



Burrell College of
Osteopathic Medicine

Sexual Misconduct
and

Non-Discrimination

Reporting, Investigating, and
Hearing Procedures

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I. **Definitions and Examples of Prohibited Sexual Conduct and Discrimination**

All of the definitions stated below and the use of terms in this Policy are intended to be consistent with how such terms are defined and interpreted in and under applicable state and federal laws and regulations, as amended from time to time. Words in definitions that are further defined are *italicized*.

Sexual Discrimination includes but is not limited to circumstances when an employee or student suffers an adverse employment or academic consequence (such as denial or loss of employment or academic opportunities or status, reductions in pay or grades) on the basis of sex or *sexual orientation*, and also includes circumstances where an employee or student is subjected to *sexual harassment* or *sexual violence*.

Sexual Violence constitutes a form of prohibited sexual discrimination and is defined as physical sexual acts perpetrated against a person's will or where a person is incapable of giving *consent* (e.g., due to the person's age or use of drugs or alcohol, or because an intellectual or other disability prevents persons from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including *rape*, *sexual assault*, sexual battery, and sexual coercion, all of which are forms of sexual discrimination prohibited by this policy.

Sexual Harassment constitutes a form of prohibited sexual discrimination and is defined as *unwelcome conduct* (verbal or physical) that unreasonably interferes with an employee's or student's work or academic performance or creates an intimidating or hostile work or educational environment on the basis of an employee's or student's sex or *sexual orientation*, and/or which is directed at, or made because of, an individual's sex or *sexual orientation*. Sexual harassment includes, but is not limited to:

1. Quid Pro Quo Sexual Harassment:

Requests or demands for sexual favors. This includes subtle or blatant pressures or requests for any type of sexual favor, accompanied by an implied or stated promise of preferential treatment or negative

consequence concerning one's employment or academic program status. This includes situations wherein:

- a. Submission to such conduct is made to appear to be a term or condition of employment, enrollment, attendance, or participation in class;
- b. Submission to or rejection of such conduct affects employment or academic decisions;
- c. Making sexual propositions or pressuring students or employees for sexual favors; and
- d. Punishing a refusal to comply with or to condition a benefit on a sexual based request or advance.

2. Hostile Work Environment:

Verbal, physical or other behavior of a sexual nature that is reasonably considered unacceptable by an employee or student. This includes, but is not limited to, commenting about an individual's body or appearance when such comments go beyond mere courtesy, telling jokes that are reasonably considered offensive by others, or other tasteless sexually-oriented comments, innuendoes, or actions that reasonably offend others. Examples include, but are not limited to, sexual remarks, jokes, or gestures communicated verbally, in writing, or through electronic means such as:

- a. Writings, pictures, or drawings of a sexual nature (or the displaying or distributing of same);
- b. Websites, social media or e-mails depicting writings, pictures or drawings of a sexual nature;
- c. Telling of sexual or dirty jokes;
- d. Sexual comments about human anatomy that are reasonably considered suggestive, offensive, or reasonably inappropriate;
- e. Spreading sexual rumors or rating other people as to sexual activity or performance;
- f. Simplistic generalizations about gender attributes, differences, and roles of individuals or groups; and
- g. *Sexual exploitation.*

Also, engaging in any type of sexually oriented and *unwelcome conduct* that would unreasonably interfere with another's work or academic program status performance. This includes, but is not limited to:

- a. Extending unwanted sexual attention to someone that reduces personal productivity or time available to work on assigned tasks;
- b. Non-consensual sexual contact or intercourse (or attempts to commit same);
- c. Repeatedly subjecting a person to egregious, unwelcome sexual attention; and
- d. *Stalking*.

Third-Party Sexual Harassment includes persons who are not the target of sexual harassment but who work in environments where sexual harassment is allegedly occurring can file "third party" and "bystander" harassment claims. Third parties who were not directly the target of sexual harassment may be able to bring a claim against the Responding Party if the third party has suffered certain repercussions due to the Responding Party's inappropriate actions.

Sexual Exploitation occurs when a person takes sexual advantage of another person for the benefit of anyone other than that person without that person's *consent*. Examples of behavior that could rise to the level of sexual exploitation include but are not limited to:

- a. Prostituting another person;
- b. Recording images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness without that person's *consent*;
- c. Distributing images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not *consent* to such disclosure and objects to such disclosure; and
- d. Viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's

consent, and for the purpose of arousing or gratifying sexual desire.

Consent must be informed, voluntary, and mutual, and can be withdrawn at any time. There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used. Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent. Silence or absence of resistance does not imply consent. Past consent to sexual activity with another person does not imply ongoing future consent with that person or consent to that same sexual activity with another person. If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature, or extent of the sexual situation, there is no consent; this includes impairment or incapacitation due to alcohol or drug consumption that meets this standard, or being asleep or unconscious.

Non-Consensual Intentional Sexual Contact is any intentional sexual touching with any object, by any person upon another, without consent and/or by force.

Non-Consensual Sexual Intercourse is any sexual intercourse, however slight, by any person upon another without consent and/or by force.

Sexual Assault is any form of sexual contact without the consent of all parties involved. Sexual contact is the intentional touching, whether with one's own body part, or an instrument or object, of another person, no matter how slight, in or on, an area of the body generally recognized as being a private part of the body; or the intentional touching of another person, no matter how slight, with one's own private body part anywhere on the other person's body. The amount, or lack thereof, of clothing being worn by either person is of no consequence in determining whether a "sexual physical contact" has occurred, and the body part touched, or used to touch with, may be covered or clothed.

Types of sexual assault may include, but are not limited to:

- rape or attempted rape
- non-consensual, intentional contact with intimate body parts
- non-consensual oral sex
- lewd exposure of one's sexual organs, either in person, in print, or electronically, to another without his or her consent
- any sexual contact between two individuals that, because of the age of the parties, is prohibited under State law.

Rape is penetration, without consent, of the vulva or anus of another using a body member or a manipulated object, or penetration of the mouth of another by the penis to gratify sexual desire, or to cause bodily injury, humiliate, harass, or degrade another; "without consent" means 1) done by the use of violence or force against the victim, 2) when the victim lacks the capacity for legal consent, and/or 3) when the victim is incapacitated or physically helpless.

Dating Violence is the use of physical, sexual or emotional abuse or threats to control another person who is, or has been involved in, a sexual, dating, or other intimate relationship with the victim. Whether there was such a relationship will be gauged by its length, type, and frequency of the interaction.

Domestic Violence is the same as domestic violence committed by the victim's current or former spouse, current or former husband, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

Stalking means engaging in two or more acts, including but not limited to directly, indirectly, or through third parties, by any action, method, device, or means, following, monitoring, observing, surveilling, threatening, or communicating to or about a person, or interfering with that person's property, that would cause a reasonable person to:

- a. Fear for the person's safety or the safety of others; or
- b. Suffer substantial emotional distress, meaning significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Unwelcome Conduct means the student did not request or invite the conduct and considered the conduct to be undesirable or offensive. Unwelcome conduct may take various forms, including, name-calling, graphic or written statements (including the use of cell phones or the internet), or other conduct that may be physically threatening, harmful, or humiliating. Unwelcome conduct does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Unwelcome conduct can involve persons of the same or opposite sex. Participation in the conduct or the failure to complain does not always mean that the conduct was welcome. The fact that a person may have welcomed some conduct does not necessarily mean that a person welcomed other conduct. Also, the fact that a person requested or invited conduct on one occasion does not mean that the conduct is welcome on a subsequent occasion.

Intimidation is unlawfully placing another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

Sexual Orientation means a person's orientation toward heterosexuality, homosexuality, bisexuality, *transgender* status, or another person's perception thereof.

Transgender means having a *gender identity* or *gender expression* that differs from societal expectations based on gender assigned at birth.

Gender Identity means an innate sense of one's own gender.

Gender Expression means external appearance, characteristics, or behaviors typically associated with a specific gender.

II. Sexual Misconduct Reporting and Investigating Procedures

Any individual who believes that an employee or student of the College, including him or herself, has been subjected to sexual misconduct is encouraged to immediately follow the applicable investigation procedure and may also pursue criminal, civil, and/or administrative remedies provided by federal and state law. The College encourages all individuals to report possible sexual misconduct that they suffer or observe, and requires responsible employees of the College to do so, in accordance with Section II, Parts A and B, of this Policy.

The purpose of these reporting, investigation and hearing procedures is to provide prompt and equitable processes for addressing and investigating incidents of sexual misconduct allegedly committed against students and employees. A lengthy period of time between an alleged occurrence and an investigation may make fact-finding more difficult; therefore, individuals are encouraged to raise concerns and complaints as soon as possible.

Amnesty for Alcohol and/or Other Drugs

Sometimes, a student or employee may be hesitant to come forward and file a sexual misconduct investigation request out of concern that the student or employee was using or was under the influence of alcohol or illegal drugs at the time of the alleged incident. However, the College's primary interest in such situations is in addressing alleged sexual violence. Illegal alcohol or drug use never makes a Reporting Party at fault for sexual violence against him or her. Other rules violations will be addressed separately from a sexual violence allegation.

III. Procedures Applicable to Requests for Investigations of Allegations of Sexual Misconduct

The following procedures apply to all Requests for Investigation alleging sexual misconduct or sexual violence. Under these procedures, individuals may submit Requests for Investigation regarding sexual misconduct allegedly committed by College students, employees, or other third parties which occur either inside

of a school program or outside of a school program if the conduct negatively affects a Reporting Party's school experience or the overall school environment, including Requests for Investigation relating to preceptors in the field.

However, the College's response to cases involving visitors, preceptors, or third parties unaffiliated with the College will depend upon the College's degree of control over the visitor or third party. This procedure also applies to Requests for Investigation related to Third Party Sexual Harassment allegedly suffered by students.

The College will investigate all incidents of sexual misconduct of which it becomes aware (such as through a responsible employee or observation of misconduct), regardless of whether anyone files an informal or formal Request for Investigation. In such a circumstance, the College is the Reporting Party. The College will elect how to proceed in such a situation, in accordance with its obligation to provide a safe, non-discriminatory educational environment under Title IX and applicable due process laws. At the conclusion of any process, the College will take steps to prevent recurrence of sexual misconduct and to correct its discriminatory effects on the Reporting Party, and others, if appropriate.

The investigation and any related process will be conducted impartially without any real or perceived conflicts of interest between the fact-finder or decision-maker and the parties. Any perceived conflicts will be fully disclosed at the beginning of the investigation. The precise investigation process will depend upon the nature of the allegations and other circumstances, but will afford both parties equal processes and procedures as described in this policy.

A preponderance of the evidence standard of review (meaning it is more likely than not that the sexual misconduct occurred) will be used in any investigations conducted and decisions made under these policies and procedures. The alleged victim or the College acting on behalf of the alleged victim of the sexual misconduct is described as the Reporting Party. The alleged offender is described as the Responding Party. The Reporting Party has the option to inform the Responding Party that his or her actions are offensive, unwelcome,

or inappropriate, but is not required to do so, as this may negate the reporting of possible offenses and place the Reporting Party in an uncomfortable, difficult, or fearful position.

The College's investigation process concerning allegations of sexual misconduct alleged to have occurred against a student will be promptly completed, ordinarily within 30 days of the College's first receiving notice of the Request for Investigation, absent extenuating circumstances such as an appeal, parallel criminal investigation, or the need for certain evidence or testimony unavailable within the typical timeframe. Both parties will be notified, in writing, of the outcome of any investigation or appeal, to the extent permitted by College policy; usually, this will occur within 14 days of the conclusion of any investigation or appeal, absent extenuating circumstances.

Both parties will be promptly notified of any deviations from these time estimates, and the reasons for any deviation, as determined and approved by the Title IX Coordinator after considering the nature and seriousness of the allegations, and any extenuating circumstances. If the process lasts longer than 30 days, each party will be provided periodic status updates until the process is completed.

Procedures for Reporting and Investigating Sexual Misconduct

Below are the applicable procedures for reporting and investigating sexual misconduct allegedly committed by a: (A) Student or (B) Employee.

A. Investigation Requests for Sexual Misconduct or Sexual Violence Allegedly Committed by a Student

The College provides three different processes, described below, for investigating and adjudicating Requests for Investigation of sexual misconduct allegedly committed by students. The first two options address Requests for Investigation alleging misconduct other than sexual violence: an Informal Conciliation Process and a Formal Investigation Process, and a third process is available only for Sexual Violence Requests for Investigation: the Sexual

Violence Response Process. (The College highly recommends that the Reporting Party of sexual violence seek immediate medical attention after the incident, The Title IX Coordinator or Sexual Assault Advocate will provide, if needed, referrals to medical professionals.)

If the student is unsure about the appropriate process for a Request for Investigation or unsure whether he/she should file a Request for Investigation, contact the Title IX Coordinator for an initial meeting, wherein the Title IX Coordinator will discuss the options and answer any questions. Copies of this Policy and Request for Information forms are available from the Title IX Coordinator and on the BCOM website.

1. Informal Sexual Misconduct Conciliation Request. The College offers an informal conciliation process as an alternative to the Formal Investigation Process for Requests for Investigation alleging sexual misconduct other than sexual violence. Upon the filing of an informal Request for Investigation, the Title IX Coordinator will attempt to intervene in order to reach a satisfactory resolution between the individuals directly involved. The informal proceeding focuses on conciliation rather than culpability and therefore does not involve a sanctioning process.

The Reporting Party and Responding Party will be asked to resolve the problem with the mediation of a College official. This may include the services of the Office of Student Affairs and/or the Office of Human Resources. If informal attempts to resolve the Request for Investigation are unsuccessful, or if the Reporting Party or the Title IX Coordinator believes an informal procedure is inappropriate, the Formal Investigation Process can be utilized at any time. The filing of an Informal Sexual Harassment or Sexual Discrimination Request for Investigation is not a prerequisite to a Formal Sexual Harassment or Sexual Discrimination Request for Investigation.

- a. If a Reporting Party wishes to try informal resolution, she/he will be asked to file an *BCOM Informal Sexual Harassment or Sexual*

Discrimination Request for Investigation (included in this procedures document). Upon receipt of this Request for Investigation, an attempt will be made to resolve the Request for Investigation by conciliation leading to informal mutual agreement.

- b. In order to conciliate an Informal Sexual Harassment or Sexual Discrimination Request for Investigation, the Title IX Coordinator may meet with the parties and their respective advisers separately, together, or both, and may permit both parties to present evidence. The purpose of the meetings is to clarify issues and resolve the Request for Investigation.
- c. If conciliation resolves the Request for Investigation, a conciliation agreement, stipulating the terms of the resolution, will be signed by the Reporting Party and the Responding Party. Each party will be simultaneously given a copy of the final signed agreement.
- d. If the conciliation process is not successful and the Reporting Party wishes to proceed with the Formal Investigation Process, the Reporting Party should follow the instructions set forth below.

The Reporting Party has a right to end the Informal Conciliation Process at any time and begin the Formal Investigation Process. Informal options will not be used to resolve Requests for Investigation concerning sexual violence allegedly committed by a College student, which will be referred directly to the Sexual Violence Response Process.

2 Formal Sexual Misconduct Investigation Process. If a Reporting Party wishes to invoke a formal administrative action regarding sexual misconduct other than sexual violence, an *BCOM Formal Sexual Harassment or Sexual Discrimination Request for Investigation* (included with this Policy) may be filed with the Title IX Coordinator.

- a. All Requests for Investigation will be acknowledged and promptly investigated and may include interviews with the Reporting Party, the Responding Party, and other persons believed to have knowledge relevant to the allegations.
- b. Both the Reporting and Responding Party may present evidence to the Title IX Coordinator.

- i. Questioning or evidence about the Reporting Party's prior sexual conduct with anyone other than the Responding Party is prohibited.
 - ii. Evidence of a prior consensual dating or sexual relationship between the parties by itself does not imply consent or preclude a finding of sexual misconduct.
- c. Both the Reporting and Responding Party will receive the Title IX Coordinator's findings letter concurrently.
- d. Upon the conclusion of the investigation of a formal Request for Investigation, a written investigative findings report and recommendation will be prepared and submitted to the Associate Dean of Student Affairs. The Associate Dean will issue a final determination on the Formal Request for Investigation to the Reporting Party and Responding Party. The final decision of the Associate Dean may include remedial measures if a violation of this Policy is found, such as a referral to the appropriate College administrative office for disciplinary action, including suspension or dismissal.

3 Sexual Violence Response Process. Requests for Investigation alleging sexual violence committed by a College student or employee will be referred to the Sexual Violence Response Process, which recognizes that outside law enforcement agencies may be simultaneously investigating and prosecuting the alleged offense. The process is initiated by the filing of a *Sexual Violence Request for Investigation* (included in this Policy). The College's specific response will be tailored to the circumstances alleged and will, in all cases, be carried out consistently with the College's Title IX obligations and in such a way that it does not impair any external criminal investigation or prejudice the rights of the alleged Reporting Party/Reporting Party or Responding Party to be treated fairly and afforded as prompt a resolution as permitted by the circumstances. For example, the College may, consistent with its obligations under Title IX, defer to

the *Interim Measures During Investigation Procedures* described herein during the pendency of the outside proceeding.

- a. All Requests for Investigation will be acknowledged and promptly investigated and may include interviews with the Reporting Party, the Responding Party, and other persons believed to have knowledge relevant to the allegations.
- b. Both the Reporting and Responding Party may present evidence to the Title IX Coordinator.
 - i. Questioning or evidence about the Reporting Party's prior sexual conduct with anyone other than the Responding Party is prohibited.
 - ii. Evidence of a prior consensual dating or sexual relationship between the parties by itself does not imply consent or preclude a finding of sexual misconduct.
- c. Both the Reporting and Responding Party will receive the Title IX Coordinator's findings letter concurrently.
- d. Upon the conclusion of the investigation of alleged sexual violence, a written investigative findings report will be prepared and submitted to the Associate Dean of Student Affairs. The Associate Dean will issue a final determination on the alleged sexual violence to the Reporting Party and Responding Party. The final decision of the Associate Dean may include remedial measures if a violation of this Policy is found, such as a referral to the appropriate College administrative office for disciplinary action.

Student Submission of Requests for Investigation of Sexual Misconduct or Sexual Violence

All Requests for Investigation alleging an incident of sexual misconduct or violence committed by a student should be mailed, emailed, or hand delivered to:

- **BCOM's Title IX Coordinator:** Vanessa Richardson, 575-674-2396, vrichardson@bcomnm.org, The Title IX Coordinator is responsible for investigating all Requests for Investigation

of sexual misconduct or sexual violence, and for identifying and addressing any patterns or systematic problems that arise during the review of such complaints. The Title IX Coordinator is available to meet with College students to discuss related issues, as needed.

If the Title IX Coordinator is not available, or there is a potential conflict of interest with the Title IX Coordinator, informal and formal Requests for Investigation the investigation request should be mailed, emailed, or hand delivered to the Human Resource Director.

- Dawn Leake, Human Resource Director; 575-674-2284; dleake@bcommm.org Office 351.

Student Appeals of Formal Sexual Misconduct or Sexual Violence Findings

Each party in a Formal Sexual Misconduct or Sexual Violence Investigation may appeal the findings or sanction determined by the Title IX Coordinator by filing a written appeal with the College President within fourteen (14) days of the date of the decision. The opposing party then may respond to the appeal, in writing, within fourteen (14) days. Both the Reporting and Responding Party may review the Title IX Coordinator's investigative report upon filing an appeal.

Appeals must meet the following criteria:

- An error in procedure, which allegedly prejudiced the process to the extent the participant was denied a fundamentally fair investigation as a result of the error. Only significant procedural errors that may have affected the decision or which relate to the sanction imposed will be considered.
- New evidence that was previously unknown and became available during the appeal process that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included with the notice of appeal.
- Sanctions imposed are not appropriate for the violation the individual(s) committed.
- Clearly demonstrated investigator bias.

All appeal documentation shall be directed to BCOM's President, John Hummer, 575-674-2203, jhummer@bcomnm.org, Dean's Suite, Office 303. Mr. Hummer will issue a written decision to both parties within fourteen (14) days of receiving the opposing party's response. There are no further appeal opportunities, and Mr. Hummer's decision shall be the final decision regarding the Sexual Violence Request for Investigation.

B. Procedures Applicable to Complaints of Sexual Misconduct Allegedly Committed by an Employee

The following procedures apply to all complaints of sexual misconduct alleged to have been committed by an employee, including sexual misconduct allegedly committed by an employee against a student.

The Reporting Party should select one of the three different processes, described in Section A for investigating and adjudicating Requests for Investigation of sexual misconduct allegedly committed by students. The appropriate investigation request should be brought to the Title IX Coordinator's attention ideally within seven (7) days of the offending conduct.

Additionally, any manager or supervisor who observes conduct in violation of this Sexual Misconduct Policy must promptly report the conduct to the College's Title IX Coordinator, who may involve the Office of Human Resources or legal counsel if deemed appropriate.

Managers and supervisors must not conduct their own interviews or investigations. The College will evaluate the investigation request and, in its sole discretion, will determine whether and how to conduct an investigation of the allegations in a prompt and equitable manner. If the College concludes that conduct violated this Sexual Misconduct Policy, it may impose appropriate disciplinary sanctions on the Respondent, up to and including termination or dismissal.

Complaints regarding violations of this Policy committed by an employee should be directed to the College's Title IX Coordinator:

- **The College's Title IX Coordinator:** Vanessa Richardson, 575-674-2396, vrichardson@bcomnm.org, Office 352. The Title IX Coordinator is responsible for investigating all complaints of sexual discrimination, sexual harassment, and sexual violence, and for identifying and addressing any patterns or systematic problems that arise

during the review of such complaints. The Title IX Coordinator is available to meet with College employees to discuss related issues, as needed.

If the Title IX Coordinator is not available, or there is a potential conflict of interest with the Title IX Coordinator, informal and formal complaints alleging an incident of sexual misconduct committed by an employee should be mailed, emailed, or hand delivered to the Office of Human Resources.

IV. Interim Measures During Investigation Procedures

Sometimes it is necessary to take steps before or during a formal investigation or an investigation of alleged sexual assault to protect the rights and interests of the parties involved. Such measures may be designed to reduce or eliminate contact between the involved parties so that they may feel safe in their education environment. Protective measures may also guard against further actual or perceived discrimination, harassment, violence or retaliation.

Protective measures may include temporary changes in working conditions (such as changes to supervisor or office location), directives to the involved parties to avoid personal contact or refrain from such contact without a neutral third person present, temporary suspension of an employee with or without pay, or temporary suspension of a student or students. As soon as practicable after receipt of a Request for Investigation, the College will make changes to a student Reporting Party's academic situations if requested and reasonably available. If interim measures are being taken due, at least in part, to a delay occasioned by the pendency of a criminal investigation and/or prosecution, the College will continue to update the parties on the status of the investigation and inform the parties when the school resumes its Title IX investigation.

V. No Contact Order

During a formal investigation or an investigation of alleged sexual violence, the Title IX Coordinator may issue a "No contact" order to insure the well-being of all parties and/or the integrity of the investigation process. Both the Reporting and the Responding Party are expected to avoid all contact with each other while the report is under investigation.

"No contact "means no communication whatsoever including direct communication (talking, calling, texting, etc.), indirect communication (through friends or third parties), or contact through social media (Facebook, Twitter, etc.). The "No contact" order does not imply any wrongdoing. Violation of the "No contact" order, however, is considered a serious and potentially threatening breach of College policy and may result in immediate suspension.

VI. Role of Attorneys in Formal and Sexual Violence Response Processes

A Reporting or Responding Party may choose to seek the advice and assistance of an attorney at their own expense. An attorney may serve as a non-participating, support person but cannot be a witness in the response process. Additionally, the College will not recognize or enforce agreements between the parties reached outside of these procedures.

VII. False Reports/Allegations

A false report or allegation of Sexual Misconduct occurs when the Reporting Party intentionally reports information or incidents that he or she knows to be untrue. Failure to prove a complaint of Sexual Misconduct is not equivalent to a false report or allegation. The College may impose sanctions against an individual who knowingly makes false allegations of Sexual Misconduct.

VIII. Record of Request for Investigation and Decision

The record of the Request for Investigation, if any, and final decision shall be retained in a confidential and secure file in the Title IX Office.

IX. Audio and/ or Video Recording of Proceedings

Individuals involved in the investigative process are not permitted to audio or video record any investigation or resolution meetings or other portions of the process.

X. Confidentiality Options for Reporting Parties of Sexual Violence

The College recognizes that some alleged Reporting Parties of sexual violence may wish to remain anonymous or for the information they disclose to be confidential. Throughout the complaint procedures (whether formal or informal), the confidentiality of all participants will be maintained to the fullest extent possible. However, different individuals both on and off campus have different abilities to maintain a Reporting Party's confidentiality based upon applicable law, including Title IX.

The following options are designed to make students and employees aware of the disclosure options available to them, and the College encourages students to talk to someone in one or more of these groups. The College also reminds students and employees of its prohibition against retaliation located in Section V of this Policy, and if the student or employee is concerned about retaliation from the alleged Responding Party, the College will take steps to prevent retaliation and take strong responsive actions to retaliatory conduct.

- ***Professional and Pastoral Counselors:*** These professionals, including the College's clinical psychologist, are bound by professional ethics to not release information without the patient's permission, except in circumstances where the counselor or health care provider believes that there is a serious threat of imminent physical violence to a specific person or persons, or as otherwise required or permitted by applicable law.
- ***Responsible Employees of the College:*** Responsible employees of the College are obligated to report incidents of possible sexual violence to school officials, including the Title IX Coordinator. A responsible employee is defined as College employee who has the authority to redress sexual violence, who has been given the duty of reporting incidents of sexual violence or any other misconduct to students to the Title IX coordinator or other appropriate school designee, or who a

student could reasonably believe has this authority or duty. Therefore, reporting to a responsible employee is not confidential. Examples of responsible employees include, but are not limited to: Campus Safety and Security Officers, Faculty members, Human Resources representatives, and Student Affairs personnel.

- ***Anonymous Reporting for Alleged Sexual Violence:*** Reporting Parties of alleged sexual violence are permitted to submit an anonymous Sexual Violence Request for Investigation or call the BCOM Anonymous Help/Tip Line by dialing 303-708-8185. The College may act then on behalf of the Reporting Party and act as Reporting Party on behalf of the student . However, the student must understand that remaining anonymous will impede the College's ability to investigate and respond to the complaint.
- ***Filing a Request for Investigation or Reporting to a Responsible Employee with a Confidentiality Request:*** A student Reporting Party of alleged sexual violence may ask that a Request for Investigation or report to a responsible employee be handled confidentially or that an investigation not be completed. In such a situation, the College must weigh the student's request against the College's obligation to provide a safe, non-discriminatory environment for all of its students and employees. If the College honors the student's request for confidentiality, the student must understand that the College's ability to meaningfully conduct an investigation into the sexual misconduct will be impeded, including the ability to sanction the alleged Responding Party. However, in some cases the College may not be able to honor a student's request for confidentiality in order to provide a safe, non-discriminatory environment for all of its students and employees.

The Title IX Coordinator will evaluate requests for confidentiality in accordance with the following factors:

- o The risk that the alleged Responding Party will commit additional acts of sexual misconduct;
- o The severity of the sexual misconduct;
- o Whether sexual violence or a weapon was involved;

- o Whether the report reveals a pattern of perpetration at a given location or by or against a particular group;

If the College determines that it cannot maintain a student's confidentiality, it will, to the extent possible, inform the student prior to taking any action that would disclose the student's identity, and will, to the extent possible, only share information with people responsible for handling the College's investigation and response. The College may not require the student requesting confidentiality to participate in the investigation.

Regardless of whether the College honors a request for confidentiality, the College will promptly take any possible steps to protect and assist the student or prevent future sexual misconduct, such as increased monitoring or security at locations where reported sexual misconduct occurred and increased education and prevention efforts.

XL Mandatory Reporting of Allegations of Sexual Violence by Responsible Employees

A responsible employee is defined as a College employee who has the authority to redress sexual violence, who has been given the duty of reporting incidents of sexual violence or any other misconduct to students to the Title IX Coordinator or other appropriate school designee, or whom a student could reasonably believe has this authority or duty. Therefore, reporting to a responsible employee is not confidential. Examples of responsible employees include, but are not limited to: Campus Safety and Security Officers, Human Resources representatives, and Student Affairs personnel.

Any time a responsible employee of the College is made aware of a situation that may be reasonably construed as sexual violence against a College student or employee, he or she must immediately contact the Title IX Coordinator listed above for an investigation and follow-up. The responsible employee must not conduct his or her own interview or investigation. The College is obligated by law to investigate any Sexual Violence Request for Investigation against a student, even if a Reporting Party states that he/she does not wish to pursue it further.

In cases involving Reporting Parties who do not wish to pursue a Request for Investigation further, the College will conduct an investigation and take whatever remedial action may be possible and appropriate under the circumstances, consistent with guidance issued by the United States Department of Education and the College's obligations to other members of the College community. Failure by a responsible employee to report an allegation or incident of sexual violence against a student to the Title IX Coordinator may result in disciplinary action up to and including termination.

XII. Prohibition of Retaliation

The College prohibits retaliation against any employee or student who, in good faith, reports, rejects, protests, or complains about sexual misconduct. Retaliation is a violation of College policy. The College will not tolerate discrimination, recrimination, or reprisal against any employee or student who reports or participates under this policy in good faith in a related investigation or hearing.

Complaints of retaliation should be reported to the Title IX Coordinator listed above. Such complaints will be investigated and handled in a prompt and equitable manner by the Title IX Coordinator, in his or her discretion. Any individuals, including Reporting Parties and alleged Reporting Parties, who are determined to have made knowingly false statements during the course of a sexual misconduct investigation, may be subject to discipline, which may include termination or dismissal.

XIII. Timely Warnings

Burrell College is required by federal law to issue timely warnings for reported incidents that pose a substantial threat of bodily harm or danger to members of the campus community. Burrell College will ensure, to every extent possible, that a victim's name and other identifying information is not disclosed, while still providing enough information for members of the campus community to make decisions to address their own safety in light of the potential danger.

XIV. Clery Report

The federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) requires colleges and universities, both public and private, participating in federal student aid programs to disclose campus safety information, and imposes certain basic requirements for handling incidents of sexual violence and emergencies. BCOM will not have a complete Clery Report until the Fall of 2017 at which time it will be made available.

XV. Training

The College provides regular training, including bystander intervention and programs, to educate all students and staff about the College's sexual misconduct and Title IX policies.

In addition, the College provides regular and thorough training to the Title IX Coordinator, campus security officers, and anyone else who is involved in responding to, or investigating, sexual misconduct.

XVI. Resources for Student and Employee Victims of Sexual Assault

For those who are victims of sexual assault, it is important to get immediate medical attention, even if there are no obvious physical injuries. Go to the emergency room of the nearest hospital. A physical examination will help to assure that any injuries will be identified and treated and that victims receive important information about the risks for sexually transmitted disease. An examination does not obligate a victim to any kind of investigation; however, it allows evidence to be obtained and preserved in the event a criminal investigation is authorized at a later time. Victims should not bathe, shower, or change clothes before the examination. Individuals are also encouraged to seek counseling services. Support by a trained counselor can help the individual understand and work through the trauma of the incident. Counselors can also help others who are close to the individual.

A. BCOM Campus Resources

For a list of confidential counseling, advocacy and support following an incidence of sexual assault, students or employees are encouraged to contact Dr. Tania Arana, Associate Dean of Admissions and Student Affairs; 575-674-2222; tarana@bcomnm.org; Office 344.

Students needing immediate and confidential medical assistance, treatment and other health services following an incidence of sexual assault, may contact the NMSU Student Health Center (on the NMSU campus, Breland Dr.): 575-646-1512; <http://chc.nmsu.edu/>.

B. Community Resources

BCOM students who are victims of sexual misconduct and assault, may also seek guidance and assistance from the following Las Cruces area resources and organizations. (Please note: these organizations are not affiliated with BCOM.)

- La Piñon Crisis Center: Sexual Assault Recovery Services of Southern New Mexico; 1-888-595-7273; www.lapinon.org
- New Mexico Coalition of Sexual Assault Programs; 1-888-883-7530; <http://nmcsap.org/>.
- NMSU Police Non-emergency; 575-646-3311
- Las Cruces Police Department; Non-emergency; 575-526-0795
- Memorial Medical Center; 2450 S. Telshor Blvd.; 575-522-8641
- Mountain View Regional Medical Center; 4311 E. Lohman Ave., 575-556-7600

XVII. Sexual Misconduct or Assault Complaints to Outside Agencies

In addition to the College's complaint procedures, a Reporting Party or alleged Reporting Party has the right to file a complaint of sexual misconduct

or assault with local law enforcement agencies. As referenced elsewhere in this Policy, the involvement of outside law enforcement agencies may necessitate some accommodation in the timing and manner of the College's Title IX investigation so as not to impede such external proceedings. However, the College will ensure that it takes appropriate interim measures to protect the Reporting Party in the educational setting as well as to follow through with its own Title IX mandated processes once it learns that the local law enforcement agencies have indicated that their proceedings will not be compromised by the College's Title IX processes. Local law enforcement agencies to which complaints may be directed include:

- Las Cruces Police Department; 700 N. Main, Las Cruces, NM 88001; (575) 541-2000; www.las-cruces.org
- New Mexico State Police Department; PO Box 30001 MSC 3187, Las Cruces, NM 88003; (575) 382-2500
www.nmsupolice.com
- New Mexico State Police; 4055 Sonoma Ranch, Las Cruces, NM 88011; www.nmsp.com

Additionally, Employee and Student Reporting Parties may file complaints with the following organizations and agencies:

A. Employees

- State of New Mexico: Office of the Attorney General; 201 N. Church St., Ste. 315, Las Cruces, NM 88001; 1-844-255-9210; www.nmag.gov
- US Equal Employment Opportunity Commission; 300 E. Main Dr., Ste. 500, El Paso, TX 79901; www.eeoc.gov
- New Mexico Department of Workforce Solutions; 1596 Pacheco St., Ste. 103, Santa Fe, NM 87505; <https://www.dws.state.nm.us/Labor-Relations/Human-Rights/Information>

B. Students

- Office of Civil Rights: US Department of Education; 400 Maryland Ave. SW, Washington, D.C. 20202; 1-800-872-5327; www.2.ed.gov
- American Osteopathic Association/Commission on Osteopathic College Accreditation (AOA/COCA); 142 E. Ontario St., Chicago, IL 60611; 1-800-621-1773; www.osteopathic.org
- Higher Learning Commission; 230 South LaSalle Street, Suite 7-500, Chicago, Illinois, 60604; 1-800-621-7440; www.hlcommission.org