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# Administrative Policies and Procedures Manual - Policy 2740: Sexual Harassment Including Sexual Misconduct~~Assault~~ (Interim)

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Authorized by [RPM 2.3 \("Equal Opportunity, ~~Affirmative Action~~, Anti-Harassment, and Anti-Retaliation"\)](#)

Process Owner: Chief Compliance Officer

If you have experienced sexual harassment, including sexual assault as defined in this policy, you have a variety of options available to you. You may report this crime to the police, pursue administrative investigative options, seek supportive measures and seek confidential resources.

You have the choice of submitting an informal complaint or a formal complaint at the University. Both choices include tailored supportive measures to assist in providing you with the support needed to continue learning and/or working at UNM. A formal complaint initiates an investigation while an informal complaint does not. You can also speak with a confidential resource described in Section 3 and identified in Appendix B to explore your options before making your decision.

Section 1 of this policy provides additional information on what to do if you experience sexual harassment, including sexual assault.

## **General**

The University of New Mexico prohibits 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 Education Amendments of 1972; 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; the Student Code of Conduct; Regents' Policy 2.5; the Faculty Handbook; the Visitor Code of Conduct; and this policy.

UNM is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities that are free from discrimination, harassment, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational enterprise, UNM has developed policies and procedures that provide a fair, prompt, and impartial process for those involved in allegations of harassment or discrimination on the basis of protected class status. UNM values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in what is often a difficult time for all involved.

For the purposes of this policy, sexual harassment, dating violence, domestic violence, and stalking are collectively referred to as "sexual harassment." Sexual harassment subverts the mission of the University and threatens the careers of students and employees.

As more fully described in Section 8, this policy applies to allegations of sexual harassment made by or against a student, staff, or faculty member that occur within the course of a UNM

program or activity or have continuing adverse effects on campus. If the circumstances giving rise to the allegations are related to UNM's educational programs or activities, this policy may apply regardless of the affiliation of the parties to the University. The University is committed to responding promptly and fairly to every allegation of sexual misconduct. This policy addresses conduct that may be covered by Title IX, Title VII, the Faculty Handbook, University Administrative Policies and the Student Code of Conduct. Allegations may be covered by one or more of the aforementioned laws/policies.

Sexual harassment may be committed by anyone, including a stranger, an acquaintance, a friend, or someone with whom the reporting party (Complainant) is involved in an intimate or sexual relationship. Individuals who have experienced sexual misconduct are encouraged to report what happened to law enforcement and to seek assistance from any of the campus resource offices or community resources referenced in Section 2 of this policy. A report of sexual harassment will be taken seriously and addressed in accordance with UNM policies and procedures.

## **Title IX Coordinator**

The University's [Title IX Coordinator](#), who oversees institutional compliance with UNM policy related to sex discrimination (including sexual harassment and misconduct), is located in the [Office of Compliance, Ethics & Equal Opportunity](#) (CEEO). The Title IX Coordinator has the primary responsibility for coordinating UNM's efforts related to investigation, resolution, and implementation of remedies and supportive measures to stop, remediate, and prevent discrimination under this policy.

The Title IX Coordinator, designees, and individuals within the Title IX team act with independence and authority free from bias and conflicts of interest.

To raise concerns involving bias or conflict of interest of the Title IX Coordinator, contact the [UNM Chief Compliance Officer](#) or the [UNM President](#). Concerns of bias on any other team member should be raised with the Title IX Coordinator, whose contact information is located at [ceeo.unm.edu](http://ceeo.unm.edu).

For more information on discrimination related to other protected categories and other forms of sexual misconduct, see [UAP 2720 \("Equal Opportunity and Prohibited Discrimination \(Interim\) and Equal Opportunity"\)](#).

This policy includes information for students, staff, and faculty on resources available following an act of sexual misconduct, including UNM responses, supportive measures, education and prevention programs, and possible disciplinary sanctions.

# 1. Procedures to Follow if You Experience Sexual Harassment Including Sexual Assault

**If you are in immediate danger, dial 911 for assistance.** If you are on the UNM campus, you will be connected with the [UNM Police Department](#) (UNMPD). If you are off campus in Albuquerque, you will be connected with the Albuquerque Police Department.

If you are the victim of a sexual assault but not in immediate danger, you may report this to UNMPD/APD. You may also want to call a trusted family member or a friend.

For the reasons set forth below, it is important for victims of sexual assault to seek medical attention. In the Albuquerque area, you can contact [SANE](#) (Sexual Assault Nurse Examiners) at (505) 884-7263 for information about receiving a sexual assault examination. If you have serious injuries, seek emergency medical attention at a hospital.

You can also contact the [Rape Crisis Center of Central New Mexico](#) at (505) 266-7711 or (888) 881-8282. The Rape Crisis hotline is available 24 hours a day, 7 days a week, 365 days a year. An advocate from the Rape Crisis Center will accompany you to a sexual assault examination at the SANE office.

- It is important for individuals who have experienced sexual harassment, in particular sexual assault, to understand the steps to take to preserve evidence for possible use later to support a criminal case.
- The sooner you file a report of sexual assault, the better the chances that helpful evidence can be collected to support a criminal case, that you will be able to convey a clear account of what happened, and that police will be able to identify and speak with witnesses.
- You may file a report of sexual assault and/or receive a sexual assault medical examination immediately and then decide at a later date if you want to pursue filing criminal charges. SANE can provide the forensic medical exam, free of charge, in a comfortable environment facilitated by nurses specially trained in sexual violence and intimate partner violence cases.

UNMPD encourages you to report any act of sexual harassment that takes place on the UNM campus to UNMPD. Also, as discussed above, if you need assistance in reporting to UNMPD, you can get help from any of the offices participating in UNM's [Sexual Misconduct and Assault Response Team](#) (SMART).

## 2. Resources Following an Act of Sexual Harassment

There are several resource options for students, staff, and faculty at UNM. Specific resources, either on or off campus for medical treatment, legal evidence collection, obtaining information, support and counseling, and officially reporting an incident are listed in Appendix A. Each resource can assist a person to access the full range of services available. Students, staff, or faculty accused of committing an act of sexual harassment may obtain confidential and anonymous support and counseling at [Student Health and Counseling](#) (SHAC) (for students) and [Counseling and Referral Services](#) (CARS) (for staff and faculty).

### **3. Confidential Resources**

Most UNM employees are Responsible Employees as described in Section 9 of this policy. Responsible Employees are not confidential resources and must report allegations of sexual misconduct as described in Section 9.

The University encourages individuals who have experienced sexual harassment to report the incident so that they get the support they need and the University can respond appropriately. UNM recognizes that such individuals may want to speak confidentially with someone on campus before deciding whether to report the incident to the police or CEEO for investigation. As such, the Title IX Coordinator has designated certain offices on campus as confidential and exempt from mandatory reporting obligations pursuant to Section 9 of this policy. Any campus offices that wish to be designated as confidential should contact the Title IX Coordinator and discuss training and data requirements, as well as enter into a memorandum of understanding that describes the confidential status and data reporting obligations.

As required by the federal Clery Act for statistical purposes, instances of sexual misconduct reported to entities other than those identified below as “No Disclosure Required” must be reported to UNMPD, which works with the Clery Compliance Officer on the annual reporting of crime statistics to the University community. Such reports to UNMPD do not include identities and are only comprised of the nature, date, time, and general location of the incident. These reports do not serve as an official police report and do not launch a criminal or administrative investigation; these reports are purely for statistical purposes to meet Clery Act obligations.

Confidential resources are listed in Appendices A and B.

### **4. Retaliation**

It is a violation of University policy to retaliate against any person who engages in protected activity. Protected activity includes complaining of or reporting sexual misconduct, testifying, assisting, or participating in an investigation or proceeding regarding an allegation of sexual misconduct. Concerns that a student, staff, or faculty member has threatened to retaliate or has

retaliated against another student, staff, or faculty member should be reported promptly to the Title IX Coordinator. A staff, faculty member, or student who retaliates against a person who makes a complaint of sexual misconduct, reports, testifies, assists, or participates in an investigation or proceeding regarding an allegation of sexual misconduct, or seeks assistance from CEEO, may be subject to disciplinary action.

Protected activity under this policy also includes reporting an incident that may implicate this policy, participating or declining to participate in the grievance process, supporting a Complainant and Respondent, or assisting in providing information relevant to an investigation.

## **5. Supportive Measures and Remedies**

UNM offers and implements appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation.

Supportive measures are confidential, non-disciplinary, non-punitive, individualized services offered as appropriate and without fee or charge to the parties to restore or preserve access to UNM's educational program or activity, including measures designed to protect the safety of the parties or the educational or work environment, and/or to deter harassment or retaliation.

The Title IX Coordinator promptly provides supportive measures or details on seeking or receiving supportive measures to the parties upon receiving a notice of complaint. See the [CEEEO Discrimination-Grievance Procedure](#).

Upon a Respondent's finding of responsibility, the Complainant may also be provided with remedies to maintain their equal access to the working and learning environment. Upon the finding of responsibility, remedies include disciplinary measures for Respondent.

### **5.1 Emergency Removal**

The University can act to remove a Respondent entirely or partially from its education programs or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or employee or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with the Threat Assessment Team (TAT) using its standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the student or employee will be given notice of the action and the option to request to meet with the Title IX Coordinator or their designee prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested within 2 business days of the Respondent receiving notice, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the emergency removal meeting.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion or termination.

UNM will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

## **6. Definitions of Sexual Harassment**

Sexual harassment is the umbrella category used by UNM for sexual misconduct, including sexual harassment, sexual assault, stalking, and dating and domestic violence, each of which is defined below. Acts of sexual harassment may be committed by any person upon another person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

### **6.1 Sexual Harassment Generally**

Sexual harassment as an umbrella category includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking. Sexual harassment is defined as conduct on the basis of sex that satisfies one or more of the following:

- The provision of an aid, benefit, or service contingent upon an individual's participation in unwelcome sexual conduct (**quid pro quo** sexual harassment);
- Unwelcome conduct that a reasonable person would consider to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an education or activity (**hostile environment** sexual harassment).

In determining whether a reasonable person would consider the behavior to be objectively offensive, consideration will be made not only as to whether the conduct was unwelcomed to the person who feels harassed, but also whether a reasonable person in a similar situation would have perceived the conduct as objectively offensive.

Mere offensiveness alone is not enough to create a hostile environment. Whether a hostile environment exists is determined by considering all the circumstances, including the following:

- The degree to which the conduct affected one or more student's education, individual's employment, or their attempt to participate in UNM's program or activity.
- The nature, scope, frequency, duration, and location of incident or incidents.
- The identity, number, and relationships of persons involved.
- The inherent nature of the higher education environment, such as inherent power differentials.

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 who are considered 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 is committed to maintaining an environment free from sexual harassment.

Sexual harassment is especially serious when it threatens relationships between students and faculty, or relationships between supervisors and their subordinates. Through grades, wage increases, recommendations for graduate study, promotion, and the like, a faculty member or supervisor can have a decisive influence on a student's or employee's success and future career at the University and beyond. UNM's Consensual Sexual or Romantic Relationships policy ([UAP 2215](#)) outlines required disclosure of a romantic or intimate relationship between a superior and a subordinate.



## **6.2 Sexual Assault**

Sexual Assault falls under the following categories and definitions:

### **6.2.1 Sex Offenses, Forcible**

Any sexual act directed against the Complainant without the Complainant's consent, including instances where the Complainant is incapable of giving consent.

- Forcible Rape. Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.
- Forcible Sodomy. Oral or anal sexual intercourse with another person, forcibly and/or against that person's will (non-consensually), or non-forcibly against the person's will in instances where the Complainant is incapable of giving consent because of age or temporary or permanent mental or physical incapacity.
- Sexual Assault with an Object. To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against the person's will (non-consensually) or non-forcibly against the person's will in instances where the Complainant is incapable of giving consent because of age or temporary or permanent mental or physical incapacity.
- Forcible Fondling. The touching of the private body parts of another person (genitals, buttocks, groin, breasts) for the purpose of sexual gratification, forcibly and/or against that person's will (non-consensually) or non-forcibly against the person's will in instances where the Complainant is incapable of giving consent because of age or temporary or permanent mental or physical incapacity.

### **6.2.2 Sexual Offense, Non-Forcible Sexual Intercourse**

- Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Statutory Rape. Sexual Intercourse with a person who is under the statutory age of consent.

## **6.3 Dating Violence**

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the

relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For purposes of this definition dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

- Dating violence does not include acts covered under the definition of domestic violence.

## **6.4 Domestic Violence**

- A felony or misdemeanor crime of violence committed by:
- A current or former spouse or intimate partner of the victim;
- A person with whom the victim shares a child in common;
- A person who is cohabitating with, or has cohabited with the victim as a spouse or intimate partner;
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
- Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- To categorize an incident as domestic violence, the relationship between the responding party (Respondent) and the Complainant must be more than both parties living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

## **6.5 Stalking**

- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
- Fear for the person's safety or the safety of others; or
- Suffer substantial emotional distress.
- Course of conduct means two or more acts, including but not limited to: acts in which the stalker directly, indirectly, or through third parties by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to threaten a person or interferes with a person's property.

## **6.6 Other Civil Rights Offenses Related to Sexual Misconduct**

In addition to the forms of sexual harassment described above, UNM prohibits all forms of discrimination when the act is based upon the Complainant's perceived or actual membership in a protected class including sex as described in [UAP 2720](#).

## **Complete Definitions**

For complete definitions of the crimes of sexual assault, domestic violence, dating violence, and stalking under New Mexico law, see “New Mexico Definitions of Violence Against Women Act<sup>1</sup> Crimes” in Section 16 of this policy.

## **7. Jurisdiction**

This policy applies to the education or work programs and activities of UNM, to conduct that takes place on the campus or on property owned or controlled by UNM, at UNM-sponsored events, or in buildings owned or controlled by UNM or UNM’s recognized student organizations. The Respondent must be a member of UNM’s community in order for this policy to apply.

If the Respondent is unknown or is not a member of the UNM community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.

Even if the Respondent is not a member of the UNM community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator. In addition, UNM may take other actions as appropriate to protect the Complainant against third-parties, such as barring individuals from UNM property and/or events.

Similarly, the Title IX Coordinator may be able to advocate for a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the University where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

Please see CEEO’s [Discrimination Grievance Procedure](#) for more information regarding CEEO’s process for accepting jurisdiction and notifying the parties involved.

### **7.1. Off-Campus and Online Conduct**

Conduct that occurs in the United States but off-campus can be the subject of a complaint or report and will be evaluated to determine whether it implicates this policy or another UNM policy. If off-campus sexual harassment occurs within the context of a UNM program or activity or has continuing adverse effects that create a hostile environment on campus or within a UNM education program or activity, the University shall take other supportive measures and may investigate the conduct.

## **7.2 Online Conduct**

This policy is written and interpreted broadly to include online and cyber manifestations of any other of the behaviors prohibited in this policy when those behaviors occur in or have an effect on UNM's education program and activities, or use UNM networks, technology, or equipment.

While UNM may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported, the University will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, unwelcome sexting, revenge porn, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the internet or other technology to harm another member of the University community.

Any online postings or other electronic communications by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of UNM's control (e.g., not on UNM networks, websites, or between UNM email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption.

Off-campus harassing speech by employees, whether online or in person, may be regulated by the University only when such speech is made in an employee's official or work-related capacity.

## **8. Consent**

The University of New Mexico has adopted a definition of consent, as follows:

Consent is an 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 their willingness to continue at each progression of the sexual interaction. Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on UNM to determine if its policy has been violated.

Sexual activity will be considered to have occurred "without consent" if no clear act or statement is given. Consent may not be inferred from silence, passivity, or lack of active response alone. A

person who is asleep, unconscious, or otherwise unaware of what is happening is unable to give consent. Furthermore, a current or past dating or sexual relationship is not sufficient to constitute consent in every instance, and consent to one form of sexual activity does not imply consent to other forms of sexual activity. It is the responsibility of the person initiating the sexual activity to obtain consent from their partner. Being intoxicated or under the influence of other drugs does not diminish one's responsibility to obtain consent.

## **8.1 Incapacitation**

The use of alcohol or drugs can limit or prevent a person's ability to freely and clearly give consent. If a person is under the influence of alcohol or drugs such that they are unable to give meaningful consent or understand the fact, nature or extent of the sexual situation, there is no consent. Intoxication alone, however, does not mean a person is incapable of consenting to sexual activity. CEEO 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, when determining whether meaningful consent to sexual activity was or could have been given. Should the preponderance of 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, that 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 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 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.

In addition to alcohol or drugs, if a person's mental, physical, or psychological disability (temporary or permanent) or age impairs their ability to make an informed decision to willingly engage in sexual activity, there is no consent. Examples include, but are not limited to: when an individual is incapacitated, scared, physically forced, intimidated, coerced, mentally or physically impaired, passed out, threatened, isolated, or confined.

It is a defense to violation of this policy if the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. "Should have known" is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment. Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent.

## **9. Reporting Suspected Sexual Harassment**

All UNM employees are considered Responsible Employees under this policy. In order for the University to respond effectively to individuals who have experienced sexual misconduct, **all** UNM staff and faculty, except as noted in Section 3, who receive information about a person who has experienced sexual misconduct must report the information to CEEO within 24 hours, or as soon as reasonably practicable, by calling CEEO at (505) 277-5251, by completing the CEEO [online reporting form](#), or by email at [ceeo.unm@unm.edu](mailto:ceeo.unm@unm.edu). This includes information obtained via third-party and rumors, as well as directly from the affected individual. Having knowledge of someone else reporting an incident of sexual misconduct or harassment does not fulfill reporting obligations. When a Responsible Employee becomes aware of sexual harassment or discrimination, they are required to report the incident to CEEO within 24 hours. It is important to recognize that the person(s) disclosing to you might be discussing an incident or occurrence that is traumatic, sensitive, and/or difficult for them to discuss. Your job is to listen without judgment; respond with respect and kindness; and listen to the person(s). If someone is in imminent harm, you should contact the Albuquerque Police Department or the UNMPD immediately by calling 911.

In the event a Responsible Employee becomes aware of suspected sexual harassment, that individual is encouraged to refer the party to a confidential advocate or other resource available to them, as outlined in Appendix B. Responsible Employees should also notify the disclosing party that they are required to report the incident to CEEO, but that they are not required to participate in an CEEO process.

### **9.1 Failure to Report**

Responsible Employees must share all details of behaviors listed in this policy with the Title IX Coordinator. Failure to Report is a violation of this policy and can result in disciplinary action for failure to comply.

## **10. Amnesty from Disciplinary Action**

UNM encourages reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to UNM officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the University community that Complainants choose to report misconduct to UNM officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the grievance process.

To encourage reporting and participation, UNM maintains a policy of offering parties and witnesses amnesty from minor policy violations, such as underage consumption of alcohol or the use of other illicit drugs, related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty to a Respondent is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to the Respondent with respect to a Complainant. UNM 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.

## **11. Rights of the Parties**

During CEEO’s ~~Discrimination~~ Grievance Procedure following a report of sexual harassment, and prior to a final determination being made through an impartial hearing, the Complainant and Respondent have equal rights to be treated with respect, dignity, and sensitivity throughout the process; to information on how the University will protect their confidentiality; and to present evidence or other information they feel relevant to the matter.

Following CEEO’s investigation, the impartial hearing determination, and the imposition of sanction if applicable, the Complainant and Respondent have equal rights to seek a discretionary review through an established appellate process. Please see the [CEEO ~~Discrimination~~ Grievance Procedure](#) for an overview of the appeal process.

## **12. Investigation and Hearing Procedures**

Parties have the option of filing an informal or formal complaint with the Title IX Coordinator. An informal complaint will not trigger an investigative process but will allow a Complainant the ability to seek supportive measures. A formal complaint will include a formal investigation and will culminate in a live hearing before a hearing officer or other decision maker. Details of the grievance procedure can be found in the [CEEO ~~Discrimination~~ Grievance Procedure](#).

### **12.1 Disciplinary Process**

After a student, faculty, or staff member has been found responsible for violating this policy following a live hearing, they will be disciplined pursuant to UNM disciplinary policies and procedures.

## **Students**

Under the University's [Student Code of Conduct](#), a student who commits a violation of this Code, including an act of sexual misconduct, is subject to the following possible sanctions:

- Verbal warning - means an oral reprimand.
- Written warning - means a written reprimand.
- Disciplinary probation - means the establishment of a time period during which further acts of misconduct may or will result in more severe disciplinary sanctions depending upon the conditions of the probation. Conditions of probation can include community service, attendance at workshops and/or seminars regarding subjects including but not limited to alcohol, drug or safety workshops and/or seminars, mandatory mental health evaluation and/or counseling or other educational sanctions.
- Suspension - means losing student status for a period of time specified in the terms of the suspension. A suspension may commence immediately upon a finding of a violation or it may be deferred to a later time.
- Expulsion - means losing student status for an indefinite period of time. Readmission may not be sought before the expiration of two years from the date of expulsion, and it is not guaranteed even after that time.
- Dismissal - means termination of student employment, either for a stated time period or indefinitely.
- Barred from campus - means being barred from all or designated portions of the University property or activities.

Students living in UNM residence halls are subject to the following possible sanctions for misconduct occurring in the residence halls:

- Housing reassignment - means the transfer of the student from one dorm room to another or one residence hall to another.
- Restricted from entry into specific residence halls, dining hall, commons building, and other UNM housing facilities.

Contract termination - means the termination of the housing contract either for a stated period of time or indefinitely.

## **Visitors**



Under the University's [Visitor Code of Conduct](#), which applies to the Albuquerque and all branch campuses, a visitor who commits a violation of this Code, including sexual misconduct, is subject to the following possible sanctions:

- Verbal Warning;
- Written Warning;
- Probation;
- Removal from campus;
- Barred from campus;
- [The sanctions of denial of admission, readmission, or employment by the University.](#)

[Employees, inclusive of faculty, staff, and students, who are represented by a union, will be subject to discipline pursuant to their applicable bargaining agreement.](#)

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#### **Faculty\***

Faculty who are found to be in violation of this policy may be subject to disciplinary action as provided in the [Faculty Handbook Policy C07 \(“Faculty Disciplinary Policy”\)](#) including:

- Warning;
- Censure;
- Suspension without pay;
- [Dismissal.](#)

•

#### **Staff\***

Staff who are found to be in violation of this policy may be subject to disciplinary action as provided in [UAP 3215 \(“Performance Improvement”\)](#) including:

- Letter of Improvement;
- Written Warning;
- Suspension;
- [Discharge.](#)

• [\\*Non-unionized.](#)

## **13. 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 and subsequent hearing 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.

## **14. UNM Branch Campus Information**

UNM's branch campuses in Gallup, Los Alamos, Taos and Valencia are subject to the University's Student Code of Conduct and Visitor Code of Conduct. All branch campuses prohibit any act of sexual misconduct and encourage students who experience such acts to report them to the appropriate law enforcement agency and to seek assistance from campus and community resources. UNM branch campus students can submit complaints alleging sexual misconduct committed by another student, staff or faculty member, or third party to UNM's Title IX Coordinator. Please refer to Section 3 of this policy for information on Confidential Reporting Sources and persons obligated to report allegations of harassment. A listing of resources available for branch campus students and community members is provided in Appendix C.

## **15. Educational Programs**

UNM recognizes the harm caused by sexual misconduct and the need to educate the University community regarding these issues. The University offers numerous educational programs. See Appendix D.

## **16. New Mexico Definitions of Violence Against Women Act Crimes**

### **Stalking – NMSA 1978, § 30-3A-1 *et seq.*, “Harassment and Stalking Act”**

- Stalking: 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.

“Harassment” means knowingly pursuing a pattern of conduct that is intended to annoy, seriously alarm or terrorize another person and that serves no lawful purpose. The conduct must be such that it would cause a reasonable person to suffer substantial emotional distress.

“Stalking” means 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, confinement, or restraint of the individual or another individual. A “pattern of conduct” means two or more acts, on more than one occasion.

“Aggravated stalking” consists of stalking perpetrated by a person:

- who knowingly violates a permanent or temporary order of protection issued by a court, except that mutual violations of such orders may constitute a defense to aggravated stalking;
- in violation of a court order setting conditions of release and bond;
- when the person is in possession of a deadly weapon; or
- when the victim is less than sixteen years of age.

**Domestic Violence – NMSA 1978, § 30-3-10, *et seq.*, “Crimes Against Household Members Act” (includes dating violence)**

- 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.
- 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.

- 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.

“Domestic violence” consists of assault or battery of:

- a spouse or former spouse, or
- parent, step-parent, in-law, grandparent, grandparent-in-law, co-parent of a child, or a person with whom a person has had a continuing personal relationship.
- “continuing personal relationship” means a dating or intimate relationship.
- Cohabitation is not necessary to be deemed a household member for purposes of the Crimes Against Household Members Act.

“Assault against a household member” means:

- An attempt to commit a battery against a household member; or
- Any unlawful act, threat or menacing conduct that causes a household member to reasonably believe they are in danger of receiving an immediate battery.

“Aggravated assault against a household member” means:

- Unlawfully assaulting or striking a household member with a deadly weapon; or
- Willfully and intentionally assaulting a household member with intent to commit any felony.

“Assault against a household member with intent to commit a violent felony” means any person assaulting a household member with intent to kill or commit any murder, mayhem, criminal

sexual penetration in the first, second, or third degree, robbery, kidnapping, false imprisonment, or burglary.

“Battery against a household member” consists of the unlawful, intentional touching or application of force against a household member when done in a rude, insolent, or angry manner.

“Aggravated battery against a household member” consists of the unlawful touching or application of force against a household member with intent to injure that person or another.

**Sexual Assault – Criminal Sexual Penetration (NMSA 1978, § 30-9-11), Criminal Sexual Contact (NMSA 1978, § 30-9-12), and Criminal Sexual Contact with a Minor (NMSA 1978, § 30-9-13)**

“Criminal sexual penetration” is the unlawful and intentional causing of a person to engage in sexual intercourse, cunnilingus, fellatio, or anal intercourse or the causing of penetration, to any extent and with any object, or the genital or anal openings of another, whether or not there is any emission.

- Criminal sexual penetration is a felony crime; the degree of the felony (first degree through fourth degree) depends on the age of the victim and the force or coercion used by the perpetrator.
- “Force or coercion” is defined in NMSA 1978, § 30-9-10(A) and means:
- the use of physical force or physical violence;
- the use of threats to use physical force or violence against the victim or another;
- the use of threats, including threats of physical punishment, kidnapping, extortion, or retaliation directed against the victim or another; or
- committing a criminal sexual penetration or criminal sexual contact when the perpetrator knows or has reason to know that the victim is unconscious, asleep, or otherwise physically helpless or suffers from a mental condition that renders the victim incapable of understanding the nature or consequences of the act.

“Criminal sexual contact” is the unlawful and intentional touching of or application of force, without consent, to the unclothed intimate parts of another who has reached his eighteenth birthday, or intentionally causing another who has reached his eighteenth birthday to touch one’s intimate parts. “Intimate parts” means the primary genital area, groin, buttocks, anus, or breast.

- Criminal sexual contact is a felony crime if perpetrated by the use of force or coercion that results in personal injury to the victim, or if the perpetrator is aided or abetted by others, or when the perpetrator is armed with a deadly weapon.
- Criminal sexual contact is a misdemeanor crime when perpetrated with the use of force or coercion.

“Criminal sexual contact with a minor” is the unlawful and intentional touching of or application of force to the intimate parts of a minor or the unlawful and intentional causing of a minor to touch one’s intimate parts. “Intimate parts” means the primary genital area, groin, buttocks, anus, or breast. A “minor” is a person eighteen years of age or younger.

## 17. Appendices

- [Appendix A – Resources Following an Act of Sexual Harassment](#)
- [Appendix B – UNM Confidential Resources and Sexual Misconduct Disclosure Obligations](#)
- [Appendix C – UNM Branch Campus Resources](#)
- [Appendix D – Education Programs](#)

### Footnotes:

<sup>1</sup>The Violence Against Women Act (VAWA) is a federal law originally passed in 1994 and reauthorized several times by Congress, most recently in 2013.

<sup>2</sup>Except as required by law and their professional licensure requirements such as reporting imminent danger.

<sup>3</sup>Except as required by law and their professional licensure requirements such as reporting imminent danger.

<sup>4</sup>Under certain circumstances, the allegations made may indicate that a continuing threat to the general public may be present. Under those circumstances, UNM may be obligated to forward the allegations to the appropriate agency for investigation and/or prosecution.