

# BURRELL COLLEGE --- *of* --- HEALTH SCIENCES

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***Burrell College of Health Sciences***

***Title IX Grievance Procedures***

***Effective 8.14.2020***

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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 Health Sciences 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.

## Title IX Procedural Compliance

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The procedures in this document comply with the Title IX regulations and shall be read in accordance to 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:

Teresa Garcia  
Title IX Coordinator  
tgarcia@burrell.edu | 575-674-2238

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 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.

## 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. Consent 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. Silence or absence of resistance does not imply consent. Past consent to sexual activity does not imply ongoing or future consent. 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 or being asleep or unconscious.
- **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.
- **Education program or activities:** meaning a) locations, events, or circumstances over which the College exercises substantial control over both the respondent and the context in which the Title IX Sexual Harassment occurs, and b) any building owned or controlled by a student organization that is officially recognized by the College; and, at the time of filing a formal complaint, a complainant is participating in or attempting to participate in the education program or activity at the College; and c) at the time of filing a formal complaint, the complainant is participating or attempting to participate in the education program or activity at the College
- **Prohibited Conduct:**
  - **Sexual Discrimination:** includes but is not limited to circumstances when an employee or student suffers adverse employment or academic consequence (such as denial or loss of employment or academic opportunities or status) on the basis of sex, sexual orientation and also includes circumstances where an employee or student is subjected to sexual harassment or sexual violence.
    - **Sexual Harassment:**
      - **Unwelcome Sexual Conduct:** Unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to the College's education program or activity;
      - **Quid Pro Quo Sexual Harassment:** An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct;
      - **Sexual Assault:** as defined in 20 U.S.C. 1092(f)(6)(A)(v) is any sexual act directed against another person, without the consent of the victim, including instances where the victim 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 victim.

- **Statutory Rape:** sexual intercourse with a person who is under the statutory age of consent.
  - **Fondling:** touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her 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:** as defined in 34 U.S.C. 12291 (a)(8) is a felony or misdemeanor crime of violence committed: (a) by a current or former spouse or intimate partner of the victim; (b) by an individual with whom the victim shares a child in common; (c) by an individual who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; (d) by an individual similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the felony or misdemeanor crime of violence occurred; (e) by any other individual against an adult or youth victim who is protected from that individual's acts under the domestic or family violence laws of the jurisdiction in which the felony or misdemeanor crime of violence occurred. For purposes of this policy, an intimate partner is defined as an individual with whom one has or had a short- or long-term relationship that provides romantic and/or physical intimacy or emotional dependence.
- **Dating Violence:** as defined in 34 U.S.C. 12291(a)(10) is violence committed by an individual who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting individual's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the individuals involved in the relationship. This 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:** as defined in 34 U.S.C. 12291 (a)(30) is engaging in a course of conduct directed at a specific individual that would cause a reasonable person to: (a) fear for the individual's safety or the safety of others; or (b) suffer substantial emotional distress. For the purposes of the Stalking definition: *Course of conduct* means two or more acts, including acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about an individual, or interferes with an individual's property. *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim. *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

- **Retaliation under this policy:** No individual may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this policy or because an individual has made a report or formal complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.
- **Supportive Measures:** non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed to restore or preserve equal access to education, protect student and employee safety, or deter sexual harassment.

## 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.

## Complaint Resolution Process

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### Initiating a Complaint

1. Reports and formal complaints of discriminatory conduct are taken seriously.
2. Reports and formal complaints of discriminatory conduct will be dealt with promptly, impartially and equitably and resolved in a reasonably prompt time frame.
3. Reports 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 report 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. Anonymous reports are accepted but can give rise to a need to investigate. The College tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. 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 Recipient 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.

### **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 or 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 Recipient will implement measures in a way that does not unreasonably burden the other 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. Safety planning
    - iv. Providing campus safety escorts
    - v. 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.
    - vi. Academic support, extensions of deadlines, scheduling adjustments, or other course/program-related adjustments
    - vii. Increased security and monitoring of certain areas of the campus
    - viii. Timely Warnings
    - ix. Any other actions deemed appropriate by the Title IX Coordinator

- d. The Title IX Coordinator will explain the process of filing a Formal Complaint, and the investigation process, to the parties.

#### **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 within 48-hours of receipt.
7. The President'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 Complaints**

1. Informal resolution of 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/Complaint 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/Complaint is taken seriously, the Title IX Office will assess each case to determine priority for investigation.

### **Steps of the Investigation**

1. At the Las Cruces (NM) campus, the investigation is performed by the College's Title IX Coordinator. At the Melbourne (FL) campus, the College's affiliation agreement with Florida Tech permits the Title IX office at Florida Tech to assist with investigative services, if requested.
2. 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.
3. 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.
4. Written Report
  - a. 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 the written report prior to submission to the decision maker. The Complainant and Defendant may respond within five(5) business days of receipt of the written report. In the case a Complainant or Defendant responds, their additional information will be included as an addendum of the Investigation Report.
5. 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 or Florida Tech's Title IX Office.

### **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.

### **Complaint Dismissal**

1. A 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 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 sufficient evidence 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 for 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.

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

1. For the Las Cruces (NM) Campus students, the Burrell College of Health and the NMSU Office of Institutional Equity (OIE) are under an affiliation where Title IX Hearings will be performed through the OIE.
2. For the Melbourne (FL) Campus students, the Burrell College of Health and the Florida Tech's Title IX Office are under an affiliation where Title IX Hearings will be performed through the OIE.
3. 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.
4. The parties have ten working days (10) to respond to the Report in writing, and provide additional evidence, should they choose to do so.
5. The final report and evidence will be submitted to the parties and the hearing officer no later than (ten) 10 days prior to hearing.
6. A live hearing will be conducted by a hearing officer appointed by the New Mexico State University's Title IX Coordinator (as Burrell's liaison) to hear the evidence in the case.
7. The hearing officer may review, and the parties may present the Title IX Investigation Report as evidence at the hearing, but the hearing officer must hear evidence, and make determinations, based solely on evidence presented at the hearing.

8. The hearing will commence between ten days (10) and thirty (30) days of the submission of the Report to the hearing officer, unless extenuating circumstances or just cause requires further delay.
  - a. The hearing officer will determine when just cause exists to delay a hearing.
9. Parties are entitled to Advisors.
  - a. If a party does not have an advisor to conduct cross-examination at hearing, one will be appointed by Burrell to assist in the questioning of witnesses at hearing.
  - b. Parties shall not examine/question each other or any witness.
10. Hearings may be conducted with parties in the same room, different/separate rooms or virtually.
  - a. Parties and their advisors must consult with the hearing officer on logistics of the hearing.
  - b. The hearing officer is the final decision-maker on hearing procedures.
  - c. A recording of the hearing shall be taken and made available to the parties for inspection and review upon request.
11. The hearing officer will determine the relevance of witnesses and evidence to be allowed at hearing.
  - a. The hearing officer will recuse themselves if they determine that they are unable to make an impartial decision on the evidence presented.
  - b. The hearing officer must explain any decision to exclude a question or evidence as not relevant.
  - c. The hearing officer may issue subpoena to compel witnesses to appear at hearing pursuant to N.M. R. Civ. P. Dist. Ct. 1-045.
  - d. The sexual history of the parties may not be allowed at hearing, unless such sexual history is determined by the hearing officer to be relevant to the sexual relationship between the parties and offered as proof of consent, or offered as proof that someone other than the Respondent committed the conduct alleged by Complainant.
  - e. If a party does not submit to cross-examination at hearing, the hearing officer's decision shall be solely based on the evidence presented at hearing.
    - i. The hearing officer may not draw an inference about the determination of responsibility based solely on a party or witness' absence from the hearing or refusal to answer questions in cross-examination.
  - f. The hearing officer will receive training specific to conducting Title IX hearings.
  - g. For student Respondents, the Office of Student Affairs will provide the hearing officer with documentation of the Respondent's conduct history, prior to the hearing officer issuing a decision.
  - h. For Employee Respondents, the Office of Human Resources will provide the hearing officer with documentation of the Respondent's conduct history, prior to the hearing officer issuing a decision.
  - i. The hearing officer will issue a written decision within fourteen (14) days of the hearing.
  - j. The hearing officer's written decision will include:
    - i. A determination that a violation of policy has or has not occurred; and
    - ii. A list of the allegations; and
    - iii. A description of the procedural steps taken from the receipt of the formal complaint through determination; and
    - iv. Findings of fact supporting the determination; and
    - v. Conclusions regarding application of policies to the facts; and
    - vi. A statement of and rationale for the results of each allegations, including:
      1. Sanctions to be imposed on Respondent; and
      2. Any remedies afforded to the Complainant, and
    - vii. Notice of the right to appeal the determination.

- j. The hearing officer's written decision will be delivered to the Title IX Coordinator for distribution to the parties.
  - k. The parties will receive the decision simultaneously.
- 12. The Burrell College Title IX Coordinator is responsible for overseeing the administration of sanctions resulting from the hearing.
- 13. 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.
- 14. 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 investigation procedures, as specified in ARP 3.25, were not followed during the course of the investigation.
  - 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.