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Title IX Update Virtual Town Hall

8/21/2020

Today's Agenda



Overview of Title IX and its History



Panelists



Changes to the Title IX Regulations



What Does This Mean for UNM?



What the New Process will Look Like



UNM Progress



Campus Resources



Q&A

Panelists

- Armando Bustamante, Program Specialist, El Centro de la Raza
- Caitlin Henke, Program Specialist, Women's Resource Center
- Lisa Lindquist, Director, LoboRESPECT Advocacy Center
- Stephen Bishop, PhD, Associate Professor: Africana Studies and Foreign Languages and Literatures



POLL 1



Title IX

“ No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

Title IX of the Education Amendments of 1972
Implementing Regulations at:
20 U.S.C. § 1681 & 34 C.F.R. Part 106

Title IX's Infancy

- Enacted in 1972, specifically for athletics
- NCAA Participation
 - 30,000 vs 170,000
 - Title IX designed to correct these imbalances



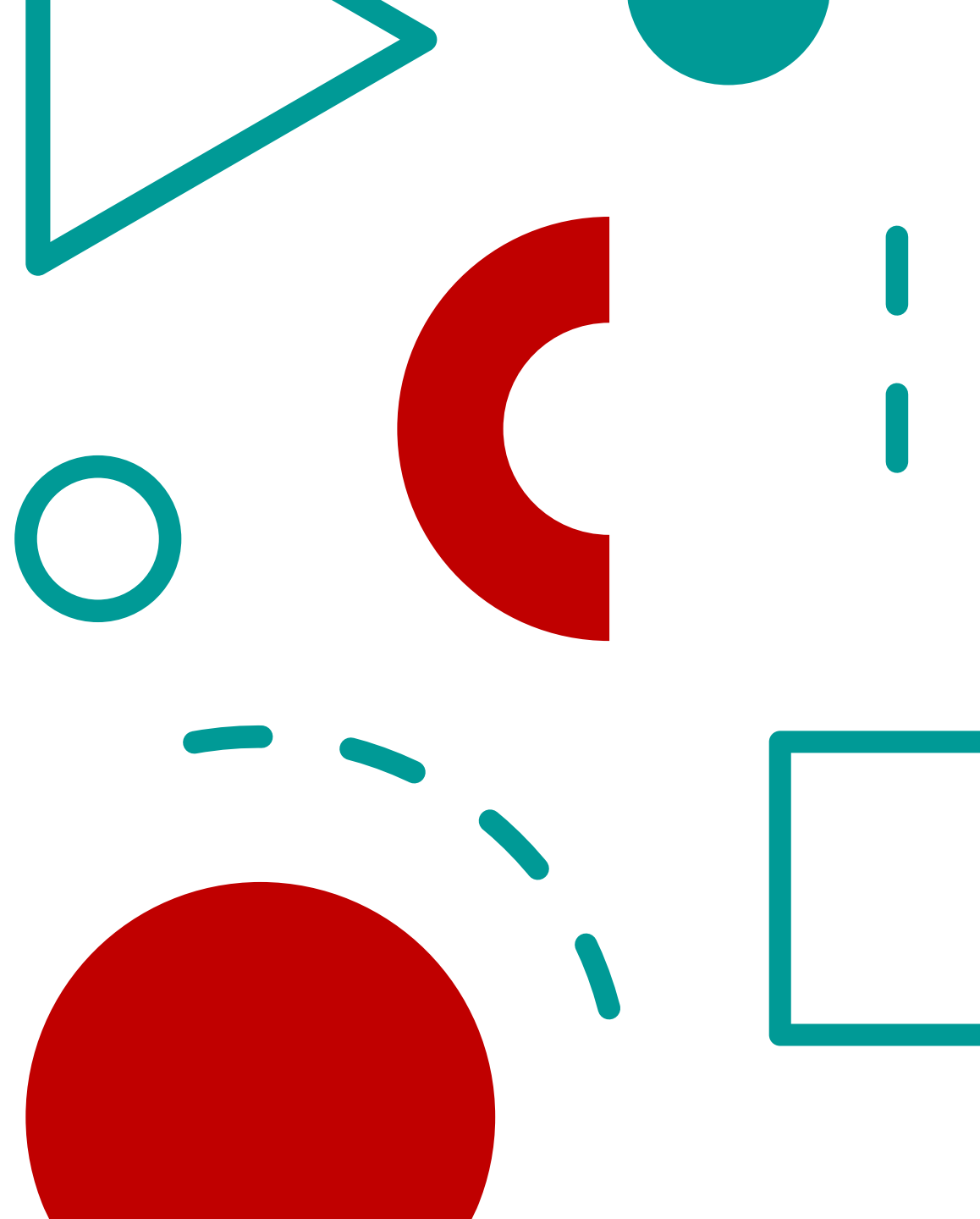
Title IX Has Been Busy

- 1972 – Title IX is born
- 1997 – OCR included Sexual Harassment under Title IX
- 2001 – OCR issued its first guidance on sexual harassment
- 2003 – Dear Colleague Letter (DCL) on Title IX and Free Speech
- 2010 – DCL on Harassment and Bullying
- 2011 – Dear Colleague Letter (DCL)*
- 2013 – DCL on Pregnant and Parenting Students
- 2014 – Q&A on Title IX and Sexual Violence*
- 2015 – DCL on the Role of Title IX Coordinators
- 2016 – DCL on Transgender Students*
- 2017 – Q&A on Campus Sexual Misconduct issued as interim guidance
- 2018 – Department of Education published Notice of Proposed Rule Making (NPRM)
- 2020 – Title IX changes published



2020 Title IX Regulations

- Issued May 6, 2020
 - 100 days to comply
- Effective and Enforceable August 14, 2020
 - Amended the Code of Federal Regulations and have force and effect of law
 - Intervening variables may impact enforcement going forward (lawsuits, election, etc.)
- The Regulations
 - Significant, legalistic, prescriptive, and very due process heavy
 - Enforceable by OCR





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POLL 2

NM





Who's Who

- Title IX Coordinator
- Complainant (CP)
- Respondent (RP)
- Reporter
- Investigator
- Advisor*
- Advocate
- Hearing Coordinator*
- Hearing Officer*
- Sanctioner

Changes to Title IX



- Definition of Sexual Harassment
- Education Program and Activity
- In the United States
- Formal Complaint
- Hearings
- Informal Resolutions

While the changes significantly limit how an institution can address sexual harassment under Title IX, UNM can (will) continue to address concerns that do not meet the new and narrow jurisdiction of Title IX Sexual Harassment

Title IX Definition of Sexual Harassment

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity
3. "Sexual assault," "dating violence," domestic violence," or "stalking" as defined in the VAWA Amendments to the Clery Act

Education Programs and Activities in the United States

- Includes locations, events, and circumstances where a school exercises substantial control over the context of the alleged harassment and the person accused of committing sexual harassment
- Includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution
- Incident must have occurred against a person in the United States



Other Jurisdiction Requirements for Title IX

At the time of the report,
Complainant must be
participating or attempting
to participate in UNM's
program or activities

Respondent must be
affiliated with UNM

OEO Process

Informal Complaint	Formal Complaint
Does not initiate an investigation*	Initiates an investigation Unless Informal Resolution is an option agreed upon by both parties

- ~~Single Investigator Model~~
- Preponderance of the Evidence

Supportive Measures



Individualized services reasonably available



Non-punitive, non-disciplinary, not unreasonably burdensome to the other party

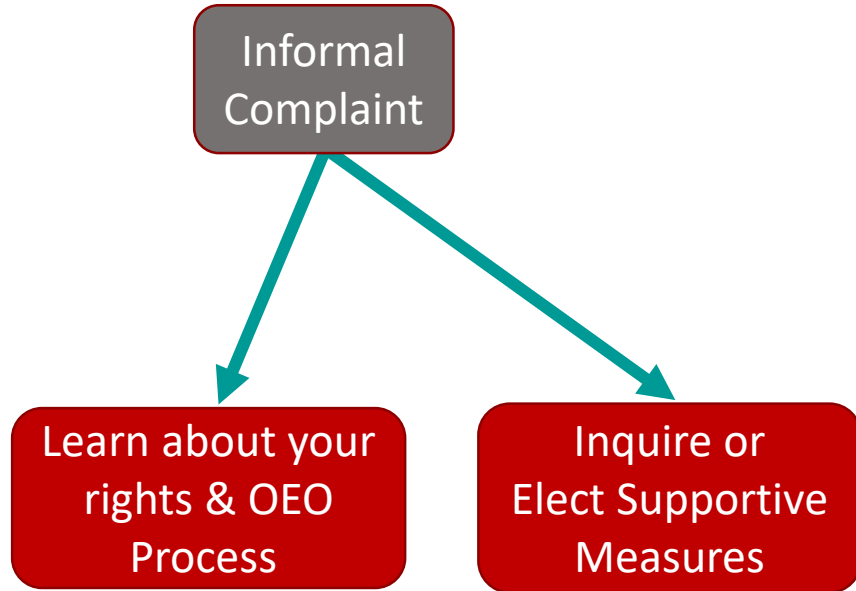


Requires tracking



Can also become a remedy

Informal Complaint Flowchart



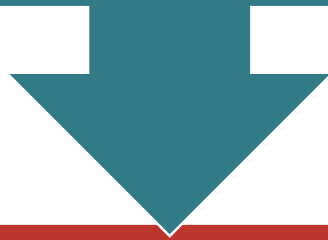
Informal Complaints include all reports received by OEO except for formal complaints

Including, but not limited to:

- UNMPD
- Responsible employees
- Housing
- CP themselves (but no formal complaint filed)
- CARE

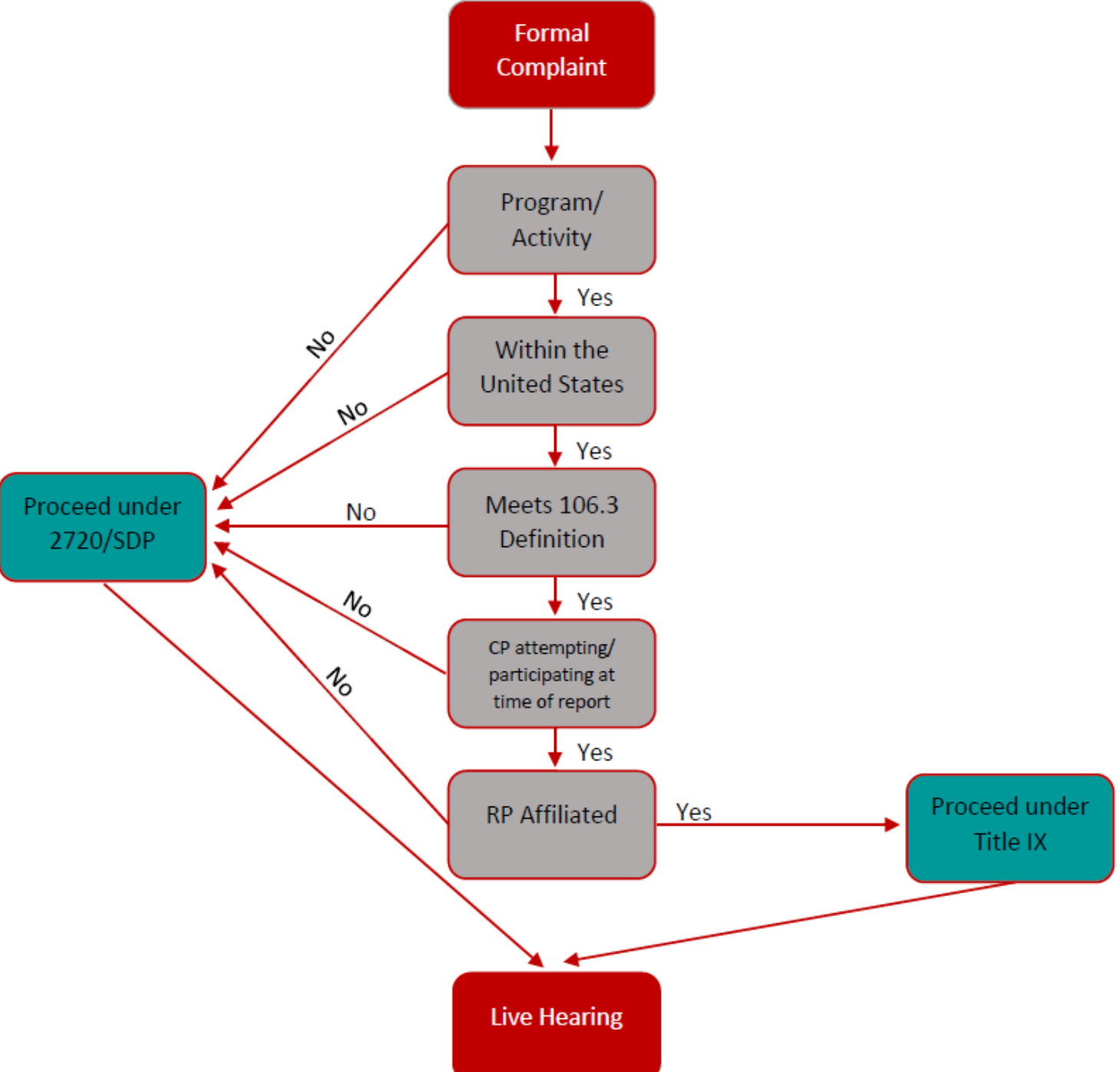
Formal Complaint

Signed by CP or filed by T-IX Coordinator



Informal Resolution
Investigation
Hearing

Once a formal complaint is filed, an informal resolution may be an option. If both parties do not agree, OEO may proceed with an investigation. OEO may dismiss the claims or finalize the investigative report and refer for a live hearing.



The grey boxes are items used to determine jurisdiction under Title IX (UAP 2740). If any of the boxes is answered with a “no”, then OEO will proceed with 2720 and/or the Student Discipline Procedure.

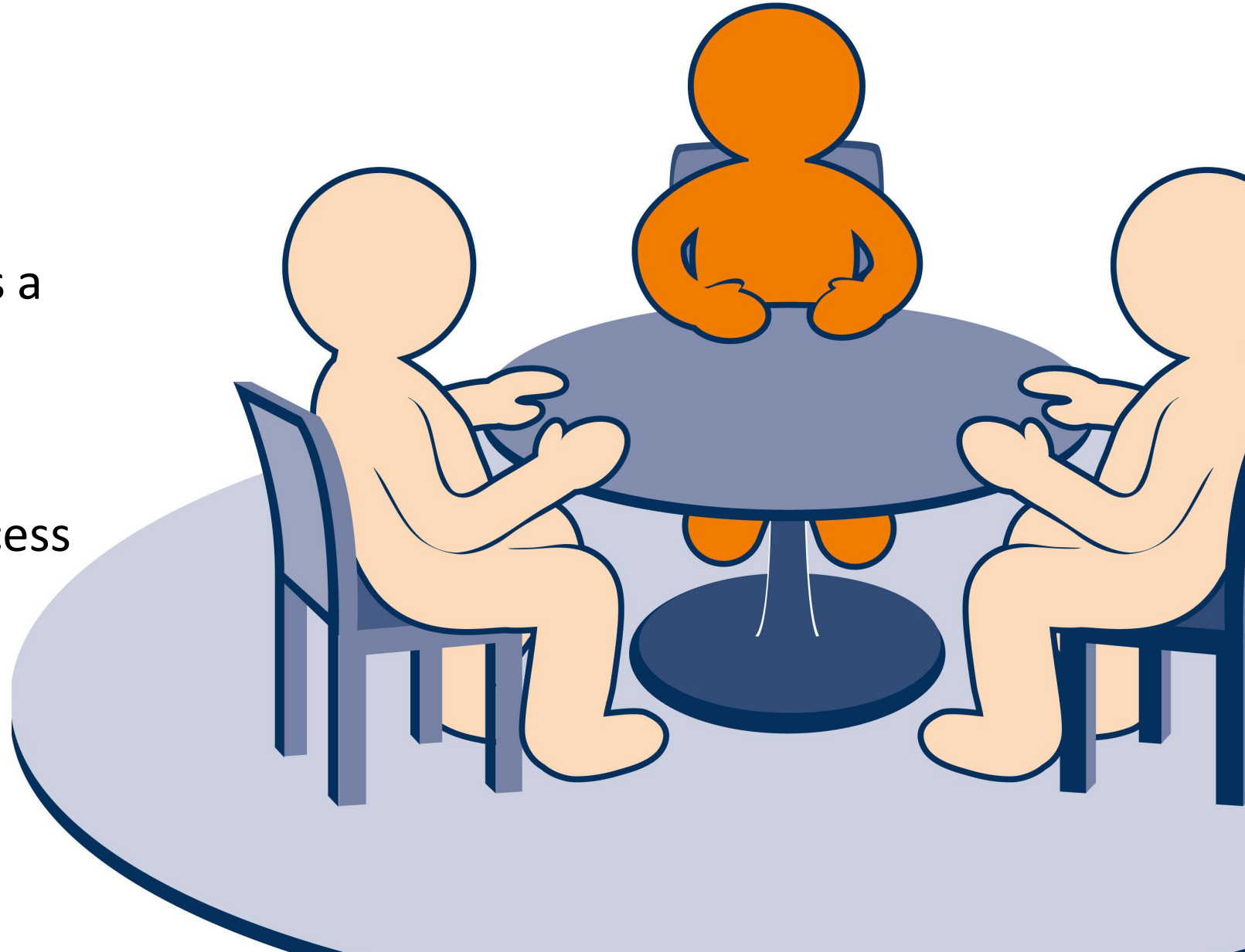
2720 encompasses all forms of civil rights discrimination that does not fall within the new sexual harassment definition under Title IX.

2720 also addresses Title VII concerns.

For sexual harassment that does not meet the Title IX definition against a student, OEO will proceed under the SDP. OEO and DoS created an MOU allowing OEO to investigate these matters.

Informal Resolution

- Not required
- Must not offer or facilitate informal resolutions to address a report of an employee sexually harassing a student
- Each party must enter the process completely voluntarily
- Documentation required
- Facilitator must be trained



Pre-Hearing Meeting

- An opportunity to provide additional information
- Parties not allowed to bring new evidence to the hearing that has not been reviewed by the Hearing Officer
 - Any new information that was not reasonably available before pre-hearing meeting can be used in an appeal



Investigation	Investigative Report
<ul style="list-style-type: none">• OEO must investigate all formal complaints• Burden of gathering evidence and burden of proof on UNM, not parties• UNM must not restrict ability of parties to discuss allegations• 10-day review period of draft investigative report• UNM may consolidate formal complaints where allegations arise out of the same facts	<ul style="list-style-type: none">• Objectively state all relevant evidence, including inculpatory and exculpatory evidence• Start from a premise that the RP did not engage in the conduct until a determination of responsibility is made at the conclusion of the grievance process by a preponderance of the evidence• Outline disputed and undisputed facts uncovered during the investigation

Advisors



- Can advise party throughout entire process
- Parties may switch at any time
- Can be biased
- Can act as a witness
- No training required
 - UNM-appointed will receive training

Live Hearings

- Decision-maker must not rely on any statement of party or witness in reaching a determination of responsibility who does not submit to cross-examination at the live hearing
- If any party requests it, the entire hearing must be held with the parties located in separate rooms, with technology enabling everyone to see and hear each other
- UNM must create recording and make it available to parties



Remedies

- To be provided to a Complainant when a Respondent is found to have violated UNM policy
- Remedies are designed to maintain the Complainant's equal access to education and may include the same individualized services described as supportive measures
- Remedies for a Complainant are not required to be non-disciplinary or non-punitive for the Respondent and need not avoid burdening the Respondent
- Confidential





COMPLETE

- Policies 2720, 2740, 3215, D175, D176
- Student Discipline Procedure
- Discrimination Grievance Procedure
- Hearing Procedure
- Hiring Hearing Officer and Coordinator

IN PROGRESS

- HSC Student Grievance Procedures
- Sanctioners
- Advisors
- Supportive Measures
- Appeals Policies

Thank You

- OEO Staff
- Office of the President
- ADVANCE
- ASUNM
- Athletics Department
- Compliance
- Dean of Students
- Faculty Policy Committee
- Faculty SAFE
- GPSA
- Health Sciences Center
- Human Resources
- Learning Environment Office
- LGBTQ Resource Center
- LoboRESPECT Advocacy Center
- Office of the Provost
- Ombuds Services
- Office of University Counsel
- OVW Campus Grant
- Panelists
- Policy Office
- School of Law
- Staff Council
- UCAM
- Women's Resource Center

UNM Resources

LoboRESPECT Advocacy Center

Women's Resource Center

LGBTQ Resource Center

Vassar House

Learning Environment Office (LEO)

SHAC

CARS

Ombuds



Q&A