

# **Legal Issues on Campus**

Graduate Assistants Orientation

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# ***FERPA: Family Education Rights and Privacy Act***

***(also called Buckley Amendment)***

## **To avoid FERPA violations, DO NOT**

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- Link the name of a student with that student's social security number in a public manner;
- Leave graded tests in a stack for students to pick up by sorting through the papers of all students;
- Circulate a printed class list with student names and social security numbers or grade as an attendance roster;

## **To avoid FERPA violations, DO NOT (cont.)**

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- Discuss the progress of any student with anyone other than that student (including parents) without the student's permission;
- Provide anyone with lists of students enrolled in your class for any purpose; and
- Provide anyone with student schedules or assist anyone other than university employees in finding a student on campus.

# **Tennessee Open Records Act**

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# What is the Tennessee Open Records Act

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- The purpose of act is to allow citizens of the state of Tennessee to have access to their government
- Not to be confused with the Freedom of Information Act (FOIA) which is only applicable to Federal Agencies

## What is the law?

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- All state records shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any **citizen**, unless otherwise provided by state law. T.C.A. § 10-7-503
- This includes employment records!

# Exceptions

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- Unpublished phone numbers
- Bank account information
- Social Security number
- Driver's license information
- Medical information



## **Exception: FERPA trumps Open Records**

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The records of students in public educational institutions shall be treated as confidential. Information in such records relating to academic performance, financial status of a student or the student's parent or guardian, medical or psychological treatment or testing shall not be made available to unauthorized personnel of the institution or to the public or any agency. T.C.A. §10-7-504(4)(A).

# **Exception: Sponsored Research Records**

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We do not disclose documents that contain:

1. proprietary information
2. trade secrets
3. patentable materials received, generated, ascertained, or discovered during the course of research

If requested, we must make available the title and description of a sponsored research project and the amount of funding for such project. TCA § 49-7-120

# **University Policy on Responses to Requests: UM1616**

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# Subpoenas

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A subpoena is a legal document which orders a person to:

1. appear to give testimony at a deposition or at trial; or
2. produce documents; or
3. both.

## **If You Receive A Subpoena:**

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- If the lawsuit involves the University, contact the Office of Legal Counsel
- If the documents or testimony sought involves work you do in your capacity as a University employee, contact the Office of Legal Counsel
- If the lawsuit, documents or testimony involve your personal life, contact your personal lawyer

## **NEVER ...**

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- Accept service of a **lawsuit**, even if it involves the University
- Only the Attorney General can accept service of a lawsuit on our behalf

# **Americans with Disabilities Act**

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# What is the Americans with Disabilities Act?

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- The Americans with Disabilities Act (ADA) is a civil rights law that:
  - Prohibits discrimination against persons with disabilities and,
  - Requires entities to provide equal access to public facilities, programs, activities and services.
- Purposes
  - End discrimination
  - Provide level playing field for persons with disabilities
  - Penalize discriminatory behavior



# What do the ADA and Section 504 of the Rehabilitation Act provide?

- No **qualified** person with a **disability** shall be excluded from participation in, denied the benefits of, or be subjected to discrimination by reason of disability.



# What does substantially limit mean?

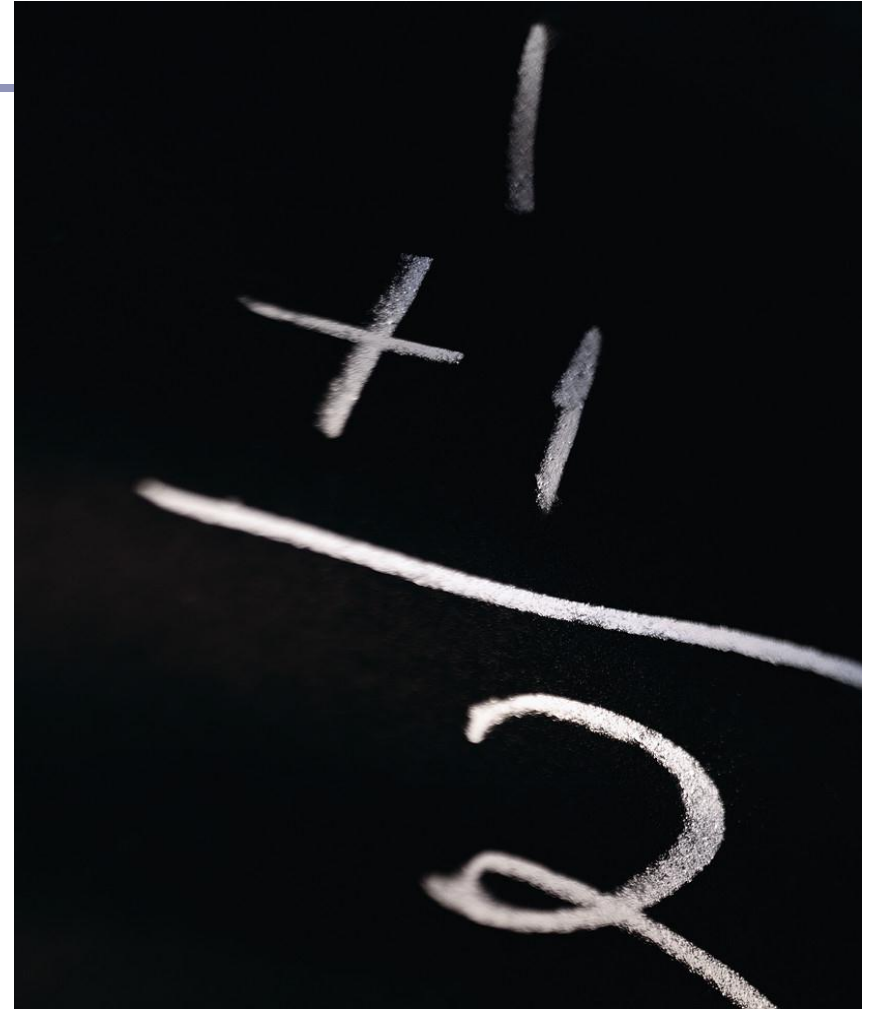
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- Substantial limitation occurs when an impairment prevents or significantly restricts the duration, manner, or condition under which the individual could perform a major life activity.
  - The effect of the impairment on the life of an individual is the determining factor.

# Major Life Activities

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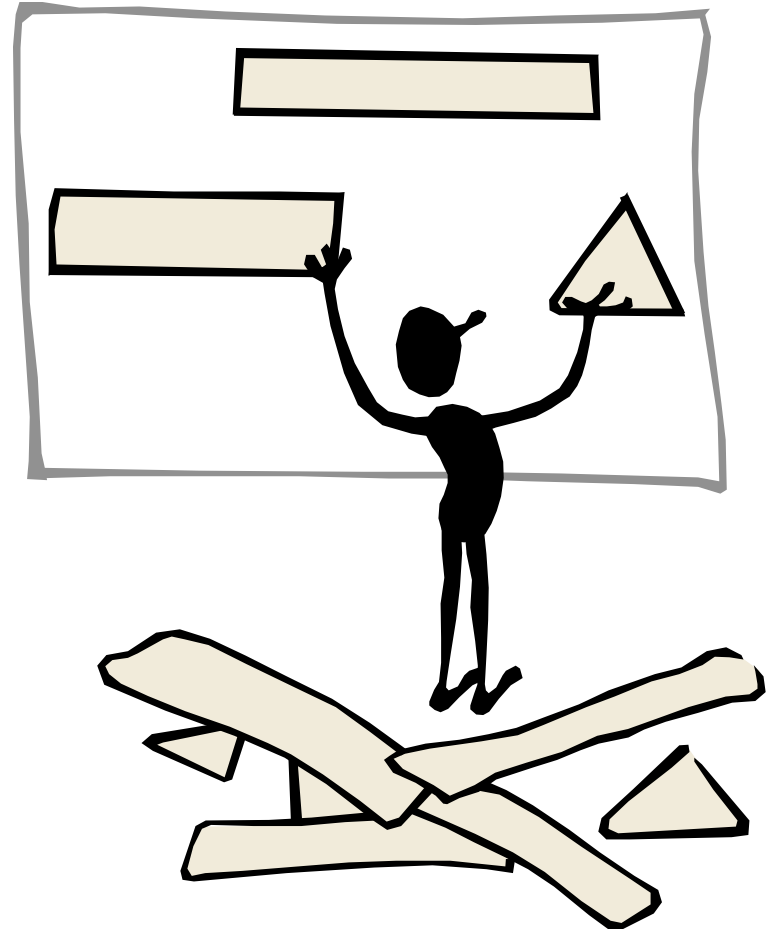
- Breathing
- Seeing
- Hearing
- Working
- Taking care of oneself
- Speaking
- Reading
- Concentrating
- Standing
- Communicating
- Walking
- **Learning**



# What does this mean to U of M?

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- Under the ADA and Section 504, we make **reasonable accommodations** for qualified persons with disabilities and provide them the opportunity to participate fully in all institutional programs and activities.



# Fundamental Alteration

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- A fundamental alteration is a change in the essential nature of a program or activity.
  - Changing the academic standards to accommodate a student would be a fundamental alteration if the change reduces or lowers the academic standards of the University.
    - Academic standards are essential and it is unreasonable to alter these fundamental standards with an accommodation.

# Personal services

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- Personal services are those that a person with a disability requires regardless of attendance at the University.
  - Examples: tutoring, personal study assistance, or individually prescribed aids, appliances and equipment

# What does all this mean?

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- Reasonable modifications to course or degree requirements may be necessary unless doing so would fundamentally alter the academic program.
- Prohibitive rules cannot be imposed on qualified students with a disability.
  - Banning audio recorders, service animals or other necessary equipment
- Methods of communication in the classroom may need to be modified, and special equipment may need to be allowed.
- When necessary, educational materials must be provided in an alternate format that is effective for the student.

# What does all this mean?

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- Alternate testing and evaluation methods must be used when necessary to ensure the student's achievement is appropriately measured.
- Classes must be relocated to permit access for students with mobility impairments.
- The University has to install handicap accessible ramps, doors, and flashing lights on alarms.
- The University must provide certain auxiliary aids and services such as:
  - Note takers
  - Alternate format texts and materials for persons with visual impairments.



# Student Disability Services

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- SDS provides a comprehensive program of services and academic accommodations designed to provide access and opportunity to students with disabilities.
- Students who register with SDS are evaluated based on the student's current functional limitations supported by the medical or professional documentation, the student's compensatory skills and the requirements of a particular course or program.
- A semester plan is created based on the evaluation which includes all accommodations necessary to provide equal access.
  - A student with a disability cannot be required to accept an accommodation, aid, service or benefit.

# What is Copyright ?

- Copyright is protection provided by law (title 17, U.S. Code) to the authors/creators of “original works of authorship,” expressed in any tangible medium. This protection is available for original works from the moment they are created and expressed in a tangible medium, and it applies whether they are published, unpublished, or registered with the U.S. Copyright Office.



# Categories of Copyright

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The U.S. Copyright law places copyrightable works in the following categories:

- \*Literary works
- Musical works, including any accompanying words
- Dramatic works, including any accompanying music
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural works

These categories should be viewed broadly. \*Computer programs may be categorized and registered as literary works.



# A few things to know about Copyright

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- It is unlawful to make or distribute copies of derivative works without permission.
  - Exceptions:
    - Public Domain – Works that were published in US before 1923 and Works of the US government
    - Fair Use
      - Case by case analysis
      - <https://umdrive.memphis.edu/g-legal/www/copyrighthelp/>
    - Single Copies for Classroom Use
    - Course packs
    - Library Reserve
    - Performance and Display in classroom
      - Must be from a lawful copy!

If all else fails, Ask Permission

# University Policies and Procedures

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The University of Memphis Policies and Procedures are located at:

<http://policies.memphis.edu/>

# **IGNORANCE OF THE LAW IS NO EXCUSE**

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This applies to the University Policies and Procedures.

You **MUST** follow Policies and Procedures ...

# Do I Have The Right To Sign A Contract on Behalf Of The University

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- All University of Memphis contracts should be reviewed by the Purchasing Department, the Office of Legal Counsel or Business Services for compliance with policy and to obtain signature by the appropriate party.
- A Contract/Agreement Routing Form, which is available on the website of the Office of Legal Counsel, must be completed and submitted with the proposed agreement.
- If you sign an agreement on behalf of the University, and do not have the authority to do so, you may be personally liable. Very few people on campus have the authority to sign on behalf of the University, so ASK FIRST!

# Campus Resources

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- If you have a safety concern contact Police Services.
- If you need an accommodation or have an issue involving discrimination of a protected class or harassment contact the Office of Diversity, Affirmative Action and Equal Employment.
- If you have a student who is disrupting the classroom contact the Office of Judicial and Ethical Programs.
- If you have a student who needs an accommodation or who needs a classroom relocated because of an accommodation contact the Student Disability Services Office.
- If you have a student who is exhibiting disturbing behavior contact the Center for Counseling, Learning and Testing.

You are not alone!



## Final Thoughts

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- If you have a question check to see if there is an applicable policy or procedure, either TBR or University (available online):

<http://policies.memphis.edu/>

<http://www.tbr.state.tn.us/policies%5Fguidelines/>

- Use common sense
- If all else fails: Call Us

# QUESTIONS

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