

# 3.25 – Prohibition of All Forms of Unlawful Discrimination

[arp.nmsu.edu/chapter-3/3-25.html](http://nmsu.edu/arp.nmsu.edu/chapter-3/3-25.html)

## Policy Details

**Responsible Executive:** University General Counsel

**Responsible Administrator:** Executive Director Institutional Equity

**Scope:** NMSU System

**Last Updated:** 09/03/2021

### PART 1: NON-DISCRIMINATION AND EQUAL OPPORTUNITY NOTICE

The New Mexico State University system (“NMSU”) is dedicated to providing equal opportunity to learning and employment.

- A. NMSU does not discriminate on the basis of age, ancestry, color, disability, gender identity, genetic information, national origin, race, religion, serious medical condition, sex (including pregnancy), sexual orientation, spousal affiliation or protected veteran status in its programs and activities as required by federal and state equal opportunity/affirmative action regulations and laws and NMSU policy and rules.
- B. Office of Institutional Equity (“OIE”) is designated as the office that receives and processes internal discrimination complaints for NMSU. Complaints of discrimination, sexual harassment, sexual violence and/or retaliation should be directed to the OIE at [equity@nmsu.edu](mailto:equity@nmsu.edu), via the OIE website at <https://equity.nmsu.edu/home/incident-report.html> or submitted in person at the address listed herein. Complaints may also be filed with the Department of Education, Office for Civil Rights, the Equal Employment Opportunity Commission and/or the New Mexico Human Rights Division.
- C. OIE is a neutral investigatory unit housed on the NMSU main campus in Las Cruces, New Mexico, serving the entire NMSU system.
- D. NMSU has designated the OIE Executive Director (“Executive Director”) as the Title IX Coordinator. As Title IX Coordinator, the OIE Executive Director is responsible for ensuring compliance with Title IX and all state and federal laws addressing sex and gender-based harassment, including sexual assault, sexual exploitation, sexual intimidation, domestic violence, dating violence, stalking and other forms of sexual violence based on sex, gender, sexual orientation or gender identity. In the event of a conflict between NMSU policies and procedures and applicable federal and state laws administered by the Office of Institutional Equity (e.g. Title IX and associated regulations), federal and state law will supersede.
- E. NMSU recognizes that individuals with disabilities are entitled to access, support and reasonable accommodation, when requested and supported through medical documentation. The Executive Director is charged with ensuring NMSU complies with Sections 503 and 504 of the Rehabilitation Act of 1973, the American’s with Disabilities Act (ADA) and all state and federal laws that prohibit discrimination on the basis of disability in admission, treatment and/or access to its programs and activities.
- F. Inquiries regarding unlawful discrimination, equal opportunity and affirmative action.
  1. Inquiries regarding unlawful discrimination including but not limited to Title IX, ADA, and Sections 503 and 504, should be directed to:
    - a. Office of Institutional Equity  
O’Loughlin House  
MSC 3515  
New Mexico State University  
P.O. Box 30001  
Las Cruces, NM 88003-8001  
575-646-3635, fax: 575-646-2182  
[equity@nmsu.edu](mailto:equity@nmsu.edu)
  2. Inquiries regarding equal opportunity and affirmative action should be directed to:
    - a. Office of Equity, Inclusion and Diversity  
Hadley Hall  
MSC 3445  
New Mexico State University  
P.O. Box 30001  
Las Cruces, NM 88003-8001  
575-646-7942  
[vpeid@nmsu.edu](mailto:vpeid@nmsu.edu)

- G. Where a violation of NMSU policies, rules or procedures is found to have occurred, NMSU will act to stop the conduct, prevent its recurrence, remedy its effects and discipline those responsible in accordance with NMSU policy.
- H. No employee or student, neither in the workplace or in the academic environment, should be subjected to discrimination. Even one incident of misconduct may constitute a violation of policy, rule or procedure. NMSU expects students, faculty and staff to treat one another and campus visitors with respect.
- I. Whether an action is discriminatory under law and/or policy will be determined based on the specific facts of each case and the context under which the conduct occurred.
  - 1. Some conduct may be inappropriate, unprofessional, and/or subject to disciplinary action, but not fall under the definition of discrimination/sexual harassment/sexual misconduct.
  - 2. Action taken will depend on the nature and seriousness of the conduct alleged and proven.

## **PART 2: TITLE IX NOTICE**

- A. NMSU does not discriminate on the basis of sex in education programs or activities. Title IX of the Education Amendment Act of 1972 is a federal law that states, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."
- B. Title IX prohibits:
  - 1. Sexual misconduct (sexual violence)
  - 2. Sexual harassment (discrimination on the basis of sex or gender)
  - 3. Stalking
  - 4. Domestic Violence
  - 5. Dating Violence
  - 6. Retaliation
- C. Title IX applies to all NMSU students, staff and faculty. NMSU policy requires reporting, of any discriminatory or alleged discriminatory conduct, by all "responsible employees". [1] Responsible employees include:
  - 1. Those with the authority to address and remedy sex-based discrimination and harassment; and/or
  - 2. Those with the responsibility to report sexual misconduct to a supervisor and OIE; and/or
  - 3. Those who a student would reasonably believe have such authority or obligation.
- D. NMSU has "actual knowledge" of discriminatory conduct when notice of sexual harassment or allegations of sexual harassment are made to the Title IX coordinator or any NMSU official who has the authority to institute corrective measures.
- E. In assessing OIE's jurisdiction of off-campus behavior under Title IX, as well as all other alleged discriminatory conduct, OIE will apply a two-pronged test:
  - 1. Does NMSU have control over the harasser; and
  - 2. Does NMSU have control over the context of the harassment (on our property, in our programs, on land we lease or control, or at events we sponsor).
    - a. NMSU reserves the option to take jurisdiction of off-campus misconduct when deemed necessary due to the involvement and/or impact on students and/or employees.
    - b. Discriminatory conduct, alleged to have occurred outside of the United States of America, must be reported, but will be investigated as a policy violation, not as a Title IX policy violation.
  - 3. NMSU will respond promptly to reports of sexual harassment in an education program or activity.
  - 4. As the designated Title IX Coordinator, the Executive Director is charged with oversight of the resolution of Title IX complaints, as well identifying and addressing systematic problems and patterns of conduct arising from such complaints. The Executive Director is authorized to appoint Deputy Title IX Coordinators(s).

## **PART 3: PROHIBITION OF SEX DISCRIMINATION/SEXUAL HARASSMENT**

- A. NMSU is committed to providing a place of work and learning free of sexual misconduct which includes sexual harassment, sexual misconduct and sexual violence. Engaging in sexual behavior that is inappropriate, unwanted, unsolicited and without consent is a violation of NMSU policy.
- B. Sexual harassment under Title IX includes: (1) quid pro quo; (2) "unwelcome conduct" of a sexual nature that a reasonable person would find "so severe, pervasive, and objectively offensive" that it effectively denies someone equal access to an education program; or (3) sexual assault, dating violence, domestic violence or stalking.
- C. No student or employee, either in the workplace or in the academic environment, should be subjected to unwelcome, non-consensual, non-verbal, verbal or physical conduct that is of a sexual nature. Even one incident may constitute a violation of NMSU policy, rule or procedure.
- D. Conduct of a sexual nature, constitutes a violation of NMSU policy and/or law and policy when:
  - 1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic status;

2. Submission to or rejection of the conduct is used as a basis for academic or employment decisions or evaluations, or permission to participate in an activity; or
3. The conduct has the purpose or effect of substantially interfering with an individual's academic or work performance, or creating an intimidating, hostile and offensive environment in which to work or learn.

#### **PART 4: PROHIBITION OF RETALIATION**

- A. Retaliation against an individual who in good faith reports allegations of discriminatory conduct or provides information in an investigation about behavior that may violate NMSU policy, rules or procedures is prohibited.
  1. Such conduct will be grounds for disciplinary action, up to and including termination/suspension from the university.
- B. Any student or employee engaging in the protected activity of making a complaint/report of discrimination or sexual harassment, in good faith, and/or cooperating in an investigation of allegations, may not be adversely affected in the terms and conditions of their education or employment.
- C. Retaliation includes, but is not limited to:
  1. Adverse action taken to keep someone from opposing a discriminatory practice, or from participating in a discrimination proceeding;
  2. Employment actions such as terminations, refusal to hire and denial of promotion;
  3. Action, such as an assault or unfounded threats, or actual civil or criminal charges that are likely to deter a reasonable person from pursuing their rights; or
  4. An unfair or unjustified grade.

#### **PART 5: NMSU SYSTEM-WIDE APPLICABILITY; SANCTIONS**

All students and employees are subject to Regent's Policy Manual 3.25 and this rule. Students or employees found to have violated NMSU's anti-discrimination policies, rules or procedures will be subject to corrective action, commensurate with the severity of the violation, in accordance with NMSU's rules governing student and employee discipline.

The applicable federal and state laws listed in Part 1 above have superseding effect over any and all pre-existing NMSU Administrative Rules and Procedures, including ARP 10.10 and 10.50, relating to employee investigation, findings, supportive measures, proposed corrective action and disciplinary processes, precedents and policies. Due process and sanctions for violating Title IX provisions will be administered solely under the guidance of ARP 3.25 for faculty, staff and students, for compliance with federal and state mandates.

Reports/Complaints of alleged discriminatory conduct by visitors, consultants, independent contractors and other third parties at NMSU should also be made to OIE. OIE will work with other NMSU departments, units and colleges, to take necessary steps to protect the NMSU community from discriminatory conduct including, but not limited to: restricting access to campus facilities for individuals engaging in this conduct, requiring training, written notice, and any and all other steps necessary to stop the conduct and prevent recurrence.

#### **PART 6: POLICY DISTRIBUTION**

Notice of this policy and how it may be accessed will be distributed annually to all NMSU students and employees. Human Resource Services ("HRS") and OIE will maintain documentation of distribution. New employees will be provided with notice of this policy at the time of hire. A link to this policy will be maintained on the OIE website at <http://equity.nmsu.edu>.

#### **PART 7: STANDARD OPERATING PROCEDURES FOR PROCESSING COMPLAINTS OF DISCRIMINATION**

The Office of Institutional Equity, in consultation with the Office of General Counsel, is authorized to issue and publish at <https://equity.nmsu.edu> standard operating procedures for processing complaints of discrimination, including the presumption of innocence on the part of the respondent, supportive measures for involved parties, the procedures for internal investigations, the procedures for live hearings if required, and the procedures for the parties' to appeal. The standard operating procedures will comply with applicable federal regulations, including the 2020 update to the Title IX regulations, and any corresponding Department of Education guidance that may be subsequently issued.

[1] NMSU Policy requires reporting by Responsible Employees of all conduct alleged to be discriminatory, whether under Title IX or Title VII.

#### **Related**

**Cross-Reference:**

**[Incidents, Concerns, and Complaints Reporting](#)**

See also:

[ARP 3.13 – Conflicts of Interest Arising from Consensual Relationships](#)

[ARP 3.26 – Gender Equity and Statement of Principles](#)

[ARP 16.78 – Mandatory Reporting for Suspected Child Abuse, Sexual Misconduct, Domestic Violence, Dating Violence or Stalking](#)

**Revision History:**

09/03/2021 Provisional Amendment implemented by Chancellor

08/14/2020 Major Revision implemented provisionally by Chancellor

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2017 Recompilation

03/10/2014 Amendment approved by Board of Regents