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Annual Back to School Training


Fall 2021

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Presenter



Elizabeth Samples
Senior Counsel
Higher Education Group
Elizabeth.Samples@huschblackwell.com

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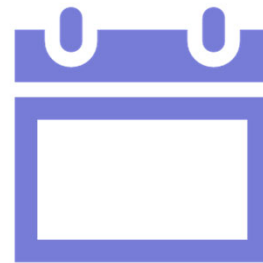
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Agenda

- Title IX/Sexual Harassment
- Other Discrimination and Harassment
- Mental Health and Accommodations
- Professionalism With Students
- Appropriate Technology Use
- Regulatory Update



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Title IX/Sexual Harassment

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What is Title IX?

“[N]o 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.”

34 C.F.R. § 106.31



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What sexual harassment does Title IX apply to?

- Title IX applies to sexual harassment in the “education program or activity” of a federal funding recipient
 - Title IX defines “education program or activity” to include the “operations” of educational institutions
- Title IX does not apply to private conduct occurring in private location that is not part of education program/activity



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What are examples of education programs and activities?

Admissions	Hiring	Workplace
In-person classes	Dormitories	Recreational amenities on campus
Sports teams	Virtual classes	Performances on campus
Off-campus trips or experiences organized by the institution	Sponsored organization activities	Anything else that happens on-campus

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Example (included in EP&A)

One student in an online College course conducted by Zoom repeatedly sends vulgar and propositioning messages to another student using the Zoom private chat feature. The two students are physically in different places during the course.



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Example (excluded from EP&A)



On a Saturday night, two students meet at a local bar and eventually go to a local hotel to “hook up.” The students verbally communicate about the sexual activity in advance, but one student exceeds the bounds of consent by continuing with sexual activity beyond what was discussed.

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What other policies might apply?

- Institutions are free to use
 - Student code of conduct
 - Faculty/employee handbooks
 - Other policies
 to address sexual harassment that does not occur in an education program or activity

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What is sexual harassment?

Conduct on the basis of sex that is:



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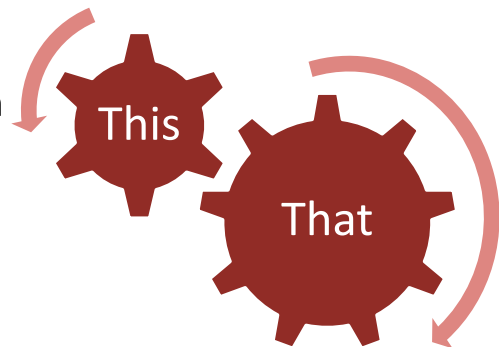
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What is quid pro quo?

- An employee of the institution conditions the provision of some aid, benefit, or service on another person's participation in unwelcome sexual conduct
 - Often arises in the employment context or where an employee holds a position of authority over a student



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Example of quid pro quo



A graduate assistant gives an undergraduate a failing grade on a lab exercise. When the undergraduate visits during office hours, the graduate assistant indicates a willingness to improve the grade if the undergraduate performs sexual favors.

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Poll question

When considering whether a hostile environment exists, whose perspective do we consider?

- The complainant's
- A reasonable person's
- Both

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What is 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 recipient's education program or activity.



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Example of hostile environment

Political Science student repeatedly jokes and denigrates Business student based on Business student's sex and perceived sexual unattractiveness. These jokes occur in class, in the bookstore where both students work, and in the residence hall at night. Political Science student always tells the jokes in the presence of others.



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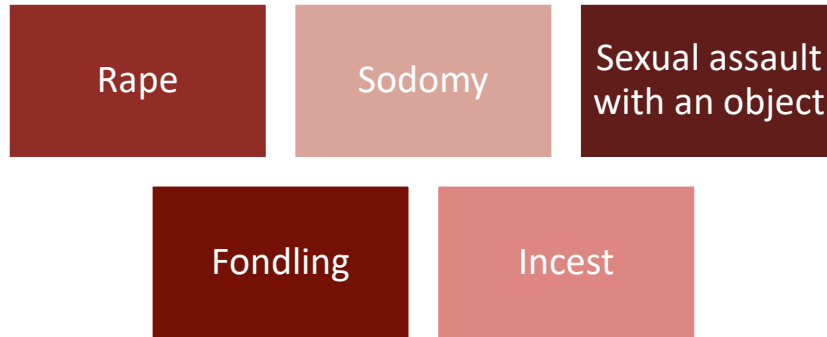
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What is sexual assault?

Title IX regulations define “sexual assault” as incorporating the following classes of conduct:



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What is incapacity?

Incapacity refers to a state where a person does not appreciate the nature or fact of sexual activity due to the effect of drugs or alcohol consumption, medical condition or disability, or due to a state of unconsciousness or sleep.



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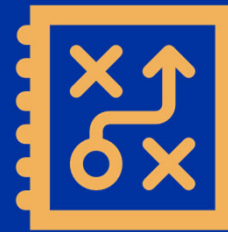
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Example (incapacitated)

Freshman and Sophomore are drinking shots in Freshman’s dorm room and talking. Freshman encourages Sophomore to take several hydrocodone to “loosen up.” After 30 minutes, Sophomore cannot stand, calls Freshman the wrong name, and has trouble staying awake. Freshman then has sex with Sophomore who lays unresponsive and does not wake up for six hours.



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What is domestic violence?

Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by 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 the state, 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 the state.

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What is dating violence?

“Dating Violence” is violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- Where the existence of such a relationship will be determined based on consideration of the following factors:
 - The length of the relationship;
 - The type of relationship; and
 - The frequency of interaction between the persons involved in the relationship.

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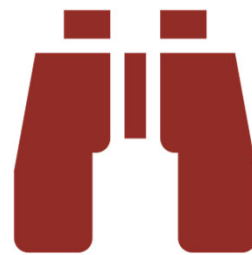
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What is stalking?

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for their safety or the safety of others; or
- Suffer substantial emotional distress.



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Does Title IX also prohibit retaliation?

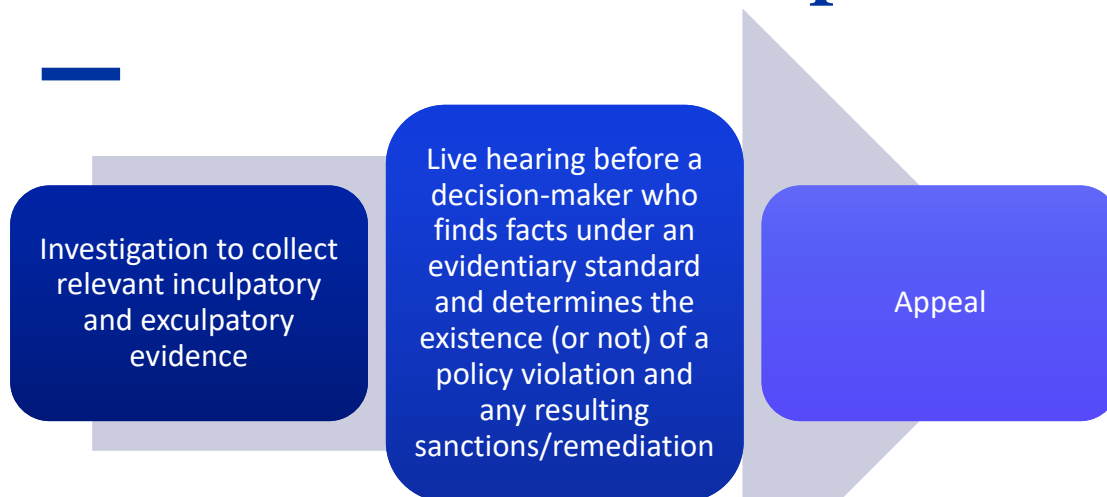
Yes – Title IX prohibits intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations or because an individual has made a report or complaint, testified, assisted, participated in or refused to participate in any manner in an investigation, proceeding, or hearing under the institution’s policy.

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What is the resolution process?



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Poll question

Under MNU's policy, am I a mandatory reporter?

- Yes
- No
- Not sure

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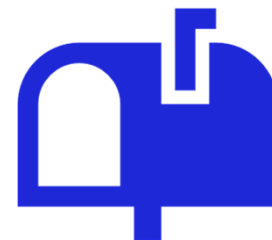
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How does an institution get notice of sexual harassment?

- Complaints from alleged victims
- Reports from third-parties, including faculty and staff with a mandatory duty to report
- Sexual harassment response is triggered when institution has "actual knowledge" of potential sexual harassment




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Who do I report sexual harassment to?



Title IX Coordinator
Richard Pacheco
913-971-3293
rmpacheco@mnu.edu

Deputy Title IX Coordinator
Sharaya Borjas
913-971-3734
slborjas@mnu.edu

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Other Discrimination and Harassment

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What types of discrimination and harassment are prohibited?

- Age
- Disability
- National origin
- Race/color
- Religion
- Veteran’s status
- Sex (including gender ID and sexual orientation)
- Genetic information
- Other categories as established by law
- Parental status

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MNU’s Notice of Non-Discrimination/EEO Statement

- MidAmerica Nazarene University policy prohibits discrimination on the basis of race, sex, religion, age, color, creed, national or ethnic origin, marital status, disability, genetic information, or any other legally protected class.
- The University’s full Non-Discrimination/Equal Employment Opportunity Statement can be located at: www.mnu.edu/nondiscrimination-statement

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What is discrimination?



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What is harassment?

Unwelcome conduct (verbal, written, physical) based on or motivated by a protected status;

That is sufficiently severe or pervasive or objectively offensive such that it;

Interferes with an individual's work or academic performance or otherwise creates a hostile environment and limits a person's participation in education programs and activities

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Title VI of the Civil Rights Act of 1964

- “No person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”
- Prohibits discrimination based on:
 - Race
 - Color
 - National Originin programs or activities that receive Federal financial assistance.

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Institutional obligations under Title VI

- Operate in a non-discriminatory manner.
- Do not retaliate against any person of opposition to an unlawful educational practice or policy or made charges, testified or participated in any complaint action under Title VI.

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What policy governs discrimination and harassment?

- Notice of Non-Discrimination; Student, Faculty and Staff Handbooks
- Student Contact
 - Vice President for Strategic Expansion
- Employee Contact
 - Director of Human Resources or Immediate Supervisor

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Is it okay to treat people differently?

- Yes, if there are legitimate and non-discriminatory reasons
- You can't treatment people differently because of a protected status
- But you can (and usually should) treat people differently when legitimate factors are present

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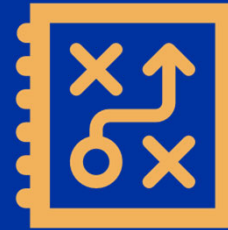
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Example (impermissible)

Supervisor is aware that employee participated in a University investigation in which a student alleged race discrimination. Supervisor purposefully gives the employee a poor evaluation because the supervisor disagreed with the employee speaking honestly about possible different treatment in the Department.



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Example (permissible)

Faculty member grades multiple-choice final exams of a non-veteran and a veteran. The non-veteran scores a 95% and the veteran scores an 87%. The non-veteran receives an "A" and the veteran receives a "B."



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Are political views harassing?

- Institution supports and favors a broad exchange of ideas and political beliefs
- The mere expression or support of political viewpoints (even minority viewpoints) is not harassing
- The manner in which political viewpoints are expressed may be harassing, depending on the circumstances

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Example (not-harassment)

Student favors closed borders with limited immigration. Student posts on social media that they support aggressive deportations and construction of a “border wall”.



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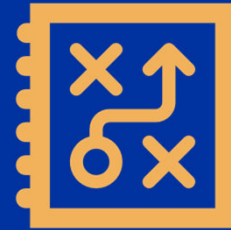
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Example (harassment)

Student identifies foreign student present on a visa and follows the foreign student around campus, repeatedly telling foreign student to “go home” and go “back to where you came from.” Student also repeatedly calls foreign student an “illegal” during class.



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Mental Health and Accommodations

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What are the key disability laws?

- Americans with Disabilities Act
- Rehabilitation Act (Section 504)
- Fair Housing Act
- State and Local Laws

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What are their general principles?

No disability discrimination in employment

No disability discrimination in programs and activities

No disability discrimination by places of public accommodation

Accessibility for facilities and services

Reasonable accommodations/modifications

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Poll question

Does a “disability” include mental health conditions?

- Yes
- No
- It depends

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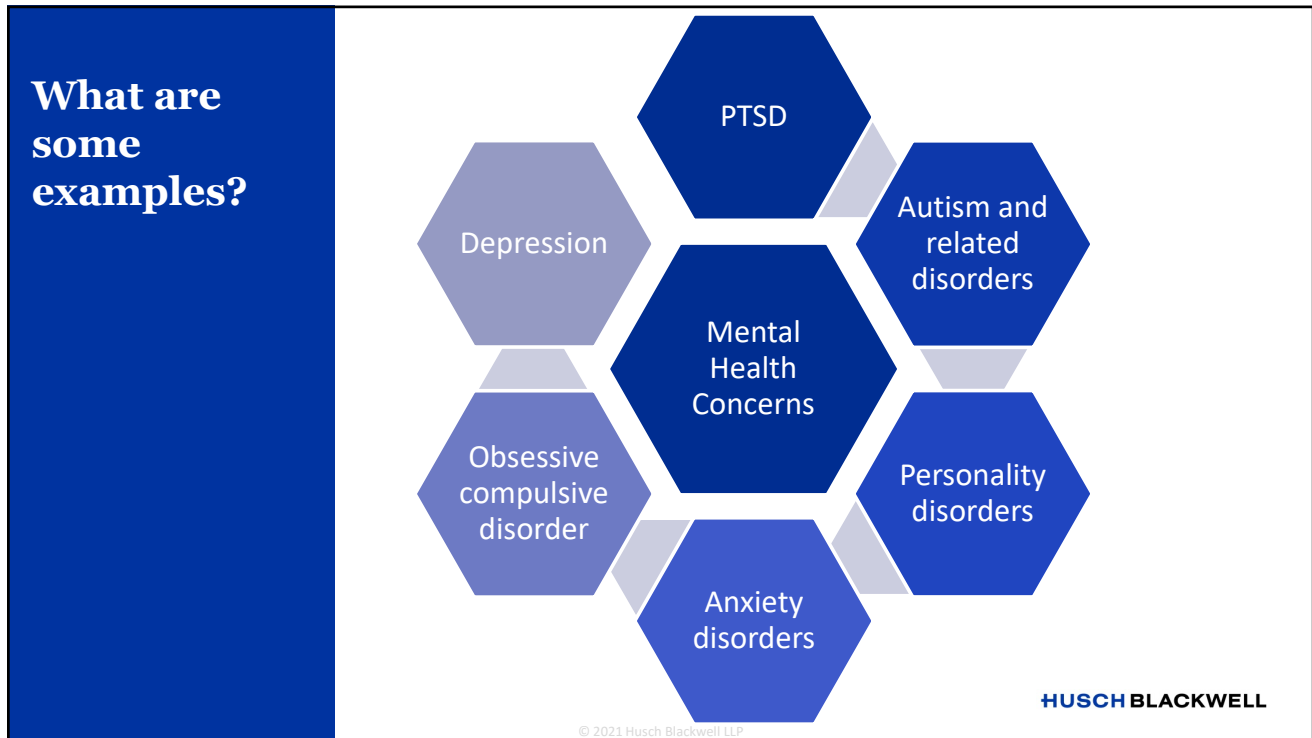
Does a “disability” include mental health conditions?

- Yes
- A physical or mental impairment that substantially limits one or more major life activities
- A record of having an impairment that is substantially limiting to a major life activity; or
- Being regarded as having an impairment that is substantially limiting to a major life activity

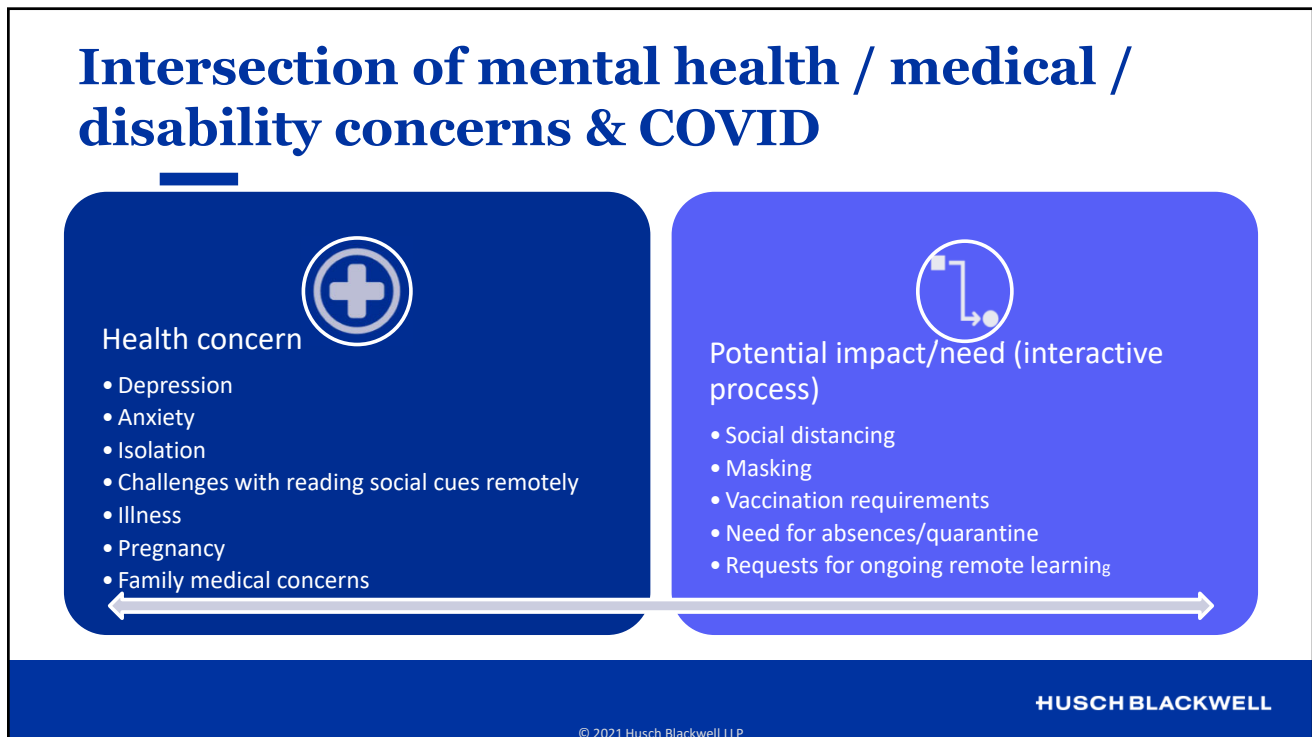
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Poll question

Can a student request an accommodation due to COVID-19?

- Yes
- No
- Need more information

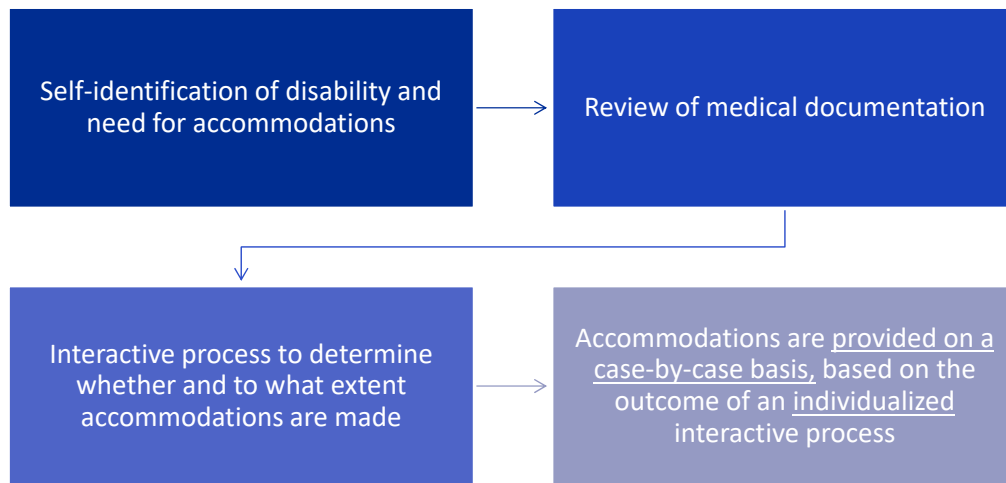
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What is the process?



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What are reasonable accommodations?

- Depends on the nature of the disability, how the disability limits the person, and the fundamental requirements of the program/activity at issue
- Common accommodations include: extension of deadlines; more time for work and tests; time for medical appointments; recorded lectures; note takers

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Who administers the interactive process for disability accommodations?

Kay Hall

Coordinator of Student Academic Success

khall@mnu.edu

913-971-3581



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What should I do if someone requests accommodations?

- Refer then to the Coordinator of Student Academic Success
- Notify the Coordinator of Student Academic Success
- Do not unilaterally diagnose a person as disabled
- Do not unilaterally grant accommodations

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What should I do if accommodations are granted?

- Abide by the accommodations that the institution issues
- Do not treat a person adversely because they have accommodations
- If accommodations appear not to be working contact Coordinator of Student Academic Success
- If you believe accommodations alter the fundamental nature of a course/activity/program, contact the Coordinator of Student Academic Success

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Professionalism With Students

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Does the institution expect staff to be professional with students?



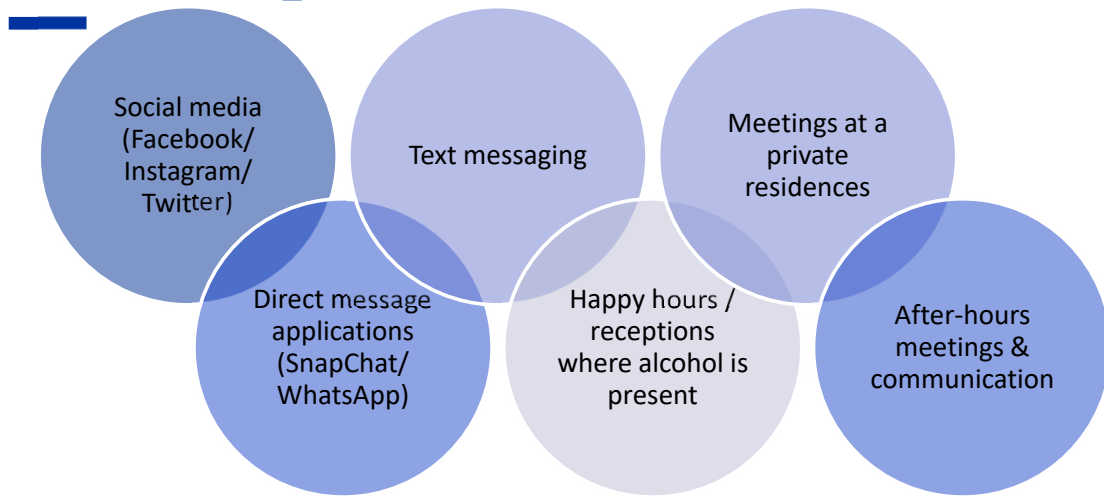
- Yes
- All faculty and staff are expected to set appropriate professional boundaries and engage in appropriate interactions with students
- All faculty and staff are expected to avoid the appearance of impropriety

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What settings have an increased risk of unprofessionalism?



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What are common unprofessional communications?

- Inquiries and comments about romantic/sex life
- Comments on physical appearance
- Jokes
- Memes
- Discussion of getting drunk/high
- Comments about other students
- Comments about other faculty/staff

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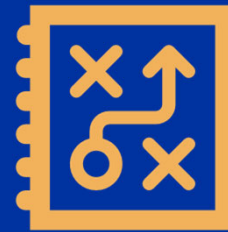
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Example (unprofessional)

Faculty member follows student's Twitter feed. Student posts picture of student at a lake in a bathing suit flexing muscles. Faculty member "likes" the post and comments "looking good."



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Example (unprofessional)

Assistant Coach follows student athlete on Facebook. When student athlete announces engagement to boyfriend on Facebook, Assistant Coach messages "He is so lucky to have snatched you!!!!!"



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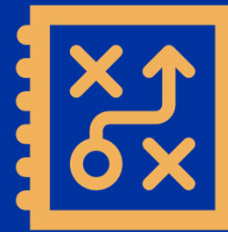
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Example (unprofessional)

Staff member offers to help student formulate graduate school admissions essay. Staff member knows student likes watersports and proposes to take the student sailing at a local lake on Saturday evening to talk about the essay.



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Example (unprofessional)

Staff member who works as a masseuse on the weekend offers to give a student worker a shoulder massage during student's work when student complains of soreness.



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What other risks areas should be avoided?

- Giving students alcohol
- Having office hours late at night
- Shutting doors/covering windows when alone with students (unless legitimate concern of confidentiality)
- Meeting with students in your home or their home when others aren't present
- Offering medical/mental health or other forms of treatment to a student unless it is your job to treat students

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Appropriate Technology Use

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Does the institution regulate its technology resources?

- Yes
- Use of institutional email, network, and electronic devices is a privilege subject to the institution's expectations for acceptable use



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What are examples of prohibited uses?

- Illegal activity
- Unauthorized commercial purposes
- Propagation of viruses, malware, and chain letters
- Improper disclosure of confidential information to third-parties (FERPA)
- Accessing or transmitting pornography
- Violation of copyright or trademark
- Violation of Notice of Non-Discrimination or Sexual Harassment Policy

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Poll question

Am I allowed to use my MNU technology for personal matters?

- No
- Yes – limited and reasonable use
- Yes – unlimited

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Am I allowed to use technology for personal matters?

- Limited and reasonable use of technology for personal matters is permissible as long as the use is not specifically prohibited; and
- Use does not interfere with job functions, create a conflict of interest, or otherwise disrupt the institution's operations

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Example (permissible)

Faculty member uses office computer to check news headlines while faculty member takes a break from drafting an academic article.



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Example (impermissible)

During working hours, staff member spends two hours of time monitoring and posting on personal social media feeds like Twitter, Facebook, and Instagram.



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Do I have responsibility for maintaining network security?



- Yes
- Employees must
 - Avoid phishing scams
 - Avoid malware
 - Avoid malicious websites
 - Avoid call in scams
 - Protect passwords

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Regulatory Update

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Biden Administration anticipated priorities

- Protections for Transgender Students
- Title IX/VAWA
- Protections for Dreamers
- Free Community College, Pell Expansion, Completion/Retention, Loan Forgiveness & Repayment Programs
- Institutional Accountability / Consumer Protection

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President Biden budget proposals

- American Jobs Plan
- American Families Plan
 - \$109B Free Community College
 - \$80B for Pell Grants Program, increase max grant by \$1,400
 - \$62B completion and retention support
 - \$39B to subsidize tuition at HBCUs, tribal colleges and other MSIs
 - Increased scholarships for future teachers and MSI teacher prep programs
- Fiscal Year 2022 Budget



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President Biden FY2022 budget

\$102.8 Billion for the U.S. Department of Education (41% increase)

\$25.5B
Pell Grants

Increase Maximum Annual Award by \$400 + \$1,400 increase in American Families Plan

\$880M
Opportunity Grants (FSEOG)

\$1.19B
Federal Work Study

Expand to DREAMers

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President Biden FY2022 budget

\$102.8 Billion for the U.S. Department of Education (41% increase)

\$14.3B
Free Community College

\$6.2B
Completion Grants



\$4.6B
Grants to assist in making HBCUs, Tribal Colleges & Universities, and other MSIs tuition Free

\$2.1B
Student Aid Administration

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Congress & FY2022 budget

House Appropriations Committee passed funding bill aligned with Biden budget

- Democrats focused on increasing Pell, funding for free community colleges, and support Minority-Serving Institutions
- Bipartisan support for programs for first-generation students, workforce education, and apprenticeship programs
- Republicans voiced concern about overspending and supporting unauthorized programs



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Negotiated Rulemaking

- Ability to Benefit Students
- Borrower’s Defense to Repayment
- Certification procedures to participate in Title IV programs
- Changes of Control
- Closed school discharges
- Discharges for borrowers with a total and permanent disability
- Discharges for false certification of student eligibility
- Financial responsibility and heightened financial risk
- Gainful Employment
- Income-contingent loan repayment plans
- Mandatory pre-dispute arbitration and prohibition of class action lawsuits in enrollment agreements
- Pell Grant eligibility for prison education programs
- Public service loan forgiveness
- Standards of administrative capability

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Accountability focus – DE&I

- Equity, Diversity and Inclusion
- Minority Student Enrollment
- First Generation Students
- Low-Income Students



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Accountability focus – Consumer information

Professional licensure disclosures Effective 7.1.2020

Identify professional licensure/certification programs

Provide compliant public disclosures (per federal and SARA requirements)

Provide individualized disclosures to students prior to enrollment (and existing students as needed)

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Consumer information (effective 7.1.2020) (cont.)

Prior Learning Credit

Non-Accredited Entity to Provide a Portion of an Academic Program

Teach-Out Plans

Enforcement & Prosecution Actions

- Disclose written criteria used to evaluate and award credit for prior learning experiences.

- Disclose in the program description that a written arrangement exists with a non-accredited entity to provide a portion of the program. Disclosure must meet the requirements of 34 C.F.R. § 668.43(a)(12).

- Disclose any teach-out plan required by an accrediting agency and the reason the plan is required.

- Disclose any enforcement action or prosecution action brought against the institution by a state or federal law enforcement agency, providing this action meets the requirements of 34 C.F.R. § 668.43(a)(20).

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New federal distance education regulations (effective 7.1.2021)

- Requirement for regular and substantive interaction may be met through using two of the following:
 - Direct instruction
 - Assessing/providing feedback on student coursework
 - Providing info and responding to questions about course content and competency
 - Facilitating group discussion about course content or competency
 - Instructional activities approved by accrediting agency

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New federal flexibility for innovative programs



- Instructional-team approach permitted
- Institutions may consider input of industry advisory boards
- Provisions for subscription-based programs
- Added flexibility for direct assessment programs
- Added flexibility for written arrangements with ineligible institutions

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Evolving legal/regulatory hot topics



Incentive Compensation – OPM agreements



Foreign Influence



COVID Prevention, Protections, Accommodation / Modification




Student Speech

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Questions



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