
Date Originally Issued: 09-27-1991

Authorized by UNM Regents' Policy 2.3 (“Equal Opportunity and Affirmative Action for Employees and Students”)
Process Owner: Director, Office of Equal Opportunity

1. General

The University of New Mexico is committed to providing a safe, inclusive, and respectful learning, living, and working environment. This policy furthers the University’s commitment to create an environment free of discrimination and harassment and foster an atmosphere that enhances productivity and draws on the diversity of its members. The University prohibits discrimination, harassment, or related retaliation based on protected class in any academic and work environment. It is critical to this commitment that anyone who experiences, witnesses, or is aware of discriminatory or harassing behavior report this behavior pursuant to Section 9 below.

The University is committed to providing equal opportunities and accessibility to individuals with disabilities. Consistent with federal and state law, individuals with disabilities are entitled to access, support, reasonable accommodation, and academic adjustments.

The University is committed to protecting the rights of expecting mothers and provides necessary accommodation to students, faculty, and staff affected by pregnancy or childbirth in the same manner as other individuals unable to work or participate in their work or education because of their physical condition.
The University is committed to providing reasonable accommodation for religious beliefs and practices of its students, faculty, and staff.

The University is committed to fostering an environment of inclusiveness respecting an individual’s preferred form of self-identification including a name other than their legal name and preferred pronouns. This policy also prohibits gender-based discrimination, including discrimination based on gender-identity and affirms every individual’s right to use the gender-specific facilities consistent with their gender identity.

The University is committed to inclusive excellence and diversity and seeks to take advantage of the rich backgrounds and abilities of everyone. The University, as an equal opportunity/affirmative action employer, complies with all applicable federal and state laws regarding nondiscrimination and affirmative action. It makes good faith efforts to recruit, hire, and promote qualified women, minorities, individuals with disabilities, and veterans.

The Office of Equal Opportunity (OEO) is the independent, impartial, and neutral campus entity designated to ensure compliance with this policy and other polices that apply to civil rights. The OEO reports directly to the University President to maintain optimal independence and impartiality. The OEO investigative process can be accessed here.

2. Definitions

A. “Protected class” means those personal traits or characteristics, statuses, and/or beliefs that are defined by applicable law and policy as protected from discrimination or harassment including race, color, ethnicity, national origin, religion, sex, gender, gender expression, gender identity, age, pregnancy, physical or mental disability, serious medical condition, genetic information, ancestry, spousal affiliation, sexual orientation, or veteran status.

B. “Discrimination” means an illegal or prohibited adverse employment or educational action, or harassment based on protected class and/or status. Differential treatment and harassment are types of discrimination.

C. “Harassment” means unwelcome verbal or physical behavior directed at a person based on protected class/status that 1) unreasonably interferes with a person’s work or education, or 2) adversely affects a term or condition of
employment or education, or 3) has the purpose of or effect of unreasonably creating an intimidating, offensive, or hostile work or educational environment.

D. “Sexual harassment” or “sexual misconduct” – See UAP 2740 for definitions.

E. “Differential treatment” means differential treatment occurs when people, whether an individual or a group, are treated differently because of their protected class.

F. “Hostile environment” means a hostile work or academic environment is a form of harassment. It is demonstrated by severe and pervasive conduct that permeates the environment and unreasonably interferes with the ability to work or learn. Whether a hostile environment exists is determined from both a subjective and objective perspective.

G. “Retaliation” means any attempt to seek retribution or take materially adverse action against any individual or group of individuals involved in filing a complaint or report under this policy, filing an external civil rights complaint, participating in the investigation of a complaint or report under this policy or reasonably opposing conduct made unlawful by this policy.

H. “Preferred pronoun” means a pronoun that a person chooses to use or have used for self-identification (she, her, hers, he, him, his, ze, they).

I. “Gender identity” means one’s internal sense of gender identity, which may be different than the assigned sex at birth.

J. “Gender non-conformity” means gender characteristics or gender identity that does not conform to gender stereotypes about masculinity or femininity.

K. “Reasonable accommodation” means any reasonable adjustment to a job, academic, or educational environment that provides equal opportunities to individuals with disabilities or serious medical conditions.

L. “Undue hardship” is determined through a consideration of the following factors:
the impact of the accommodations on departmental and University
operations and delivery of services,
• the nature of the accommodations and cost in relation to the University’s
total budget,
• the number of University employees, and
• the number, type, and location of facilities.

See Section 3.3 of UAP 3110 ("Reasonable Accommodation for Employees With Disabilities").

3. Prohibited Discrimination

Discrimination including differential treatment and harassment is strictly prohibited by
this policy.

3.1. Differential Treatment

The University expects all members of the University community, as well as its visitors,
to be treated equitably, in all aspects of its educational programs and activities and
employment. Listed below are examples of conduct that can constitute discrimination
based on differential treatment. This list is not all-inclusive; in addition, each situation
must be evaluated in light of the specific facts and circumstances to determine if
discrimination has occurred.

• Singling out or targeting persons for different or adverse treatment (e.g., more
severe discipline, unfair grade, lower salary increase, negative performance
evaluation, or termination) because of their protected class.
• Preventing persons from using University facilities or services because of their
protected class.
• Denying persons access to educational programs based on their protected class.
• Failing to provide reasonable accommodations for qualified individuals with
disabilities or serious medical conditions or for religious holidays or observances.
• Treating persons differently because they do not conform to the gender
stereotypes associated with their biological sex.

3.2. Harassment

The University prohibits harassing behavior based on protected class. Listed below are
examples of behavior that can constitute such harassment. The list is not all-inclusive; in
addition, each situation must be considered in light of the specific facts and circumstances to determine if harassment has occurred.

- Disparaging remarks to a person about a protected status (e.g., negative or offensive remarks or jokes about a person’s religion or religious garments).
- Electronic communications, such as e-mail, text messaging, and Internet use, that violate this policy.
- Unwelcome questions or invasive requests for documentation to persons about their gender and/or gender identity.
- Sexual misconduct as defined in UAP 2740.

4. Gender Identity

4.1. Preferred First Names and Pronouns

This policy prohibits discrimination and harassment based on gender identity or gender non-conformity. Individuals shall have the right to be addressed by a first name and pronoun corresponding to their gender identity. Individuals shall not be required to obtain a court-ordered name change before they may be addressed by the name and pronoun that corresponds to their gender identity. Except when the use of an individual’s legal or primary name is required by law or policy, individuals will be identified in the University’s systems by the preferred first name that they have designated in accordance with the applicable procedure. The procedures for registering a different first name are contained on the University Registrar’s website for students and employment areas for students, staff, and faculty. ADD LINKS WHEN AVAILABLE

Individuals also have the right to be addressed by a pronoun corresponding to their gender identity upon request. The intentional or persistent refusal to respect a preferred name or pronoun can constitute discrimination or harassment that is a violation of this policy. This policy does not prohibit inadvertent slips or mistakes in using an individual’s preferred name or pronoun.

4.2. Gender-Specific Facilities

Individuals shall be provided access to designated gender-specific facilities consistent with their gender identity.

5. Freedom of Speech and First Amendment Protection

This policy is not intended to inhibit or restrict free speech or the expression of ideas. In cases of alleged harassment or discrimination, the protections of the First Amendment must be considered if issues of speech or expression are involved.
6. Hate/Bias Crimes and Incidents

A hate crime is a crime committed in whole or in part because of the victim's actual or perceived race, religion, color, national origin, ancestry, age, disability, gender, sexual orientation, or gender identity. Under New Mexico state law, hate crimes are "motivated by hate," meaning the commission of a crime with the intent to commit the crime because of the actual or perceived race, religion, color, national origin, ancestry, age, disability, gender, sexual orientation, or gender identity of the victim, whether or not the offender's belief or perception is correct. NMSA 1978, Section 31-188-1). A person who has experienced a hate crime should report the crime to the University of New Mexico Police Department by calling 277-2241 or 911 in case of emergency or by filing a hate crime report on the police website.

A hate/bias incident is an act of conduct, speech, or expression to which a bias motive is evident as a contributing factor (regardless of whether the act is criminal). All hate crimes are bias incidents but not all bias incidents are hate crimes. A hate/bias incident may also be a violation of this policy and should be reported to the OEO or reported via the hate/bias reporting form on the OEO website.

7. Reasonable Accommodation

The University makes reasonable accommodations for students, employees, and prospective students and employees in accordance with federal and state regulations. Assessing and determining appropriate and effective reasonable accommodations must be done on a case by case basis. Failure to accommodate can constitute discrimination in some instances. Anyone seeking to file a claim for failure to provide an accommodation in the academic and/or work environments should contact the OEO.

7.1. Reasonable Accommodation for Religious Observances and Practices

The University makes reasonable accommodations for religious observances and practices for faculty, staff, and students, and prospective students and employees. Reasonable accommodations are made for students unless such accommodations have the end result of altering educational requirements of a course or program, or place an undue burden on the operations of the University. Reasonable accommodations are made for faculty and staff unless such accommodations have the end result of disrupting the efficiency or effectiveness of the workplace, fundamentally altering the essential functions of a job, or placing an undue hardship on the
University. Failure to accommodate religious observances and practices can constitute
discrimination on the basis of religion in some instances and each case will be evaluated
in light of the totality of the circumstances. Persons seeking religious accommodation
should contact the OEO if assistance is needed.

7.2. Reasonable Accommodation for Individuals with Disabilities and Serious Medical
Conditions

The University is committed to providing equal opportunities to individuals with
disabilities. The University makes reasonable accommodations for applicants, students,
and employees. The University makes reasonable accommodations for the physical and
mental disabilities of a student unless an accommodation has the end result of
fundamentally altering the nature of the course or program, or places an undue
hardship on the operation of the University. The University makes reasonable
accommodations for the physical or mental disabilities of an employee or applicant
unless such accommodations have the end result of fundamentally altering the essential
functions of a job or place an undue hardship on the operation of the University.

Failure to accommodate can constitute discrimination on the basis of disability in some
instances. Students should refer to UAP 2310 ("Academic Adjustments for Student with
Disabilities") for guidance on requesting accommodations and should contact the
University Accessibility Resource Center for assistance. Employees, including
undergraduate and graduate student employees, should refer to UAP 3110
("Reasonable Accommodation for Employees with Disabilities") for guidance on
requesting workplace accommodations and initiating an interactive dialogue with their
immediate supervisor or manager.

The Director of the OEO has been designated as the University ADA Coordinator. Any
applicant, employee, or visitor needing guidance on seeking a reasonable
accommodation for disability should contact the Director of the OEO. Once an
accommodation has been put into place, the accommodation should be registered with the
ADA Coordinator for tracking and implementation purposes. In addition, any students,
employees, and applicants who feel that they have been denied a reasonable
accommodation can file a complaint with the OEO pursuant to section 13 below.

7.3. Pregnancy Accommodation

The University is committed to protecting the rights of expecting persons and makes
reasonable accommodations for pregnancy, lactation, and conditions related to
pregnancy for faculty, staff, and students and prospective students and employees. The University makes accommodations for students unless an accommodation has the end result of fundamentally altering the nature of the course or program, or places an undue hardship on the operation of the University. The University makes accommodations for employees or applicants unless such accommodations have the end result of fundamentally altering the essential functions of a job or place an undue hardship on the operation of the University. Students, employees, and applicants should contact the OEO if assistance is needed.

8. Reporting Procedures, Investigations, and Disciplinary Procedure

It is the policy of the University to prevent and eliminate forms of unlawful discrimination in employment and educational settings. Persons who believe they have been discriminated against on the basis of a protected class are encouraged to contact the OEO. The OEO is the independent, impartial, and neutral campus entity designated to ensure compliance with all University policies that apply to civil rights including any allegations of civil rights violations. The OEO reports directly to the University President’s office to maintain optimal independence and impartiality. The OEO follows its Discrimination of Claims Procedure (DCP) when addressing and investigating claims of discrimination. The DCP describes the procedures that apply when a complaint is filed pursuant to this section. The DCP is linked to this policy.

In some instances, the behavior at issue may be harassing, but not sufficiently severe, persistent, or pervasive as to constitute a hostile work or learning environment. In such cases, the University may take action to stop the offending behavior in an effort to avoid the possibility that a hostile environment will develop. Individuals and/or groups of individuals may be required by the University to participate in training or other informal processes to eliminate offending behavior, prevent its reoccurrence, and remedy its effects in a manner that ensures compliance and the safety and welfare of the campus community. Information on this informal process is in the DCP.

The Student Code of Conduct and Visitor Code of Conduct describe the disciplinary processes and procedures that may apply after an investigation pursuant to this section is complete and a finding is made that this policy was violated by a student or visitor.

The University may also implement interim measures or interventions, as appropriate to the allegations and if the allegations warrant, to protect the community and students involved, pending the culmination of any review, investigation, or appeal process. If the
review, investigation or appeal process determines that there is no cause to believe this policy has been violated, these interim measures may be revoked.

UAP 3215 (“Performance Management”) describes the disciplinary processes and procedures that may apply after an investigation pursuant to this section is complete and a finding is made that this policy was violated by a staff member.

Faculty Handbook Policy C07 (“Faculty Discipline”) describes the disciplinary processes and procedures that may apply after an investigation pursuant to this section is complete and a finding is made that this policy was violated by a faculty member.

9. Reporting Responsibility

When University faculty, administrators, and supervisors witness or receive a written or oral report or complaint of discrimination or harassment, they are required to promptly notify the OEO. The University relies on its employees to notify the OEO office of all disclosures of discrimination and harassment as defined in this policy. The University encourages reporting of all known or suspected discriminatory conduct. The University can take corrective action only when it becomes aware of issues. Therefore, it encourages persons who believe they have witnessed or experienced discrimination or harassment to come forward promptly with their inquiries, reports, or complaints. Individuals have the right to pursue legal remedies or to contact outside administrative civil rights agencies in addition to proceeding with this policy.

This section of the policy does not obligate licensed healthcare professionals and other persons, who are required by professional or University responsibilities to keep certain communications confidential, to disclose those confidential communications.

9.1. Supervisors

Supervisors shall report all known or suspected discriminatory conduct to the OEO. If supervisors fail to take notify the OEO when they know, or reasonably should have known, that a student or subordinate employee is being subjected to discrimination, supervisors could be held in violation of this policy. Supervisors shall report all known or suspected discriminatory conduct. Additionally, supervisors should manage their workplaces to ensure that they are fair, equitable, and respectful.

10. Confidentiality
The University recognizes that individuals have a right to privacy; however, the University also has an obligation to address concerns and inquiries, as well as to investigate and resolve civil rights claims. All complaints will be handled in a confidential manner to the extent possible and consistent with principles of due process. Information will only be shared among University employees or external parties on a need-to-know basis and as permitted under University policy and applicable federal and state law.

All participants involved with an internal discrimination or harassment investigation have a duty to keep investigation information confidential. Any attempt by any participant to influence the outcome of an investigation by divulging information to others who have no legitimate “need to know” may be grounds for disciplinary action.

11. Retaliation

It is the policy of the University to foster an environment where individuals may raise civil rights claims without fear of retaliation or reprisal. All members of the University community have a right to redress for perceived violations of this policy. It is contrary to federal and state civil rights laws, and to University policy, to retaliate against any persons for asserting their civil rights, which includes raising concerns related to civil rights, reporting to any University office charged with addressing such complaints, filing a claim of discrimination or harassment, or participating in an investigation related to an allegation of discrimination or harassment.

Allegations of civil rights retaliation should be reported to the OEO. Retaliation is grounds for a subsequent complaint and may result in disciplinary action against the persons committing the retaliatory acts. Listed below are examples of behavior that can constitute such retaliation. The list is not all-inclusive; in addition, each situation must be considered in light of the specific facts and circumstances to determine if retaliation has occurred.

- Work related threats, warnings, or reprimands.
- Transfers to less prestigious work hours or duties.
- Engaging in activity that is likely to deter reporting pursuant to this policy.

12. 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 discrimination, harassment, or retaliation under this policy, even if an investigation fails to substantiate the allegation.

Notwithstanding this provision, the University may discipline employees or students when it is determined that they brought an accusation of discrimination or harassment 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, will be subject to disciplinary action.

13. Equal Opportunity and Affirmative Action

The University recognizes its responsibility to extend equal employment and educational opportunities to all qualified individuals and will not discriminate against any applicant or employee based on protected class or status. The University has a responsibility to its students and to the citizens of the State to actively recruit, hire, and retain the best-qualified persons possible, and to do so in the context of our commitment to affirmative action principles.

Further, the University commits itself to a program of affirmative action to increase access by, and participation of, traditionally underrepresented groups including women, minorities, individuals with disabilities, and veterans. OEO provides guidance and assistance to the University leadership in identifying effective recruitment and retention strategies to meet its affirmative action responsibilities. This includes monitoring or auditing all employment activity for staff and faculty at the University.


Executive Order 112446 requires the University to create a written Affirmative Action Plan (AAP) that measures whether women, minorities, individuals with disabilities, and veterans are being employed at the expected rate given their composition of the relevant labor pool, and set goals when they are not.

The Director of OEO has been designated as the Affirmative Action Coordinator. This official is responsible for gathering data for the AAP, monitoring, or auditing all of the
University’s equal employment opportunity and affirmative action activities, reporting annually on the effectiveness of the University’s affirmative action programs, and developing recommendations for necessary action to assure attainment of the University’s stated objectives. Any questions related to the AAP should be directed to the OEO.

The University President has overall responsibility for the AAP. All senior and mid-level administrators (vice presidents, deans, directors, department heads) are accountable for their performance in the accomplishment of affirmative action goal objectives and action oriented plans, and for ensuring that all recruitment, applications, and hiring processes are consistent with state and federal law and with AAP objectives. Human Resource professionals and search and interview committees should adhere to all applicable recruitment and hiring guidelines, affirmative action and diversity principles and regulations, and AAP goals and initiatives. All University data stewards are responsible for providing accurate, verified, and timely data for the annual AAP.

14. References

14.1. Related Policies

- Regents Policy 2.3 ("Equal Opportunity and Affirmative Action for Employees and Students")
- Regents Policy 2.5 ("Sexual Harassment")
- UAP 2200 ("Whistleblower Protection and Reporting Suspected Misconduct and Retaliation")
- UAP 2215 ("Consensual Relationships and Conflicts of Interest")
- UAP 2310 ("Academic Adjustments for Student with Disabilities")
- UAP 2740 ("Sexual Violence and Sexual Misconduct")
- UAP 2750 ("Lactation Support Program")
- UAP 3110 ("Reasonable Accommodation for Employees with Disabilities")
- UNM Student and Visitor Codes of Conduct

14.2. Resources and Contacts

- Accessibility Resource Center (ARC)
- Campus Police
- Center for Academic Program Support
- Counseling, Assistance, and Referral Service
- Dean of Students
14.3. Applicable Laws

- The Equal Pay Act of 1963
- Titles IV, VI, and VII of the Civil Rights Act of 1964
- Title IX of the Education Act of 1972 The Rehabilitation Act of 1973 (Sections 503 and 504)
- The Vietnam Era Veterans Readjustment Assistance Act (1974)
- Age Discrimination Act (1975)
- Pregnancy Discrimination Act (1978)
- The Americans with Disabilities Act (ADA) of 1990; Amendments Act of 2008
- Executive Order 11246
- Uniform Services Employment and Reemployment Act (1994)
- Violence Against Women Act of 1994
- Violence Against Women Reauthorization Act of 2013
- The New Mexico Human Rights Act