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***Burrell College of Osteopathic Medicine***

***Title IX Grievance Procedures***

***Effective 8.01.2024***

**For Incidents Occurring on or after 8.1.2024**

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## Title IX Policy Statement

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Please see Policy B1043 located on our website: <https://burrell.edu/policy-b1043/>

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/expulsion/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.

**With Title IX regulations in 2024, it is necessary to distinguish the procedures for incidents occurring prior to August 1, 2024 and incidents occurring on or after August 1, 2024. For incidents occurring prior to August 1, 2024, please review the Title IX procedures [here](#).**

## Title IX Procedural Compliance for Incidents Occurring After August 1, 2024.

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The procedures in this document comply with the Title IX regulations and shall be read in accordance with the regulations. [34 CFR Part 106 Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance](#)

The 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's Title IX Coordinator's name and contact information is as follows:

Erica Hughey  
Title IX Coordinator  
ehughey@burrell.edu | 575-674-2279

The College shall post all training Title IX personnel receive on its website: <https://burrell.edu/title-ix/>

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 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.

## Definitions

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- **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.

- **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)
- **Other Prohibited Conduct in the Context of Sexual Harassment and/or Sexual Discrimination:**

- **Bullying:** repeated and/or severe aggressive behavior that is likely to intimidate or intentionally hurt, control, or physically or mentally diminish the Complainant, that is not speech or conduct that is otherwise protected by the First Amendment.
- **Endangerment:** threatening or causing physical harm; extreme verbal, emotional, or psychological abuse; or other conduct which threatens or endangers the health or safety of a person or damages property.
- **Hazing:** any act or action which does or is likely to endanger the mental or physical health or safety of a person as it relates to a person's initiation, admission into, or affiliation with any College group or organization.
  - It is not necessary that a person's initiation or continued membership is contingent upon participation in the activity, or that the activity was sanctioned or approved by the student group or student organization, for an allegation of hazing to be upheld.
  - It shall not constitute an excuse or defense to a hazing allegation that the participants took part voluntarily, gave consent to the conduct, voluntarily assumed the risks or hardship of the activity, or that no injury was suffered or sustained.
  - The actions of alumni, active, new, and/or prospective members of a student group or student organization may be considered hazing.
  - Hazing is not confined to the student group or student organization with which the person subjected to the hazing is associated.
- **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.

## Federal Timely Warning Obligations

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Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, the College must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

The College will ensure that a Complainant’s name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

## Jurisdiction

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The Title IX Policy and these procedures apply to the College’s education programs and 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 to misconduct occurring within any building owned or controlled by a College-recognized student organization. This may also apply to the effects of off-campus misconduct that limit or deny a person’s access to College’s education program or activities.

For disciplinary action to be issued under the Title IX Policy and these procedures, the Respondent must be a College faculty member, student, or employee at the time of the alleged incident. If the Respondent is unknown or is not a member of the College community, the Title IX Coordinator will offer to assist the Complainant in identifying appropriate institutional and local resources and support options and will implement appropriate supportive measures. The College can also assist in contacting local or institutional law enforcement if the individual would like to file a police report about criminal conduct. All vendors serving the College through third-party contracts are subject to the policies and procedures of their employers.

## Reports/Formal Complaints under Title IX

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A **Report** provides notice to the College of an allegation or concern about sexual discrimination, sexual harassment, or retaliation and provides an opportunity for the Title IX Coordinator to provide information, resources, and supportive measures. Reports can be submitted by meeting with the College's Title IX Coordinator and/or by using the College's Grievance Form on its website (select Title IX): [https://burrell.edu/bcom\\_grievance\\_form/](https://burrell.edu/bcom_grievance_form/)

Reporting carries no obligation to initiate a Complaint, and in most situations, the College is able to respect a Complainant's request to not initiate a resolution process. However, there may be circumstances, such as pattern behavior, allegations of severe misconduct, or a compelling threat to health and/or safety, where the College may need to initiate a resolution process. If a Complainant does not wish to file a Complaint, the College will maintain the privacy of information to the extent possible. The Complainant should not fear a loss of confidentiality by giving Notice that allows the College to discuss and/or provide supportive measures, in most circumstances.

A formal **Complaint** provides notice to the College that the Complainant would like to initiate an investigation or other appropriate resolution procedures. A Complainant or individual may initially make a report and may decide at a later time to make a Complaint. Reports or Complaints of sexual discrimination, sexual harassment, and/or retaliation may be made using any of the following options:

- 1) File a Complaint with, or give verbal Notice directly to, the Title IX Coordinator. Such a Complaint may be made at any time (including during non-business hours) by using the telephone number, email address, or by mail to the office of the Title IX Coordinator.
- 2) Utilize the Title IX Formal Complaint form on the College website:  
<https://burrell.edu/students/title-ix/complaint-form/>

## Complaint Resolution Process

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The College reserves the right to address offensive conduct and/or harassment that (1) does not rise to the level of creating a hostile environment, or (2) that is of a generic nature and not based on a protected characteristic. Addressing such conduct will not result in the imposition of discipline under College policy, but may be addressed through respectful conversation, remedial actions, education, effective Alternative Resolution, and/or other Informal Resolution mechanisms. Offensive conduct and/or harassment may result in referral to the Office of Student Affairs or the Office of Human Resources for review under the College's Code of Professional Conduct Policy.

### Initiating a Report or Formal Complaint

1. Reports and formal complaints of discriminatory conduct are taken seriously.
2. Reports or Formal Complaints of discriminatory conduct will be dealt with promptly, impartially and equitably and resolved in a reasonably prompt time frame.
3. Reports or Formal Complaints may be submitted by any person through reporting forms available at <https://burrell.edu/title-ix/>, or by email, or in person to the Title IX Coordinator. Such a submissions may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator.

4. The College tries to provide supportive measures to all Complainants. Because reporting carries no obligation to initiate a formal response, and as the College respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows the College to discuss and/or provide supportive measures.
5. Upon receipt of a complaint, the Title IX Coordinator will conduct an initial assessment for the sole purpose of determining if the alleged conduct is prohibited under this policy. If the alleged conduct is not prohibited under this policy, the Title IX Coordinator will dismiss the complaint from the Title IX grievance process and may refer the alleged conduct to another office for review under the College's general grievance policy.

#### **Treatment of the Parties**

1. Processes will apply equally to the parties involved.
2. While parties are encouraged to limit their communication with others about the scope and extent of the investigation, no provision of this rule should be interpreted as preventing parties from discussing the allegations being investigated or gathering and presenting inculpatory and exculpatory evidence. (Note: This does not include instances when parties are issued orders of No Contact).

#### **Timely Reporting**

1. Employees and students who witness, suspect, are told about or experience potentially discriminatory conduct are encouraged to make a report or file a formal complaint with the Title IX Coordinator immediately.
2. Reports/Complainants should be timely, as the passage of time may limit steps that may be taken; however, all reports, regardless of temporal proximity, should be submitted to the Title IX Coordinator.

#### **Evidence**

1. All relevant evidence, both exculpatory and inculpatory, will be evaluated to determine credibility, regardless of whether the evidence was produced by the Complainant, or Respondent.
2. Parties will have the right to provide the names of witnesses to be interviewed as part of the investigation of the complaint. The investigation process will involve contacting all relevant witnesses.
3. The College utilizes the preponderance of the evidence standard.

#### **Presumption**

1. A Respondent is presumed not responsible for the conduct alleged until a determination of responsibility is made at the conclusion of the investigation process.
2. Investigations will be conducted using the preponderance of the evidence standard.

#### **Supportive Measures Offered**

1. After receipt of a Report/Formal Complaint, the Title IX Coordinator will promptly contact the Reporting Party/Complainant, and Respondent when appropriate, to discuss the availability of supportive measures.
  - a. Supportive measures are available, whether or not a Formal Complaint is filed with the Title IX Coordinator and are kept confidential to the greatest extent possible.
  - b. Supportive measures are designed to protect the safety of all the parties or the College's educational environment or deter sexual harassment.

- c. The College will maintain the privacy of the supportive measures, provided that privacy does not impair the College's ability to provide the supportive measures. The College will act to ensure as minimal an academic impact on the parties as possible. The College will implement measures in a way that does not unreasonably burden any party. These actions may include, but are not limited to:
  - i. Referral to counseling, medical, and/or other healthcare services
  - ii. Referral to the Employee Assistance Program
  - iii. Referral to community-based service providers
  - iv. Safety planning
  - v. Providing campus safety escorts
  - vi. Implementing contact limitations (no contact orders) between the parties
    - 1. Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.
  - vii. Academic support, extensions of deadlines, or other course/program-related adjustments
  - viii. Class schedule modifications (as applicable), withdrawals, leave of absence
  - ix. Increased security and monitoring of certain areas of the campus
  - x. Trespass, Persona Non Grata (PNG), or Be- On-The-Lookout (BOLO) orders
  - xi. Timely Warnings
  - xii. Any other actions deemed appropriate by the Title IX Coordinator
- d. The Parties are provided with a timely opportunity to seek modification or reversal of the College's decision to provide, deny, modify, or terminate supportive measures applicable to them. A request to do so should be made in writing to the Title IX Coordinator. An impartial employee other than the employee who implemented the supportive measures, who has authority to modify or reverse the decision, will determine whether to provide, deny, modify, or terminate the supportive measures if they are inconsistent with the Title IX regulatory definition of supportive measures. The College will also provide the Parties with the opportunity to seek additional modification or termination of supportive measures applicable to them if circumstances materially change. The College typically renders decisions on supportive measures within seven (7) business days of receiving a request and provides a written determination to the impacted party(ies) and the Title IX Coordinator.

**Interim Suspension/Removal of Respondent**

- 1. A student Respondent will be removed from the education program or activity, during the pendency of an investigation, only after:
  - a. An individualized safety and risk analysis are conducted by a team assembled by the Title IX Coordinator; and
  - b. A determination is made about any immediate threat to the physical health or safety of any individual arising from the allegations, which justifies removal; and
  - c. The Respondent is provided with notice and an opportunity to challenge the decision immediately following the removal.
    - 1. A Respondent may challenge the interim suspension/removal.
- 3. Challenges must be stated in writing and directed to the Title IX Coordinator within 48-hours of receipt of notice of removal.
- 4. The interim suspension/removal will be enforced until a decision is made on the challenge.
- 5. Decisions on a challenge to interim suspension/removal will be made by the President or designee.

6. A decision will be issued in writing by the President or Dean within 48-hours of receipt.
7. The President or Dean's decision is final.
  - d. An employee may be placed on administrative leave during the pendency of a Title IX investigation when it is determined that the employee will impede the investigation or is determined to be an immediate threat.
    - i. A decision to place an employee on administrative leave will be decided by Title IX Coordinator in conjunction with Office of Human Resources.

### **Informal Resolution of Reports and Complaints**

1. Informal resolution of reports and/or complaints includes, but is not limited to the following options:
  - a. Resolution sessions/mediation,
  - b. assistance in communication between parties, and
  - c. adjustments to the academic/work environment.

### **Formal Resolution of Complaints**

1. Formal resolution of complaints may include:
  - a. Preliminary inquiry,
  - b. investigation of the allegations,
  - c. findings of fact, and
  - d. a determination of responsibility, and
  - e. sanctions, and
  - f. remedies, where appropriate.
2. If allegations in a Report leads to a formal Complaint and are accepted for investigation, parties will be notified in writing of the allegations to be investigated.
3. Burrell students, employees and affiliates are required to cooperate with Title IX investigations.
4. While each Report and/or formal Complaint is taken seriously, the Title IX Office will assess each case to determine priority for investigation.

### **Advisors in the Resolution Process**

1. The Parties may each have an Advisor (friend, mentor, family member, attorney, or any other individual a party chooses) present with them for all meetings, interviews, and hearings within the Resolution Process, including intake. The Parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.
2. The Title IX Coordinator will offer to assign a trained Advisor to any party if the party chooses. If the Parties choose an Advisor from the pool available from the College, the College will have trained the Advisor and familiarized them with the College's Resolution Process.
3. The College cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not, or cannot afford an attorney, the College is not obligated to provide an attorney to advise that party.
4. A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. Parties are expected to provide the College with timely notification if they change Advisors. If a party changes Advisors, consent to share information with the previous Advisor is assumed to be terminated, and a release for the new Advisor must be submitted.
5. The College may permit Parties to have more than one Advisor, or an Advisor and a support person, upon special request to the Title IX Coordinator. The decision to grant this request is at the Title IX Coordinator's sole discretion and will be granted equitably to all Parties.
6. Advisors appointed by the institution cannot be Confidential Employees, and although they will not be asked to disclose details of their interactions with their advisees to institutional officials

or Decision-makers absent an emergency, they are still reminded of their Mandated Reporter responsibilities.

7. Advisors should help the Parties to prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. Advisors may not provide testimony or speak on behalf of their advisee unless given specific permission to do so.
8. The Parties are expected to ask and respond to questions on their own behalf throughout the Resolution Process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any Resolution Process meeting or interview. For longer or more involved discussions, the Parties and their Advisors should ask for breaks to allow for private consultation.
9. Advisors will be asked to sign a Non-Disclosure Agreement. The College may decline to share information with any advisor who has not signed such agreement. Advisors are expected to maintain confidentiality of the records the College shares with them as the Advisors are entitled the same opportunity as their advisees to access relevant evidence, and/or the same written investigation report that accurately summarizes evidence.

### **Steps for the Investigation for Complaints**

1. All investigations are adequate, thorough, reliable, impartial, prompt, and fair. They involve interviewing all relevant Parties and witnesses, obtaining relevant evidence, and identifying sources of expert information, as necessary. After an interview, Parties and witnesses will be asked to verify the accuracy of the recording, transcript, or summary of their interview. They may submit changes, edits, or clarifications. If the Parties or witnesses do not respond within the time period designated for verification, objections to the accuracy of the recording, transcript, or summary will be deemed to have been waived, and no changes will be permitted. The College may consolidate Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, when the allegations arise from the same facts or circumstances or implicate a pattern, collusion, and/or other shared or similar actions.
2. The College will follow Florida Tech's investigation process for students enrolled at Burrell's Melbourne (FL) campus. Melbourne (FL) campus students, please visit Florida Tech's Title IX Investigations section at: <https://www.fit.edu/policies/title-ix/>.
3. Notification of the Investigation
  - a. The Title IX Office will send a formal notification via Burrell email to the Complainant and the Respondent notifying them of the investigation process and the potential policies that have been violated based on the allegation. The investigator will notify the Complainant and the Respondent of the process for the investigation, a caution regarding retaliation, and any other pertinent information for the specific investigation. The College has an affiliation agreement with Florida Tech who will assist with the investigation process for students enrolled at Burrell's Melbourne (FL) campus.
4. Information Gathering
  - a. The assigned Investigator to the Title IX case begins gathering information via interviews from the Complaint, the Defendant, and Witnesses. Information may include, but are not limited to, electronic materials (texts, social media posts, emails, phone logs, etc.), video footage, and audio recordings. Medical records can also be obtained by the Investigator with written consent. During the information gathering process the Complainant and Defendant may provide information to the Investigator they feel is vital information to the investigation process and provide names of potential witnesses.

- b. Employees of the College (not including Complainant and Respondent) are required to cooperate with and participate in the investigation and resolution process. Student witnesses and witnesses from outside the College community cannot be required to cooperate. Interviews may be conducted in person, via online platforms or by telephone. Parties and witnesses may also provide written statements.
  - c. Interviews are recorded and all involved persons should be aware that interviews are recorded. The recording and/or transcript of the meeting will be provided to the parties for their review, after which the parties may pose additional questions to each other. Those subsequent meetings or interviews are also recorded and/or transcribed and shared with the parties.
5. Written Report
- a. At the conclusion of the Title IX investigation, a Title IX Investigation Report, will be drafted and sent electronically to the parties, and their advisors, accompanied by relevant evidence. The Investigator and Decision-maker will only consider evidence that is deemed relevant and not otherwise impermissible evidence.
  - b. After the Complainant and Respondent have had an opportunity to review and respond to the collected documentation, the Investigator begins writing a report based on the collected documentation and interviews. The report will include allegations that were investigated, the policy against which the allegations were reviewed, the individuals contacted and interviewed, a list of the documents, and materials gathered. The report will also include a timeline of when events occurred. The Complainant and Defendant will have an opportunity to review and respond to the written report prior to submission to the decision maker.
6. Notification of the Outcome of Investigation
- a. Once the Investigator completes the written report, the Title IX Office will send an email via Burrell email to both the Complainant and the Respondent. The email will include information about the outcome of the investigation and the necessary next steps which could include routing to the Burrell Conduct Committee or to a Title IX hearing which would be completed using New Mexico State University Office of Institutional Equity (Las Cruces (NM) Campus student) or Florida Tech's Title IX Office (Florida Tech).

#### **Delay in Resolving Complaints**

1. Where there is good cause for a delay of the resolution of a complaint, written notice will be given to the parties.
2. Good cause for delay may include, but is not limited to:
  - a. The absence of a party, a party's advisor or a witness;
  - b. The need to wait for the resolution of a concurrent law enforcement activity;
  - c. The need for language translation or accommodation of disabilities.
3. The College will make good faith effort to complete the resolution process as promptly as circumstances permit and will regularly communicate with the parties to update on progress and timing.

#### **Report and/or Complaint Dismissal**

1. A report and/or complaint will likely be dismissed if any of the following elements are not met:
  - a. The conduct alleged would not constitute discriminatory conduct as defined in the Title IX policy or
  - b. The conduct did not occur in Burrell College's education program, property or activity; or

- c. The conduct did not occur in the United States; or
  - d. The conduct did not occur at a time when the complainant was participating in or attempting to participate in an education program or activity through Burrell College.
- 2. A formal complaint may be dismissed after the investigation is commenced if:
  - a. A complainant notifies the Title IX Coordinator in writing that they would like to withdraw the complaint; or
  - b. The Respondent is no longer enrolled or employed by Burrell College; or
  - c. Circumstances exist preventing Title IX Coordinator from gathering evidence sufficient to reach a determination as to the allegations.
- 3. If/when a complaint is dismissed, written notice will be sent simultaneously to the parties notifying them of the dismissal.
  - a. Upon dismissal, a complainant may resubmit their complaint to the Title IX Coordinator with additional allegations, or
  - b. Appeal the dismissal of their complaint.
    - i. Review authority for student appeals will be to the President or Designee for review.
    - ii. Review authority for employee's appeals will be to the President or Designee.
  - c. When appealing dismissal of a complaint for investigation, the complainant must state a reason, with specificity, as to why Title IX Coordinator has erred in dismissing the complaint.
  - d. A written decision on an appeal of a dismissal will be rendered within ten (10) working days of receipt by the review authority.
  - e. The denial of an appeal by the review authority is final.
  - f. If the review authority determines that an investigation should be conducted, the decision will be returned to the Title IX Coordinator and an investigation will commence.

### **Respondent Admits Responsibility**

- 1. At any point in the proceedings, if a Respondent elects to admit to the charged violations and waive further process, the Decision-maker is authorized to accept that admission, adopt it as their finding/final determination, and administer sanctions. This would waive the Respondent's right to appeal. If the Respondent rejects the finding/final determination/sanctions, or does not admit to all conduct charged, the Resolution Process continues to its conclusion. The Complainant retains their right to appeal a determination when a Respondent admits responsibility.

### **Withdrawal or Resignation Before Complaint Resolution**

- 1. Should a student or employee Respondent decide not to participate in the resolution process, the process proceeds absent their participation. If the student or employee withdraws or resigns, the resolution process may continue or, the Title IX Coordinator may exercise their discretion to dismiss the complaint. If the complaint is dismissed, the College will still provide reasonable supportive measures.

### **Hearings for Title IX Cases**

- 1. The Burrell College of Osteopathic Medicine and New Mexico State University (NMSU) are under an affiliation agreement whereas Title IX Hearings will be performed through NMSU's Office of Institutional Equity (OIE) for students located at the Las Cruces (NM) Campus. The College and Florida Tech are under an affiliation agreement whereas Title IX Hearings will be performed through Florida Tech's Title IX Office.



2. Hearings for Las Cruces (NM) campus students will be conducted in accordance with NMSU's procedures for Title IX hearings. Please visit the NMSU Title IX Hearings section at: <https://equity.nmsu.edu/oie-complaint-procedures/oie-complaint-procedures.html>
3. Hearings for Melbourne (FL) campus students will be conducted in accordance with Florida Tech's procedures for Title IX hearings. Please visit Florida Tech's Title IX Hearings section at: <https://www.fit.edu/policies/title-ix/>
4. In all cases where the complaint is not resolved through informal resolution, the College will work with NMSU and Florida Tech to assign a hearing officer to adjudicate the complaint. The Title IX Coordinator will see that the hearing officer is provided a copy of the investigation report and all evidence transmitted to the parties by the investigation. For Melbourne (FL) students, the investigation is being performed by Florida Tech's Title IX office.
5. The Burrell College Title IX Coordinator is responsible for overseeing the administration of sanctions resulting from the hearing. Sanctions may include administrative withdrawal and/or termination of employment.
6. The decision of the hearing officer becomes final, either on the date that the Appeal Authority provides the parties with written determination supporting the decision of the hearing officer, or the date on which an appeal would no longer be considered timely.
7. Appeals from the decision of the Hearing Officer may be submitted by either party.
  - a. Appeals from the decision of the Hearing Officer must be submitted within five (5) working days of issuance of the decision.
    - i. Appeals must be in writing and submitted to the Burrell Title IX Coordinator.
    - ii. Appeals must state the reason for appeal with specificity
      1. The Appellant provides evidence that new facts and evidence have surfaced, which were not reasonably available at the time of the determination, which may impact the outcome of the investigation.
      2. The Appellant alleges and presents evidence that there existed a conflict of interest or bias for, or against a party, which affected the outcome of the investigation.
      3. The Appellant provides evidence that a procedural irregularity would change the outcome.
  - b. Within five working (5) days of receipt of written appeal, the Burrell Title IX Coordinator, will forward the written appeal, along with a copy of the Investigation Report and accompanying exhibits, to the Appeal Authority.
    - i. The President or designee is the Appeal Authority.
    - ii. A written decision on the appeal will be issued by the Appeal Authority within ten working (10) days of receipt of written appeal.
      1. Burrell Title IX Coordinator will process the Appeal Authority's written decision to the parties.
      2. If denied, the written decision will provide specific reasons as to why the appeal is being denied.
        - a. The Appeal Authority's denial of an appeal is final.
      3. If the appeal is granted by the Appeal Authority, due to allegations of failure to follow policy, the matter will be assigned to a third-party investigator for review and determination of:
        - a. Whether a procedural error occurred; and
        - b. Whether or not such procedural error impacted the determination of the case.
        - c. If the third-party investigator determines that a procedural error occurred, which negatively impacted the outcome of the case, a

determination of appropriate next steps will be issued by the third-party investigator.

4. Even in cases where an appeal of the determination is granted, Title IX Coordinator may refer the matter to Office of Student Affairs/Office of Human Resources office for review of other policy violations and sanctions.
5. The investigation report and subsequent determinations will remain on file with the Burrell Title IX Coordinator.
6. The decision of the Appeal Authority shall be final.