to identify potentially relevant information – including other witnesses, documents, electronic data, etc.



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Reminders for conducting interviews

- Be objective and do not prejudge
- Make those being interviewed as comfortable as possible
 - Consider appropriate location, time, etc.
 - Avoid group interviews
 - Provide adequate notice of interviews
- Be respectful – always.
- Remember how stressful this experience of being interviewed may be to the person with whom you are speaking.



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Reminders for conducting interviews

- Be Thorough
 - If a party or witness uses vague terminology (e.g., some, many, a lot), ask for more detail
 - If a party or witness uses subjective terms (e.g., acted strange, seemed upset), ask for more detail
 - If relevant, ask for detailed information about dates, times, location, injuries, acts committed, witnesses, etc.



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Reminders for conducting interviews

- Handling sensitive issues
 - Make the meeting space as private and as comfortable as possible.
 - Be respectful; allow the witness to take the time they need to share the information.
 - Consider whether follow-up questions should be asked in a later meeting but be certain to address any fact issues or disputes.



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Reminders for conducting interviews – Garrity Warnings

- Most relevant in situations where the University is investigating conduct that may also be criminal.
- Not necessary for most investigations, unless the investigator is aware of a concurrent criminal investigation.
- In situations where the University intends to compel a response and the employee being questioned indicates they are not comfortable answering, the investigator should provide a Garrity Warning.



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Quick Case Study

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Report Writing – Best Practices

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Preparing the report

- Plan as you investigate
 - Compile information as you go – don't be left to draft everything at the end of your interviews
- Drafting as you go helps to identify gaps in information
- As you consider the report, decide –
 - How will you organize the information?
 - Follow the report template
 - Will you include an overall chronology or summary at the end?
 - What are some key sections that you should include?



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Preparing the report

- The report should include a detailed summary of the investigation, including:
 - Summary of the procedural steps in the investigation;
 - Summary of all interviews; and
 - Summary of any physical or documentary evidence.
 - Photographs, logs, emails, text messages, police reports, forensic evidence, etc.
- Attach copies of statements and documents to the report.



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Summaries of Witness Interviews

- When summarizing witness interviews –
 - Explain who the witness is and how he/she is connected to the University and the investigation
 - State when and where you interviewed the witness
 - Identify any other individuals present during the interview (e.g., an advocate)
 - Describe in detail each event or topic discussed during the interview



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Summaries of Witness Interviews

- Identify what information you provided to the witness (if any) about the complaint or your investigation
- Note any discussions about confidentiality, retaliation, next steps, etc.
- Describe in detail how the witness responded to the information provided
 - What did the witness say?
 - Did they have a physical or emotional response?
 - Did they deny having any relevant information?



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Summaries of Witness Interviews

- With respect to each event or topic discussed –
 - Note the date, time, and location
 - Provide a chronology of the event as reported by the witness (who said what and in what order)
 - For any key statements, document verbatim what the witness reported was said
 - Describe in detail any alleged gestures or physical contact
 - Note the name of any other witnesses identified by the witness
 - Describe any documents or other evidence provided by the witness



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Remember tone and voice

- When recounting information from the parties or witnesses, identify the source of the information and avoid conclusory statements
 - Good
 - “Maria reported that Dave called her fifteen times on Tuesday evening after class.”
 - “The following is a summary of the information provided by Maria: . . .”
 - Not so good
 - “Dave called Maria fifteen times after class.”



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Summaries of Witness Interviews

- Note your observations about the witness's behavior, demeanor, and attitude during the interview
- BUT only report factual observations, no conclusions
 - Good
 - Maria cried when talking about X.
 - Dave looked at the floor when talking about Y.
 - Not So Good
 - Maria cried when talking about X, so I believe she was telling the truth.
 - Dave looked at the floor when talking about Y, so I believe he was lying.



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Summaries of Witness Interviews

- Note inconsistencies in the witness's account or discrepancies between what the witness says during the interview and any subsequent communications
- BUT again, avoid conclusions
 - Good
 - During my initial interview with Maria, she said Dave did X. After informing her that Dave denied doing X, she explained that Dave had actually done Y.
 - Not So Good
 - Maria lied during her initial interview when she said Dave did X. She later admitted that Dave had actually done Y.



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Follow-Up Interviews

- Same rules above apply
- Identify the reason for the follow-up interview and what information you provided to the witness
- Describe in detail the witness's response to the information provided



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Other Evidence

- Describe the evidence
- Summarize relevant portions
- Attach to the report if appropriate



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Other Information

- If a witness was not contacted, explain why
 - Were they unavailable?
 - Did they refuse to participate?
- If certain evidence was not obtained, explain why
 - Was it not accessible?
 - Was it deemed irrelevant? Why?
- Consider including an overall, chronological summary of the alleged incidents



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What else should you consider?

- A Good Investigative Report is ... **as specific as possible**
 - Avoid vague terms like “some,” “many,” “a lot”
 - Provide dates, times, locations, when available
 - The more details, the better



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What else should you consider?

- A Good Investigative Report is ... **clear**
 - Err on the side of over-explaining
 - Assume the reader knows nothing about the individuals involved
 - Introduce each individual the first time they are mentioned in the report and provide their title and/or explain their involvement in the complaint and investigation
 - Use consistent terminology throughout



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What else should you consider?

- A Good Investigative Report is ... **objective**
 - Focus on the facts – who, what, when, where, why, how
 - Avoid using subjective terms (e.g., acted strange, seemed upset)
 - Leave your personal feelings or conclusions out
 - This is the information-gathering part of the process



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What else should you consider?

- A Good Investigative Report is ... **helpful to the decision-maker.**
 - What is helpful?
 - What is not helpful?



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The finishing touches

- Review the Report
 - Is it easy to read?
 - Is everything included?
 - Does it look professional?
 - Is it consistent with other similar reports?
 - Will it make sense to someone with no knowledge of the complaint and investigation?
 - Does it contain a full description of how the matter was brought to the University and what was done to investigate the complaint?



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Concluding thoughts

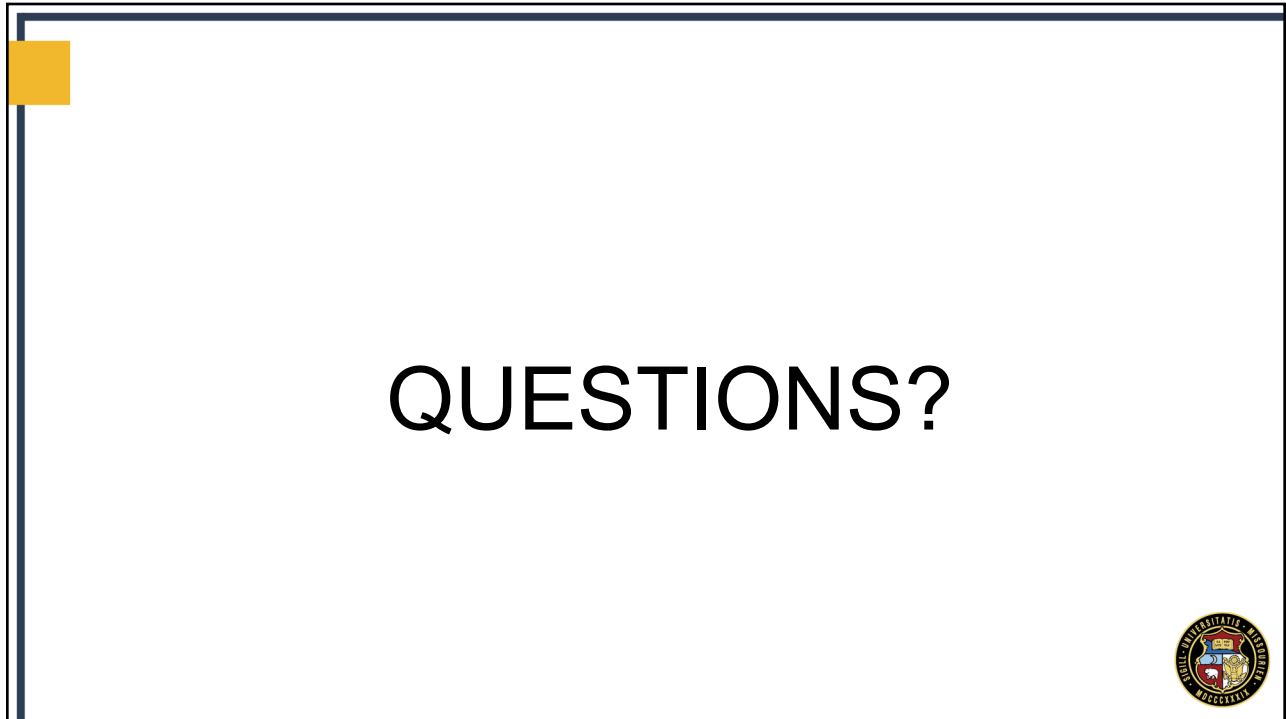
- Treat all individuals involved in this process with respect and courtesy
- Be even handed and impartial – this process is meant to be fair to all involved
- Remember the impact of the process on those involved and be sensitive to those difficulties



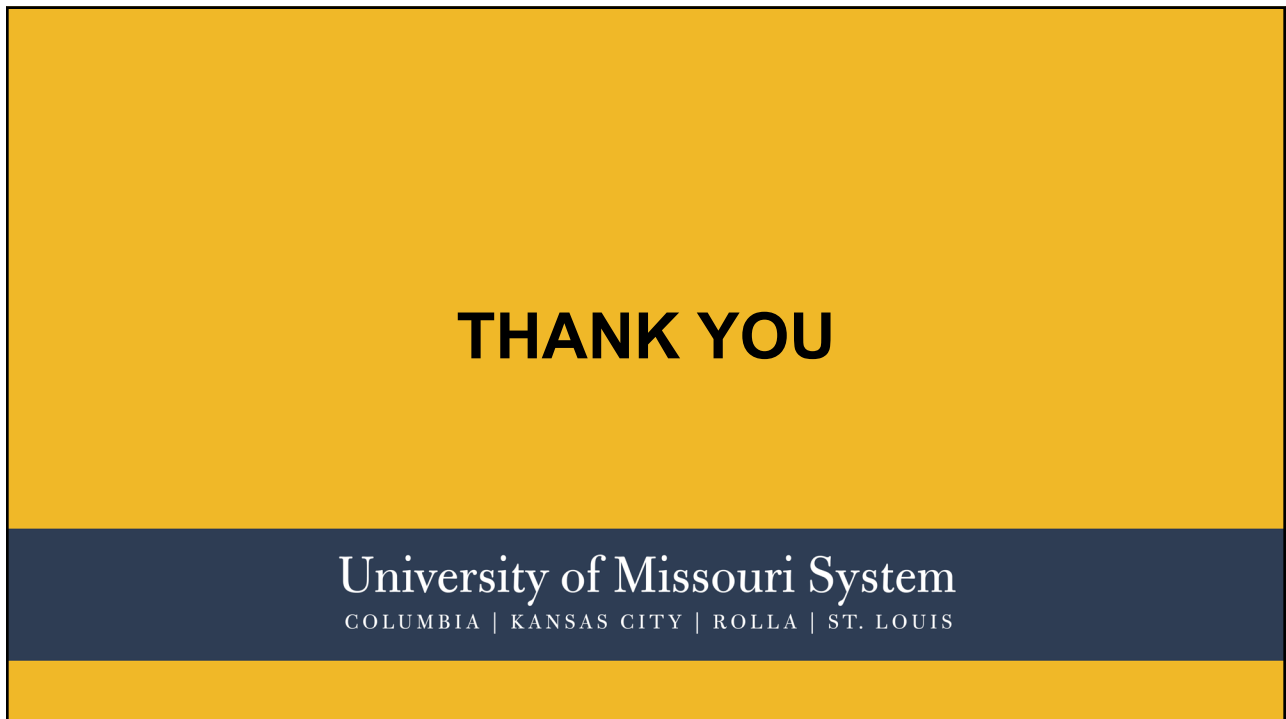
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Case Studies

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Anonymous report received on website portal July 8, 2022:

My economics professor in class yesterday said that female Russians were much more likely – statistically speaking - to have an abortion than any other percentage of individuals in the world. This professor then called on my friend Sofia, who is an international student from Russia, and asked her if she or anyone she knew has had an abortion! This is incredibly inappropriate and absurd. This professor needs to be reprimanded for this type of statement as this is NOT professional AT ALL. If something is not done about this, and soon, his comments will be sent out to the media. I don't think that the Board of Curators wants this type of media attention for the University.

What do you do after receiving this anonymous report?

You knew that this report came in July 8, 2022. You then checked which economics courses were offered on Thursday July 7, 2022 to narrow down which class this statement might have been made. Then you check with the Registrar’s office to find out if there is a Sofia registered in any of those courses. BINGO! You find out that Sofia Petrov is registered in Global Economies: Economics 205, a course taught by Dr. Gabriel Tatum. Dr. Tatum is a tenured professor who has been teaching economics here for 11 years. He came here from Michigan University.

You decide to contact Sofia to conduct an interview. Sofia agreed to meet with you on July 12, 2022.

Interview with Sofia Petrov:

Sofia Petrov is an international student attending school on an educational VISA; she is in her second year. She was a bit nervous to speak during the interview but after explaining your reason for wanting to talk with her, she appeared to relax.

Sofia described her interactions with Dr. Tatum throughout the summer semester course, Global Econ. She said it was a small class, only about 25 students, and because of this, the students all got to know each other and Professor Tatum pretty well. The professor even hosted a BBQ about half-way through the semester at a local park. She enjoyed the class until the day in question – which she said was humiliating.

Sofia said that Dr. Tatum was discussing how social justice events can have a major impact on global economy and he raised the *Dobbs* decision. He then said what he said about Russian women and abortion and just out of the blue called on me to discuss whether I had ever had an abortion or knew anyone who had. It was clear that it was because I was Russian that he called on me to ask me these really personal questions. Sofia said she did not answer his questions – only shrugged. She said that Dr. Tatum reminded her that participation was 15% of her grade and that she needed to engage with the class discussion and that they were all friends “here.” Dr. Tatum, Sofia said, then re-asked her the same question about abortion. Sofia told him that she did not feel comfortable answering his question and Dr. Tatum told her that her grade would reflect her failure to participate.

Sofia then stated that she went to Dr. Tatum’s office hours to discuss what had happened in class. Dr. Tatum told Sofia that he did not understand what she was embarrassed about. Dr. Tatum said that she was the only Russian in the class and that her class had a great opportunity to learn from her; that he was disappointed that she would not participate and share with the rest of her classmates’ information she knew.

What would you do after learning this information?

On July 15, 2022, you get a call from Sofia. She tells you about what occurred in class on July 14, 2022. She meets with you in the afternoon on July 15, 2022.

Second Interview with Sofia:

Sofia says that when she went to class on Thursday that Dr. Tatum called on her again. This time, inside of asking her about abortions, Dr. Tatum asked her about the Ruble – about its value, how significant the U.S. dollar seemed in Russia, would he be able to use dollars in Russia today, and much more. Sofia said she is embarrassed because she is not any sort of expert on the Russian economy and does not appreciate her professor calling her out to discuss Russian social issues. Sofia discloses that she is having a tough time being able to focus in class and really does not want to return to class but there are only two classes left before the end of the summer semester.

What would you do after learning this information?

An email was sent to the MUHC Title IX and Equity Office on May 2, 2022 by an employee, Sara Johnson.

When I was a student nurse, I recall working on different floors during clinical rotations. During the clinic for the OBGYN training, it was the most stressful. One doctor in particular was really mean. She treated us students like we were nothing. One – she just ignored us. She did not let us get involved in the treatment of patients. Two – if she did acknowledge us, she would ask us to bring her water if we passed her in the hall. I thought this was because we were students; sort of a form of hazing. I blew it off. Now that I am graduated, I realized that it is wrong that way I was treated by this Doctor.

I am on the cardiac floor and treated much better. The cardiac surgeons treat us really well; especially Dr. Sam Hall. Dr. Hall includes me in the treatment planning – Dr. Hall even contacts me after hours. I have gotten to scrub in with Dr. Hall on really serious cardiac cases to assist despite some of my co-workers having been in the department a lot longer than me. My co-workers are starting to get jealous but I was an A student and graduated summa cum laude. Dr. Hall definitely recognizes my aptitude for the cardiac unit. Dr. Hall even said he is going to send in a recommendation that I get a pay raise, along with my colleagues Ronda and Linda.

I have noticed that Dr. Hall tends to surround himself with only white nurses. On the cardiac floor, we have two African-American nurses, Tina and Rose, and one Jewish nurse, Ruth, and three other Caucasian nurses, Tim, Ronda, and Linda. We also have a nurse that is openly gay, John. Dr. Hall has expressed that he is a strong believer in Christ. I have not heard him say anything hateful about anyone; in fact, he was very excited about the Dobbs decision as he never wants any person to be harmed. That is why he became a doctor – to do no harm.

I really want other nursing students to be treated better than I was as a student. Students deserve to be treated like I am now by Dr. Hall.

What do you do after receiving this email?

After receipt, Sara was contacted and agreed to come in for an intake interview on May 5, 2022. Sara reported the following to the investigator during her initial intake interview:

Sara works as a nurse in the cardiac floor of the hospital. She has worked at the hospital for almost two years, after graduating from the Sinclair School of Nursing at the University of Missouri-Columbia. Sara’s annual salary is \$46,000. Sara loves Mizzou and comes from a long line of Tigers who are big donors to MU Football.

Sara likes working on the cardiac floor and tries to get scheduled when Dr. Hall is working whenever she can; she admits that she has a bit of a crush on Dr. Hall. Sara is 25 years old. Sara believes Dr. Hall is 67 years old.

Sara was asked about scrubbing in on surgeries when she was actually assigned to a cardiac floor. Sara became noticeably uncomfortable in the interview and said that she had expressed a desire to Dr. Hall while he was checking on a patient and he said she could assist him during surgery. Sara said she asked her supervisor who said no – that she was not properly trained – but that when she later reviewed the schedule, she saw that she was listed the next day on the OR schedule with Dr. Hall’s initials.

Sara was next asked to describe interactions she had witnessed between Dr. Hall and Tina, Rose, or Alyssa. Sara said that Dr. Hall was a nice Christian man and that she was only present to discuss her concerns while she was a student.

You ask Sara to describe her whether John ever spoke to you about his interactions with Dr. Hall. Sara said she had an appointment and needed to leave.

What do you do at this point?

After reviewing the information received so far, you decide to schedule an interview with Tina, Rose, Ruth, and John.

Interview with Tina Givens:

Tina meets with you in person at your Title IX and Equity Office at the hospital during her lunch break. Tina has been working as an RN for MUHC for 29 years, is 54 years old, and gets paid \$54,000. Tina works on the cardiac floor with Sara Johnson. Tina discloses to you that she believes Sara and Dr. Hall might be involved in a romantic relationship but also admits that she has not witnessed anything physical occur between them. Tina says it is “just a vibe.”

Tina is asked to describe her working environment. Tina says that overall she enjoys her job. She says that most of the nurses are friends with each other and need to be supportive of one another because the doctors are really difficult to work with. Tina says that the most difficult in her opinion is Dr. Hall. Tina described Dr. Hall as having “absolutely no personality.” Tina said when he walks into a room “it is all business” and she believes “even patients get nervous.” Tina says he is a “fine surgeon.” If either of my parents needed heart surgery, I would want Dr. Hall to do it.

Tina was asked if she is ever assigned to patients of his; she said no.

Interview with Rose Nolan:

Rose talks with you on the telephone during break. She says she only has 15 minutes. Rose is 63 years old, has been working as an RN for MUHC for 37 years, and gets paid \$57,000. Rose works on the cardiac floor and has been working on that floor for 30 years. Although Dr. Hall has also been practicing with MUHC for 30 years as a cardiac surgeon, “somehow, I have never been assigned one of his patients,” Rose tells you. When asked why she thinks that is, Rose says, “because I don’t look like Sara.” Rose was asked to be more specific. Rose said, “I’m not 25 and I’m not White.”

Interview with Ruth Long:

Ruth agrees to meet with you outside at a local coffeeshop. She did not want to be seen inside the hospital, for fear that someone might see her. Ruth is 42 years old, has worked for MUHC for 7 years as an RN, has an annual salary of \$42,000, and has worked in cardiac nursing for 20 years (her entire nursing career). Ruth said that Dr. Hall is the head of the entire cardiac unit, as he is the head cardiac surgeon. Although she does not directly report to him, her nursing supervisor reports to someone who directly reports to Dr. Hall. She has heard from others that Dr. Hall does not like to be questioned, especially about managerial things, “it is his unit. He does not need any nurse questioning his authority.”

Interview with John Badey:

John spoke to you in the Title IX and Equity Office. John works as an RN in the cardiac unit. John is 47 years old, has worked for MUHC for 10 years and makes \$64,000. John has his Bachelor’s degree in Nursing and a Master’s degree in Nursing Administration. He would like to work in hospital administration. John finds cardiac surgery fascinating and

would like to scrub into a surgery but has not been given that opportunity like Sara. He has heard rumors of a relationship between Sara and Dr. Hall but tries not to get caught up in office gossip; he has never witnessed anything unprofessional between them. He is not aware of any other nurse that works on a nursing floor though that has gotten that same opportunity.

John has not spoken much with Dr. Hall other than during brief conversations about patient care. John describes Dr. Hall as abrupt and distant. John has never seen Dr. Hall work with Tina or Rose. John does recall a time that Dr. Hall said 'that he could not believe Tina and Rose were still working given that the government was handing out COVID checks. He thought they might make more that way than he had authorized them to get paid. He was sure that would get them out the door.'

Now what do you do?

END OF EXERCISE.

RAISE YOUR HAND WHEN COMPLETED TO RECEIVE NEXT PAGE.

Lee Rogers has worked for the University in the Human Resources department for six years as a human resources consultant. He has watched people come and go in the department and has learned from different supervisors over time and feels that he has also grown during these six years himself as both an employee and a leader. He learned that the Human Resources Assistant Director is planning to leave during his 1:1 meeting with her. He has been reporting to her for two years now and has learned a lot from her. She reports directly to the Director of Human Resources. Learning about this opening, Lee decides to apply after the position is posted. Lee is aware that the position is going to be posted for at least 30 days both internally and externally.

During the 30 days, Lee learns that a few other people from the department also have applied. He does not feel discouraged, however, because he knows he has a great relationship with his team and also the Director. Lee cannot escape the thought entering his mind that he is only one of three African-American employees in the entire HR department (there are thirty-five people total) although he has never felt that he has been treated differently. Lee is also the only employee in the department in a wheelchair.

Lee completes his first interview. At the interview is the Director and five other campus community members, 4 of whom he knows and one whom he is unfamiliar. He is familiar with the hiring committee process – he has sat on several hiring committees himself.

Lee feels confident about his interview. It is Lee's understanding that during the first round of interviews, 5 candidates were interviewed. Lee was the only African-American applicant to have received an interview.

Lee is called back for a second interview. The second interview is with the HR Director, Compliance Manager and University Deputy General Counsel. From his time at the University, Lee is familiar with all of these individuals and felt that he nailed this interview. Lee asked about accommodations during the interview and was advised to speak to the Disability Coordinator about his concerns.

Lee does not get hired. The person that gets hired is an Indian female that has not worked for the University, has five years of experience at a private business' HR department, and whose family is a big donor to the University.

Lee makes a report that he believes he was not hired due to his disability.