

Legal Fundamentals For MSU Deans and Department Heads

Role of Deans and Department Heads

- Deans and Department Heads are representatives of the administration and the institution.
- Required to handle all kinds of problems with legal implications – HR management of employees {union and non-union}, first responders to complaints of discrimination, processing student complaints, etc.
- Training today will focus on providing you with an overview of the most important legal issues facing Deans and Department Heads and some resources for the future.

Higher Education Law

- FERPA – Family Education and Privacy Act
- Title IX of the Education Act
- Title VII of the Civil Rights Act
- Equal Pay Act
- Age Discrimination in Employment Act
- Montana Human Rights Act and Code of Governmental Practices
- Montana Higher Education Statutes
- Campus Safety and Security Act [Clery Act]
- Drug Free Schools and Community Act
- Higher Education Opportunity Act
- Americans with Disabilities Act and Rehabilitation Act
- Export Control Laws
- Environmental Regulations
- State Ethics Laws
- OMB Circulars

FERPA

- No release of educational records without student consent
- Students have the right to inspect and correct educational records
- Public record requests and FERPA

FERPA Questions

- Can I send information to my advisee by email without violating FERPA?
- An angry student has threatened to sue me for violating FERPA because I talked with her professor about her? Am I liable?
- A parent has emailed me a FERPA consent signed by his student. He is asking me to send him the student's grades so he can get a discount on insurance. Is that ok?

Federal Non-Discrimination Law

- Title VII prohibits discrimination in employment
- Title IX prohibits sex discrimination in education
- ADA and Rehabilitation Act prohibits disability discrimination in employment, education and governmental services

State Non-Discrimination Law

Montana Human Rights Act and
Code of Governmental Fair
Practices Act

Prohibits discrimination in
education, employment and
governmental services

Harassment is Discrimination

- Harassment based upon a person's protected class is a form of discrimination prohibited by state and federal law –
 - Race/Color
 - National Origin
 - Religion/Creed
 - Age
 - Sex/Gender
 - Marital Status
 - Physical or Mental Disability
 - Political belief
 - Sexual Orientation – prohibited by MSU policy

Harassment

Harassment - acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on protected class is discrimination.

If harassment rises to a level that

- denies or limits a student's ability to participate in or benefit from the educational program = violation of state law and Title IX
- creates a hostile work environment-violation of Title VII and state law

Harassment based upon protected class = discrimination prohibited by state and federal law.

Sexual Harassment is:

Unwelcome sexual advances, request for sexual favors accompanied by implied or overt threats, unnecessary physical contact, sexually explicit or demeaning comments

or

Conduct of a sexual nature that creates an intimidating, hostile or offensive environment

or

substantially interferes with an individual's academic or work performance.

Sexual Violence

- Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability.
- A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion. All such acts of sexual violence are forms of sexual harassment covered under Title IX.

Title IX prohibits Sexual Harassment of:

- Student by Faculty Member
- Student by Student
- Faculty Member by Student
- Student by a third party
- Student by any university employee

Other laws protect employees from sexual harassment/discrimination

Bottom Line

- Any reports of sex discrimination, harassment and particularly **acts of sexual violence** must be reported to Title IX Coordinator and addressed in some fashion by the institution
- Confidentiality cannot be promised! If a report is made to you, you must make clear that you cannot promise confidentiality and that you have a duty to report

Bottom Line

- Contact the Title IX Coordinator if you receive any reports of such acts or have knowledge or reasonable suspicion of such acts.

Waiting for a report may not be enough

Address inappropriate conduct when it arises.

- Faculty/staff socializing with students
- More than casual interactions between faculty and students
- Gift giving; special favors
- Sexual comments

Scenarios

- “Rumors” of harassing behavior on student trip
- Student “may have been” sexually assaulted at student party while drunk, doesn’t really know what happened because of intoxication
- You observe student is faculty’s “right hand”; they seem very “close”—he is her mentor and given favored treatment in assignments and publications. They spend a lot of time together.
- Neighbor tells you “in confidence” that a student who is a friend of her daughter’s has been sexually assaulted by another student

Research Compliance and the Dean and Department Head

- Conflict of Interest
- Export controls
- Research Integrity

ADA & FMLA

FMLA

- Applies to any serious illness, childbirth or placement of child for adoption.
- Grants 12 weeks of job protected leave in 12 month period
- Required to take sick leave if available (exceptions for childbirth and adoption)

ADA

- Applies to permanent and temporary disabilities, physical and mental.
- Requires “reasonable accommodation.” The most common faculty request is time off in excess of FMLA
- The use of leave and other terms are case specific.

ADA & FMLA

- Both trigger significant legal rights and obligations
- To best protect the University, get help and follow the processes.
- Avoid “informal accommodations.”
Remember, no good deed goes unpunished.

Scenario 1

- A faculty member requests to teach on-line only classes for a semester in order to take care of an ailing family member.
 - What could go wrong?
 - What can you do to keep it on track?

Scenario 2

- In August, faculty member requests 12 weeks FMLA leave to deal with depression. In December, the request is renewed for the following semester.
 - Is the University obligated to provide leave?
 - Are there other alternatives?

Scenario 3

- A faculty member has accepted a contract to teach two summer courses. Two days into the first course, he is in a car accident and unable to teach for the remainder of the summer. Is he eligible for FMLA?
- Does your answer change if the faculty member informs you two weeks before the start of class that he has scheduled a knee surgery that will keep him out 6 weeks?

Conflict of Interest

- New PHS-NIH Rules
 - \$\$ Threshold LOWER -- \$5000
 - Research Reporting Broader
 - All Investigators Report Interests Related to Institutional Responsibilities
 - Institution Determines if COI
 - Research Reporting—PCF, New Investigators, Free Travel
 - Travel Reporting--\$5000 or greater

Conflict of Interest

- Annual Reporting
 - Review Reports to Help Assess Conflict
- Nepotism
 - Law and Policy Prohibits:
 - Involvement in Decisions which have an Economic Benefit or Detriment
 - Often Requires Management Plan
 - Peers Usually OK

Consulting Reporting

- Annual Report
 - Entity
 - Days of Consulting
 - MSU Resources Used and Payment
- Deans and Dept Heads
 - Review Reports
 - Assess compatibility with MSU duties

Export Control Regulations

- Military Technology—ITAR, U.S. Munitions List
- Dual-Use Technology—Commerce Control List PLUS EAR 99
- Any Commerce with: North Korea, Syria, Iran, Cuba, Sudan, (varies from time to time)

Export Control Regulations

- Triggered when:
 - Research outside Fundamental Research Exemption—requires Technology Control Plan
 - Shipping items, materials, or technical data outside the U.S.
 - Foreign Collaborations
 - Foreign Entities Sponsor Research

Research Integrity

- Plagiarism, Falsification, and Fabrication
- Allegations Require Strict Procedures
 - Allegations Must be Reported to VP R
 - Assessment
 - Inquiry
 - Investigation
- Responsible Conduct of Research Training
 - NSF—All Students, including Post-Docs
 - NIH—Training Grants, Extensive Requirements

Collective Bargaining and the Dean and Department Head

- Collective Bargaining Agreement (CBA) is a legally binding contract between the Union and the University
 - Establishes the Union as an Exclusive Representative between Faculty and Administration or Graduate Students and Administration
- Dictates terms, wages, hours & working conditions

What to expect

- Administration is empowered
 - Management rights
- Faculty and Graduate Students are empowered
 - Grievances
 - Unfair Labor Practices (ULPs)
 - Representation at certain types of meetings

Resistance is futile

- The CBA is not optional – for either party
 - Possible traps
 - Direct dealing
 - Cherry picking the articles or application
 - Looking for ‘work arounds’
 - Letting deadlines slide