



# OFFICE OF EQUAL OPPORTUNITY

## 2020 Title IX Town Hall Meeting Q and A

- **What are the anticipated impacts to LGBTQIA students?**
  - The regulation changes focused on sexual harassment and no other forms of discrimination under Title IX.
  - We do not know yet how these regulations will impact our LGBTQIA community, but we do have state law and policies that continue to protect against harassment and discrimination.
  - The LGBTQ Resource Center is a confidential advocacy center to offer support to our Lobo Community.
  - OEO staff ask visitors for their name and pronoun. Additionally, OEO staff are regularly Safe Zone trained. Folks with a UNM NetID can [update their preferred name and pronoun](#) in LoboWeb.
  - The new [Hearing Process](#) includes Rules of Decorum. In those rules, mis-gendering and dead naming is strictly prohibited.
  
- **If a report is filed, will it immediately go into the hearing process?**
  - No. A formal complaint – signed and dated by the Complainant – initiates an investigation. All investigations end in a live hearing.
  
- **If a formal report was filed, can the report be changed into an informal report?**
  - The Complainant can withdraw their formal complaint at any time. It is a discretionary dismissal and will be considered by the Title IX Coordinator, on a case by case basis, whether the investigation will continue.
  
- **Will the complainant/respondent be able to bring in support people (family/friends) to hearings?**
  - Each party is allowed to have their advisor with them during the hearing. The advisor is required for the purpose of cross-examination.
  - A party may request ADA accommodations prior to the hearing if they are a qualified individual with a disability as determined by either the ADA Coordinator or Accessibility Resource Center.
  
- **What's the responsibility of an advocate during a hearing?**
  - An advocate can attend the hearing if they are acting in the capacity of an advisor. The parties are only allowed to have their advisor present at the hearing.

- **Will advisors be asking the questions in the live hearings or will the hearing officer?**
  - Both. The Hearing Officer may ask questions of parties and witnesses. The advisors will be asking the cross-examination questions to the other party.
  
- **How does UNM protect students during these required live hearings? Who can tune into these live hearings and who has access to the recordings? How is privacy for the involved parties ensured during this process?**
  - The hearings are restricted to the parties, their advisors, witnesses (for their portion of the hearing) the Hearing Officer, the Hearing Coordinator, a sanctioning authority, and others as deemed necessary (i.e., University Counsel, the Title IX Coordinator, UNMPD)
  - The hearings will be recorded by the Hearing Officer. A party may request to review the recording and will have a specific platform to review, but not download or distribute.
  
- **If a report is filed, will complainants and respondents immediately be issued an advocate?**
  - No. They are provided with information about the various resources on campus and we allow them to make the decision that is best for their needs.
  - At a party's request, OEO may connect a party with an advocate or respondent support person.
  
- **How long do hearings last, is there a timeline for the process of hearings?**
  - This depends on the length and complexity of the case. We will have a better idea once we begin holding hearings more regularly.
  
- **I have heard about a hearing officer model – how does that look?**
  - There will be a Hearing Officer who acts as the decision maker for all live hearings. The [hearing process](#) is available on the OEO website.
  
- **How do I get more information about reporting/process?**
  - Contact OEO for more information. We are happy to host a department training as well as individual conversations.
  - OEO will continue to update its website on the Title IX changes. The new [Discrimination Grievance Procedure](#) is also available on the OEO website.
  
- **What are live hearings, is it like a trial?**
  - The live hearing is an administrative hearing. Some aspects may feel quasi-judicial and that is because this is how the Department of Education has structured the grievance process we must follow.
  
- **Will this shorten the timeliness of the entire process?**
  - Yes, however there may be cases where the complexity requires more time than outlined in our [Discrimination Grievance Procedure \(DGP\)](#).

- **Is there an appeal process to this live hearing model? If so, what does that look like?**
  - Yes, the appeals process has not changed. You can appeal a dismissal and final outcome (decision and sanction) to the President and then the Board of Regents. The appeals process is unchanged.
  
- **If the hearings are different, could a person CHOOSE to have a 2720/SDP format hearing even if the complaint falls under the new Title IX definitions?**
  - No. If the complaint falls under Title IX jurisdiction then OEO must proceed under Title IX. The Department of Education does not allow choice in determining which policy can be applied. If it falls within Title IX's jurisdiction, then UNM must follow the procedural steps outlined by the Department of Education.
  
- **Are the sanctions for 2720/SDP versus Title IX violations different?**
  - No, the discipline would not be different based upon the policy that is violated.
  
- **What about US students who study abroad and are sexually harassed by another student from the University?**
  - OEO will continue to address sexually harassing behavior that occurs outside of the United States, it just will not be addressed under Title IX.
  
- **How does this change us employees as "responsible employees"?**
  - It does not. UNM's reporting policy has not changes as a result of the new Title IX regulations.
  
- **Can the advisor be a lawyer too?**
  - Yes, the advisor may be a lawyer. Each party must have an advisor of their choice. If a party does not have an advisor, UNM will provide one, free of charge.
  
- **Hello, my question, if I am understanding correctly. This makes it harder for complainants to report, meaning informal complaints will not be automatically investigated? and if a formal complaint is submitted it will go to a hearing?**
  - Informal complaints do not initiate an investigation; rather, OEO helps the complainant to obtain supportive measures and to know their options and rights. A formal complaint will result in an investigation of the alleged conduct. Formal complaints are likely to end in a live hearing so that a hearing officer may determine whether the conduct occurred.
  
- **Are witnesses also subject to cross-examination under the new Title IX rule?**
  - Yes. The Complainant, Respondent, and Witnesses are subject to cross-examination at the live hearing.
  
- **Regarding live hearings, are they saying that if a question is not answered none of the other responses will be considered?**
  - That is correct. If a party or witness does not answer a question, their statements must not be relied upon by the Hearing Officer in making a determination.

- **How is the hearing process different under 2720?**
  - The investigation and hearing process itself will be the same as the process under 2740. The differences will be in what is and is not allowed during the hearing. For example, in a 2720 hearing, the hearing officer may rely on prior statements if a party does not submit to cross examination.
  
- **Difference between Hearing Officer and Hearing Coordinator**
  - The Hearing Officer will be determining whether the Respondent violated University policy. The Hearing Coordinator will oversee all administrative duties, including, but not limited to, scheduling the hearing and reserving space, scheduling with parties and witnesses, ensuring parties and the Hearing Officer have all relevant documents prior to the hearing.
  
- **I assume that this information will be reflected in our annual training on Learning Central. Is that right?**
  - We are working on updating training material.
  
- **In regards to the change from or to and, how are they defining pervasive?**
  - The Title IX regulations do not change the definition of pervasive, which has historically been construed by courts to be conduct that is continuous enough to alter the affected party's working or learning environment.
  
- **Are there limitations to the kinds of questions that can be asked during cross examination in a Title IX hearing?**
  - Yes. The questions must be relevant, including those that challenge credibility. The Hearing Officer first decides if the question is appropriate before allowing the party/witness to answer the question.
  - There is also a rape shield protection for Complainants making questions and evidence about a Complainant's prior sexual behavior irrelevant unless offered to prove that someone other than the Respondent committed the alleged misconduct or offered to prove consent.
  
- **If there is a change of administration, how quickly can these regulations be undone?**
  - I am not sure. The Department of Education would have to go through the rule making process, including a comment period. The administration will also be battling a pandemic, which might require more immediate attention. I also doubt the regulations would be completely undone. Rather, there may be compromise between current and previous guidance.
  
- **In my office sometimes students disclose in a non-anonymous survey. We have to now reported to OEO. We don't have to do that now? Should an advocate then reach out to that student?**
  - This should still be reported to OEO. Your reporting obligations have not changed. OEO will continue to address sexual misconduct that falls outside of Title IX's new jurisdiction.

- **I am confused about changes, could you explain this that I read: In the past, these regulations have been guidelines, but are now legally enforceable.**
  - The Department of Education, instead of publishing guidance on how to respond to sexual harassment, has included the guidance into the law by enacting regulations. Prior to these recent changes, Title IX itself had not changed since 2001. The Dear Colleague Letters that were shared with schools in the past provided us with best practices and clarified the role of Title IX. This allowed institutions quite a bit of flexibility in how they responded to sex discrimination. The recent changes are focused, primarily, on how schools respond to sexual harassment. Now UNM must follow the strict and concerning process outlined by the Department of Education in addressing sexual harassment claims, rather than decide what is best for our Lobo Community.
  
- **But an informal resolution can only be pursued if a formal complaint is filed, correct?**
  - For Title IX purposes, yes.
  
- **Are UNM's Title IX investigation records subject to IPRA (and FOIA) and if so, to what extent?**
  - Yes, OEO's investigations, including Title IX investigations are subject to IPRA. The regulations have not changed this. It is the IPRA Office that determines what information is sent to the requesting party; however, they do protect student information in accordance with FERPA.

## Miscellaneous Section

- In the past what was reported to OEO was not distributed to other campus resources i.e respondent (perpetrator) records are in separate silos, hence there are pervasive examples that are not accessed.
- *The University did contribute to the NM Attorney General's lawsuit - which other states also participated in - that was filed in order to prevent the implementation of these regulations; however, last week, a federal court denied an injunction. Legal proceedings are ongoing.*
- *Thank you. I understand that these are laws. But the UNM community can still pressure her to disagree or point out the horrific deficiencies of these changes. I'm not talking about "not" following the law. Sure. Phone conversation or email for follow up discussion would be welcome.*

## Helpful Info/Links

- *Graduate Studies has an Ombudsman to provide ombuds services for graduate students - which is any assistantship recipient.. sorry, I meant which also includes any assistantship recipient*
- It might be useful to share the following information: Ombuds Services for Staff listens supportively and confidentially to Title IX concerns. We provide information about available resources. We do not provide advocacy, but we do offer workshops upon request on topics such as Supportive Listening Skills and Title IX Reporting. Ombuds Services serves UNM staff and faculty supervising staff. [ombudsforstaff.unm.edu](http://ombudsforstaff.unm.edu)
- OMBUDS does a great "reporting 101" training with helpful notecards for how to respond.
- Faculty SAFE: <https://facultysafeunm.wordpress.com/>
  - Liz Hutchison: [ehutch@unm.edu](mailto:ehutch@unm.edu) Stephen Bishop: [sbishop@unm.edu](mailto:sbishop@unm.edu)
- LoboRESPECT: <https://loborespect.unm.edu/support/support-a-survivor.html>