




Regulations require no bias or conflicts of interest



- Consistent with federal law, "All investigators, decision makers or any person designated to facilitate an informal resolution process, cannot have a conflict of interest or bias for or against complainants (person allegedly harmed) or respondents (person who allegedly caused the harm)generally or an individual complainant or respondent"
- § 106.45(a), § 106.45(b)(1)(iii)



Equal Opportunity

Non-Discrimination Statement

- **Illegal Discrimination** occurs when some people are **treated differently** than others because of their membership in a protected group/class. For example: because of race, age, gender, religion or sexual orientation
- However, not all types of discrimination are unfair or illegal. (i.e. favoring a particular sport's team or food)

Reasonable Accommodations

Equality

The assumption is that everyone benefits from the same supports. This is equal treatment.

Equity

Everyone gets the supports they need (this is the concept of "affirmative action"), thus producing equity.

Universal Design

All 3 can see the game without supports or accommodations because the cause(s) of the inequity was addressed. The systemic barrier has been removed.

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Office of Institutional Diversity, Equity and Access (IDEA)

Executive Director of the Office of IDEA
Title IX Coordinator (Institution)
ADA Coordinator (Institution)
Chief Diversity Officer

Assistant Director of IDEA

Deputy Title IX Coordinator

Deputy Title IX Coordinator

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IDEA Responsibilities

Equity Efforts (Compliance)

Affirmative Action

Vets 4212

Title IX

ADA/Section 504 & Reasonable Accommodations

VAWA & Campus SaVE

Inclusion Efforts (Support & Proactive Education)

Diversity & Inclusion

Education & Outreach (e.g. Canvas Training)

Diversity Plan

Response to Concerns

Reporting

Investigations

Process Navigation Discussion

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what is it?
 related to Title IX?
 what does it protect?

TITLE IX

(9)

Title IX, Education Amendments of 1972, 20 USC 1681

37 WORDS

"No person in the United States shall, on the basis of sex, be excluded from the participation in, be denied benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance."

- A civil rights protection
- Provides **protection from all forms of sexual misconduct** including: sex-based discrimination, harassment, or gender violence at any educational institution receiving federal funding
- Students** are the primary focus of Title IX, but **applicable to all** campus constituencies
- Applies to males and females**, including gender non-conforming individuals
- prohibits discrimination on the basis of sex** in education programs or activities operated by recipients of federal financial assistance

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Scope of the Recipient's education program or activity.
Title IX applies to all of Murray State University's education programs or activities, whether such programs or activities occur on-campus or off-campus. The University may address sexual harassment affecting its students or employees that falls outside Title IX's jurisdiction in any manner the school chooses, including providing supportive measures or pursuing discipline.

Sexual Misconduct Violations

Sexual Violence

Any sexual behavior that happens without a person's consent

- Rape
- Statutory Rape
- Child Sexual Abuse
- Sexual Harassment and/or Threats
- Sexual Exploitation
- Non-Consensual Sexual Activity/Sexual Assault
- Relationship Violence
- Stalking
- Blackouts
- Coercion
- Incapacitation
- Absence of Consent

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IX University Responsibilities

- ✓ MSU must take prompt and effective action to stop harassment, eliminate a hostile environment and address its effects
- ✓ Adopt equitable grievance procedures
- ✓ Use preponderance of evidence and a reasonable person standard
- ✓ Conduct investigations separate from and independent of any criminal investigation or proceeding
- ✓ Conduct campus wide educational sessions both in person and online for faculty, staff, and students with particular emphasis for target groups: Residence Life, Athletics, Band, Greek Life, Student Leaders, Advisors, etc.
- ✓ Online training requires 100% score on assessment
- ✓ Designate Title IX Coordinator and Deputy Coordinators
 - ✓ Publish the address, phone number and email for the Title IX Coordinator and Deputies
- ✓ Provide campus wide training both in person and online and train target groups: Residence Life, Athletics, Band, Greek Life, Student Leaders, etc.
- ✓ Provide access to written policies, procedures and campus resources
- ✓ Training to include definitions, ways to report, refer to campus policies, campus resources, discuss sexual harassment and grievance procedures and campus educational sessions/training

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Definition

Sexual Harassment definition: 3 Parts

against a STUDENT

1 Severe

2 Pervasive

3 Objectively Offensive

Allegation about conduct must include all three parts

An allegation about conduct missing one of the three parts must be covered under another set of policies (i.e. Student Conduct or Employee Handbook)

1 Severe + 2 Pervasive + 3 Objectively Offensive = Sexual Harassment

Sexual Harassment definition:

against an EMPLOYEE

1 Severe

2 Pervasive

3 Objectively Offensive

1 Severe OR 2 Pervasive OR 3 Objectively Offensive = Sexual Harassment

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threshold review

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Severe OR AND Pervasive OR AND objectionably offensive = Sexual harassment

Note: an isolated incident of objectionable behavior is NOT actionable - a PATTERN OF BEHAVIOR IS ACTIONABLE

catcalling
street harassment

Said University...

① have control over respondent behavior? ② know or should have known ③ Failed to take action to STOP

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Definition

Sexual Harassment [34 CFR § 106.30]

Sexual harassment means conduct on the basis of sex that satisfied one or more of the following:

(1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;

(2) 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; or

(3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

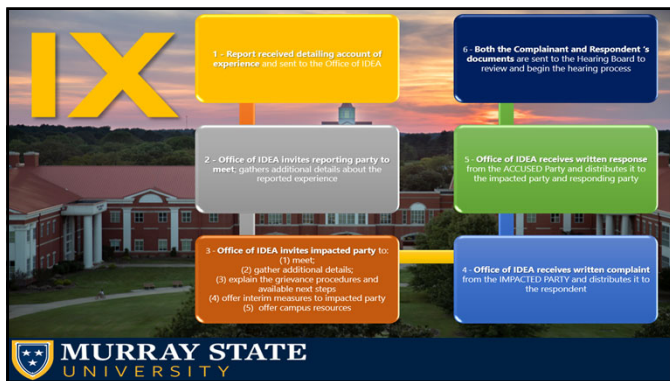
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Grievance Procedures

OPTIONS

Allegations against a STUDENT	Allegations against an EMPLOYEE
INFORMAL: Limited investigation occurs without identifying information	INFORMAL: Limited investigation occurs without identifying information
FORMAL: Written Complaint University Judicial Board called into service to render decision & sanctions	FORMAL: Written Complaint IDEA Investigates and makes recommendation to VP. to render decision & sanctions

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Policy

NOT

Party

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Campus Resources

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REPORTING AND RESOURCES

A guide for addressing allegations of Sexual Misconduct, Sexual Violence, Relationship Violence, Stalking and Sexual Exploitation

Office of Institutional Diversity, Equity and Access (IDEA)

103 Wells Hall • Murray, KY 40302
202-809-3924 • 202-809-4880 fax • idea@murraystate.edu

Executive Director of IDEA/Title IX Coordinator:
Candice Preece Duffy
Deputy Title IX Coordinators and Investigators:
J. Quinn Butler
July 2020

Interpersonal Protective Orders

Kentucky's new tool to protect survivors of dating violence, sexual assault, and stalking

KCADV

Kentucky Coalition Against Domestic Violence

Campus Resources

To address occurrences of Sexual Misconduct, Sexual Harassment, Sexual Assault, Sexual Violence, Relationship Violence, Stalking, and Sexual Exploitation

- Health Care Providers - campus locations to provide emergency medical care and counseling
- Student Support Services - campus locations to provide academic, financial, and personal support
- Student Health Services - campus locations to provide medical care and counseling
- Student Legal Services - campus locations to provide legal advice and representation
- Student Financial Services - campus locations to provide financial aid and scholarship information
- Student Activities - campus locations to provide information about campus events and organizations
- Student Government - campus locations to provide information about student governance
- Student Union - campus locations to provide information about student union activities
- Student Housing - campus locations to provide information about student housing options
- Student Dining - campus locations to provide information about student dining options
- Student Transportation - campus locations to provide information about student transportation options
- Student Safety - campus locations to provide information about student safety resources
- Student Wellness - campus locations to provide information about student wellness resources
- Student Career - campus locations to provide information about student career resources
- Student Internship - campus locations to provide information about student internship opportunities
- Student Research - campus locations to provide information about student research opportunities
- Student Leadership - campus locations to provide information about student leadership opportunities
- Student Service - campus locations to provide information about student service resources
- Student Support - campus locations to provide information about student support resources
- Student Community - campus locations to provide information about student community resources
- Student Culture - campus locations to provide information about student culture resources
- Student Identity - campus locations to provide information about student identity resources
- Student Belonging - campus locations to provide information about student belonging resources
- Student Success - campus locations to provide information about student success resources
- Student Well-being - campus locations to provide information about student well-being resources
- Student Engagement - campus locations to provide information about student engagement resources
- Student Participation - campus locations to provide information about student participation resources
- Student Involvement - campus locations to provide information about student involvement resources
- Student Connection - campus locations to provide information about student connection resources
- Student Relationship - campus locations to provide information about student relationship resources
- Student Community - campus locations to provide information about student community resources
- Student Culture - campus locations to provide information about student culture resources
- Student Identity - campus locations to provide information about student identity resources
- Student Belonging - campus locations to provide information about student belonging resources
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- Student Involvement - campus locations to provide information about student involvement resources
- Student Connection - campus locations to provide information about student connection resources
- Student Relationship - campus locations to provide information about student relationship resources



Impartial and Unbiased

- Board members, hearing officers (and others including investigators) must remain impartial and must not form any opinions or judgments prior to the hearing. Board members must disclose any relationships or affiliations with any party prior to the hearing. Appropriate considerations will occur which may result in a board member being excused from the proceedings.



Regulations require training/educational session(s)

- Consistent with federal law, "All investigators, decision makers or any person designated to facilitate an informal resolution process, must receive training on how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. In conducting illegal discrimination and/or illegal harassment proceedings, all such persons must not rely on stereotypes (including but not limited to sex)— i.e. typical notions of what men or women do or do not do or notions of what a particular protected class do or do not do—and must promote impartial investigations and adjudications of formal complaints of illegal discrimination or illegal harassment."
- § 106.45(b)(1)(iii)



Avoiding Conflicts of Interest

- Caution must be engaged as MSU's *treatment of a complainant or respondent in response to a complaint of illegal discrimination or illegal harassment may constitute illegal discrimination nor illegal harassment.*
- Effective decision making "...requires impartiality to further the fairness and equity in treating all parties with dignity, respect and sensitivity without bias, prejudice or stereotypes infecting interactions with parties..." (Office for Civil Rights, January 15, 2021)



Avoiding Conflicts of Interest, Bias, Partiality

- Define conflicts of interest (COI)
- Describe methods of avoiding COI
- Steps to take when discovering or anticipating a COI



Definitions: Conflicts of Interest, Bias, Partiality

- Conflict of Interest
 - a conflict between the private interests and the official or professional responsibilities of a person in a position of trust
- or
- a conflict between competing duties. See <https://www.merriam-webster.com/dictionary/conflict%20of%20interest>.
- Bias
 - an inclination of temperament or outlook; especially, a personal and sometimes unreasoned judgment. See <https://www.merriam-webster.com/dictionary/bias>.
- Partial
 - inclined to favor one party more than the other. See <https://www.merriam-webster.com/dictionary/partial>.



Avoiding Conflicts of Interest

- Most wouldn't willingly participate in misdeeds
 - i.e. bribery, kickbacks or fraudulent behavior
- May not easily recognize other scenarios that create a conflict of interest
- Unintentional bias can trip up even the most savvy or well-meaning of us
- Research shows the brain is adept at aligning a person's interests, undermining the objectivity most of us typically possess



Avoiding Conflicts of Interest

- MSU employees must avoid any conflict of interest that may affect their independent judgment in the impartial performance of their MSU duties
- MSU employees must disclose in advance any scenarios in which they believe a conflict of interest may exist



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Avoiding Conflicts of Interest – Title IX

- Understanding the standard of evidence – Preponderance of the Evidence "more likely than not"; 50%+ a feather (51%)
- Reasonable person standard – Whether bias exists requires examination of the particular facts of a situation and to apply the objective (whether a reasonable person would believe bias exists) common sense approach to not apply generalizations that might unreasonable conclude that bias exists.



Avoiding Conflicts of Interest – Title IX

- Cautions against using sex-stereotypes as evidence bias
- Cautions against using prior affiliations as evidence of bias
- Cautions against evaluating bias based on outcomes
- *Treat complainants and respondents equitably under the regs*
- *Avoid sex stereotypes*
- *Treat each person as an individual, not as a member of a class*
- *Objectively examine relevant evidence before reaching determination*
- *Give both parties equal opportunity to present witnesses and evidence*
- *Continue to evaluate issues of bias and conflicts of interest throughout the process*



Avoiding Conflicts of Interest

Whenever a potential conflict arises, it's time to ask yourself a few questions.

Is this legally permissible?

Is it the right thing to do?

Could I get in trouble?

Carefully consider whether to participate in a decision-making process whenever any personal financial interest is at stake.



Screen 14 of 24

Avoiding Conflicts of Interest

It's also important to consider not only the legality of a situation, but also the appearance.

How will it look to others?

Will it reflect badly on me or my institution?

Even when a true conflict of interest does not exist, you should always be sensitive to the appearance of a conflict.



Screen 15 of 24

Required Education
Reminder

CALLING ALL RACERS!

REMEMBER...

Finish the **required** TITLE IX Training online

Visit: murraystate.edu/mandatorytraining

Questions?

Complete Acknowledgement Form distributed via email and scan to: msu.idea@murraystate.edu
