



Brief Guide to the 2020 Title IX Regulations

The 2020 Title IX regulations required all colleges to revise or rewrite their policies and procedures for addressing sex offenses, including sexual harassment, sexual assault, domestic violence, dating violence, and stalking. The College has worked diligently to ensure that its newly revised policies and procedures are compliant with these regulations. The regulations include fifteen pages of new requirements, and more than 2,000 pages of explanation of the provisions within those fifteen pages.

To summarize:

- Title IX protects students and employees who are impacted by sexual harassment, sexual assault, domestic violence, dating violence, and stalking. When these behaviors occur, and a formal complaint is made, the college is obligated to address and remedy them and ensure that no one is denied effective access to the educational program of the college.
- Colleges have jurisdiction requirements that they must follow to determine whether a complaint falls within Title IX or is to be addressed within other college policies and procedures.
- Complainants are well-protected by the regulations in terms of supportive measures that are offered by colleges to try to address the impact of sex offenses.
- Complainants and respondents are each entitled to an advisor of their choosing throughout the resolution process, and the college will provide this advisor to each party to assist in the questioning of witnesses at a hearing.
- The regulations have now created options for informal resolution instead of filing a formal complaint.
- To protect the due process rights of respondents, colleges are required to use a formal complaint process for certain types of allegations. That formal process includes an investigation, a live hearing, questioning of the parties through their advisors, a determination by an objective decision-maker, and an appeal.

As a result of these changes, the College has worked to balance the rights of all parties, and to create a process that is fair, transparent, and compliant. To note, the College must also comply with state laws and a federal law called the Violence Against Women Act (VAWA), Section 304, which also protects college community members when they experience sex offenses.

When the College receives a Title IX complaint, there are four possibilities that govern how the College will proceed:

1. The complaint falls within Title IX AND is covered by the 2020 Title IX regulation
 - a. The complaint will fall in this category when it alleges sexual harassment, sexual assault, domestic violence, dating violence, and/or stalking (as defined by college policy, if proven) AND the conduct:
 - Happened in the United States;
 - Occurred where the college controls the context of the incident (a college program or property, typically);
 - The school has jurisdiction over the respondent as a student or employee; and
 - Happened to a complainant who at the time of the complaint was participating in or attempting to participate in the college's educational program.

If any of these requirements fails to be met, the college is required to "technically" dismiss the complaint. If these requirements are met, the resolution process will be a Formal Complaint Process.

2. The complaint falls within Title IX but is not covered by the 2020 Title IX regulations
 - a. The complaint will fall in this category if it does not involve sexual harassment, sexual assault, domestic violence, dating violence, and/or stalking, but the allegations pertain to sex discrimination more broadly, such as:
 - disparate treatment, e.g., discrimination against a pregnant student; denial of access to a program; inequitable funding on the basis of sex);
 - forms of sexual orientation discrimination;
 - forms of gender identity/expression discrimination [based on sex stereotypes].
- When a complaint is filed under Title IX, the regulations require these types of allegations to be technically dismissed. The College will then address them under the College's Grievance Policy. If there is no formal complaint made, they can be addressed using the College's Grievance Policy without needing to go through a dismissal first with respect to the Title IX Formal Complaint process.
3. The complaint falls within VAWA Section 304 (This could be an overlay with 1 or 2, above, or a stand-alone status.)
 - a. The complaint will fall in this category if it is not within the Title IX jurisdiction above (see four bullet points in item 1), but still involves sexual violence, dating violence, domestic violence, or stalking. In this case, the College must address the conduct under procedures that comply with VAWA Section 304, and the complaint can be then addressed under the College's Grievance Policy. If there is no formal complaint made, they can be addressed using the College's Grievance Policy without needing to go through a dismissal first with respect to the Title IX Formal Complaint process.
4. The complaint does not fall within Title IX or VAWA Section 304
 - a. Finally, where the complaint falls within neither Title IX nor VAWA Section 304, the College is not required by law to act on the complaint. However, the College will act with discretionary jurisdiction, meaning that it still thinks it is important to address the allegations even if law does not require it. The complaint can be then addressed under the College's Grievance Policy. If there is no formal complaint made, they can be addressed using the College's general grievance process without needing to go through a dismissal first with respect to the Title IX Formal Complaint process.

The incidents that fall within the Title IX process occur within a narrow range. They must fit the definitions of sexual harassment, sexual assault, domestic violence, dating violence, or stalking (as defined by College policy, if proven) in the United States, where the College controls the context of the incident and has control over the respondent and the complainant is participating in or attempting to participate in the College's educational program. Outside of that, all sex offenses or sex discrimination complaints will fall the College's Grievance Policy.

The last part of jurisdiction to understand is dismissal. As noted above, the College is mandated to and must dismiss a formal complaint or any allegations therein if, at any time during the Title IX investigation or hearing, it is determined that:

- The conduct alleged in the formal complaint would not constitute sexual harassment, sexual assault, dating violence, domestic violence or stalking as defined in policy, even if proved; and/or
- The conduct did not occur in an educational program or activity controlled by the school (including buildings or property controlled by recognized student organizations), and/or the school does not have control of the respondent; and/or
- The conduct did not occur against a person in the United States; and/or
- At the time of filing a formal complaint, a complainant was not participating in or attempting to participate in the education program or activity of the recipient.¹

The College may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

¹ Unless this complaint is one initiated by the Title IX Coordinator themselves because of some serious risk to the campus community.

- A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; or
- The respondent is no longer enrolled in or employed by the recipient; or
- Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, the College will send written notice of the dismissal and the rationale for doing so simultaneously to the parties. This dismissal decision is appealable by any party under the College's procedures for appeal. More information regarding dismissal of a formal complaint and the procedures for appeal are outlined in the College's Title IX procedures.

There are informal resolution options offered by the College. The College cannot and will not force or coerce any student or employee into an informal resolution. For an informal resolution to be offered, a formal complaint must first be filed, but that does not mean a live hearing must occur. A formal complaint can also lead to an informal resolution process and should an informal resolution fail, a formal complaint process is always still available.

Formal complaints may result in a live hearing for adjudication of the allegation. Burrell College is utilizing the New Mexico State University Office of Institutional Equity to act as a liaison for conducting live hearings should one be necessary:

1. Live hearings do not have to happen with all parties in the same room. Any or all parties can opt for virtual participation at any time. Even with a virtual hearing, all participants will be able to see and hear each other throughout the hearing.
2. Although there is "cross-examination" during the hearing, it may not work the way you think. The parties cannot question each other directly, at all. The advisors to the parties ask the questions, and before they do, the Chair of the hearing rules on each question first. So, there is really only indirect questioning, not "cross-examination" like you might find in a courtroom.
3. Even though advisors get to ask questions of parties and witnesses, you may find that most of the questions are posed by the neutral decision-makers. Once those questions are posed, they cannot be asked again by the advisors, so in most cases, the questions come to the parties from the decision-makers, not from the other party's advisor.
4. A written decision is issued, based on the preponderance of the evidence standard (whether a policy violation is more likely than not), and offers a clear rationale for the decision.
5. The decision is appealable by all parties.
6. The hearing process is kept confidential by the College.

The College's processes and procedures have been designed to meet our obligations under this new law and to assure fairness to all participants. For questions or confidential discussion about any options and college processes, please contact Burrell's Title IX Coordinator.