

Lower Brule Community College
Title IX Policies & Procedures
Addendum in Response to U.S. Department of Education Rule
August 14, 2020

POLICY STATEMENT

As a Tribally-controlled institution of higher education, the Lower Brule Community College an additional campus of Sinte Gleska University, seeks to create and support a positive educational environment through its academic programs, services, activities, policies and procedures aimed at providing protection against sex discrimination and harassment. LBCC condemns discrimination and harassment in its education programs and activities based on sex or gender, sexual orientation, gender identity or expression, sexual harassment, sexual violence, domestic violence, dating violence, and stalking.

INTRODUCTION

The Lower Brule Community College strives to maintain and enhance its ongoing commitment to the fair treatment of all individuals and to supporting survivors of sexual assault through this process. To accomplish this, the College has designated the following individual to oversee Title IX policies and procedures, including the 2020 U.S. Department of Education Rule on sexual harassment and misconduct at institutions of higher education:

Title IX Coordinator: Dr. Natalie Anderson
Lower Brule Community College
605-473-9232
natalieb@lowerbrulecc.org

This policy applies to students and staff (including faculty) engaged in activities of the Lower Brule Community College who have experienced violations by other students, staff (including faculty), and visitors to the campus. If a violation occurs by a visitor who is not an LBCC student or staff member, this will be referred to and handled by local authorities (e.g., the Lower Brule Sioux Tribal Police Department) and jurisdictions.

A copy of this policy and its procedures will be distributed and made available to all employees, applicants for admission and employment at the Lower Brule Sioux Tribe. The College will provide ongoing training for LBCC's Title IX personnel (Title IX coordinator, investigator, student advisors, and decision-makers) involved with this process.

BRIEF SUMMARY OF THE PROCESS

1. A formal complaint is initiated with the Title IX Coordinator or one of the following individuals:
 - a. Dr. Doris Stiles, Educational Consultant, (605) 222-8498, Doris.Stiles@hotmail.com
 - b. Cody Russell, College Board President, (605) 730-1469, codyrussell@lowerbrule.net
 - c. Cecelia Wright, Student Services, (605) 473-9232, ceceliacw@lowerbrulecc.org
 - d. Kari Gosmire, Education Specialist, (605) 999-6330, karig@lowerbrulecc.org
2. Investigation of a complaint will be handled by the Director of Student Services.
3. A live hearing will be conducted.

4. An appeal process will be carried out.

INFORMAL RESOLUTION

(non-sexual allegations/complaints)

The Lower Brule Community College may facilitate an informal resolution process for non-sexual complaints and for internal disputes involving students and staff (including faculty) based on Lakota cultural practice and ceremony for mediation. This would be offered if both parties give voluntary, informed written consent prior to the processing of a formal complaint. Four individuals including at least one Tribal spiritual leader/practitioner who would serve as advisors will preside over the informal resolution process.

- a. The Lower Brule Community College will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, the waiver of the right to an investigation and adjudication of formal complaints.
- b. The Lower Brule Community College will not require the parties to participate in informal resolution and may not offer informal resolution unless a formal complaint is filed.
- c. At any time prior to agreeing to a resolution, any party has the right to withdraw from informal resolution and resume the grievance process with respect to a formal complaint.
- d. The Lower Brule Community College will not offer or facilitate an informal resolution process on sex-based allegations involving students and staff (including faculty).

SEXUAL HARASSMENT

Sexual harassment is the unwelcomed sexual conduct that is so severe, pervasive, and objectively offensive that it limits an individual's ability to participate in programs or activities at the Lower Brule Community College. This unacceptable conduct includes sexual assault, domestic violence, dating violence, stalking, and non-violent sexual harassment involving a person(s) present in the United States. This policy applies if the conduct happens in the Lower Brule Community College's programs or activities at all locations and properties of the Lower Brule Community College associated as part of the postsecondary institution. This includes all events officially sponsored by the Lower Brule Community College and those circumstances by which the Lower Brule Community College exercises substantial control.

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (i) A College employee conditioning education benefits on participation in unwelcome sexual conduct (i.e., *quid pro quo*); or
- (ii) Unwelcome conduct that a reasonable person would determine is so severe, pervasive or objectively offensive that it effectively denies a person equal access to the College's education programs or activities; or
- (iii) Sexual assault (as defined in the Clery Act*), dating violence, domestic violence, or stalking (as defined in the Violence Against Women Act**). Where unwelcome sex-based conduct consists of speech or expressive conduct, the Lower Brule Community College will strive to balance Title IX enforcement with respect to free speech and academic freedom. First Amendment protections are applicable where students and staff (including faculty) are able to enjoy free speech and academic freedom even when speech or expression may be interpreted as offensive.

*Clery Act (P.L. 101-542 as amended) sexual assault definitions:

- a. Rape – The 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. (Note: The rape definition also includes crimes of sodomy and sexual assaults with an object).
- b. Fondling – The 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.
- c. Incest – Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- d. Statutory Rape – Non-forcible sexual intercourse with a person who is under the age of consent.

**Violence Against Women Act (P.L. 103-322 as amended) definitions:

- a. Domestic Violence – A felony or misdemeanor crime of violence committed
 - 1. By a current or former spouse or intimate partner of the victim;
 - 2. By a person with whom the victim shares a child in common;
 - 3. By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - 4. By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
 - 5. By any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- b. Dating Violence – Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such the relationship shall be determined based on the reporting party’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the person involved in the relationship.
 - 1. For 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.
- c. Stalking – Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her safety or the safety of others; or cause substantial emotional distress.

REPORTING

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment). Reporting can be done through in-person communications, by mail, by telephone, or by electronic mail (using the contact information listed by the Title IX Coordinator), or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report. Such a report can be made at any time including non-business hours by telephone, electronic mail, or mail to the office address listed for the Title IX Coordinator who can be reached 24 hours a day/7 days a week, at 605-222.8025. The Lower Brule Community College will respond promptly and no later than two (2) days after receiving a report.

Major Provisions:

- a. The Title IX Coordinator will promptly contact the complainant confidentially to a) discuss the availability of supportive measures, b) consider the complainant’s wishes with respect to supportive measures, c) inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and d) explain to the complainant the process for filing a formal complaint.

- b. The Lower Brule Community College will follow a grievance process that complies with the Final Rule before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent.
- c. The Lower Brule Community College will investigate sexual harassment allegations in any formal complaint which can be filed by a complainant, or an incident document signed by the Title IX Coordinator.
- d. The Lower Brule Community College affirms that a complainant's wishes with respect to whether the school investigates should be respected unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.
- e. If the allegations in a formal complaint do not meet the definition of sexual harassment, or did not occur in the Lower Brule Community College's education program or activity against a person in the United States, the College will dismiss such allegations for purposes of Title IX. However, the College may still address the allegations in any manner the College deems appropriate under the Lower Brule Community College code of conduct for students and personnel.

FORMAL COMPLAINT

The Complainant is an individual who is alleged to be the victim of conduct that could constitute sexual harassment. It is recognized there are legal right of parents and guardians to act on behalf of parties (including by filing formal complaints) in Title IX-related matters.

The Respondent is an individual who has been reported to be the perpetrator of conduct that could constitute violations, especially sexual harassment.

A Formal Complaint is a document filed by a complainant and signed by the Title IX Coordinator, alleging sexual harassment against a respondent and requesting that the Lower Brule Community College investigate the allegation of sexual harassment.

- a. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the Lower Brule Community College with which the formal complaint is filed.
- b. A formal complaint may be filed with the Title IX Coordinator in person, by mail or by electronic mail, by using the contact information that is listed for the Title IX Coordinator, and by any additional method the Lower Brule Community College designates.
- c. The phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the school) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.
- d. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party during a grievance process, and must comply with requirements for all Title IX personnel to be free from conflicts and bias. When a Title IX Coordinator signs a formal complaint, such action is not taken on behalf of a complainant, and the Title IX Coordinator does not become a party.
- e. The Lower Brule Community College recognizes and will treat a person as a complainant any time the Lower Brule Community College has notice that the person is alleged to be the victim of conduct that could constitute sexual harassment (regardless of whether the person themselves reported, or a third party reported the sexual harassment), and irrespective of whether the complainant ever chooses to file a formal complaint.
- f. There is no time limit or statute of limitations on a complainant's decision to file a formal complaint.

- g. It is recognized by the Lower Brule Community College that under certain circumstances, the Title IX Coordinator may not be able to respond promptly to a complaint due to circumstances including being on leave, out of the area, or a complaint being filed against the Title IX Coordinator, or the complainant being comfortable in reporting a complaint. In these situations, Director of Student Services will exercise the authority to comply with this policy on behalf of the Title IX Coordinator.

INVESTIGATIONS

The Lower Brule Community College recognizes that it must investigate the allegations in any formal complaint and disseminate written notice to both parties of the allegations upon receipt of a formal complaint. The College will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the school obtains that party's voluntary written consent to do so.

Major Provisions:

- a. The burden of gathering evidence and burden of proof remains with the Lower Brule Community College, not on the parties.
- b. The Lower Brule Community College will provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence.
- c. The Lower Brule Community College will not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., restriction by "gag orders").
- d. Parties must have the same opportunity to select an advisor of the party's choice who may be, but need not be, an attorney.
- e. The Lower Brule Community College will be responsible for disseminating written notice of any investigative interviews, meetings, or hearings.
- f. The Lower Brule Community College will disseminate to the parties, and their advisors, any evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the parties to inspect, review, and respond to this evidence.
- g. The Lower Brule Community College will disseminate to the parties, and their advisors, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for the parties to respond.
- h. The Lower Brule Community College will dismiss allegations of conduct that do not meet the definition of sexual harassment or did not occur in a school's education program or activity against a person in the U.S. Such dismissal is only for Title IX purposes and does not preclude the institution from addressing the conduct in any manner the College deems appropriate.
- i. The Lower Brule Community College may, at its discretion, dismiss a formal complaint or allegations therein if the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein, if the respondent is no longer enrolled or employed by the school, or if specific circumstances prevent the Lower Brule Community College from gathering sufficient evidence to reach a determination.
- j. The Lower Brule Community College will provide the parties with a written notice of a dismissal (mandatory or discretionary) and the reasons for the dismissal.
- k. The Lower Brule Community College may, at its discretion, consolidate formal complaints where the allegations arise out of the same facts.

HEARINGS

The Lower Brule Community College recognizes that a “live hearing with cross-examination” is required for postsecondary education institutions regarding sex-based complaints.

Major Provisions:

Four (4) individuals will be retained and be provided training/on-going training to act as “decision makers” and “advisors” in the event that one or both of the parties involved wish to have one appointed by the Lower Brule Community College.

The Title IX Coordinator will coordinate and manage the hearing process but will not be serving as an investigator, decision-maker or advisor.

- a. The Title IX Coordinator will assign one individual as the decision-maker.
- b. The Title IX Coordinator will assign, as requested an individual, to serve as an advisor without fee or charge to that party.
- c. An advisor of the College’s choice, who may be, but is not required to be an attorney, will be assigned to conduct cross-examination on behalf of that party.
- d. The remaining decision-maker/advisor will be present to serve as an alternate should an emergency come up and this individual would need to fill that role for the decision-maker or advisor(s).
- e. At the request of either party, the recipient must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party answering questions.
- f. At the live hearing, the decision-maker(s) must permit each party’s advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party’s advisor of choice and never by a party personally.
- g. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross examination or other question, the decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- h. If a party or witness does not submit to cross examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party’s or witness’s absence from the live hearing or refusal to answer cross-examination or other questions.
- i. Live hearings pursuant to this paragraph may be conducted with all parties physically present in the same geographic location or, at the school’s discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- j. The Lower Brule Community College will create an audio or audiovisual recording, or transcript, of any live hearing and make this available to the parties for inspection and review.
- k. Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.
- l. The Standards of Evidence used by the Lower Brule Community College must be clear and convincing for complaints against students and staff (including faculty).

- m. The Lower Brule Community College's grievance process will not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- n. The Lower Brule Community College presumes that the respondent is not responsible for the alleged conduct until a determination of the alleged violation is made at the conclusion of the grievance process.

Sanctions:

1. Charges are dismissed, no action required.
2. Suspension of a student or employee, and referral to appropriate authorities for sexual-related complaints.
3. Expulsion of an employee and referral to appropriate authorities for sexual-related complaints.
4. Expulsion of a student and referral to appropriate authorities for sexual-related complaints.

APPEALS

Either party may appeal the determination regarding responsibility of conduct and the College's dismissal of a formal complaint, or any allegations therein, on the following:

- a. Procedural irregularity that affected the outcome of the matter.
- b. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter.
- c. The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias that affected the outcome of the matter.

Appeals may be considered by the Lower Brule Community College Board of Directors to review the merits of the appeals. Decisions made by LBCC College Board are final.

RETALIATION

The Lower Brule Community College expressly prohibits retaliation against any individual for exercising Title IX rights based on federal civil rights laws as these relate to American and Tribal citizens. It is unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by these laws. This means that if an individual brings concerns about possible civil rights problems to a school's attention, including publicly opposing sexual harassment or filing a sexual harassment complaint with the school or any State or Federal agency, it is unlawful for the school to retaliate against that individual for doing so.

The Lower Brule Community College will take steps to prevent retaliation against a student who filed a complaint either on his or her own behalf or on behalf of another student, or against those who provided information as witnesses. These steps will also be taken for employees. Complaints of retaliation will follow the same process of review, investigation, hearing, and appeal.

Major Provisions:

- a. The Lower Brule Community College may not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing.

- b. Charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.
- c. Employees of the Lower Brule Community College must keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, or as required by law, or as necessary to carry out a Title IX proceeding. This confidentiality provision also applies to the social media policy of the College.
- d. Complaints alleging retaliation may be filed according to the grievance procedures adopted and published for sex discrimination and sexual harassment.
- e. The exercise of rights protected under the First Amendment does not constitute retaliation.
- f. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation; provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.

ASSISTANCE FOR VICTIMS OF SEXUAL ASSAULT

The Lower Brule Community College recommends that victims of sexual harassment and sexual assault seek appropriate counseling and treatment services. While the College does not have the certified professional staff to offer such services at this time, there are Tribal programs and local organizations that can be accessed:

Lower Brule Counseling Services (605) 473-8029

Project Safe (605) 730-1113 or (605) 208-0047

Indian Health Services (605) 473-5526