

2020 Title IX Regulations

UNM Update

The U.S. Department of Education (Department) released its Final Regulations under Title IX of the Education Amendments of 1972 on Wednesday, May 6, 2020. The Department is giving recipients 100 days to comply with its new Title IX regulations. The New Rule goes into effect August 14, 2020 and has the force and effect of law, unlike the previous guidance issued by the Department. The regulation's mandatory requirements for investigation apply to cases involving students and employees (faculty and staff).

Title IX addresses all aspects of sex discrimination. However, these changes by the Department apply only to Sexual Harassment claims under Title IX.

What is Changing

- Jurisdiction to Title IX
 - Definition of Sexual Harassment
 - Sexual harassment definition narrowed; aligns more closely with Clery Act geography and VAWA's Big 4 (stalking, sexual assault, dating violence, and domestic violence).
 - Conduct must occur within UNM's education program or activity and against a person in the United States.
 - Includes situations over which the school exercises substantial control, as well as buildings owned or controlled by student organizations officially recognized by the school, such as fraternity and sorority houses.
 - At the time a report is submitted, the Complainant must be participating or attempting to participate in UNM's education program or activity.
- The grievance process must include a live hearing to determine responsibility and appropriate sanction, as well as allow for cross-examination by the parties' advisors
 - Investigators will no longer make a determination of responsibility; a hearing officer will be charged with that duty.

- UNM must investigate every formal complaint (filed by a Complainant or by the Title IX Coordinator)
 - All informal complaints (where the Complainant does not wish to proceed) received by OEO will be offered supportive measures and an opportunity to engage in an interactive discussion exploring supportive measures options.
- Informal resolution is an alternative to an investigation. Both parties must agree and it is only offered after a formal complaint is made. Informal resolutions are not offered where an employee has been accused of sexually harassing a student.
 - Informal resolutions will be addressed on a case by case basis, while understanding the limitations of UNM capacity.
- Live Hearings
 - Can allow for remote and/or virtual participation
 - Technology to hear and see each party required
 - Each party must have an advisor to conduct cross-examination
 - Rape shield protections
 - Sexual predisposition = never
 - Prior sexual behavior = two exceptions
 - If a party or witness does not submit to cross-examination, the Hearing Officer must exclude and not consider their prior statements in making a determination
- UNM will continue to address misconduct that does not fall within Title IX's new sexual harassment jurisdiction under other policies and codes of conduct.
- Formal Complaint – filed by the Complainant or the Title IX Coordinator
 1. OEO receives a report alleging sexual harassment
 2. OEO sends outreach (includes list of supportive measures, an invitation to engage in interactive discussion about supportive measures, and the option to file a formal complaint, with instructions).
 3. Complainant submits a formal report indicating they want UNM to investigate their claim(s)
 4. Notice sent to both parties
 - a. Actual allegations and facts that would constitute sexual harassment
 - b. The presumption of innocence
 - c. A statement that the parties are entitled to an advisor of their choice

- d. A statement that the parties can request to inspect and review certain evidence
 - e. Information regarding the policy(ies) and false statements
5. Options for informal resolution (done or move to 6)
 6. Dismissal (Mandatory and Discretionary Dismissals and Appeals Rights)
 7. If dismissed, can reinstate as something other than Title IX
 8. Complete investigative report (fact-finding by OEO)
 9. Conduct live hearing
 10. Written determination (responsibility and sanction(s)) communicated to parties
 - a. Remedies given to Complainant (confidential)
 11. Appeals options
 12. Sanction(s) go into effect after appeals exhausted
- Policy changes
 - OEO, BoR, HSC, Law School, Student Code of Conduct, (I'm sure there's more)
 - All training received by Title IX personnel will be posted to the OEO website
 - Hearing Officer position created – will report to President Stokes
 - Hearing Coordinator to provide administrative support to the Hearing Officer

What is Remaining the Same

- UNM Responsible Employee policy unchanged
 - UNM will not change its Responsible Employee requirement under Policy 2740
- Preponderance of the evidence standard remains
 - UNM will maintain its current standard of evidence for all allegations of a UNM policy violation

Forthcoming

- Policies and Procedures
 - Visuals once above finalized
- Timeline
 - Investigations
 - 10 days (business or calendar)

- Hearing scheduled no less than 10 days after investigation complete

Areas for Increased Efforts

- Supportive Measures (Staff and Faculty, and continued increase for students)
- Advisors

Please note training will be provided to all who need it