POLICY

The Burrell College of Osteopathic Medicine shall comply with the regulations promulgated by the US Department of Education under Title IX of the Education Amendments Act of 1972. The College shall not tolerate sexual discrimination or misconduct, including sexual harassment within a scope of conduct that occurs within the United States in the College’s education program or activities. All forms of prohibited conduct under Title IX may result in disciplinary action in accordance with College policies and procedures up to and including suspension/administrative withdrawal/termination. Applicable state and federal laws that address conduct may also meet the College’s definitions of prohibited conduct and criminal prosecution may take place independently of disciplinary action instituted by the College.

DEFINITIONS

- **Complainant**: An individual who is alleged to be the victim of conduct that could constitute sexual harassment or sexual discrimination. May also be referred to as the Reporting Party.
- **Respondent**: An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or sexual discrimination.
- **Actual Knowledge**: means notice of sexual misconduct, sexual harassment or allegations of sexual harassment to the College’s Title IX Coordinator or any official who has authority to institute corrective measures on behalf of the College.
- **Consent**: Knowing, voluntary, informed, mutual and affirmative permission by word or action to engage in sexual activity. Individuals may perceive and experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity. If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent is evaluated from the perspective of what a reasonable person would conclude are mutually understandable words or actions. Reasonable reciprocation can establish consent. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain their consent to be kissed back. Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, sexual activity should cease within a reasonably immediate time. Silence or the absence of resistance alone should not be interpreted as consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent. Consent to some sexual contact (such as kissing or fondling) cannot be assumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected. If a sexual partner shares the clear expectation for the use of a condom, or to avoid internal ejaculation, and those expectations are not honored, the failure to use a condom, removing a condom, or internal ejaculation can be considered acts of sexual assault. Proof of consent or non-consent is not a burden placed on either party involved in a Complaint. Instead, the burden remains on the College to determine whether its Policy has been violated. The existence of consent is based
on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged misconduct occurred and any similar and previous patterns that may be evidenced. Going beyond the boundaries of consent is prohibited. Thus, unless a sexual partner has consented to slapping, hitting, hair pulling, strangulation, or other physical roughness during otherwise consensual sex, those acts may constitute dating violence or sexual assault.

- **Education program or activities**: defined as including locations, events, or circumstances in which the College exercises substantial control over both the Respondent and the context in which the conduct occurred, circumstances where the College has disciplinary authority, and in misconduct occurring within any building owned or controlled by a College-recognized student organization.

- **Force**: the use of physical violence and/or physical imposition to gain sexual access. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Force is conduct that, if sufficiently severe, can negate consent. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” which elicits the response, “Okay, don’t hit me. I’ll do what you want.”). Coercion is unreasonable pressure for sexual activity. Coercive conduct, if sufficiently severe, can render a person’s consent ineffective, because it is not voluntary. When someone makes clear that they do not want to engage in sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive. Coercion is evaluated based on the frequency, intensity, isolation, and duration of the pressure involved.

- **Formal Complaint**: A document signed and filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment or sexual discrimination against a respondent and requesting that the College investigate the allegation. The document may be filed in person, mailed, sent by email or by any additional method designated by the College to the Title IX Coordinator by the complainant. If electronically filed, the complaint must contain the complainant’s physical or digital signature or indicate that the complainant is the person filing the complaint. At the time of filing a formal complaint, the complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.

- **Incapacitation**: a state where a person is incapable of giving consent. An incapacitated person cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction). A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including because of alcohol or other drug consumption. This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances. Incapacitation is determined through consideration of all relevant indicators of a person’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk. If the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated, the Respondent is not in violation of this Policy. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

- **Prohibited Conduct**:
  - **Sexual Discrimination**: is different treatment with respect to a person’s employment or participation in an education program or activity based, in whole or in part, upon the person’s actual or perceived characteristic on the basis of sex, including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
  - **Pregnancy Discrimination**: is different treatment with respect to the full spectrum of processes and events connected with pregnancy, including pregnancy, childbirth, termination of pregnancy, or lactation; related medical conditions; and recovery therefrom.
  - **Sexual Harassment**: is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including sex stereotypes, sex characteristics, pregnancy or related
conditions, sexual orientation, and gender identity; sexual assault, dating violence, domestic violence, and stalking.

- **Hostile Environment Harassment:** unwelcome sex-based conduct, that, based on the totality of the circumstances, is subjectively and objectively offensive, and is so severe or pervasive, that it limits or denies a person’s ability to participate in or benefit from the College’s education program or activity.
- **Quid Pro Quo:** an employee agent, or other person authorized by the College, to provide an aid, benefit, or service under the College’s education program or activity, explicitly or impliedly conditioning the provision of such aid, benefit, or service, on a person’s participation in unwelcome sexual conduct.
- **Sexual Assault:** is any sexual act directed against another person, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent. Sexual assault can occur between individuals of the same or different sexes and/or genders.
  - **Rape:** penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.
  - **Statutory Rape:** sexual intercourse with a person who is under the statutory age of consent.
  - **Fondling:** touching of the private body parts of the Complainant (buttocks, groin, breasts) for the purpose of sexual gratification, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.
  - **Incest:** sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Domestic Violence:** is defined as violence on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common or by a person who is cohabitating with, or who has cohabitated with, the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the state, or by any other person against an adult or youth Complainant who is protected from that person’s acts under the domestic or family violence laws of the state.
- **Dating Violence:** is defined as violence, on the basis of sex, committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
  - Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - Dating violence does not include acts covered under the definition of domestic violence.
- **Stalking:** defined as engaging in a course of conduct, on the basis of sex, directed at the Complainant, that would cause a reasonable person to fear for the person’s safety, or the safety of others; or suffer substantial emotional distress. For the purposes of this definition—
  - Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
• Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.

• Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

• **Sexual Exploitation**: defined as a person taking non-consensual or abusive sexual advantage of another, that does not constitute sex-based harassment as defined above, for their own benefit or for the benefit of anyone other than the person being exploited. Examples include but are not limited to —
  
  • Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
  
  • Invasion of sexual privacy (e.g., doxxing)
  
  • Knowingly making an unwelcome disclosure of (or threatening to disclose) a person’s sexual orientation, gender identity, or gender expression
  
  • Taking pictures, video, or audio recording of another person in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person’s consent), including the making or posting of non-consensual pornography
  
  • Prostituting another person
  
  • Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
  
  • Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person’s ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
  
  • Misappropriation of another person’s identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)
  
  • Forcing a person to take an action against that person’s will by threatening to show, post, or share information, video, audio, or an image that depicts the person’s nudity or sexual activity
  
  • Knowingly soliciting a minor for sexual activity
  
  • Engaging in sex trafficking
  
  • Knowingly creating, possessing, or disseminating child sexual abuse images or recordings
  
  • Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (i.e., Deepfakes)

  • **Retaliation under this policy**: No individual may engage in adverse action, including intimidation, threats, coercion, or discrimination, against any person, by the College, a student, employee, or a person authorized by the College to provide aid, benefit, or service under the College’s education program or activity, for the purpose of interfering with any right or privilege secured by law or Policy, or because the person has engaged in protected activity, including reporting information, making a Complaint, testifying, assisting, or participating or refusing to participate in any manner in
an investigation or Resolution Process under the Title IX Procedures, including an Informal Resolution process, or in any other appropriate steps taken by the College to promptly and effectively end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects. The exercise of rights protected under the First Amendment does not constitute retaliation. It is also not retaliation for the College to pursue Policy violations against those who make materially false statements in bad faith in the course of a resolution under the Title IX Policy. However, the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

- **Unauthorized Disclosure:** no individual may distribute or otherwise publicize materials created or produced during an investigation or Resolution Process except as required by law or as expressly permitted by the College; or publicly disclosing institutional work product that contains personally identifiable information without authorization or consent.

- **Failure to Comply/Process Interference:** the following is prohibited under this policy -
  - Intentional failure to comply with the reasonable directives of the Title IX Coordinator in the performance of their official duties, including with the terms of a no contact order
  - Intentional failure to comply with emergency removal or interim suspension terms
  - Intentional failure to comply with sanctions
  - Intentional failure to adhere to the terms of an Informal Resolution agreement
  - Intentional failure to comply with mandated reporting duties as defined in this Policy
  - Intentional interference with the Resolution Process, including, but not limited to:
    - Destruction of or concealing of evidence
    - Actual or attempted solicitation of knowingly false testimony or providing false testimony or evidence
    - Intimidating or bribing a witness or party

- **Supportive Measures:** non-disciplinary, non-punitive individualized services offered as appropriate and reasonably available. They are offered, without fee or charge to the Parties, to restore or preserve access to the College’s education program or activity, including measures designed to protect the safety of all Parties and/or the College’s educational environment and/or to deter discrimination, harassment, and/or retaliation.

**RESPONSIBLE OFFICIAL:**
Title IX Coordinator

**PROCEDURES**
1. The College shall ensure a Title IX Coordinator is designated and accessible with contact information provided on the College website and in its college catalog and student handbook. The College shall provide notification to all students, applicants, and employees of the Title IX Coordinator’s name and contact information.
2. The College shall post all training Title IX personnel receive on its website.
3. The College shall respect the privacy of individuals reporting or accused of sexual harassment to the extent reasonably possible in accordance with all applicable laws, rules, and regulation. The College shall keep confidential the identity of any individual who has made a report or formal complaint under this policy, including any complainant, any individual reported to be the perpetrator, any respondent, any witness, except as may be permitted by Family Educational Rights and Privacy Act (FERPA), or as required by law, or to carry out the purposes of conducting any investigation or hearing under this policy.
4. When the College learns of an allegation of sexual harassment, the College shall provide supportive measures as described in its Title IX grievance procedures and explain the process of filing a formal complaint.
5. The College shall maintain a Title IX grievance process to provide due process and fundamentally fair procedures to adjudicate the allegations of sexual harassment filed through a formal complaint.

6. All students and employees are subject to local, state, and federal laws, and have the right to file a complaint or charge with appropriate federal, state, or local departments or agencies.

7. Students and employees may contact the appropriate regulatory agency for inquiries concerning the application of Title IX as well as the implementation of its regulations:

   a. For Students:
      i. U.S. Department of Education Office for Civil Rights
         32 Old Slip, 26th Floor
         New York, New York 10005
         Phone: (646) 428-3800
         Fax: (646) 428-3843
         email: OCR.NewYork@ed.gov

   b. For Employees:
      i. U.S. Equal Employment Opportunity Commission
         131 M Street, NE
         Washington, DC 20507
         202-663-4900

CROSS REFERENCES:
Policy B1040 Non Discrimination
Title IX Grievance Procedures
https://sites.ed.gov/titleix/policy/
https://burrell.edu/title-ix/