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# Back-to-School Training

MidAmerica Nazarene University  
August 2022

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## Your Presenter

Elizabeth Samples

Partner  
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## Agenda

- Title IX Sex Discrimination
- Professional Boundaries with Students
- FERPA and Student Privacy
- Data Security and Appropriate Use



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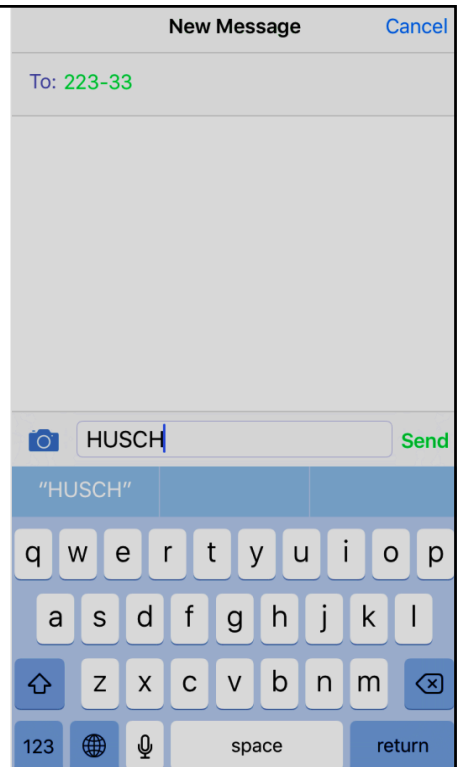
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## Polling Login

- Text **huschedu2** to 22333
- Text in answers to participate in polls



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# Title IX Sex Discrimination

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## Title IX

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- Proposed regulations published early this summer
- Proposed regulations are subject to change and not presently in force
- Compliance with August 2020 regulations is still mandatory



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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.”

32 C.F.R. § 106.31



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## What are the two conceptual types of sex discrimination?

- Adverse treatment discrimination
- Sexual harassment



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## Example of Adverse Treatment

Supervisor consistently gives male employees promotions while keeping female employees in their positions, despite all employees being similarly situated in terms of responsibility, experience, and performance.



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## Example of Sexual Harassment

Student tells sexual jokes to peers, displays sexual imagery, propositions them, and frequently comments on whether peers' dress is "sexy."



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## What is the key distinction between these two concepts?

- Adverse treatment involves adverse action that is motivated by the target's sex and that directly limits or excludes from participation in education program or activities
  - Usually by someone in a supervisory or authoritative position
- Sexual harassment involves unwelcome conduct that is either sexual in nature or sex based and meets the definition of the VAWA crimes
  - Quid pro quo; hostile environment; sexual assault; domestic violence; dating violence; stalking
  - Sexual harassment is subject to elaborate regulations governing investigation and determination

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### Poll Question

**For purposes of Title IX “sex” consists solely of assigned sex at birth.**

- True
- False

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**For purposes of Title IX "sex" consists solely of assigned sex at birth.**

True

False


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## What constitutes “sex” for purposes of Title IX?

- Assigned sex/biological sex
- Gender identity
- Sex stereotypes
- Sex characteristics
- Sexual orientation
- Pregnancy and related conditions



*U.S. Department of Education Guidance and Proposed Title IX Regulations*

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## What do the proposed Title IX rules say about pregnancy?

- Explicit protections against pregnancy-based discrimination and harassment
- Obligation to provide reasonable accommodations for pregnancy and related conditions
- Provision of time and space for lactation
- Obligation to provide information to pregnant students about reasonable accommodations



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## Example

Pregnant student experiences emergency complication and schedules doctor visit that conflicts with class. Student informs faculty member of the absence and the reason for it.



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## Poll Question

### What should the faculty member do?

- Grant the absence only if the student has not yet exceeded the total number of allowable absences on syllabus
- Grant the absence and wish the student good luck
- Grant the absence, tell the student the University's policy allows reasonable accommodations for pregnant students, and notify the Title IX Coordinator

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### What should the faculty member do?

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Grant the absence and wish the student good luck

Grant the absence, tell the student the University's policy allows reasonable accommodations for pregnant students, and notify the Title IX Coordinator

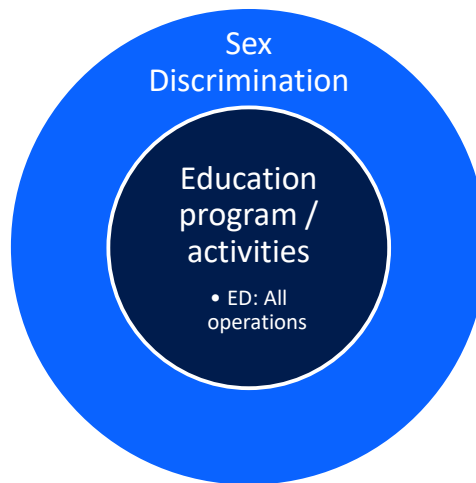
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## What is the scope of Title IX's reach?

- All forms of sex discrimination in the institution's "education programs and activities"
- Does not apply to private conduct occurring in private settings unconnected to institutional programs and activities



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## What are examples of education programs and activities?

Admissions	Hiring	Workplace
In-person classes	On-campus housing	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 sends vulgar chat messages and sexual imagery to another student in a class conducted via Zoom.



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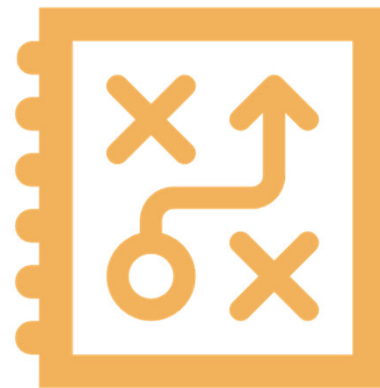
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### Example (excluded from EP&A)

.....

Student A reports that Student B sexually assaulted Student A over the summer while both students were back in their hometown. The alleged assault occurred after the two had been on a date.



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## Can other policies apply if sexual misconduct falls outside Title IX?

- Yes, institutions are free to regulate sexual misconduct that falls outside the scope of Title IX through other policies:
  - Student codes of conduct
  - Faculty handbooks
  - Staff handbooks
  - Policies implementing other laws, such as Title VII



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## What is Title IX sexual harassment?

Conduct on the basis of sex that is:

Quid pro quo harassment

Hostile environment harassment

Sexual assault

Dating violence

Domestic violence

Stalking

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## Example of quid pro quo

Coach offers to increase playing time for student athlete if student athlete will perform sexual favors for the coach. Student athlete views the overture as unwelcome.



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## Example of hostile environment

Employee A repeatedly propositions Employee B despite Employee B repeatedly saying "no." Employee A also repeatedly comments on Employee B's physique, tells unwelcome sexual jokes to Employee B, and rubs employee B's shoulders.



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## What is sexual assault?

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

Rape

Sodomy

Sexual assault  
with an object

Fondling

Incest

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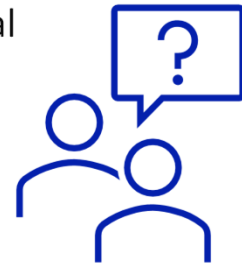
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## What is consent?

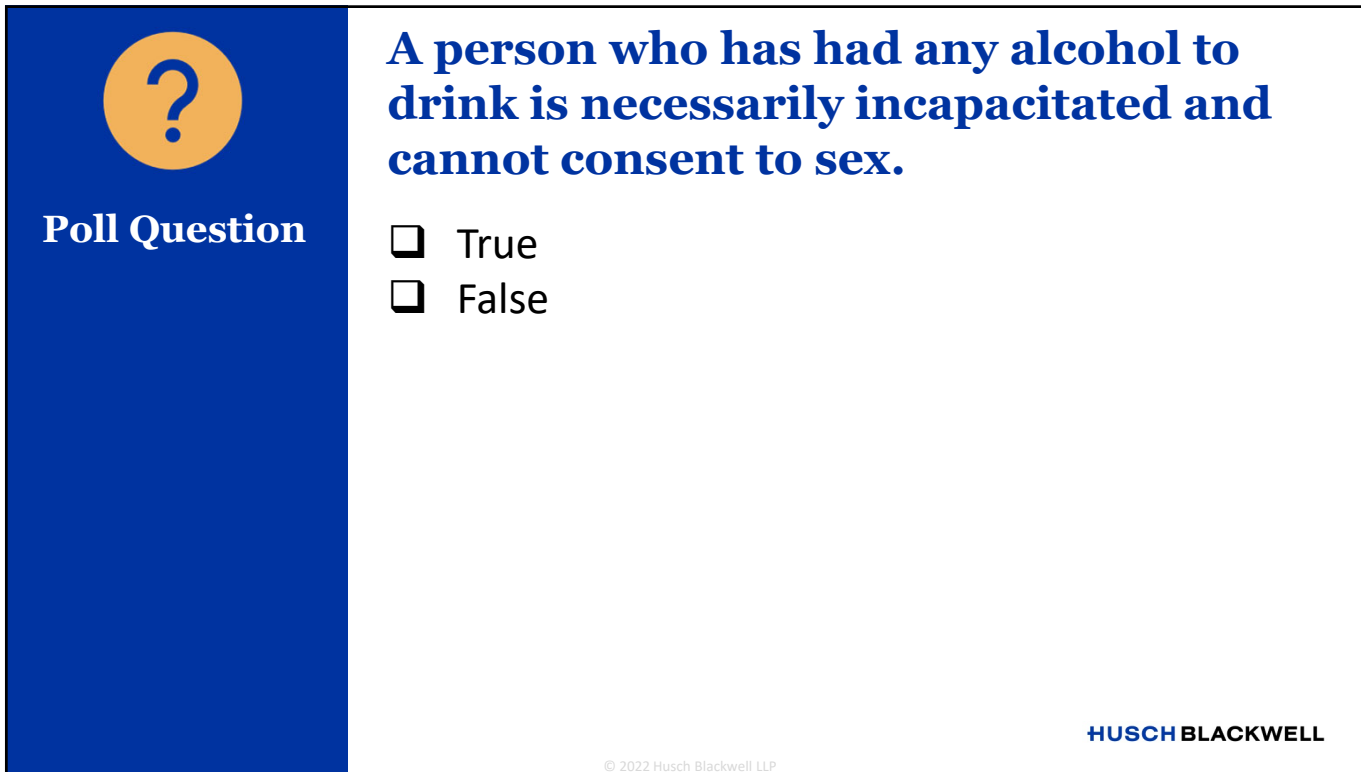
- Words or actions that a reasonable person would understand as agreement to engage in the sexual conduct at issue.
- A person who is incapacitated cannot consent.
- A person who is below the statutory age of consent cannot consent.
- Consent cannot be procured through threats or coercion.



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A blue vertical bar on the left side of the slide contains a white question mark icon inside a yellow circle. Below the icon, the text "Poll Question" is written in white. To the right of this bar, the main text of the slide is in blue: "A person who has had any alcohol to drink is necessarily incapacitated and cannot consent to sex." Below this text are two radio button options: "True" and "False". In the bottom right corner, the text "HUSCH BLACKWELL" is displayed in blue. At the very bottom center, there is a small copyright notice: "© 2022 Husch Blackwell LLP".

**?**

**Poll Question**

**A person who has had any alcohol to drink is necessarily incapacitated and cannot consent to sex.**

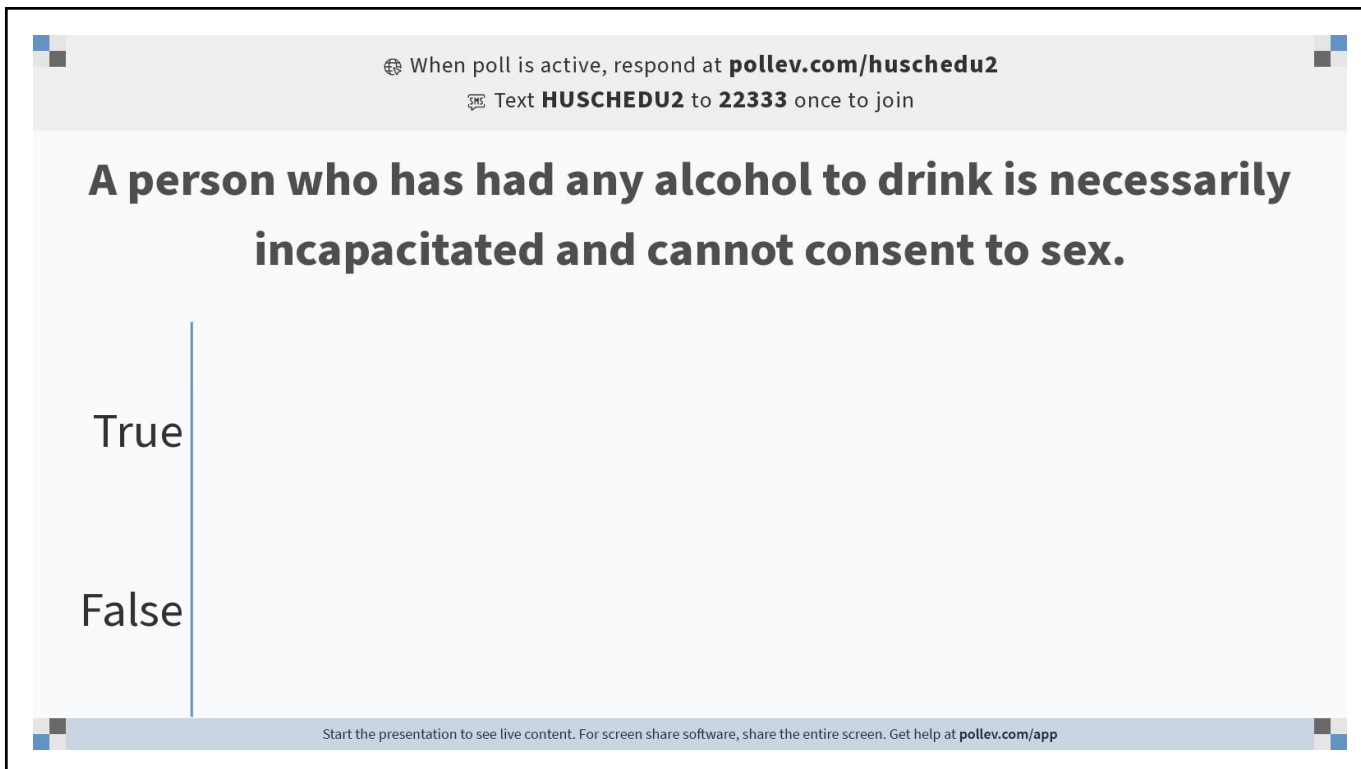
True

False

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The slide shows the poll question and options from the previous slide. At the top, there is a grey header with a globe icon and the text "When poll is active, respond at [pollev.com/huschedu2](https://pollev.com/huschedu2)". Below this is a text icon and the text "Text HUSCHEDU2 to 22333 once to join". The main text of the slide is in black: "A person who has had any alcohol to drink is necessarily incapacitated and cannot consent to sex." Below this text are two radio button options: "True" and "False". A vertical blue line is positioned to the left of the "True" option, indicating that it is the selected answer. At the bottom, there is a grey footer with the text: "Start the presentation to see live content. For screen share software, share the entire screen. Get help at [pollev.com/app](https://pollev.com/app)".

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**A person who has had any alcohol to drink is necessarily incapacitated and cannot consent to sex.**

True

False

Start the presentation to see live content. For screen share software, share the entire screen. Get help at [pollev.com/app](https://pollev.com/app)

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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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## Example (incapacitated)

Student A and Student B are drinking heavily and take prescription pills before having sex. During sex, Student B slumps over and passes out. Student A fails to stop and completes intercourse.



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## How does the institution address Title IX sexual harassment?

- When the institution has actual knowledge of actual or potential sexual harassment it must:
  - Offer supportive measures to the putative victim and information about options.
  - If a formal complaint is filed investigate and resolve the complaint through established grievance procedures.
  - If sexual harassment is substantiated, impose discipline on the perpetrator and provide remediation to the victim.

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## What policies governs the grievance process?



### Title IX (NINE) Policy

Title IX (9) of the Education Amendments of 1972 (20 U.S.C. 1681) (Title IX) is a federal law that prohibits discrimination based on the gender of students and employees of educational institutions that receive federal financial assistance.

- Sexual Harassment Policy
- Complainant Rights and Options
- Respondent Rights and Options
- Title IX Complaint Form
- Fall 2020 Title IX Compliance Training
- Fall 2021 Title IX Compliance Training

<https://www.mnu.edu/wp-content/uploads/2022/04/4892-1947-8529.1-MNU-Title-IX-policy-2021-2022.pdf>

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## Which employees have a duty to report sexual harassment?

- All University employees are required to report sexual harassment to the Title IX Coordinator Deputy Title IX Coordinator except
- Professionals at the Counseling and Wellness Center who are confidential resources



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## To report sexual harassment:

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

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



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# H-B

## Key takeaways

- Title IX prohibits all forms of sex discrimination and sexual harassment in the University’s education programs and activities.
- “Sex” for purposes of Title IX is broader than assigned sex/biological sex and encompasses multiple other categories.
- The institution has a grievance process for investigating and resolving complaints of sexual harassment.
- Some managerial employees are mandatory reporters of sexual harassment, and all employees are encouraged to report sexual harassment.



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## Questions



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## **Professional Boundaries with Students**


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### **Does the institution expect employees to be professional with students?**

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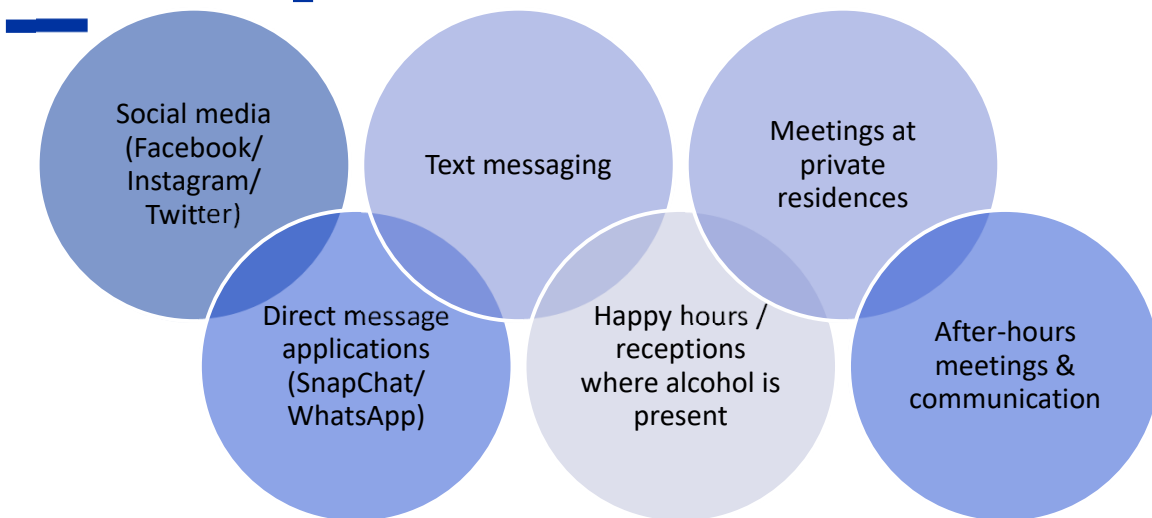
- Yes
- All administrators, faculty, and staff must set appropriate professional boundaries and engage in appropriate interaction with students
- All employees are expected to avoid the appearance of impropriety

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## What settings have an increased risk of unprofessionalism?



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## What are some examples of 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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## Example (unprofessional)

Staff member follows student's Twitter feed. Student posts picture of student on the Las Vegas strip while aggressively kissing another person. Staff member replies: "Yeh, getting' it on!!!"



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## Example (unprofessional)

Supervisor is friends with student worker on Facebook. Student posts about their breakup with their significant other. Student laments, "will I ever find love again?" Staff member comments: "Yes, you are beautiful, smart, and fun to be around. I would date you if I could!"



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## Example (unprofessional)

Staff member has Facebook account with numerous students as friends. One day, there is a particularly contentious department meeting. Staff member vents on Facebook “Somedays I hate my job and the people I have to work with!”



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### Poll Question

**I have one or more social media accounts with students as friends, followers, and contacts.**

- True
- False

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## I have one or more social media accounts with students as friends, followers, and contacts.

True  
False


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## Example

Staff member offers to help student of the opposite sex prepare an admissions essay for graduate school. Staff member invites student to come to staff member's house on a Friday evening at 9:00 pm to work on the essay. No one but the staff member is home. Nothing happens except work on the essay.

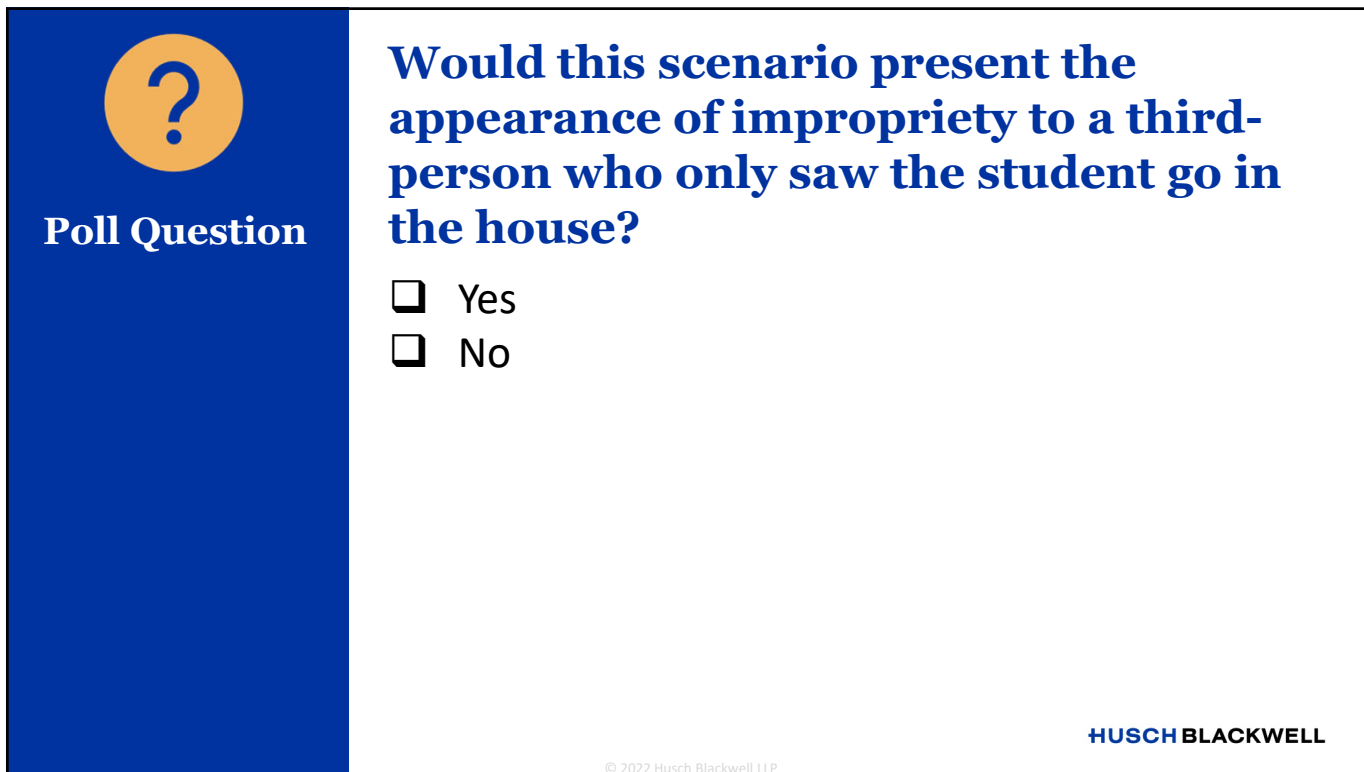


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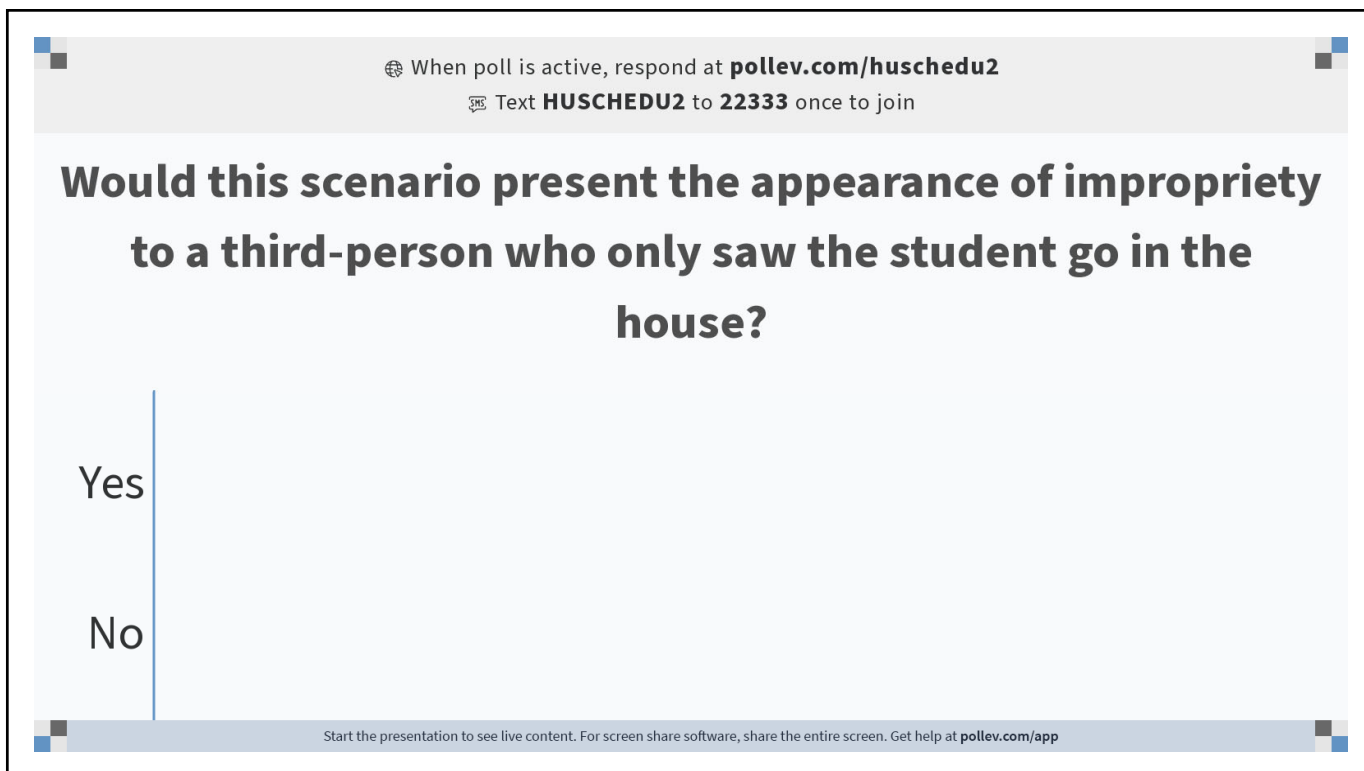
**Would this scenario present the appearance of impropriety to a third-person who only saw the student go in the house?**

Yes  
 No

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A screenshot of a poll interface. At the top, it says "When poll is active, respond at [pollev.com/huschedu2](https://pollev.com/huschedu2)" and "Text **HUSCHEDU2** to **22333** once to join". The poll question is repeated. Below the question, there are two vertical bars representing the number of responses for "Yes" and "No". The "Yes" bar is significantly taller than the "No" bar. At the bottom, it says "Start the presentation to see live content. For screen share software, share the entire screen. Get help at [pollev.com/app](https://pollev.com/app)".

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**Would this scenario present the appearance of impropriety to a third-person who only saw the student go in the house?**

Yes  
No

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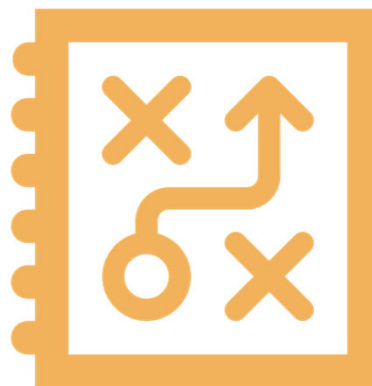
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## Example (unprofessional)

Assistant coach who recently graduated College gives student athletes his cell phone number to coordinate workouts. One, night, assistant coach receives several inappropriate texts from several student athletes who are at a party. One text says: "You are the hottest coach ever."

Coach responds: 😏



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### Poll Question

## What should the coach have done?

- Ignore the text and act like nothing happened
- Ignore the text and then discreetly tell the student the next day to knock it off
- Respond: "That's not appropriate," and then immediately report the issue to the head coach and athletics director

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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 (especially when others aren't present)
- Offering medical/mental health or other forms of treatment to a student unless it is your job at the University to treat students

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## Example (unprofessional)

Assistant coach is a licensed counselor teaching a course in counseling. Student confides in coach after practice that they experienced trauma and would like to meet with coach to receive counseling. Over next few weeks, coach meets with student on campus, and provides counseling for student's trauma.



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## Example (unprofessional)

Athletics trainer is employed to work with student athletes. One day, a family friend of the trainer who is a student (but not a student athlete) tells the trainer they have pulled a muscle in their upper thigh and could use treatment. The trainer has the student come to the training room, after hours, and provides a therapeutic massage and assists the student with stretching. No one else is present in the training room.




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Questions






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FERPA and Student Privacy

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## Family Educational Rights and Privacy Act (FERPA)

Gives University students:

- Right to access education records
- Right to have errors in education records corrected
- Right to have personally identifiable information in records kept confidential



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## What are student records?



- Directly related to a student
- Maintained by the University or a party acting on its behalf
- Can be physical or electronic
- Can be free-standing files or information contained in a larger data compilation

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## Are there exceptions to FERPA's non-disclosure rule?

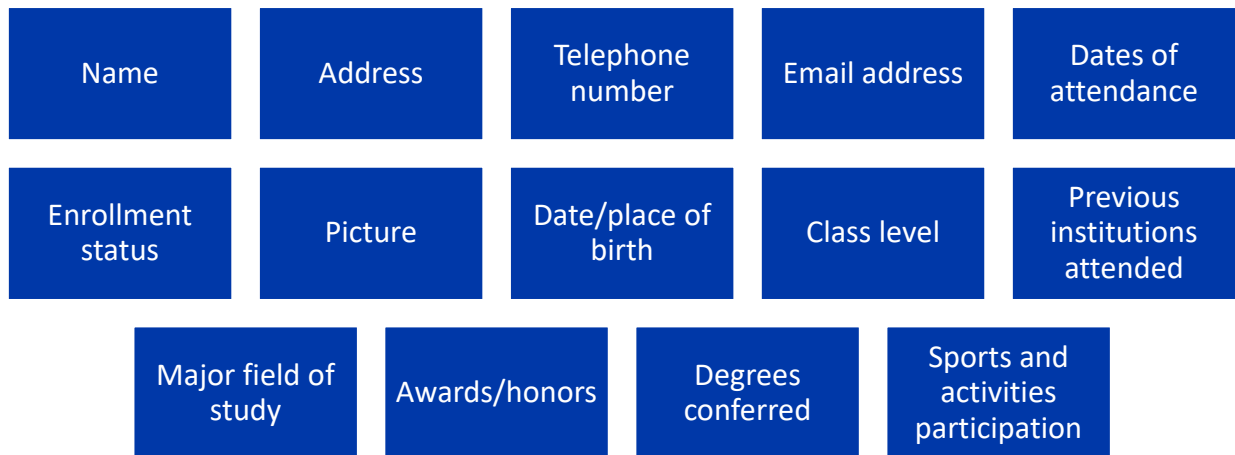
- "Directory" information
- Personal observations
- Health/safety emergency
- To school where student seeks to enroll
- Government agencies
- Accreditors
- Vendors with appropriate contractual protections for confidentiality
- In response to valid court order or subpoena
- With written authorization
- If the record reflects a finding of responsibility for a sexual assault

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## What are examples of directory information?



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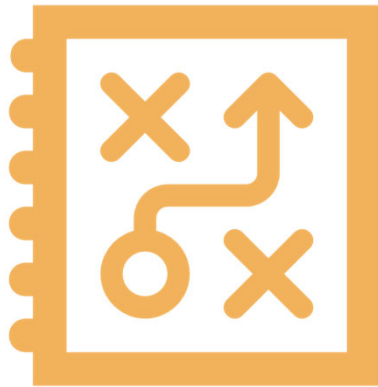
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### Example of Personal Observation



Coach observes student athlete have outstanding performance with 20 points and 15 rebounds. Coach records the statistics in the student athlete's file. Coach later tells student athlete's parents about the outstanding performance.

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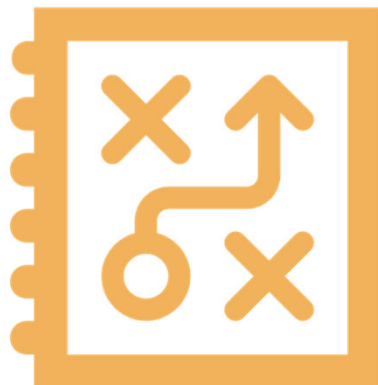
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### Example of Health or Safety Emergency



Student receiving University counseling services expresses intent to engage in self-harm but refuses counselor's advice to seek in-patient treatment. Concerned student will act imminently to harm themselves, counselor contacts the student's parents.

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## Example of Valid Court Order



Circuit Court of Johnson County Kansas issues subpoena requiring production of academic transcript of student who is involved in a personal injury lawsuit in which the student claims they suffered severe injury and emotional distress from an accident.

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Poll Question

**Parents have a right under FERPA to access the education records of University students.**

- True
- False

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**Parents have a right under FERPA to access the education records of University students.**

True

False

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**-**  
**+**

## Do parents have a right to access student records?

- Generally “no”
- FERPA rights transfer to the student at age 18 or when the student attends college
- Parents may be granted access if one of the express exceptions to FERPA applies
- Institution may, in a FERPA policy, grant parents of dependent students access to certain records



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**Example**

Parent calls student support staff to complain about the student getting failing grades. Student support staff would need to review student's academic records to even be able to discuss student's grades with upset parent.



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**Example**

Parent emails Academic Success Center and requests documentation of all disability accommodations that have been granted to student. Parent is accustomed to having interacted with IEP team in a K-12 setting.



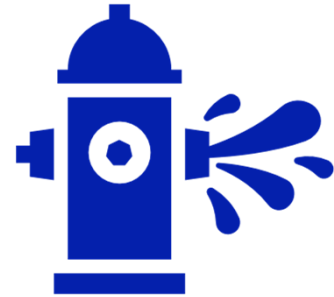
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## Do inadvertent disclosures violate FERPA?

- FERPA prohibits both intentional and unintentional disclosures of personally identifiable student records unless an exception applies
- Inadvertent disclosures affecting large numbers of students may need to be reported to the U.S. Department of Education



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## Example

Administrative assistant drafts a form email to send to each student whose grade is below 70% at the class midpoint on behalf of the professor. Instead of sending the email to all students using the BCC feature, the staff member inadvertently pastes the students' names into CC, so that all recipients see each other.



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## Poll Question

### What should a staff member do if they violate FERPA?

- Do nothing and hope no one notices
- Immediately email every person who received FERPA protected information, apologize for violating FERPA, and ask them to delete it
- Promptly notify administrative leadership and collaborate in an institutional response

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### What should a staff member do if they violate FERPA?

Do nothing and hope no one notices

Immediately email every person who received FERPA protected information, apologize for violating FERPA, and ask them to delete it

Promptly notify administrative leadership and collaborate in an institutional response

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## Example

Business office prepares an email to send to students who have delinquent accounts. The email is supposed to have a link showing the recipient only their own account information. But due to a technical glitch, when a recipient clicks on the link, they can access any student's financial information.



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## Example

A worker in an institution's Wellness and Counseling Center clicks on a phishing email that allows fraudsters to access and download the confidential data of several hundred students.



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## Does FERPA restrict disclosures amongst institutional employees?

- Yes
- FERPA permits internal disclosures of personally identifiable student records only to employees with a “legitimate educational interest”
- A case-by-case analysis that turns on whether employee needs the records to perform their duties as an employee



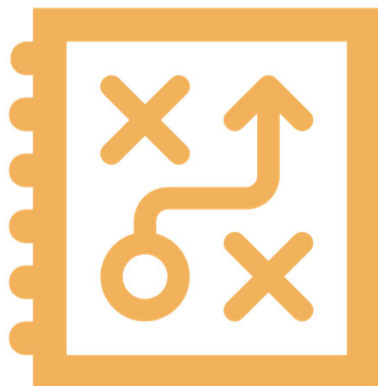
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## Example (permissible)



A Title IX Coordinator requests a student’s academic schedule from the registrar to determine the best time and day in the student’s schedule to conduct an investigative interview.

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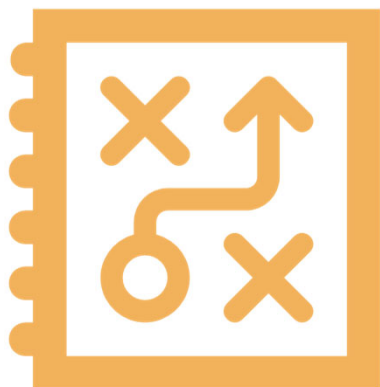
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## Example (impermissible)



A staff member the business office has a student in the nursing program. The employee asks his friend, a history faculty member to “pull” the student’s grades to see if the student is succeeding. The history faculty member obtains the records by telling the registrar’s office he needs them to write a letter of recommendation.

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## Key takeaways

- Federal law makes personally identifiable student records confidential subject to narrow exceptions
- In higher education, parents do not have a general right to access student records
- The intentional or unintentional disclosure of personally identifiable student records violates FERPA
- Even internal sharing of personally identifiable student records is restricted by federal law




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**Questions**



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**Data Security and  
Appropriate Use**

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## Do I have responsibility for maintaining data security?



- Yes
- Employees must maintain the confidentiality of electronic records to the same extent required of similar paper records
- Employees must take steps to maintain the security of University networks and infrastructure

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## What laws are implicated by the disclosure of electronic records?

- FERPA (student records)
- State data breach laws (personal information relating to finances and identity)
- Federal laws governing electronic data in critical industries, affecting national security, or involving lending



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## Can employees face personal liability for improper disclosure?

- Potential consequences if professionally licensed (lawyers; medical providers; counselors; etc.)
- Potential tort liability for the disclosure of information that would embarrass, invade privacy, or cause emotional distress
- Potential loss of employment or other employment-based discipline

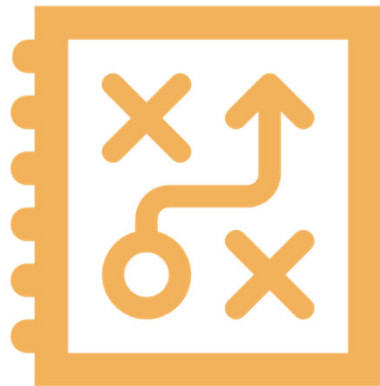
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## Example



Staff member with access to payroll and disgruntled that other employees are paid more, leaks paystubs containing name, address, partial social security number, compensation amounts, and direct deposit information.

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## Example

Worker in student development receives an email from the parent of a student asking for a copy of the student's entire conduct file. The parent explains they promised to pay for the student's tuition only if the student kept their "nose clean." Worker sends parent the file.



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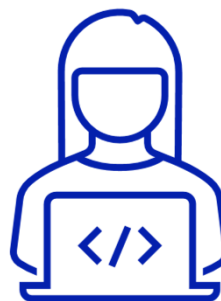
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## What are the most common causes of unintentional breach?

- Phishing emails
- Malware
- Malicious websites
- Scam calls
- Insufficient passwords
- Compromise of credentials



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## Example

Staff member receives email appearing to be from supervisor at 2:30 am in the morning. Email is coded as “urgent” and requires staff member to provide PDF copies of various student accounts “as soon as you get in” for an important meeting at 8:30 am.



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### Poll Question

## What could the employee do before sending the account information?

- Hover-over or right click the displayed name to confirm it is actually the supervisor’s email address
- Call their supervisor to confirm the request before sending the files
- Instead of replying, start a new email using the supervisor’s email address from the Outlook directory and attaching the PDFs to that email

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## What could the employee do before sending the account information?

- Hover-over or right click the displayed name to confirm it is actually the supervisor's email address
- Call their supervisor to confirm the request before sending the files
- Instead of replying, start a new email using the supervisor's email address from the Outlook directory and attaching the PDFs to that email

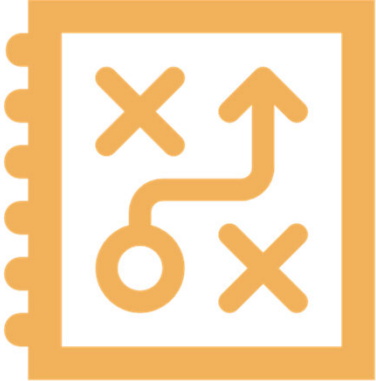
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## Example

Employee in registrar's office receives an email with the subject "Invoice Past Due." The email contains a generic statement that the University's invoice is "past due" and will be "sent to collection unless paid" The email contains a hyperlink to said "invoice."

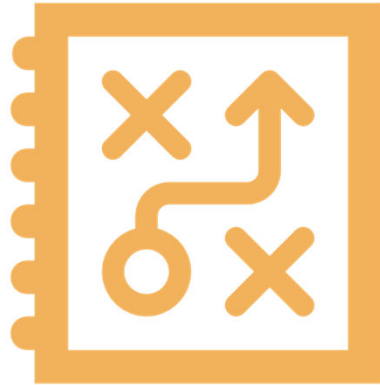


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## Example

Faculty member receives email confirming purchase of concert tickets and referencing that credit card has been charged. Email provides a phone number to contact for customer service inquiries. Faculty member never purchased concert tickets.

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## Example

Administrator uses the same password for all personal accounts and University login. Administrator receives notice from an online vendor that his password has been compromised in a large data breach. Administrator fails to change his University login credentials.



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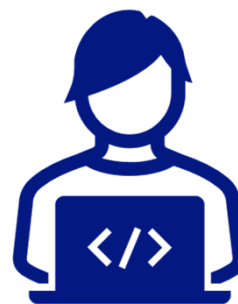
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## Does the institution regulate the use of its technology resources?

- 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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### Poll Question

## Does the University retain the right to monitor the use of its technology infrastructure?

- Yes
- No

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## Does the University retain the right to monitor the use of its technology infrastructure?

Yes

No

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## Does the institution regulate the use of its technology resources?

### APPENDIX B: Acceptable Use of Technology Resources Policy

MNU provides technology resources for use by students, employees, and visitors. The use of MNU technology resources and all information maintained in any form by students, employees, and visitors is subject to laws, regulations, contracts, licenses, policies, and procedures as established by MNU. This policy broadly applies to all on- and off-campus events and activities sponsored by MNU and related student organizations. MNU may monitor its technology resources to ensure user compliance with applicable policies. If an infraction is discovered, appropriate action will be taken. The university will also cooperate with all legitimate law enforcement agencies regarding investigations and access to the university's technology resources.

Users of MNU technology resources are expected to comply with all policies related to the acceptable, responsible, and lawful use of such technology resources. Failure to do so is considered a conduct violation that will be investigated and resolved according to the applicable MNU policy. Depending on the circumstances, infractions may result in disciplinary action up to and including suspension or expulsion/termination, revocation of system access privileges, and/or prosecution.

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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)
- Violation of copyright or trademark
- Violation of discrimination and harassment policies

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## Am I allowed to use technology for personal matters?

- Limited and reasonable use of technology for personal matters is permissible so 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)



Coach uses office computer to check news headlines for five minutes while taking a break from work activities.

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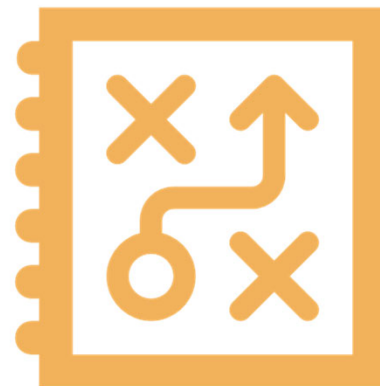
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### Example (impermissible)

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

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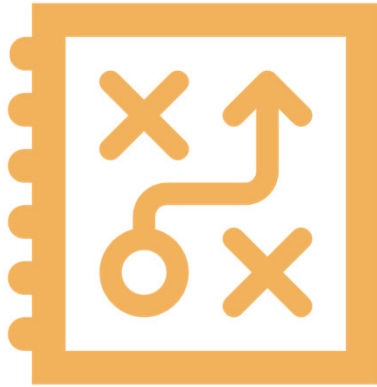
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### Example (impermissible)



Staff member serves as treasurer for a political campaign on their own time. Staff member uses their University email account for all communications as treasurer.

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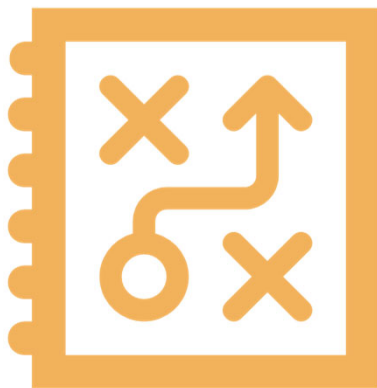
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### Example (impermissible)



Assistant coach has a large collection of pirated songs and videos. Coach saves the media files to a shared network drive as a “backup” in case they should be accidentally deleted from coach’s personal computer.


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