



Sexual Misconduct Policy

Approved March 21, 2019
to replace NMT Interim Sexual Misconduct Policy

Campus-wide Administrative Policy

**New Mexico Institution of Mining and Technology
Socorro, New Mexico 87801**

Responsible University Office:

Effective Date: 3/21/2019

- Office of the President

Date Revised:

Policy Owner(s):

- Vice President for Student and University Relations
- Title IX Coordinator
- Equal Employment Opportunity and Affirmative Action (EEOAA) Director

Policy contact(s):

- Title IX Coordinator

CONTENTS

- I. Policy Statement
- II. Terms
- III. Sexual Misconduct Violations
- IV. Sanctions
- V. Amnesty From Disciplinary Action
- VI. Jurisdiction
- VII. Confidentiality
- VIII. Rights of the Parties
- IX. Resources Following an Act of Sexual Harassment or Other Forms of Sexual Misconduct
- X. Interim Protective Measures
- XI. Investigations
- XII. Conduct Proceedings
- XIII. FERPA
- XIV. Timely Warning Alerts/Emergency Notification
- XV. Title IX Coordinator
- XVI. Providing False Information

REASON FOR POLICY

PROCEDURES

APPENDICES

FREQUENTLY ASKED QUESTIONS

CONTACTS



I. Policy Statements

- A. New Mexico Institute of Mining and Technology (New Mexico Tech or the “University”) is committed to a healthy and safe learning, living, and working environment which promotes responsibility, dignity, and respect for all persons. New Mexico Tech prohibits all forms of discrimination, however this policy specifically relates to discrimination on the basis of sex (including gender, sex stereotyping, gender expression, and gender identity). Sexual harassment, which includes acts of sexual violence, is a form of sex discrimination. Sex discrimination is a violation of Title VII of the Civil Rights Act of 1964; Title IX of the Educational Amendments of 1972; and the New Mexico Human Rights Act, NMSA 1978, Sections 28-1-1 to 28-1-7, 28-1-7.2, 28-1-9 to 28-1-14. Sexual harassment, sexual violence/assault, intimate partner violence, stalking, and all forms of sex/gender-based discrimination as defined below in Sections III. are strictly prohibited and will not be tolerated.
- B. In this policy and its associated procedures, the University utilizes the term sexual misconduct to collectively apply to all forms of sexual harassment, sexual assault, sexual violence, intimate partner violence, stalking, and any Title IX offenses, as well as the other terms and violations defined below in Section III.
- C. All University members are prohibited from engaging in, or assisting or abetting another’s engagement in sexual misconduct, intimate partner violence, stalking, and related retaliation (collectively “prohibited conduct”).
- D. This policy applies to University members, who include:
 - 1. University students, whether enrolled full time or part time, for credit or non-credit courses;
 - 2. University employees and
 - 3. third parties who are engaged in any University activity or program, or who are otherwise interacting with the University, including, but not limited to, volunteers, contractors, vendors, visitors, and guests.
- E. This policy applies to all forms of gender-based discrimination/sexual misconduct as well as stalking, intimate partner violence, and related retaliation committed by or against students, employees, and third parties when:
 - 1. the conduct occurs on University property;
 - 2. the conduct occurs in the context of a University employment or an education program or activity, including, but not limited to, University-sponsored academic, extracurricular (e.g. athletics/club sports), study abroad, research, on-line or internship programs or activities;
 - 3. the conduct occurs off University property and outside the context of a University employment or education program or activity, but has a continuing adverse effect on or creates a hostile environment for students, employees, or third parties while on University property or in any University employment or education program or activity; or
 - 4. the conduct indicates that the respondent (accused) may present a danger or threat to the health or safety of University members.
- F. This policy is applicable regardless of the sexual orientation and/or gender identity of individuals engaging in sexual activity.
- G. This policy also includes information for students and employees on resources available following an act of sexual misconduct, New Mexico Tech responses, prevention and interim measures, the disciplinary process, possible disciplinary sanctions, and the University’s requirement to collect and report general associate statistics in accordance to the Clery Act. Any

individual who believes that they have been subjected to sexual misconduct or gender-based discrimination, is strongly encouraged to report the incident(s) to the police department; victim survivor assistance; and/or internally with New Mexico Tech. New Mexico Tech officials can help stop the unwelcome behavior, remedy/resolve the situation with discipline, preventative, and interim measures, and recommend other related support services.

- H. University employees must report incidents of assault or abuse of a child (i.e. under age 18) that they know about or have reason to believe is occurring or occurred to the police. Those incidents that occurred on University property or at University-sponsored activities must be reported to the Title IX Coordinator and the New Mexico Tech Campus Police.
- I. Almost all New Mexico Tech employees have been designated “Responsible Employees” as defined by the U.S. Department of Education’s Office of Civil Rights. These responsible employees (University administrators, supervisors, faculty, teaching assistants, and other professional staff, including resident assistants) are therefore obligated to report any known or perceived sexual misconduct or sexual/gender-based discrimination to our designated [Title IX Coordinator](#) even if little information is known (see FREQUENTLY ASKED QUESTIONS section for more details). To the extent possible, information reported to a responsible employee will be communicated with the Title IX Coordinator within 24-hours. These responsible employees and the Title IX Coordinator will not share personally identifiable information with New Mexico Tech Campus Police or other law enforcement without the victim’s consent or unless the victim has also reported the incident to law enforcement. Supervisors and Human Resources representatives must report sexual harassment or other forms of sexual misconduct directed at University employees or third parties to the campus Title IX office.

Other University employees are encouraged to report sexual harassment directed at University employees or third parties to the campus Title IX office, or their supervisor or a Human Resources representative. However, this reporting is not required.

- J. The New Mexico Tech campus has counseling and medical staff (see Section IX.A. below) who can maintain confidentiality except in incidents involving minors. In addition to providing needed care, these confidential employees can review options with the victim/survivor (i.e. complainants) regarding their rights, support mechanisms, accommodations/ interim protective measures, and legal and campus disciplinary steps.
- K. Concurrently, the University complies with all related local, state, and federal laws including the Campus Sexual Violence Elimination Act (“Campus SaVE Act”) amending the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”), which is a federal law that requires colleges and universities to have procedures in place to respond to incidents. As mentioned above, New Mexico Tech also complies with Title IX of the Education Amendments of 1972 (Title IX), which is a federal civil rights law that prohibits discrimination on the basis of sex (including gender, sex stereotyping, and gender identity) in federally funded education programs and activities. Sexual harassment, sexual assault, and intimate partner violence are forms of sex and gender-based discrimination prohibited by Title IX and New Mexico Tech.
- L. It is a violation of Title IX and University policy to retaliate against any person who makes a complaint or report of sexual misconduct or testifies, assists, or participates in an investigation or proceeding regarding an allegation of sexual violence or sexual misconduct. Concerns that a student or employee has threatened to retaliate or has retaliated against another student or employee should be reported promptly to the Title IX Coordinator or Affirmative Action/Equal Employment Opportunity Commission (AA/EEOC) director. An employee or student who

retaliates against a person who makes a complaint of sexual misconduct, testifies, assists, or participates in an investigation or proceeding regarding an allegation of sexual misconduct, or seeks assistance from the Title IX Coordinator or AA/EEOC director may be subject to disciplinary action. Reports of retaliation will be reviewed and investigated in the same manner in which other allegations of misconduct are handled.

- M. New Mexico Tech is dedicated to preventing and resolving sexual misconduct and Title IX offenses by providing:
1. Awareness and prevention programming
 2. Assistance and support for students and employees affected by violence and other forms of discrimination or harm.
 3. Prompt attention so complaints of sexual harassment, sexual misconduct, and any form of discrimination will be taken seriously and dealt with promptly and equitably.
 4. Processes for reliable and impartial investigation and adjudication that includes appropriate disciplinary sanctions for those who commit Title IX offenses or sexual misconduct, including limiting access to campus facilities, suspension, and dismissal.
 5. Support and guidance from the campus Title IX Coordinator who can also be a resource to help students and/or employees better understand complainant rights and respondent rights.
 6. Where offenses are found to have occurred, New Mexico Tech will act to stop the reported conduct, prevent its reoccurrence, remedy its effects, and discipline those found responsible.
- N. Use of alcohol or other drugs will never function to excuse any behavior that violates this policy.

II. Terms (Alphabetized)

A. Affirmative Consent: *Affirmative consent* is affirmative, informed, and conscious decision to willingly engage in mutually acceptable sexual activity. Consent requires a clear affirmative act or statement by each participant to each sexual act in a sexual interaction. Consent demonstrates that the conduct in question is welcome or wanted. Relying solely on non-verbal communication can lead to miscommunication about one's intent. Confusion or ambiguity may arise at any time during a sexual interaction. Therefore, it is essential that each participant makes clear his or her willingness to continue at each progression of the sexual interaction. This definition of consent does not vary based upon an individual's sex, sexual orientation, gender identity, or gender expression.

The following factors will be considered when determining whether affirmative consent was given.

1. Each individual who wishes to engage in sexual contact is responsible for obtaining consent from the other individual or individuals who intend to be involved in the sexual contact.
2. A lack of protest, the absence of resistance, and silence do not by themselves indicate consent.
3. The existence of a present or past sexual, dating, or other romantic relationship between the individuals involved does not by itself imply consent to sexual contact.
4. Consent must be present throughout the sexual contact and may be given and withdrawn at any time.
5. When consent is withdrawn, all sexual contact must stop. Where there is confusion about the state of consent, sexual contact must stop until the individuals have verified the affirmative consent of all individuals involved.
6. Consent to one form of sexual contact does not by itself constitute consent to another form of sexual contact.

Consent is not obtained where:

1. An individual is compelled to engage in unwanted sexual contact through the use of coercion. Coercion may consist of physical force, intimidation, threats, or severe or persistent pressure that would reasonably cause an individual to fear significant consequences if they refuse to engage in sexual contact.
2. An individual involved in sexual contact is incapacitated due to the influence of drugs or alcohol, and a reasonable person would know of this incapacitation. Incapacitation due to the influence of drugs or alcohol is a state beyond mere intoxication or impaired judgment. Some indicators of incapacitation due to the influence of drugs or alcohol may include:
 - a. A lack of control over one's physical movement (for example, an inability to walk or stand without stumbling or assistance).
 - b. An inability to effectively communicate (for example, where one's speech is heavily slurred, incomprehensible, or nonsensical).
 - c. A lack of awareness of one's circumstances or surroundings (for example, a lack of awareness of where one is, how one got there, who one is with, and how or why one became engaged in sexual contact).

Intoxication alone, however, does not mean a person is incapable of consenting to sexual activity. The University examines the record for other behavior like stumbling or otherwise exhibiting loss of equilibrium; slurred speech or word confusion; bloodshot, glassy or unfocused eyes; vomiting, especially repeatedly; being disoriented, or confused as to time or place; or loss of consciousness. Should the evidence in the record demonstrate that one or more such behaviors were objectively apparent at the time the alleged unconsented-to or unwelcomed sexual activity occurred, then the evidence may demonstrate that the respondent knew or should have known that the complainant was incapable of giving meaningful consent to sexual activity due to incapacitation (e.g. intoxication). If the person initiating the sexual activity is also under the influence of alcohol or drugs, that does not diminish their responsibility to obtain affirmative consent, and is not a defense to charges of violation of this policy. Because it may be difficult to discern whether a sexual partner is incapacitated, it is better to err on the side of caution and assume that your partner is incapacitated and unable to give consent to the sexual activity.

3. An individual involved in sexual contact is unable to communicate or understand the nature or extent of the sexual situation because of a physical or mental condition.
4. An individual involved in sexual contact is asleep, unconscious or involuntarily physically restrained.
5. An individual involved in sexual contact is not of legal age to give consent pursuant to New Mexico state law.

Please note, under state law children who are less than 13 years of age are incapable of consent under all circumstances. Sexual activities with someone who is at least 13 years of age and less than 16 years of age are only legal if the defendant is less than 18 years of age and less than 4 years older than the victim.

*See Appendices: [Determining Consent](#) for further guidance.

- B. Complainant:** *Complainant* shall mean the individual who was allegedly subjected to the sexual misconduct. Throughout this policy, its related documents, and in other New Mexico Tech policies, the complainant may be referred to as the reporting party or impacted individual. Some advocates and other entities may also refer to the complainant as the victim or survivor.
- C. Incapacitation:** *Incapacitation* is the physical and/or mental inability to make informed rational judgments. States of incapacitation include, without limitation, sleep, blackouts, and flashbacks. Where an intoxicant is involved, incapacitation is a state of intoxication where the intoxicant

consumed impairs a person's decision-making capacity, awareness of consequences, and ability to make fully informed judgments.

- D. Intimate Partner Violence:** *Intimate Partner Violence* shall mean the University's term that encompasses relationship violence, domestic violence, domestic abuse, and date violence that includes physical, sexual, or psychological harm as defined below in Sections III. below, as well as under the Student Code of Conduct within [Student Handbook](#) and [Employee Handbook](#).
- E. Prohibited Conduct:** *Prohibited Conduct* is the collective term utilized by the University referring to behaviors that all University employees and students are prohibited from engaging in, or assisting or abetting another's engagement in, such as sexual misconduct, intimate partner violence, stalking, harassment, discrimination, and related retaliation.
- F. Respondent:** *Respondent* shall mean the individual reported to have allegedly committed the sexual violence or sexual misconduct. Throughout this policy, its related documents, and in other New Mexico Tech policies, the respondent may also be referred to as the accused or perpetrator.
- G. Retaliation:** *Retaliation* is any form of intimidation, reprisal or harassment against an individual because the individual has made a report of sexual misconduct or has participated in an investigation of sexual misconduct by or of an University community member including:
1. firing, refusing to hire, or refusing to promote the individual;
 2. departing from any customary employment or academic practice regarding the individual;
 3. transferring or assigning the individual to a lesser position in terms of wages, hours, job classification, job security, employment or academic status;
 4. informing another student, staff or faculty member who does not have a need to know that the individual has made a complaint or participated in an investigation of a complaint of sexual misconduct; and
 5. impeding the individual's academic advancement in any University activity or program.
- In order for a behavior to be retaliation, the negative action must have been taken because of the report or participation in the investigation.
- H. Sexual Misconduct:** *Sexual misconduct* shall mean the University's comprehensive term for any form of sexual harassment, sexual violence/assault, stalking, and intimate partner violence as defined in this section and violations outlined in Section IV. below. This can be any Title IX offense or any other conduct of a sexual nature that is nonconsensual, or has the purpose or effect of threatening, intimidating, or coercing a person. It can also be actual, attempted or threatened sexual contact with another person without that person's consent.
- I. Standard of Evidence:** *Standard of evidence* is the degree of certainty required to establish a violation has occurred. New Mexico Tech utilizes the clear and convincing standard of evidence for resolving complaints under this policy. In the clear and convincing evidence standard the degree of certainty is that it is substantially more likely to be true than untrue; highly probable. This is a more stringent standard than a preponderance of the evidences standard but less stringent than a beyond a reasonable doubt standards.
- J. Title IX:** *Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 et. Seq., with implementing regulations, 34 C.F.R. Part 10*, is a comprehensive federal law that prohibits discrimination on the basis of sex in any federally funded education program or activity. Sexual harassment, sexual assault and other forms of sexual misconduct are considered sexual discrimination under federal law, all of which interfere with a student's right to receive an education free from discrimination or an employee's right to a discrimination-free work environment. According to 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.”

- K. University Property:** *University property* shall mean all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the University, either solely or in conjunction with another entity.
- L. University-Sponsored Activities:** *University-sponsored activities* shall mean any program or event sponsored by the University, including but not limited to those sponsored by student groups.

III. Sexual Misconduct Violations (but not limited to):

- A. Dating violence:** under New Mexico’s Crimes Against Household Members Act, someone with whom a person has a dating or intimate relationship is considered to be a household member. Any of the felony and misdemeanor crimes enumerated as domestic violence in the Crimes Against Household Members Act are also crimes when committed against someone with whom the offender has a dating or intimate relationship. Under the Violence Against Women Act of 2013 (42 USC § 13925) dating violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
 1. The length of the relationship.
 2. The type of relationship.
 3. The frequency of interaction between the persons involved in the relationship.
- B. Domestic abuse:** under the Family Violence Protection Act, “domestic abuse” is defined as “an incident of stalking or sexual assault whether committed by a household member or not” resulting in physical harm, severe emotional distress, bodily injury or assault, a threat causing imminent fear or bodily injury by any household member, criminal trespass, criminal damage to property, repeatedly driving by a residence or work place, telephone harassment, harassment, or harm or threatened harm to children. Under the Family Violence Protection Act, “household members” include a spouse, former spouse, parent, present or former stepparent, present or former parent-in-law, grandparent, grandparent-in-law, child, stepchild, grandchild, co-parent of a child, or a person with whom the petitioner has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member under the Act. Violation of any provision of an order of protection issued under the Family Violence Protection Act is a misdemeanor crime and constitutes contempt of court and may result in a fine or imprisonment or both.
- C. Domestic violence:** under state law, domestic violence is defined as felony and misdemeanor crimes under the New Mexico Crimes Against Household Members Act. Crimes included under the New Mexico Crimes Against Household Members Act are assault, aggravated assault, assault with intent to commit a violent felony, battery, and aggravated battery. A “household member” is a spouse, former spouse, parent, present or former stepparent, present or former parent-in-law, grandparent, grandparent-in-law, a co-parent of a child, or person with whom someone has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member. In addition, under the New Mexico Family Violence Protection Act, violation of a court-issued order of protection granted to protect an individual who has experienced sexual violence or misconduct or domestic abuse is a misdemeanor crime.

- D. Intimate partner violence:** is the general term the University will utilize to encompass domestic violence, domestic abuse, and dating violence that includes physical, sexual, or psychological harm (e.g. emotional abuse) as defined above.
- E. Non-consensual oral sex:** non-consensual contact between one person's mouth and the genitals or anus of another person.
- F. Rape:** non-consensual sexual intercourse (either vaginal or anal) with a penis, vagina, tongue, finger, or any object.
- G. Sexual assault*:** actual or attempted sexual contact without affirmative consent; or a threat to engage in contact that would be, if the threat were carried out, sexual contact without affirmative consent.

Some forms of sexual assault include:

1. Penetration of the victim's body, also known as rape
2. Attempted rape
3. Forcing a victim to perform sexual acts, such as oral sex or penetrating the perpetrator's body
4. Fondling or unwanted sexual touching

* Source: The Rape Abuse and Incest National Network (RAINN)

- H. Sexual contact/battery:** non-consensual touching, kissing, or fondling of another person in a sexual way, whether the person is clothed or unclothed; or forcing someone to touch another in a sexual way.
- I. Sexual exploitation:** taking sexual advantage of another person without consent, including, without limitation, indecent exposure; voyeurism; non-consensual recording, photographing, or transmitting identifiable images of private sexual activity and/or the intimate parts of another person; and/or allowing third parties to observe private sexual acts. The use of technology, electronic mail or computer dissemination of gender-based communications or sexually explicit images; and the posting of pornography or other sexually explicit materials in University offices, classrooms or any other public area owned or controlled by the University.
- J. Sexual harassment:** Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment covered by this policy generally falls into one of two categories: quid pro quo and hostile environment. Conduct of a sexual nature becomes a violation of this policy when:
 1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic advancement (**quid pro quo**);
 2. submission to or rejection of such conduct by an individual is used as the basis for employment decisions or academic decisions affecting such individual (**quid pro quo**); or
 3. unwanted conduct of a sexual nature is sufficiently serious (i.e., severe, pervasive, or persistent) and objectively offensive as to deny or limit a person's ability to participate in or benefit from the University's programs, services, opportunities, or activities; or when such conduct has the purpose or effect of unreasonably interfering with an individual's employment (**hostile environment**).

Mere offensiveness is not enough to create a hostile environment. Although repeated incidents increase the likelihood that harassment has created a hostile environment, a serious incident such as a sexual assault, even if isolated, can be sufficient.

In determining whether harassment has created a hostile environment, consideration will be made not only as to whether the conduct was unwelcome to the person who feels harassed, but also whether a reasonable person in a similar situation would have perceived the conduct as objectively offensive. Also, the following factors will be considered:

1. The degree to which the conduct affected one or more student's education or individual's employment.
2. The nature, scope, frequency, duration, and location of incident or incidents.
3. The identity, number, and relationships of persons involved.
4. The nature of higher education, such as inherent power differentials.

Listed below are behaviors that may constitute sexual harassment (either quid pro quo or hostile environment sexual harassment, as defined above), depending on the particular circumstances of the situation:

1. Suggestive or obscene letters, notes, invitations
2. Electronic communications, such as e-mail, text messaging, and Internet or network use, that are sexual in nature
3. Unwelcome sexual jokes or comments (including favorable comments about someone's gender, body, or appearance)
4. Impeding or blocking movements, touching, or any physical interference or stalking
5. Sexually oriented gestures; or displaying sexually suggestive or derogatory objects, pictures, cartoons, or posters
6. Threats or insinuations that refusal to provide sexual favors will result in reprisals; withholding support for appointments, recommendations, promotions, or transfers; or change of assignments or poor performance reviews or grades
7. Sexual or gender-based violence, including, but not limited to, rape, sexual assault, sexual battery, and sexual coercion

While sexual harassment often takes place under circumstances where a power differential between the persons involved exists, this policy recognizes that sexual harassment also may occur between persons of the same University status: student-student, faculty-faculty, and staff-staff, or between peers. Additionally, the prohibition against sexual harassment applies regardless of the genders of the parties. Sometimes harassers target a person who has authority over them. Harassers can also be persons who are not members of the University community, such as contractors or visitors. Regardless of the source, the University does not tolerate this kind of behavior and the University is committed to maintaining an environment free from sexual harassment.

Sexual harassment is especially serious when it threatens relationships between students and teachers, or relationships between supervisors and their subordinates. Through grades, wage increases, recommendations for graduate study, promotion, and the like, a teacher or supervisor can have a decisive influence on a student's or employee's success and future career at the University and beyond.

The University prohibits all forms of sexual or gender-based harassment, including sexual violence and other forms of sexual misconduct.

- K. Sexual violence:** refers to physical sexual acts perpetrated with force or coercion against a person's will; or where a person has not given consent as defined in this policy or is unable to consent due to their use of alcohol or drugs, or disability, or age.
- L. Stalking:** is a course of conduct directed at a specific person that is unwanted, unwelcome, or unreciprocated and that would cause a reasonable person to feel fear. This can be in a physical form or electronically. Under New Mexico law, "stalking" is defined as knowingly pursuing a pattern of conduct, without lawful authority, directed at a specific individual when the person intends that the pattern of conduct would place the individual in reasonable apprehension of

death, bodily harm, sexual assault, or restraint of the individual or another individual. “Aggravated stalking” consists of stalking perpetrated by a person who knowingly violates a court order, including an order of protection, or when the person possesses a deadly weapon or when the victim is under sixteen years of age.

IV. Sanctions

The following sanctions may be imposed upon any member of the community found to have violated this Sexual Misconduct Policy. Factors considered in sanctioning are defined in [New Mexico Tech’s Academic Honesty Policy and Guide to Conduct and Citizenship for Student](#) found in the [Student Handbook](#) and [Employee Handbook](#). The following are the typical sanctions that may be imposed upon campus community members, singly or in combination:

A. Student Sanctions (listed below and defined in [the Student Code](#))

1. Warning
2. Probation
3. Suspension
4. Expulsion
5. Withholding Diploma or Degree
6. Revocation of Admission or Degree
7. Transcript Notation
8. Organizational Sanctions
9. Other actions as outlined in Section V. of the Student Code of Conduct.

B. Employee Sanctions (listed below and defined in [Employee Handbook](#))

1. Warning – Written or Verbal
2. Performance Improvement Plan
3. Required Counseling
4. Required Training or Education
5. Demotion
6. Loss of Annual Pay Increase
7. Suspension without Pay
8. Suspension with Pay
9. Revocation of Tenure
10. Termination

There are many factors considered when determining appropriate sanctions. NEW MEXICO TECH utilized [Sanctioning Guidelines for Sexual Misconduct/Title IX Violations](#) when establishing student sanctions.

V. Jurisdiction

- A. The Dean of Students Office (DOSO), Office of Graduate Studies (OGS), and AA/EEOC are not law enforcement agencies. As such, while they are charged with investigating allegations of sexual violence and misconduct as provided in this policy, they do not enforce criminal statutes. Enforcement of criminal statutes is the sole jurisdiction of law enforcement agencies. Similarly, while they generally have jurisdiction to administratively investigate claims of sexual misconduct, depending on the allegations made, the DOSO, OGS, and AA/EEOC may not have jurisdiction to investigate all alleged sexual misconduct. The information received from an

individual reporter/s or complainant/s will be reviewed and a determination will be made as to whether the DOSO, OGS or AA/EEOC has jurisdiction over the concerns.

- B. Conduct occurring off-campus can be the subject of a complaint or report and will be evaluated to determine whether it implicates this policy or the [Student Code of Conduct](#). If off-campus sexual misconduct has continuing effects that create a hostile environment on campus for an individual who has experienced sexual misconduct, the University may take interim measures and depending on the circumstances, will investigate the conduct.

VI. Amnesty From Disciplinary Action

One of New Mexico Tech's primary concerns is the safety of its students and employees. To facilitate reports and thorough investigations of prohibited conduct or sexual misconduct, individuals who report information about possible sexual misconduct violations to the University, and individuals who participate in an investigation under this policy, will not be disciplined by the University for violations of its drug and alcohol policies that occurred in connection with the reported prohibited conduct and were discovered as a result of a prohibited conduct report or investigation. This amnesty provision applies to complainants, respondents, and other individuals who participate in an investigation under this policy. However, this amnesty provision does not apply to a person who has given another person alcohol or drugs without their knowledge and with the intent of causing them to become incapacitated and therefore vulnerable to experiencing prohibited conduct.

Moreover, the University may offer leniency with respect to other violations that emerge as a result of a prohibited conduct report or investigation, depending on the circumstances involved.

However, students and employees should understand that any violation of state or federal criminal law involving the use or possession of alcohol or illegal drugs may result in prosecution, and New Mexico Tech cannot grant amnesty from proceedings in the criminal justice system. Decisions about prosecution are made by the District Attorney's Office in the state criminal justice system and by the U.S. Attorney's Office in the federal criminal justice system.

VII. Privacy and Confidentiality

The University is committed to protecting the privacy of all individuals involved in the investigation and resolution of a report under this policy to the greatest extent possible. The University will maintain the privacy of student records in accordance with applicable state and federal law, including the Family Educational Rights and Privacy Act (FERPA). The University will maintain the privacy of employee records in accordance with applicable state and federal law. In accordance with these legal requirements, the University will make reasonable efforts to protect the privacy of individuals while also fulfilling the need to gather information to assess the report, to take steps to eliminate prohibited conduct, prevent its recurrence, and remedy its effects, and to satisfy the due process rights of the parties.

The University has a compelling interest in protecting the integrity of its investigations, protecting the privacy of parties and witnesses, and protecting parties and witnesses from harassment, intimidation, or retaliation as a result of their participation in an investigation. To further these goals, witnesses and parties are asked to keep confidential the information that they learn about an investigation (including the allegations, the identities of the parties, witnesses and the questions asked in interviews). In particular, witnesses and parties are advised not to discuss the investigation or allegations with anyone who they believe could be a witness.

In some circumstances, the University may find it necessary to require that parties and witnesses keep confidential all information related to the investigation to prevent harm to individuals or the work or academic environment. For example, University members may be required to maintain confidentiality to protect University members from harassment, intimidation, and retaliation; to keep evidence from being destroyed; to ensure that testimony is not fabricated or contaminated by others; to prevent a cover-up; or to prevent serious disruption of the work environment.

On the New Mexico Tech campus, the University's Student Health Center and Counseling & Disabilities Office in the Fidel Center are the only locations on campus where disclosures of sexual misconduct may be made confidentially. A victim can seek assistance and support from the medical personnel and support staff in the Student Health Center without triggering a University investigation. Individuals working or volunteering in those offices can confide in the Title IX Coordinator without revealing any personally identifiable information regarding the incident. New Mexico Tech's Employee Assistance Program (EAP) can also provide confidential resources to New Mexico Tech employees. Individuals can change their minds and make a report to the Title IX Coordinator or law enforcement at any time.

VIII. Rights of the Parties

- A. During the investigation following a report of sexual misconduct to New Mexico Tech, and prior to a final determination being made, the reporting party ("[complainant](#)") and responding party ("[respondent](#)") have equal rights. Below is a sample of the rights to which both parties are entitled:
1. To be treated with respect, dignity, and sensitivity throughout the process.
 2. To written notification about their right to change academic, living, transportation, or work situations even if they do not formally report or participate in the University's investigatory or disciplinary process.
 3. To written notification of a student or employee's rights and options, regardless of whether the crime took place on campus or off campus.
 4. To be provided information on how the University will protect the confidentiality of the parties.
 5. To notification of available services for mental health/counseling, advocacy, legal assistance, and other available community resources.
 6. To be informed of the University's sexual misconduct policies and procedures.
 7. To a timely and thorough investigation of the allegations.
 8. To participate or decline to participate in the investigation or disciplinary process. However, these processes may still occur and decisions made based on the information available.
 9. To the opportunity to have one (1) advisor/advocate present at any meeting or hearing with University officials for support and/or consultation.
 10. To the opportunity to be present and have others (e.g. witnesses) provide evidence about alleged violations in disciplinary proceedings (informal or formal).
 11. To be notified, in writing of the outcome of any investigative, disciplinary, or appeals proceeding (both parties are free to share the outcome with anyone they wish).
 12. To disagree with the decision and/or sanctions determined by the informal/investigative proceedings.
 13. To request an appeal of the decision and/or sanctions determined by the formal disciplinary proceedings.

14. To be protected from retaliation for their involvement in University's investigatory and disciplinary proceedings.
 15. To information on obtaining orders of protection and no contact orders.
- B. Respondents are only required to meet with the campus authority (e.g. Title IX office, AA/EEOC) to hear the allegations and learn about the prohibited conduct investigative and adjudicative processes.
1. Student Respondents who fail to attend this initial meeting with the campus authority in sexual misconduct cases will have a hold placed on their student account and in some situations will also receive an Interim Suspension until the time of the initial meeting occurs.
 2. Respondents are not required to respond to the allegations or provide other information to the campus Title IX office.
 3. However, if the respondent does not provide information, the investigation will proceed based on the information available.
- C. Individuals experiencing sexual or gender-based harassment or discrimination also have the right to file a formal grievance with government authorities:

U.S. Department of Education Office for Civil Rights
 Denver Office for Civil Rights, U.S. Department of Education
 Cesar E. Chavez Memorial Building
 1244 Speer Boulevard, Suite 310
 Denver, CO 80204-3582
 Telephone: (303) 844-5695
 FAX: (303) 844-4303; TDD: (800) 877-8339
 Email: OCR.Denver@ed.gov

- D. Victims, complainants, or reporters of sexual misconduct should review “New Mexico Tech’s Procedures to Follow if You are a Victim or Complainant of Sexual Harassment or Another Forms of Sexual Misconduct” in the Procedures Section of this policy.
- E. Respondents or the accused should review “New Mexico Tech’s Procedures to Follow if You are the Respondent or Accused of Committing Sexual Harassment or Another Form of Sexual Misconduct” in the Procedures Section of this policy.

IX. Resources Following an Act of Sexual Harassment or Other Forms of Sexual Misconduct

While the University encourages an individual who has experienced sexual misconduct to make an official report, whether the person chooses to do so, they are urged to seek appropriate help. There are numerous resources for students and employees on campus at New Mexico Tech or externally in the community or region. Specific resources, either on or off campus for medical treatment, legal evidence collection, obtaining information, support, counseling, and officially reporting an incident of sexual misconduct can be found on [New Mexico Tech’s Title IX website](#) from the Title IX office, Counseling office and Health Center.

Those resources can assist a person to access the full range of services available. Students and employees accused (respondent) of committing an act of sexual misconduct may obtain confidential and anonymous support and counseling at New Mexico Tech’s Counseling & Disabilities Office in the Fidel

Center. Employees can receive support and advice from the Office of Human Resources or Office of AA/EEOC.

X. Interim Protective Measures

The Vice President of Student and University Relations office or designee has the authority to implement interim measures which stay in place until the end of any review or appeal process. The Vice President of Student and University Relations office can impose a “no contact” order, which typically directs the complainant and respondent not to have contact with each other, either in-person or through electronic communication, pending the investigation and resolution of a complaint. The Vice President of Student and University Relations office can work collaboratively with the Academic Affairs office and the Office of the Registrar to arrange for changes in academic and/or on-campus living situations, as needed. Other interim measures, as appropriate, can be implemented by the Vice President of Student and University Relations office before the final outcome of the investigation and afterwards as needed. Employee complainants are encouraged to communicate with their supervisor, the Office of Human Resources, and AA/EEOC, for interim preventative measures as needed.

XI. Investigations

The University will not officially conduct an investigation without first informing the complainant to get consent, however there are some cases where the University will investigate related tips while maintaining your confidentiality. A support person may be present (e.g. advisor, advocate, parent, attorney, etc.) during any questioning related to this incident. The University will follow the direction of law enforcement authorities in obtaining, securing, and maintaining evidence relating to the sexual misconduct incident. University authorities will also assist in preserving materials which are relevant to a University disciplinary proceeding. The University will not wait for the conclusion of a criminal investigation before beginning a Title IX investigation. More details regarding the investigative process can be found in the URLs below in the PROCEDURE section of this policy.

XII. Conduct Proceedings

New Mexico Tech’s conduct procedures for resolving allegation of sexual misconduct against students is slightly different from those used to for employees. In these University conduct proceedings, both parties are allowed a support person present, such as an advisor, advocate or an attorney. The University utilizes the clear and convincing as the evidentiary standard for resolving a complaint of this policy. The due process followed by New Mexico Tech allows for an informal proceeding, a formal hearing, and an appeal process, if needed. The standard procedures are impartial and provide the opportunity for both the complainant and respondent to make statements, present witnesses, and evidence. Each party has the right to be notified of the outcome of any University disciplinary or conduct proceeding concerning a complaint, subject to the limitations of the New Mexico Government Data Practices Act, as well as be informed of any appeal procedures. Both parties have the right to disagree with the informal proceedings and request a formal hearing, and request an appeal of the formal hearing’s decision regarding the violation and/or any associated sanctions. Any other potential violation of the University’s Student Code of Conduct or Employee Handbook will be addressed separately from the sexual misconduct allegation.

XIII. FERPA

The Family Educational Rights and Privacy Act (FERPA) protect students' educational records, including reports made to the Title IX Coordinator and disciplinary complaints. FERPA prohibits the University from releasing these records to persons outside the institution without the student's consent except in response to a lawful subpoena or other special circumstances as required by law. As required by law and in compliance with the Department of Education, New Mexico Tech will notify both the complainant and respondent of sexual misconduct cases of University disciplinary proceedings and any sanctions imposed to either party. Details of some sanctions (e.g. private mature) may not be completely disclosed.

XIV. Timely Warning Alerts/Emergency Notification

If a report of a sexual misconduct or Title IX offense reveals there is an immediate threat to the health or safety of students or employees on campus or that an on-going serious or continuing threat to the campus community exists, an Emergency Notification or a Timely Warning will be issued. The purpose of a Timely Warning is to enable persons to protect themselves, heighten safety awareness, and seek information that will lead to an arrest and conviction of the perpetrator/s. The victim's name and other personally identifying information will NOT be included in any Emergency Notification or Timely Warning.

As required by law, all cases of sexual assault, sexual harassment, intimate partner violence, and stalking will be included in the University's [Annual Security and Fire Safety Report/Crime Statistics](#).

XV. Title IX Coordinator

The New Mexico Tech's Title IX Coordinator [(575) 835-5187 or titleixcoordinator@nmt.edu], oversees compliance with all aspects of the sexual or gender-based harassment, sexual discrimination, and this sexual misconduct policy. The Title IX Coordinator reports directly to President of New Mexico Tech. Questions about this policy should be directed to the Title IX Coordinator. Anyone wishing to [make a report](#) relating to sexual or gender-based harassment, sexual discrimination, and sexual misconduct policy may do so by reporting the concern to the University's Title IX Coordinator.

In the event that an incident involves alleged misconduct by the Title IX Coordinator, reports should be made directly to the Office of the President (575) 835-5600.

Additionally, anonymous reports can be made by victims and/or third parties using the [online reporting form](#) or the reporting hotline at (575) 835-5005. Note that these anonymous reports may prompt a need for the institution to investigate and not having all the needed information may make it difficult to effectively protect to victim from further harm and adjudicate a disciplinary case.

XVI. Providing False Information

Because of the nature of discrimination, harassment, or retaliation complaints, allegations often cannot be substantiated by direct evidence other than the complaining individual's own statement. Lack of corroborating evidence should not discourage individuals from seeking relief under this policy. No adverse

action will be taken against an individual who makes a good faith allegation of sexual misconduct under this policy, even if an investigation fails to substantiate the allegation.

Notwithstanding this provision, the University may discipline employees or students when it has been determined that they brought an accusation of sexual misconduct in bad faith or with reckless disregard of the truth or falsity of the claim. Additionally, anyone participating in an investigation who intentionally misdirects an investigation, whether by falsehood or omission, may be subject to disciplinary action.

REASON FOR POLICY

The Student Code of Conduct Policy and employee policies in the Employee Handbook prohibit conduct covered by this administrative policy. Further, this policy in part establishes and communicates associated procedures for responding to incidents involving sexual misconduct. The commitment of the entire Tech community to this policy contributes to our goal of creating a campus free from sexual harassment, sexual misconduct, and other forms of gender-based discrimination that may occur within a personal or intimate relationship, as well as prevent a hostile environment.

PROCEDURES

- [NMT Sexual Misconduct Reporting Options & Procedures](#)
- [Sexual Misconduct Investigative Procedures Involving Students](#)
- [Informal Resolution Process for Student Sexual Misconduct Cases](#)
- [Formal Hearing Procedures](#)
- [Procedures for Responding to Reports of Sexual Misconduct](#)
- [New Mexico Tech's Procedures to Follow if You are a Victim or Complainant of Sexual Misconduct](#)
- [New Mexico Tech's Procedures to Follow if You are the Respondent in a Sexual Misconduct Case](#)
- [Employee Handbook](#)

APPENDICES

- [Determining Consent](#)
- [Complainant's Rights Related to Gender-based Discrimination/Sexual Misconduct, Stalking, Intimate Partner Violence, and Retaliation Cases](#)
- [Respondent's Rights Related to Gender-based Discrimination/Sexual Misconduct, Stalking, Intimate Partner Violence, and Retaliation Cases](#)
- [Sanctioning Guidelines for Sexual Misconduct/Title IX Violations](#)

FREQUENTLY ASKED QUESTIONS

- [Employees' Obligation to Report Sexual Misconduct to the Campus Title IX Office](#)
- [Investigations and Accommodations](#)

- [Retaliation](#)
- [Supervisor Obligations](#)

CONTACTS

Subject	Phone	Email
Title IX Coordinator	575-835-5187	titleixcoordinator@nmt.edu
AA/EEOC Director	575-835-5005	affirmative-action@nmt.edu
Director of Counseling & Disability Services	575-835-5780	counseling@nmt.edu
NMT Police Department	575-835-5434	dispatcher@nmt.edu