

Administrative Policies and Procedures Manual - Policy 2740: Sex Discrimination Including Sexual Misconduct (Interim)

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Authorized by RPM 2.3 ("Equal Opportunity and Affirmative Action for Employees and Students").

Process Owner: Chief Compliance Officer

2024 INTERIM POLICY INTRODUCTION

In April 2024, the U.S. Department of Education's Office for Civil Rights (OCR) published 2024 amendments to the Department's regulations implementing Title IX of the Education Amendments of 1972 (the "2024 Amendments"). The 2024 Amendments take effect on August 1, 2024 and obligate UNM to apply the requirements set forth therein to complaints of sex discrimination regarding alleged conduct that occurs on or after August 1, 2024. The changes to this policy are adopted on an interim basis to enable the University's compliance with the 2024 Amendments as of August 1, 2024, and other relevant law.

If you have experienced sex discrimination or sexual misconduct, which includes sexual assault and other sex-based crimes, as defined in this policy, you have a variety of options available to you. You may report such crimes to the police, seek confidential support or pursue administrative options, including but not limited to the following:

- filing a complaint to request an investigation and determination as to whether you were subjected to discrimination or harassment occurred;
- requesting an alternative resolution process, including but not limited to mediation; and/or
- filing a report on behalf of someone else who may have been subjected to discrimination or sexual misconduct.

All of the above options may include tailored supportive measures that are reasonably available to assist in providing parties with the support needed to continue learning and/or working at UNM. The parties also may seek supportive measures separate and apart from the above options. You can speak with a confidential employee 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 misconduct, including sexual assault.

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General

The University of New Mexico prohibits sex discrimination. This means the University prohibits discrimination on the basis of sex, sex stereotypes, sex characteristics, gender identity, sexual orientation, and pregnancy or related conditions. Sex discrimination subverts the mission of the University, and threatens the careers of students and employees.

The types of discrimination that are covered under this policy are differential treatment, sex discrimination, and sexual misconduct.

Sex Discrimination: This is when a person is treated differently based on sex, sex stereotypes, sex characteristics, gender identity, sexual orientation, and pregnancy or related conditions. This type of discrimination includes but is not limited to the failure to provide equal athletic opportunity; unequal access to curriculum; unequal treatment in the workplace and retaliation.

Sexual Misconduct: This is a form of sex discrimination. Sexual misconduct includes but is not limited to the following:

- Hostile Environment Discrimination: unequal treatment based on sex, sex stereotypes, sex characteristics, gender identity, sexual orientation, and pregnancy or related conditions that is so severe and pervasive that it alters your ability to participate in University programs or act;
- Quid Pro Quo Discrimination: when University benefits, aid or services are implicitly or expressly conditioned on unwelcome sexual harassment; and
- Sexual assault, dating violence, domestic violence, stalking, and sexual exploitation.

Sexual misconduct 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 misconduct will be taken seriously and addressed in accordance with UNM policies and procedures.

In addition to the University's prohibition on discrimination based on pregnancy or pregnancy related conditions, we offer additional protections to students, employees and applicants for admission or employment, on the basis of current, potential, or past pregnancy or related conditions. For more information on these protections, see University Administrative Policy 2760: Pregnancy or Related Conditions (Interim).

UNM is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities that are free from all discrimination and retaliation, including but not limited to sex discrimination and sexual misconduct. 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 matters where sex discrimination, sexual misconduct, retaliation and other forms of discrimination based on protected class status is alleged. 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.

As more fully described in Section 8, this policy applies to students, employees, applicants for admission or employment and other individuals who suffered conduct that could constitute sex discrimination, including sex-based harassment, while they were participating or attempting to participate in a University program or activity. If the circumstances giving rise to the allegations are related to, or impact, 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 sex discrimination, including sexual misconduct.

This policy addresses conduct that may be covered by Title IX, Title VII, the Clery Act and the Violence Against Women Act amendments to the Clery Act, 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. 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.

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 of any other team member should be raised with the Title IX Coordinator, whose contact information is located on the [CEEO website](#).

This policy contains information for students, staff, faculty, and other individuals participating in or attempting to participate in UNM's program or activities who have experienced an act of sex discrimination, including an act of sexual misconduct, regarding available resources, relevant definitions, supportive measures, education and prevention programs, and disciplinary sanctions that may be imposed for violations of this policy. For more information on discrimination related to other protected categories, see [UAP 2720: \("Equal Opportunity and Prohibited Discrimination and Related Misconduct \(Interim\)"\)](#).

Concerns about UNM's application of this Policy and compliance with certain federal civil rights laws may also be addressed to:

Office for Civil Rights (OCR)

U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Customer Service Hotline #: [\(800\) 421-3481](#)
Facsimile: [\(202\) 453-6012](#)
TDD#: [\(877\) 521-2172](#)
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

U.S. Department of Health and Human Services Office of Civil Rights

U.S. Department of Health and Human Services
200 Independence Avenue, SW
Room 509F, HHH Building
Washington, D.C. 20201
Toll-free: [\(800\) 368-1019](#)
TDD toll-free: [\(800\) 537-7697](#)

1. Procedures to Follow if You Experience Sexual Misconduct 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 misconduct, 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 misconduct 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 Misconduct

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 misconduct 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 Employees

Most UNM employees are Responsible Employees as described in Section 10 of this policy. Responsible Employees are not confidential employees and must report allegations of sex discrimination, including sexual misconduct as described in Section 10.

The University encourages individuals who have experienced sex discrimination including sexual misconduct, 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 10 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.

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 sex discrimination, including sexual misconduct; testifying; assisting; or participating in an investigation or proceeding regarding an allegation of sex discrimination. 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 sex discrimination, reports, testifies, assists, or participates in an investigation or proceeding regarding an allegation of sex discrimination, 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 or upon dismissal of a complaint.

Supportive measures are confidential 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. Supportive measures cannot be unreasonably burdensome to a party and cannot be imposed for punitive or disciplinary reasons. Supportive measures may include, for example, counseling, extension of deadlines, restrictions on contact applied to one or more parties, and changes in class, work, or housing. Supportive measures will be kept confidential to the extent possible.

The Title IX Coordinator, or their designee, promptly provides reasonably available supportive measures or may provide information on how to access supportive measures. See the [CEEEO Grievance Procedure \(CGP\)](#).

Upon any finding a Respondent is responsible for a violation of this policy, the Complainant may also be provided with remedies to restore and maintain their equal access to the working and learning environment. Upon the finding of responsibility, remedies include disciplinary measures for Respondent.

Challenging a Supportive Measure

The Parties are provided with a timely opportunity to seek modification or reversal of the Title IX Coordinator's decision to provide, deny, modify, or terminate supportive measures applicable to them.

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 assessment has determined they pose an imminent and serious threat to the health or safety of a Complainant or any student, employee or other individual arising from the allegations of sex-discrimination. This risk analysis is performed by the Threat Assessment Team (TAT), in collaboration with the Title IX Coordinator, using its standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the University will provide the Respondent with written notice of the emergency removal and an opportunity to challenge the decision following the removal. The student or employee will be given the option to request to meet with the Title IX Coordinator or their designee after such action/removal was imposed, as soon thereafter as reasonably possible, to show cause why the action/removal was implemented or should be modified.

This petition 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 the petition 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 Chief Compliance Officer, Title IX Coordinator, or their designee, 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 Chief Compliance Officer, Title IX Coordinator, or their designee, 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 of duration. Violation of an emergency removal will be grounds for discipline under the applicable policy, 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 Sex Discrimination, Including Sex Misconduct

Sex Discrimination

Sex discrimination is differential treatment or a hostile environment with respect to a person's employment or participation in an education program or activity based, in whole or in part, upon the person's actual or perceived sex.

Hostile Environment Discrimination:

- Unwelcome conduct on the basis of sex, that
- Based on the totality of the circumstances,
- Is subjectively and objectively offensive, and
- Is so severe or pervasive,
- That it limits or denies a person's ability to participate in or benefit from UNM's education program or activity.

Differential Treatment Discrimination:

Any intentional differential treatment of a person or persons that is based on a person's actual or perceived sex and that:

- Excludes a person from participation in;
- Denies a person benefits of; or
- Otherwise adversely affects a term or condition of a person's participation in a UNM program or activity.

Disparate Impact Discrimination:

Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on the basis of sex that:

- Excludes a person from participation in;
- Denies a person benefits of; or
- Otherwise adversely affects a term or condition of a person's participation in a UNM program or activity.

Sexual misconduct is another form of sex discrimination and is described in the next section.

6.1 Sexual Misconduct Generally

Sexual misconduct as an umbrella category includes the offenses of sexual exploitation, sexual harassment, quid pro quo, sexual assault, domestic violence, dating violence, and stalking. Sexual misconduct is defined as conduct on the basis of sex, including acts that are sexual in nature. Sexual misconduct may be committed by any person upon another person, regardless of the sex, sexual orientation, and/or gender identity of those involved. The various types of sexual harassment are defined below:

Sexual Exploitation

- A person taking non-consensual or abusive sexual advantage of another person, that does not constitute Sexual Harassment,
- For their own benefit or for the benefit of anyone other than the person being exploited.

Examples of sexual exploitation include but are not limited to:

Sexual voyeurism (such as watching a person undressing, using the bathroom, or engaging in sexual acts without the consent of the person being observed).

Invasion of sexual privacy.

Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually related activity where there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe, or disseminating photos without the photographed person's consent), including the making or posting of revenge porn.

Prostitution or prostituting another.

Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV), a sexually transmitted disease (STD) or infection (STI), without informing the other person of the infection. [Note: even if the viral loads are undetectable and transmission chances are low to non-existent, many state laws still require a person to disclose their HIV status to sexual partners].

Administering drugs or alcohol (such as so-called "rape drugs") to another person without their knowledge or consent.

Exposing one's genitals in non-consensual circumstances, including unwelcome sexting.

Sexual Harassment

Hostile Environment

- unwelcome conduct of a sexual nature, that
- based on the totality of the circumstances,
- is subjectively and objectively offensive, and
- is so severe or pervasive,
- that it limits or denies a person's ability to participate in or benefit from UNM's education program or activity

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 the 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 Relationship policy ([UAP 2215](#)) outlines required disclosure of a romantic or intimate relationship between a superior and a subordinate.

Quid Pro Quo

- an employee agent, or other person authorized by UNM,
- to provide an aid, benefit, or service under UNM's education program or activity,
- explicitly or impliedly conditioning the provision of such aid, benefit, or service,
- on a person's participation in unwelcome sexual conduct.

6.2 Sexual Assault

"Sexual Assault" is an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's UCR program:

- Rape. The 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 victim.
- Fondling. The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- Incest. 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

Dating Violence is defined as follows:

- violence,
- on the basis of sex,
- committed by a person,
- who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
- The existence of such a relationship shall be determined based on the Complainant'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 the 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.

For purposes of this Policy, violence is defined as intentionally or recklessly causing the Complainant physical, emotional, or psychological harm. Legitimate use of violence for self-defense is not chargeable under this Policy because the purpose is safety, not harm. Consensual use of violence, such as in kink relationships, would also not meet this definition, in most circumstances.

6.4 Domestic Violence

Domestic Violence is defined as follows:

- Felony or misdemeanor crimes committed,
- on the basis of sex,
- by a current or former spouse or intimate partner of the Complainant,
- by a person with whom the Complainant shares a child in common, or
- by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of New Mexico

6.4 Stalking

Stalking is defined as follows:

- engaging in a course of conduct,
- on the basis of sex,
- directed at the Complainant, that
- would cause a reasonable person to fear for the person's safety, or
- the safety of others; or
- Suffer substantial emotional distress.

For the purposes of this definition:

- Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

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 Act¹ Crimes" in Section 17 of this policy.

7. Jurisdiction

This Policy is only applicable to alleged sex-discrimination, including sexual misconduct, incidents that occur on or after August 1, 2024. For alleged incidents of sex discrimination or sexual misconduct occurring prior to August 1, 2024, the policy and procedures in place at the time of the alleged incident apply. Applicable versions of those policies and procedures are available at the following links: [UAP 2720 through July 31, 2024](#), and [UAP 2740 through July 31, 2024](#).

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. However, the Respondent's affiliation does not necessarily alleviate UNM's responsibility to address sex discrimination within its programs or activities.

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.

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

7.1. Off-Campus Conduct

Conduct that occurs in the United States but off-campus can be the subject to this policy's authority and will be evaluated to determine whether it implicates this policy or another UNM policy. If off-campus sex discrimination occurs within the context of a UNM program or activity or has continuing adverse, or downstream, 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.

Similarly, the University has an obligation to address hostile environments based on sex that occur in any environment under University programs or activities, even when some of the alleged discriminatory conduct occurred outside of the United States or other program external to UNM, such as an externship or study abroad program. If there are effects of that external conduct that impact a student or employee's work or educational environment, those effects can often be addressed remedially by the Title IX Coordinator if brought to their attention.

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. Gender Identity

8.1 Affirmed First Names and Pronouns

This policy prohibits discrimination and harassment based on gender identity or gender expression. Individuals shall not be required to obtain a court-ordered name change before being addressed by the first name and pronoun that corresponds to their gender identity. The University is committed to using preferred or affirmed names and pronouns wherever possible in the course of University business and education.

Members of the University community are expected to make reasonable efforts to address individuals by a pronoun corresponding to their gender identity upon request. Individuals may not be subjected to unwelcome questions or invasive requests for documentation related to their gender identity.

The intentional or persistent refusal to respect a preferred or affirmed 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 or affirmed name or pronoun.

8.2 Gender-Specific Facilities

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

Definitions:

- “Affirmed pronoun” means a pronoun that a person chooses to use or have used for self-identification (e.g., she, her, hers, he, him, his, ze, they).
- “Gender identity” means one’s internal sense of gender identity, which may be different than the assigned sex at birth.

9. 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.

9.1 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 instances where 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.

10. Reporting Sex Discrimination

A Responsible Employee is an individual who is required to report incidents of sex discrimination about which they are made aware. All UNM employees are considered Reasonable Employees under this policy, including those with responsibility for administrative leadership, teaching, and advising. In order for the University to respond effectively to individuals who have experienced sex-based discrimination, **all** UNM staff and faculty, including residents, fellows, post docs, etc., except confidential employees as defined in Section 3, who receive information about a person who has experienced sex-based discrimination, including sexual misconduct must report the information to CEEO within 24 hours, or as soon as reasonably practicable. This includes information obtained via third-party and rumors, as well as directly from the affected individual. The Responsible Employees also are required to report allegations made against them to CEEO. Having knowledge of someone else reporting an incident of sexual misconduct or harassment does not fulfill reporting obligations.

Reports can be made by calling CEEO at [\(505\) 277-5251](tel:5052775251), completing the CEEO [online reporting form](#), or email ceeo@unm.edu.

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 sex discrimination, that individual is encouraged to refer the party to a confidential advocate or other confidential employee 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 CEEEO, but that the disclosing party is not required to participate in a CEEEO process.

10.1 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.

11. 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 on campus, 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.

12. Rights of the Parties

During CEEEO's Grievance Procedure following a report of sexual discrimination, 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 CEEEO'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 [CEEEO Grievance Procedure](#) for an overview of the appeal process.

13. Investigation and Hearing Procedures

Parties have the option of filing a complaint with CEEEO, which will initiate an investigation into the allegations of sex discrimination; requesting an alternative resolution from CEEEO; or contacting CEEEO to obtain information regarding or requesting supportive measures. One need not file a complaint and trigger the investigative process to seek or receive reasonably available supportive measures. The filing of a complaint will trigger an 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 [CEEEO Grievance Procedure](#).

13.1 Disciplinary Process

If after the conclusion of the grievance procedure, including a live hearing, the Respondent has been found responsible for violating this policy, including stalking, dating violence, domestic violence, and sexual assault, 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.

Faculty*

Unrepresented 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;
- Disciplinary probation;
- Suspension without pay;
- Dismissal.

Staff**

Staff who are found to be in violation of this policy may be subject to non-disciplinary sanctions, including coaching, training and letters of expectation; as well as the following disciplinary action described in UAP 3215 ("Performance Improvement") including:

- Letter of Improvement;
- Written Warning;

- Suspension;
- Discharge.

*Faculty Members of United Academics – UNM Unit 1: *Censure, suspension without pay, termination*

*Faculty Members of United Academics – UNM Unit 2: *Censure, suspension without pay, termination*

**Employee Members of United Staff - UNM: *Letter of improvement, written warnings/notice, suspension, discharge*

**Employee Members of the University of New Mexico Police Officer's Association Albuquerque: *Letter of improvement, written reprimand/warning, suspension without pay, dismissal/discharge*

**Employee Members of Communications Workers of America: *Letter of improvement, written warning, suspension, discharge*

**Employee Members of the United Electrical, Radio and Machine Workers of America (United Graduate Workers of UNM): *Written reprimand, suspension without pay, discharge*

14. 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.

15. UNM Branch Campus Information for Students

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 sex discrimination 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 sex discrimination 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.

16. Educational Programs

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

16.1 Employee Training - Effective August 1, 2025

All UNM employees are required to complete training on the institution's obligation to address sex discrimination, their reporting requirements, and obligation to provide contact information for the Title IX Coordinator when a student discloses that they are pregnant. Training must be completed within 30 days of hire and annually thereafter. Failure to comply with the training requirements may result in disciplinary action.

This training is designed to help faculty and staff recognize sex discrimination, including sexual misconduct, know their reporting responsibility, and understand how to respond to a pregnancy or related condition disclosure. Employees are encouraged to meet the training requirement through the available online modules from Learning Central, however an alternative training method may be requested, as needed. Each employee must complete training annually.

17. 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.

18. 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:

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

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

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

⁴Under 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.

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