



# Sexual Misconduct Policy

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## Division of Student Affairs

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1/22/2025 - due to the 1/9/2025 vacated Title IX 2024 Regulations

**Policy Purpose:** To supplement institutional expectations for employees, students, and visitors, as well as to comply with the state of New Mexico and federal Title IX regulations

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## **POLICY STATEMENT**

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 that promotes responsibility, dignity, and respect for all persons. New Mexico Tech prohibits all forms of discrimination however, this policy specifically relates to sex discrimination (e.g., sex stereotyping, sex characteristics, pregnancy or related conditions, and various forms of sexual harassment) and sexual misconduct. Sexual harassment (e.g., sexual violence/assault, intimate partner violence, stalking, quid pro quo, and creating a hostile environment) 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.

## **GENERAL POLICY**

1. In this policy and its associated procedures, the University utilizes the term sexual misconduct to collectively apply to all forms of sexual harassment, sex discrimination, and any Title IX offenses (collectively “Title IX prohibited conduct”), as well as the other terms and violations defined below in Section III (collectively “prohibited conduct”). The grievance resolution process for all Title IX prohibited conduct must follow the NMT Title IX Resolution Procedures (i.e., Title IX Grievance Procedure).
2. All University members are prohibited from engaging in, or assisting, or abetting another’s engagement in sexual misconduct and any form of discrimination (i.e., prohibited conduct).
3. This policy applies to University members, who include:
  - a. University students, whether enrolled full-time or part-time, for credit or non-credit courses;
  - b. University employees and
  - c. 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.
4. This policy applies to all forms of sexual misconduct, sexual harassment, sex discrimination, and related retaliation committed by or against students, employees, and third parties when:
  - a. the conduct occurs on University property;
  - b. 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), research, online or internship programs or activities;
  - c. 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
  - d. the conduct indicates that the Respondent (accused) may present a danger or threat to

- the health or safety of University members.
5. Title IX jurisdiction applies to all applicable violations (e.g., sexual harassment, sexual violence, sex discrimination, etc.) occurring under the University's education program or activity in the United States. This policy is applicable regardless of the sex, sex characteristics or sex stereotypes of individuals engaging in sexual activity.
  6. This policy also includes information for students and employees on resources available following an act of sexual misconduct, New Mexico Tech responses, prevention, and supportive measures, the disciplinary process, possible disciplinary sanctions, remedies, 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 sex discrimination, is strongly encouraged to report the incident(s) to the New Mexico Tech Police Department (NMTPD), and/or internally with New Mexico Tech's Title IX Coordinator. The Title IX Coordinator can help stop the unwelcome behavior, remedy/resolve the situation with discipline, preventative, referrals, supportive measures (e.g. accommodations), and recommend other related support services or institutional changes.

7. 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 on University property or at University-sponsored activities to the New Mexico Tech Campus Police and Title IX Coordinator.
8. Except for Confidential Employees, all New Mexico Tech employees have been designated as **Mandatory Reporters** with regards to this policy and grievance procedure. These Mandatory Reporters are obligated to report any known or perceived sexual misconduct or sex discrimination to the University's [Title IX Coordinator](#) even if little information is known (see FREQUENTLY ASKED QUESTIONS section for more details). To the extent possible, information obtained, shared, or reported to a Mandatory Reporter will be communicated with the Title IX Coordinator within 24-hours. These Mandatory Reporters and the Title IX Coordinator will not share personally identifiable information with New Mexico Tech Campus Police or other law enforcement without the Complainant's/ victim's consent or unless the victim has also reported the incident to law enforcement. This information is considered private.
9. Employees whose communications are privileged or confidential under federal or state law (e.g. Counselors, Medical Professionals) are considered **Confidential Employees**. The University has also extended the role of a Confidential Employee to its two (2) Ombudspersons. Complainants going to these individuals would receive the same confidentiality as they would with the University counseling and medical staff.

However, these Confidential Employees **must** share (1) that they are confidential, including when they are not required to notify the Title IX Coordinator about conduct that reasonably may constitute sex discrimination; (2) how to contact New Mexico Tech's Title IX Coordinator and how to make a complaint of sex discrimination; and (3) that the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate an informal resolution process or an investigation under the grievance procedures.

10. 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), that is a federal civil rights law that prohibits discrimination on the basis of sex in federally funded education programs and activities. Sexual harassment, sexual assault, stalking, and intimate partner violence are forms of sex-based discrimination prohibited by Title IX and New Mexico Tech.
11. The Title IX 2020 Regulations define sexual harassment and sexual assault as:
  - a. An employee conditioning the provision of a school aid, benefit, or service on the student or employee’s participation in unwelcome sexual conduct (i.e., quid pro quo sexual harassment); or
  - b. Unwelcome conduct, by an employee or student, determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies that individual equal access to the school education program or activity; or
  - c. Sexual assault, dating violence, domestic violence, or stalking, as defined in applicable federal law (i.e., Violence Against Women Act [VAWA]).That means the conduct at issue must be addressed using the Title IX regulatory processes (i.e., Title IX Grievance Procedures) if it meets one of more of the criteria above. Conduct that does not fall under Title IX jurisdiction can be resolved through NMT’s other policies and procedures.
12. 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. Reports of retaliation will be reviewed and investigated in the same manner in which other allegations of misconduct are handled.
13. New Mexico Tech is dedicated to preventing and resolving sexual misconduct and Title IX offenses by providing:
  - a. Awareness and prevention programming
  - b. Assistance and support for students and employees affected by violence and other forms of discrimination or harm.
  - c. Reports of sex discrimination, sexual misconduct, and any form of discrimination will be taken seriously and dealt with promptly and equitably.
  - d. Processes for reliable and impartial investigation and adjudication that include appropriate disciplinary sanctions for those who commit Title IX offenses or sexual misconduct, including limiting access to campus facilities, suspension, and dismissal.
  - e. Support and guidance from the campus Title IX Coordinator will also include resources to help students and employees better understand Complainant rights and Respondent rights.
  - f. 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.

14. Use of alcohol or other drugs will never function to excuse any behavior that violates this policy.

### **SEXUAL MISCONDUCT VIOLATIONS (BUT NOT LIMITED TO):**

1. **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 property damage, repeatedly driving by a residence or workplace, 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
2. **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:
  - a. The length of the relationship.
  - b. The type of relationship.
  - c. The frequency of interaction between the persons involved in the relationship.These violations are also be considered misdemeanor crimes and constitutes contempt of court and may result in a fine or imprisonment or both.
3. **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 domestic abuse is a

misdemeanor crime.

4. **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.
5. **Hostile Environment Harassment:** Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies or limits a person equal access to the school's education program, activity or employment. Mere offensiveness is not enough to create a hostile environment. Although repeated incidents increase the likelihood that this harassment has created a hostile environment. A serious incident such as sexual assault, even if isolated, can be sufficient.
6. **Non-Consensual Oral Sex:** non-consensual contact between one person's mouth and the genitals or anus of another person.
7. **Quid Pro Quo Harassment:** An employee or Teaching Assistant (TA) of the school conditions the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct. This type of conduct is a violation of this policy when (i.) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic advancement or (ii.) submission to or rejection of such conduct by an individual is used as the basis for employment decisions or academic decisions. This can include related situations where there is a power differential between the parties (e.g. supervisor and employee, instructor, or TA and student).
8. **Peer Retaliation:** means retaliation by a student against another student. (see retaliation below)
9. **Rape:** non-consensual sexual intercourse (either vaginal or anal) with a penis, vagina, tongue, finger, or any object.
10. **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 a 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.
11. **Sex Discrimination:** is discrimination on the basis of sex (e.g. sex stereotypes, sex characteristics, pregnancy or related conditions, and sexual harassment. This includes differential treatment of individuals or groups based on sex, sex stereotypes, sex characteristics, instead of their behavior or qualifications.
12. **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)

13. **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.
14. **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 to disseminate sex discrimination 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.
15. **Sexual Harassment:** means conduct on the basis of sex that satisfies one or more of the following:
  - a. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).
16. **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.
17. **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.

## SANCTIONS

The following sanctions may be imposed singly or in combination upon any member of the community found to have violated this Sexual Misconduct Policy:

1. Student Sanctions
  - a. Warning
  - b. Probation
  - c. Restrictions
  - d. Educational Assignments
  - e. Referrals or Required Counseling
  - f. Suspension
  - g. Expulsion
  - h. Withholding a Diploma or Degree
  - i. Revocation of Admission or Degree
  - j. Transcript Notation
  - k. Organizational Sanctions
  - l. Other actions as outlined in Section V. of the Student Code of Conduct.
2. Employee Sanctions (listed below and defined in [Employee Handbook](#))
  - a. Warning – Written or Verbal
  - b. Performance Improvement Plan
  - c. Required Counseling
  - d. Required Training or Education
  - e. Demotion
  - f. Loss of Annual Pay Increase
  - g. Suspension without Pay
  - h. Suspension with Pay
  - i. Revocation of Tenure
  - j. Termination

There are many factors considered when determining appropriate sanctions. New Mexico Tech utilizes [Sanctioning Guidelines for Sexual Misconduct/Title IX Violations](#) when establishing student sanctions.

## JURISDICTION

1. The Dean of Students Office (DOSO), Office of Graduate Studies (OGS), Title IX Office, and AA/EEOC are not law enforcement agencies. As such, while these offices may be charged with investigating allegations of sexual violence and sexual 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, Title IX Office, 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, Title IX Office, or AA/EEOC has jurisdiction over the concerns.

2. 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 will address the behavior to determine if the on-campus behavior constitutes a violation of this policy or any other University policy. The University will not take up or adjudicate the original off-campus behavior. If the University investigates the on-campus behavior, supportive measures may be implemented.

## **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. New Mexico Tech cannot grant amnesty from proceedings in the criminal justice system. Prosecution decisions 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.

## **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 because 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. The parties and their Advocates may be asked to sign a Non-disclosure form on some aspects of their case.

On the New Mexico Tech campus, the NMT Health Center and NMT Counseling Center & Disabilities Office in the Fidel Center are the only offices 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.

In addition to the two confidential offices mentioned above, the University has a Faculty Ombudsman and Staff Ombudsperson (i.e. Ombuds) who are considered Confidential Employees.

## **RIGHTS OF THE PARTIES**

1. 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:
  - a. To be treated with respect, dignity, and sensitivity throughout the process.
  - b. 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.

- c. To written notification of a student or employee's rights and options, regardless of whether the crime took place on campus or off campus.
  - d. To be provided information on how the University will protect the confidentiality of the parties.
  - e. To notification of available services for mental health/counseling, advocacy, legal assistance, and other available community resources.
  - f. To be informed of the University's sexual misconduct policies and procedures.
  - g. To a timely and thorough investigation of the allegations.
  - h. 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.
  - i. To the opportunity to have one (1) advisor/advocate (i.e. Support Person) present at any meeting or hearing with University officials for support and/or consultation.
  - j. To the opportunity to be present and have others (e.g. witnesses) provide evidence about alleged violations in disciplinary proceedings (informal or formal).
  - k. 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).
  - l. To disagree with the decision and/or sanctions determined by the informal/investigative proceedings.
  - m. To request an appeal of the decision and/or sanctions determined by the formal disciplinary proceedings.
  - n. To be protected from retaliation for their involvement in the University's investigatory and disciplinary proceedings.
  - o. To information on obtaining orders of protection and no contact orders.
2. 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 and the rest of the associated grievance process.
    - a. 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.
    - b. Respondents are not required to respond to the allegations or provide other information to the campus Title IX office.
    - c. However, if the Respondent does not provide information, the investigation will proceed based on the information available.
  3. Individuals experiencing sexual discrimination, sexual harassment or retaliation and the matter is not effectively resolved according to our procedures, individuals 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](mailto:OCR.Denver@ed.gov)

4. 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.
5. 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.

## **RESOURCES FOLLOWING AN ACT OF SEXUAL MISCONDUCT OR OTHER FORMS OF SEX DISCRIMINATION**

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

## **SUPPORTIVE MEASURES**

The Title IX Coordinator, Vice President of Student Affairs, and the Dean of Students or designees’ have the authority to implement supportive measures which stay in place until the end of any review or appeal process. These administrators can impose a “no contact” order (NCO), 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. These administrators 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 supportive measures, as appropriate, can be implemented by these administrators before the final outcome of the investigation and afterward as needed. Employee Complainants are encouraged to communicate with their supervisor, the Office of Human Resources, and AA/EEOC, for supportive measures as needed.

## **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.

## **GRIEVANCE PROCEEDINGS**

New Mexico Tech's grievance procedures for resolving allegations of sexual misconduct against students are slightly different from those used for employees. In these University grievance proceedings, both parties are allowed a Support Person present, such as an advisor, advocate, or attorney. The University utilizes the preponderance of the evidentiary standard for resolving a complaint of this policy. The due process followed by New Mexico Tech allows for an informal resolution option, 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, call witnesses, and present evidence. Each party has the right to be notified of the outcome of any University disciplinary or grievance 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 must agree to engage in an informal resolution process. If needed, the formal hearing's decision regarding the violation and/or any associated sanctions can be appealed. Any other potential violation of the University's Student Code of Conduct or Employee Handbook will be addressed separately from the sexual misconduct allegation. See the NMT Title IX Procedures for more details.

## **FERPA**

The Family Educational Rights and Privacy Act (FERPA) protects 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 on either party. Details of some sanctions (e.g. private mature) may not be completely disclosed.

## **TIMELY WARNING ALERTS/EMERGENCY NOTIFICATION**

If a report of 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 ongoing 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 (i.e. Clery Act), all cases of sex discrimination, sexual harassment, sexual assault, intimate partner violence, and stalking will be included in the University's [Annual Security and Fire Safety Report/Crime Statistics](#).

## **TITLE IX COORDINATOR**

The New Mexico Tech's Title IX Coordinator [(575) 835-5953 or [titleixcoordinator@nmt.edu](mailto:titleixcoordinator@nmt.edu)], oversees compliance with all aspects of sexual discrimination, sexual harassment, and this sexual misconduct policy. The Title IX Coordinator reports directly to the Vice President for Student Affairs and Chief Diversity Officer-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 discrimination sexual harassment, and sexual misconduct policy or NMT Title IX Prohibited Conduct may do so by reporting the concern to the University's Title IX Coordinator or Deputy Title IX Coordinator.

If an incident involves alleged misconduct by the Title IX Coordinator, reports should be made directly to the Vice President for Student Affairs and Chief Diversity Officer (575) 835-5880.

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 University to investigate and not having all the needed information may make it difficult to effectively protect the reporter from further harm and adjudicate a disciplinary case.

## **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.

## **POLICY REVISION**

This Policy and associated procedures succeed all previous policies addressing sex discrimination, sexual harassment, sexual misconduct, and/or Retaliation, for incidents occurring on or after August 14, 2020. The Title IX Coordinator regularly reviews and updates the Policy and procedures. Incidents occurring before August 14, 2020, will be addressed using the policy that was in place at the time of the incident, but the procedures used will be those in place at the time of the Formal Complaint. The University reserves the right to make changes to this document as necessary, and those changes are effective once they are posted online.

If laws or regulations change or court decisions alter policy or procedural requirements in a way that impacts this document, this document will be construed to comply with the most recent laws, regulations, or court holdings.

This document does not create legally enforceable protections beyond the protections of the background federal and state laws that frame such policies and codes, generally.

A change required by a court or government order could occur during an active investigation or resolution process. If that happens, the University reserves the right to adjust the Policy and Procedures accordingly and notify the Parties of any necessary mid-process changes. This could include entirely replacing the Policy or associated procedures, which could necessitate restarting an investigation or resolution process. The University will make every effort to minimize the impact on the Parties as much as possible if changes are unavoidable.

## **RELATED PROCEDURES**

1. [NMT Title IX Resolution Procedures](#)
2. [NMT Sexual Misconduct Reporting Options & Procedures](#)
3. [Employee Handbook](#)

## **APPENDICES**

1. [Complainant's Rights Related to Gender-based Discrimination/Sexual Misconduct, Stalking, Intimate Partner Violence, and Retaliation Cases](#)
2. [Respondent's Rights Related to Gender-based Discrimination/Sexual Misconduct, Stalking,](#)

[Intimate Partner Violence, and Retaliation Cases](#)

3. [Sanctioning Guidelines for Sexual Misconduct/Title IX Violations](#)

## **FREQUENTLY ASKED QUESTIONS**

1. [Grievance Process Investigations and Accommodations](#)
2. [Retaliation](#)
3. [Supervisor Obligations](#)

## **CONTACTS**

<b>Subject</b>	<b>Phone</b>	<b>Email</b>
Title IX Coordinator	575-835-5953	<a href="mailto:titleixcoordinator@nmt.edu"><u>titleixcoordinator@nmt.edu</u></a>
AA/EEOC Director & Deputy Title IX Coordinator	575-835-5005	<a href="mailto:affirmative-action@nmt.edu"><u>affirmative-action@nmt.edu</u></a>
Director of Counseling Center	575-835-5780	<a href="mailto:counseling@nmt.edu"><u>counseling@nmt.edu</u></a>
NMT Police Department	575-835-5434	<a href="mailto:dispatcher@nmt.edu"><u>dispatcher@nmt.edu</u></a>

Please Note: When using a campus phone, dial the last 4-digits or dial 9 before dialing the full numbers above.

## DEFINITIONS

1. **Affirmative Consent** is affirmative, informed, and conscious decision to willingly engage in mutually acceptable sexual activity. This higher level of consent requires a clear affirmative act or statement by each participant to each sexual act in a sexual interaction. Affirmative 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 their willingness to continue at each progression of the sexual interaction. This definition of affirmative consent does not vary based on an individual's sex, sexual orientation, gender identity, or gender expression. The following factors will be considered when determining whether Affirmative Consent was given.
  - a. Each individual who wishes to engage in sexual contact is responsible for obtaining Affirmative Consent from the other individual or individuals who intend to be involved in the sexual activity.
  - b. A lack of protest, the absence of resistance, and silence do not by themselves indicate consent.
  - c. 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.
  - d. Affirmative consent must be present throughout the sexual interaction, it must be given, and can be withdrawn at any time.
  - e. 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.
  - f. Affirmative Consent to one form of sexual contact does not by itself constitute consent to another form of sexual contact.

Affirmative Consent is not obtained where:

- a. 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.
- b. 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:
  - i. A lack of control over one's physical movement (e.g., an inability to walk or stand without stumbling or assistance).
  - ii. An inability to effectively communicate (e.g., where one's speech is heavily slurred, incomprehensible, or nonsensical).
  - iii. A lack of awareness of one's circumstances or surroundings (e.g., 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 behaviors 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, and then the evidence may demonstrate that the respondent knew or should have known that the Complainant was incapable of giving meaningful Affirmative 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 nor is it 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.

- c. 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.
- d. An individual involved in sexual contact is asleep, unconscious or involuntarily physically restrained.
- e. An individual involved in sexual contact is not of legal age to give consent pursuant to New Mexico state law.

*Please note, under NM 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.*

2. **Complainant** means (1) a student or employee who is alleged to have been subjected to conduct that could constitute sexual misconduct or sex discrimination under Title IX; or (2) A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sexual misconduct or sex discrimination under Title IX and who was participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination. 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. In a Title IX grievance process, an individual must be affiliated or a former affiliate participating or attempting to participate in an education program or activity when the incident occurred. Complainants can also be guest speakers, volunteers, or potential students on a college visit are either attempting to or participating in an educational program or activity (e.g. sports, theater or fine arts fan) and therefore have a right to file a Title IX report.
3. **Disciplinary Sanctions** mean consequences imposed on a Respondent following a determination under Title IX that the Respondent violated the University's prohibition on

sex discrimination.

4. **Formal Complaint** means a document filed by a complainant to the school's Title IX Coordinator or a report signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual misconduct, sexual harassment, or other sex-based discrimination against a student or employee. 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 school. According to the guidelines set by the U.S. Department of Education in 2020; this includes details about the alleged incident, the involved parties, and a request for the institution to take action to address the. Under Title IX, the University must have a Formal Complaint to pursue and resolve the reported incident.
5. **Formal Resolution** under the University's Sexual Misconduct Policy and Title IX is a grievance process that begins when a Formal Complaint is filed alleging sex discrimination or other forms of sexual misconduct. This grievance process ends (1) if the parties agree to resolve the matter through the Informal Resolution process; (2) the Complainant withdraws their complaint; (3) if after an initial assessment by the Title IX Coordinator and any additional requests for information it is determined there is insufficient information to continue with a Formal Complaint of this nature (i.e. the matter cannot officially continue as a Title IX case but can be referred to be resolved by other University grievance processes); or (4) after a due process that includes an investigation, adjudication, and any associated appeal.
6. **Grievance Procedures** is the process the University follows to resolve formal complaints of sex discrimination or sexual misconduct that is fair, equitable, and incorporates due process principles. The process ensures that all parties are treated fairly and that the grievance process is not used for retaliation.
7. **Incapacitation** is when a person lacks the ability to voluntarily agree (i.e., give Affirmative Consent) to sexual activity because the person is asleep, unconscious, under the influence of an anesthetizing or intoxicating substance such that the person does not have control over their body, is otherwise unaware that sexual activity is occurring, or is unable to appreciate the nature and quality of the act. Incapacitation is not necessarily the same as legal intoxication. A party who engages in sexual conduct with a person who is incapacitated, under circumstances in which a reasonable sober person in similar circumstances would have known the person to be incapacitated is responsible for Title IX Prohibited Conduct. Except for sanction considerations, it is not a defense that the Respondent's belief in Affirmative Consent arose from their own intoxication.
8. **Informal Resolution (IR)** under this policy and Title IX is a voluntary agreement between parties involved in allegations of sex discrimination or other sexual misconduct. It's an alternative to a formal investigation and can be used to address allegations of this policy or sex discrimination violations. The IR process is intended to be flexible and provide a range of possible outcomes. The IR process is mediated by a trained IR administrator. The final outcomes of the IR must be agreed upon by the parties and the Title IX Coordinator.
11. **Parties** means the Complainant or Respondent
12. **Prohibited Conduct** is the term used collectively 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, and related retaliation. Title IX Prohibited Conduct calls out specific behaviors where the University uses the collective term sexual misconduct for the same violations.

13. **Pregnancy or Related Conditions** means:
  - a. Pregnancy, childbirth, termination of pregnancy, or lactation;
  - b. Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
  - c. Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.
14. **Relevant** means related to the allegations of sex discrimination under investigation as part of the grievance procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision-maker in determining whether the alleged sex discrimination occurred.
15. **Remedies** means measures provided, as appropriate, to a Complainant or any other person the University identifies as having had their equal access to the University's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the University's education program or activity after the University determines that sex discrimination occurred or the result of an Informal Resolution. Remedies may include Supportive Measures, but need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.
16. **Report** shall mean a form of communication a concern or complaint that is done in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. 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, sexual harassment or other forms of sexual misconduct. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.
17. **Respondent** shall mean the individual reported to have allegedly committed the violation of the University's Sexual Misconduct Policy. 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.
18. **Sex Discrimination** is prohibited behavior under Title IX and by the NMT Sexual Misconduct Policy, and it includes Sexual Harassment, Sexual Assault, Dating and Domestic Violence, Stalking, Disparate Treatment, and Disparate Impact.
19. **Retaliation** is an action that may take the form of intimidation, threats, coercion, or another adverse action (e.g., doing an end run around §106.45, releasing confidential information about parties, etc.) that would deter a reasonable person from exercising civil rights protected under the laws enforced by OCR and occurs when a person is discriminated against for taking actions that are protected by civil rights laws. As this relates to this policy, an individual took adverse action (materially adverse, not trivially adverse) against another because of their involvement in the Sexual Misconduct or Title IX resolution process (in some way).

20. **Sexual Misconduct** shall mean the University's comprehensive term for any form of sex discrimination, sex-based harassment, sexual violence/assault, stalking, and intimate partner violence as defined in section III. Violation 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.
21. **Standard of Evidence** is the degree of certainty or the amount of evidence required to establish a violation has occurred. New Mexico Tech utilizes the Preponderance of the Evidence for resolving complaints under this policy. In the Preponderance of Evidence Standard, the University would need to determine it was more likely than not that violation (e.g. sexual misconduct, harassment, abuse) occurred to find the Respondent to be in violation of this policy. This standard is not as stringent as the Clear and Convincing Standard or Beyond a Reasonable Doubt Standard.
22. **Student With a Disability** means a student who is an individual with a disability as defined in the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(9)(B), (20)(B), or a child with a disability as defined in the Individuals with Disabilities Education Act, 20 U.S.C. 1401(3).
23. **Supportive Measures** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the school's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The school must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the school to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.
25. **Title IX** or 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. Sex discrimination and other forms of sexual misconduct 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."
26. **Title IX Prohibited Conduct** means conduct or behavior that is prohibited under Title IX (i.e. sex discrimination).
27. **Trauma-Informed Response** means a response involving an understanding of the complexities of sexual misconduct dating violence, domestic violence, sexual assault and

harassment or stalking through training centered on the neurobiological impact of trauma, the influence of societal myths and stereotypes surrounding the causes and impacts of trauma with an understanding of perpetration methodology and how to conduct an effective investigation.

- 28. **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.
- 29. **University-Sponsored Activities and Educational Programs** shall mean any program or event sponsored by the University, including but not limited to those sponsored by student groups. These activities can be hosted at on or off-campus venues.

POLICY REVISION APPROVAL

Signature, President  
New Mexico Tech

Signature, Chair  
Board of Regents or NMT

Date: \_\_\_\_\_

Date: \_\_\_\_\_