



Respondent’s Rights Related to Gender-based Discrimination/Sexual Misconduct, Stalking, Relationship Violence, and Retaliation Cases

A. Related Policy & Procedures [New Mexico Tech Sexual Misconduct Policy](#) and [NMT Title IX Procedures](#)

New Mexico Tech (the “University”) is committed to taking prompt and effective steps intended to end sexual misconduct including sexual harassment and sexual assault as well as stalking, relationship violence, and related retaliation, prevent their recurrence and, as appropriate, remedy their effects. This policy applies to University members, who include:

1. University students, whether enrolled full time or part time, for credit or non-credit courses;
2. University employees and
3. third parties who are engaged in any University activity or program, or who are otherwise interacting with the University, including, but not limited to, volunteers, contractors, vendors, visitors, and guests.

This policy and respondent’s (accused party’s) rights apply to all forms of gender-based discrimination/sexual misconduct as well as, stalking, relationship violence, and related retaliation committed by or against students, employees, and third parties when:

1. the conduct occurs on University property;
2. the conduct occurs in the context of a University employment or education program or activity, including, but not limited to, University-sponsored academic, athletic, extracurricular, study abroad, research, on-line or internship programs or activities;
3. the conduct occurs off University property and outside the context of a University employment or education program or activity, but has a continuing adverse effect on or creates a hostile environment for students, employees, or third parties while on University property or in any University employment or education program or activity; or
4. the conduct indicates that the respondent (accused) may present a danger or threat to the health or safety of University members.

B. Prohibition

All University members are prohibited from engaging in, or assisting or abetting another’s engagement in, sexual misconduct, relationship violence, stalking, and related retaliation (collectively “prohibited conduct”).

C. Expectations, Opportunities, and Obligations of and for respondents

Respondents (accused) and complainants (accuser) can expect the following in connection with reports submitted under this policy:

1. Prompt and fair resolution of prohibited conduct reports.
2. Privacy in accordance with this policy and law.
3. Information about applicable support and advocacy resources (see below).
4. Protection from retaliation (see below) as defined in this policy.
5. Timely notice of any meeting or proceeding at which the person's presence is contemplated by this policy.
6. Written notice to the respondent of the allegations constituting a potential violation of this policy, including sufficient details and with sufficient time to prepare a response before any initial interview.
7. Timely and equal access to information that will be used after the prohibited conduct investigation and during disciplinary meetings and hearings, where available.
8. Receipt of periodic updates, and updates upon request, on the status of the investigation and adjudication procedures.
9. An explanation if the timeline for completion of the investigation and adjudication procedures must be extended.
10. Contact from the University after the investigation is concluded to determine whether additional supportive measures are needed.
11. Proceedings that are conducted by individuals who:
 - a. do not have a conflict of interest or bias for or against the complainant or respondent;
 - b. receive annual training on prohibited conduct and procedures for investigating prohibited conduct complaints that protect the safety of the parties and promote accountability; and
 - c. treat all participants with dignity.
12. To not be required to resolve prohibited conduct concerns directly with the other party, such as through mediation.
13. The campus Title IX office or its designee will ensure that the complainant receives a written explanation of applicable resources (see below), and is offered the opportunity to discuss those resources.
14. Complainants and respondents have the following opportunities in connection with reports submitted under this policy:
 - a. To express concerns about the proceedings or processes under this policy.
 - b. To offer information, submit evidence, and identify witnesses during an investigation.
 - c. Complainants and respondents have the following obligations in connection with reports submitted under this policy:
 - To not retaliate against any person as defined in this policy.

- To provide truthful information in connection with any report, investigation, proceeding or resolution under this policy.

D. Resources for Personal Support

Both the University and community offer a number of free and confidential support resources that might be useful to you. For example:

1. Employee Assistance Program (confidential professional consultation and referral services to address employees' personal or work concerns) 800-348-3232 or 505-816-6790
2. Student Health and Counseling & Disability Services Center (confidential health care providers and counselors for students), 1st floor Fidel: 575-835-5094 (health center x-5094 on-campus) and 575-835-6619 (counseling x-6619 on-campus)
3. The National Domestic Violence Hotline 800-799-7233
4. National Sexual Assault Hotline 800-656-4673
5. New Mexico Coalition of Sexual Assault Programs, Inc. 505-883-8020, email: nmcsaas@swcp.com
6. Albuquerque Rape Crisis, 1025 Hermosa Dr. SE, Albuquerque, NM 87108, 505-266-7711, email: www.rape-crisis.org
7. Sexual Assault Nurse Examiners (SANE), 625 Silver, SW - 2nd Floor, ABQ, NM 87102, 505-883-8720, Emergency SANE Contact: 505-884-7263, <http://abqsane.org/>
8. Socorro Mental Health: 575-835-2444
9. Socorro General Hospital : 575- 835-1140 Emergency Room: 575-835-8370
10. Learn to Live (confidential online service to help students with issues related to stress, depression and anxiety) <https://www.learntolive.com/>

E. Support Persons/Advisors/Advocates

Respondents may be accompanied to meetings throughout the investigation and adjudication process as follows:

1. In cases of alleged sexual misconduct and other prohibited conduct related to this policy involving employee or other non-student/University member respondents, respondents and complaints may be accompanied throughout the meetings in the investigation and adjudication process by one (1) support person of their choice. A support person may be an attorney, victim's support advocate, support person or other individual who is not a witness in the case.
2. In these similar cases involving student respondents, the complaints may be accompanied to meetings and hearings in the investigation and adjudication process by one (1) support person of their choice, although additional advisors may be allowed during investigative meetings at the discretion of the investigator. An advisor may be an attorney, victim's support advocate, support person or another individual who is not a witness in the case. If you decide that you would like to have an advisor present during any meeting with Dean of Students Office (DOSO) or Office Graduate Studies (OGS), please let us know. If you make that decision while meeting with a DOSO or OGS staff

member, the staff member will stop the meeting and reschedule it for a time when an advisor can accompany you.

3. Each party is permitted one (1) Hearing Support Person at the hearing, however the advisor will have no active role in the hearing except for cross-examining purpose of the other party. The Hearing Support Person can consult with their advisee and the advisee can address the Chair with any questions. If the Hearing Support Person attempts to be more actively involved, the Chair will provide the Hearing Support Person a warning of protocol. If the Hearing Support Person continues to intervene or is disruptive, the advisor will be asked to leave the room/session.

F. Privacy and Confidentiality

The University protects the privacy of all individuals involved in University investigative processes to the greatest extent possible. The University only share information about you and about the information you provide when it is necessary in order to fairly and thoroughly respond to the reports we receive. We have provided you with a Data Privacy Notice that provides more information about the situations in which the information you provide could be shared.

The University encourages respondents not to speak with anyone else about the report, the investigation, the allegations or other information we discuss. When others learn about this information, the reputations, relationships, future employability and many other aspects of the lives of those involved in the investigation could be jeopardized. In addition, the more people who learn about this information or the identities of the parties or witnesses, the more likely it is that retaliation may occur.

In particular, we advise respondents not to talk about the report, the investigation, the allegations or the other information we discuss with the respondent or anyone you believe could be a witness. This will help to maintain the integrity of the investigation and prevent fabrication or destruction of evidence. We also know that memories can be fragile and that discussions about this information could potentially change witnesses' and parties' memories.

The University recognizes that respondents may need to discuss information about your experience and your report to AA/EEOC or DOSO with others in order to make employment, academic or housing arrangements, and such discussions are appropriate. For example, an employee complainant may share information about their experience or report with their supervisor. We also encourage you to use personal and University-provided resources, listed above, to obtain the support you need.

G. Retaliation

The University prohibits retaliation. Retaliation occurs when someone engages in intimidation, harassment, reprisal or other harmful action against another for making a report, participating in an investigation, or expressing opposition to misconduct.

As a respondents, you are both responsible for not retaliating against others for their participation in the investigation and protected from someone retaliating against you because you have made a report and participated in an investigation. To prevent retaliation, we advise that you be cautious about sharing information about the investigation with others. We also advise you to not contact the respondent unless such contact is necessary to complete your normal employment or academic work.

We know that many respondents worry that they will experience retaliation. If you experience possible retaliation, please let us know right away so that we can address the situation appropriately.

H. Truthfulness

We expect that you will provide full and truthful answers to our questions. Knowingly providing false, misleading or incomplete information can result in disciplinary action.

I. Procedural Fairness Protections (e.g., due process)

The University is committed to providing all parties with strong procedural fairness protections, including notice of the allegations and investigation, the opportunity to present evidence and identify witnesses and an impartial and unbiased investigation process.

J. Notifications for Respondents in Sexual Misconduct and These Other Prohibited Conduct Cases

The following additional information also might be helpful for complainants:

- a. Support and advocacy resources are available for University members who have experienced sexual misconduct or other prohibited behavior.
- b. You have the right to seek medical treatment.
- c. You have the right to contact law enforcement. You have the right to be assisted by campus authorities in contacting law enforcement and seeking a protective order. You also have the right to decline to contact law enforcement.
- d. You have the right to request accommodations or protective measures, such as changes to your academic, living, transportation and working situations. To obtain such accommodations or protective measures, please contact the Title IX Coordinator or the departments or individuals with the ability to provide the requested accommodations, such as the campus housing and residential life office or the appropriate faculty member.
- e. Please take care to preserve evidence that may assist in showing that the reported misconduct occurred or in obtaining a protective order. For example, preserve relevant e-mails, texts, photos, and other types of evidence. You have up to 168 hours (7 days) to get a free medical forensic exam for evidence collection at any hospital emergency department. If you are considering making a police report or getting a forensic exam, save your clothes and sheets in a paper bag and do not shower.

K. DUTY TO PARTICIPATE

Complainants are not required to participate in prohibited conduct investigations. However, the University may be limited in its ability to respond to a prohibited conduct report without the complainant's participation. When requested, respondents are required to meet with the campus Title IX office or its designee without undue delay to, at a minimum, hear the detailed allegations asserted against them. Respondents are not required to respond to these allegations, and the fact of their failure to provide any response will not be used to support a finding of responsibility. However, where a complainant or respondent refuses to provide relevant information in an investigation, the campus Title IX office or its designee will make a finding based only on the information available.

Employees who are exempted from reporting sexual misconduct under Section VII are not required to participate in prohibited conduct investigations as witnesses.

All other University members are required to participate in prohibited conduct investigations to ensure that the most complete information is available for the University to determine whether prohibited conduct occurred. The Title IX Coordinator or a designee may excuse University members from this requirement in certain circumstances, such as where the University member is unlikely to provide significant relevant information or where participation would be particularly burdensome for that University member. This duty to participate does not apply to student participation in prohibited conduct hearings.

Individuals who knowingly or intentionally file a false report or provide false or misleading information in connection with an investigation may be subject to disciplinary action up to and including termination of employment or expulsion. Disciplinary action is not warranted where an individual makes a prohibited conduct report or participates in a prohibited conduct investigation in good faith, even if the report or information is ultimately not substantiated. An individual makes a report or participates in a prohibited conduct investigation in good faith when that individual reasonably believes that the information they have provided is accurate.

Reports that an individual has knowingly or intentionally filed a false report or provided false or misleading information will be addressed by the following offices: (1) for reports of students engaging in this misconduct, the campus office responsible for investigating and adjudicating potential Student Conduct Code violations other than sexual harassment, sexual assault, stalking and relationship violence; (2) for reports of employees engaging in this misconduct, the employee's supervisor or human resources representative; and (3) for reports of third parties engaging in this misconduct, the University official responsible for retaining or overseeing the third party.

L. Data Privacy Notice

The purpose of this meeting is to collect information from you regarding reports of discrimination, harassment, sexual misconduct, nepotism or retaliation. Some of the information that we request from you may be private information under New Mexico and/or federal law. The University will use this private information to investigate or otherwise appropriately address reported misconduct, including potential violations of the University's policies related to discrimination, harassment, sexual misconduct, retaliation and/or nepotism.

You are not required by law or University policy to provide any information during this meeting and you may refuse to provide some or all of the information requested. If you decide not to provide information, you will not be subject to disciplinary action because of your decision not to provide information. This refusal may not apply to all employees (e.g. law enforcement). In all formal investigations, we will make a decision about whether a violation of University policy has occurred based on the information available to us. Therefore, if you do not provide information in a formal investigation, we will make a decision without the benefit of the information you have. If you decide to provide information, our expectation is that the information you provide will be truthful. Knowingly providing false, misleading or incomplete information can result in disciplinary action.

When possible, the University will only release private information about you and/or information that you provide to other University members who need this information to investigate, address and/or make decisions about reported misconduct. However, private information about you may be released if permitted or required under New Mexico or federal law to the individuals or entities identified on the following page.

Information about you may be released if permitted or required under New Mexico or federal law, including to the following individuals or entities:

Information about students	Information about employees
<ul style="list-style-type: none"> ● the complainant, the respondent and witnesses in the matter or investigation at issue; ● school officials, including University faculty, who have legitimate educational interests in the information; ● other schools in which you seek or intend to enroll, or are enrolled; ● other schools where you are also enrolled or receiving education services; ● the federal Comptroller General or other federal, state or local government officials for purposes of program compliance, audit or evaluation; ● appropriate individuals in connection with your application for, or receipt of, financial aid; ● alleged victims of crimes of violence or sexual assaults, if you are the alleged perpetrator and the released information is the final result of a disciplinary proceeding against you, and related to the alleged crime(s); ● your parents, if your parents claim you as a dependent student for tax purposes; ● institutions engaged in research related to testing, student aid, or improved instruction; ● accrediting organizations in connection with their accrediting functions; ● appropriate persons in connection with an emergency, if necessary to protect your health or safety or the health or safety of others; ● courts, grand juries, or state or federal agencies, if the information is sought with a valid subpoena or pursuant to an administrative or court order (including when sought in conjunction with a criminal investigation); ● persons/entities whom you authorize to receive the data; and ● other persons or entities authorized by state or federal law. 	<ul style="list-style-type: none"> ● the complainant, respondent and witnesses in the matter or investigation at issue; ● individuals within the University whose work assignments reasonably require access to the information; ● labor organizations, to the extent that a responsible authority determines that the dissemination is necessary to conduct elections, notify employees of fair share fee assessments, or to implement labor law or collective bargaining agreements; ● law enforcement, in order to report a crime or alleged crime committed by an employee, or for the purpose of assisting law enforcement in the investigation of a crime committed or allegedly committed by an employee; ● the New Mexico Department of Administration for the purpose of administering the workers' compensation program; ● state and federal enforcement agencies, including but not limited to the U.S. Equal Employment Opportunity Commission, the New Mexico Department of Human Rights, and the U.S. Department of Labor; ● appropriate licensing entities and agencies; ● pursuant to a court order; ● entities and agencies as determined by a responsible authority and who are authorized by state or federal law to gain access to the information; ● persons/entities whom you authorize to receive the data; and ● other persons or entities authorized by state or federal law. ● In addition, if final disciplinary action is taken, the nature of the final disposition of the disciplinary action, together with the specific reasons for the action and data documenting the basis of the action (excluding data that would identify employees who are confidential sources) will become public data that may be released;