

## 3.80 – Prohibition of Non-Discriminatory Bullying, Hazing and Hostile Misconduct v111218

### PART 1: PURPOSE

---

This rule promotes a safe and healthy environment for students and employees who participate in university sponsored activities or chartered student organizations, reside in university housing, or work on campus. The rule defines and prohibits various types of hostile misconduct (not based upon discriminatory motives), clarifies how to make a report or complaint, and summarizes the action the university will take in response. The rule also protects from retaliation individuals who report an alleged violation of this rule or participate in the administrative processes related to enforcement of this rule.

### PART 2: DEFINITIONS

---

- A. Bullying: An act or omission (not based on discriminatory motives prohibited by RPM and ARP 3.25) committed with the intention of intimidation or causing emotional distress or other harm, typically directed toward a person perceived to be vulnerable or less powerful.
- B. Hazing: An act or omission (not based on discriminatory motives prohibited by RPM and ARP 3.25) committed by one or more individuals, occurring on or off campus, where:
  - 1. The act or omission is committed in connection with an initiation into, an affiliation with, or the maintenance of membership in, any organization. For the purpose of this policy, “organization” means an intercollegiate or intramural athletic team; chartered student organization; or other association, order, society, corps, cooperative, club, department, unit, division or similar group that is officially or unofficially affiliated with the university and whose membership consists primarily of enrolled students or employees of the university; and
  - 2. The act or omission creates an unreasonable risk of emotional or physical harm, or causes actual physical harm, mental duress or degradation, or unreasonably interferes with a person’s academic endeavors or progress, or work environment.
- C. Hostile Misconduct: An unjustified act or omission or series of acts or omissions (not based on discriminatory motives prohibited by RPM and ARP 3.25), which is sufficiently severe, pervasive or persistent so as to unreasonably interfere with or limit a person’s ability to participate in academic opportunities or activities, or to work productively in the workplace. Bullying and Hazing are types of conduct which may constitute Hostile Misconduct under this Rule.
- D. Retaliation: “Retaliation” for purposes of this rule is an adverse action taken in retribution against a person who has in good faith: (1) opposed the misconduct prohibited by this rule; (2) submitted a report or complaint of any type of Hostile Misconduct; (3) assisted with or participated in an investigation, proceeding or hearing related to administration of this rule.

### PART 3: EXCLUSION FOR DISCRIMINATORY MISCONDUCT

Discriminatory misconduct is outside the purview of this rule. Misconduct based upon a protected class (age, ancestry, color, mental or physical disability, gender, genetics, serious medical condition, national origin, race, religion, sexual orientation, gender identity, spousal affiliation, or veteran status) is prohibited under RPM 3.25 and ARP 3.25, and must be reported to Office of Institutional Equity. In such cases OIE will coordinate with Employment & Labor Relations (HR-ELR) or the Dean of Students office regarding appropriate administrative, disciplinary or corrective action based on the investigative findings.

## **PART 3: PROHIBITED MISCONDUCT**

---

- A. Prohibition of Hostile Misconduct and Retaliation: Hostile Misconduct and Retaliation are prohibited. Students and employees participating in such misconduct are subject to disciplinary measures. External parties engaging in such conduct may be banned from the campus or subject to other sanctions. The acquiescence or consent of the individual subjected to the misconduct constituting Hostile Misconduct is not a defense. The following non-exhaustive list describes conduct that may contribute to a finding of a violation of this rule, if substantiated by the facts:
1. Abusive or demeaning verbal acts or name calling; graphic and written statements in any media (e.g. texting, email, social media);
  2. Threats of harm or actual harm;
  3. Physical abuse, such as whipping, beating, branding, pushing, shoving, or tackling, use of physical restraints or objects;
  4. Forced physical activity, such as consumption of food, liquor or drugs, or sleep deprivation;
  5. Theft and/or destruction of property;
  6. Yelling, screaming, or calling members (prospective or actual) demeaning names, or restricting or substantially altering an individual's regular routines, including social interaction;
  7. Conduct that a reasonable, similarly situated individual would consider humiliating and or degrading to others;
  8. Forcing, requiring or endorsing another individual, including but not limited to prospective or new members of organization, to violate university policies, organization/association bylaws, team rules and/or any local, state, or federal law.

## **PART 4: DUTY TO REPORT AND COOPERATE**

The prevention of Bullying, Hazing, Hostile Misconduct and Retaliation is the responsibility of every member of the university community. Each organization, association, athletic team, department, unit, division, as well as each individual student and employee must report incidents believed to be associated with Bullying, Hazing, Hostile Misconduct or Retaliation and cooperate with any investigation as requested by the involved NMSU offices. Complaints or reports of non-discriminatory Bullying, Hazing, Hostile Misconduct or Retaliation are to be made as follows:

- A. Charged Party is NMSU Student: When the person alleged to have violated this rule is a student or associated with a student organization recognized by NMSU, complaints and reports must be made to the Dean of Students office. If a student reports to an employee of NMSU, the employee must promptly forward the report to the Dean of Students office.
- B. Charged Party is NMSU Employee: When the person alleged to have violated this rule is an employee or associated with any faculty or staff organization recognized by NMSU, complaints and reports should be made to HR-ELR. Any supervisor receiving such a report must promptly forward the report to HR-ELR.
- C. Charged Party Not NMSU Student or Employee: Students should seek guidance from the Office of the Dean of Students and employees from HR-ELR for misconduct alleged to violate this rule that is committed by a third party who is neither student nor employee but occurs on campus or involves a university sponsored event or organization.
- D. Criminal Misconduct: The reporting required above is not exclusive. Criminal misconduct should always be reported to the NMSU Police Department or other relevant law enforcement agency, in addition to the appropriate administrative unit, as indicated above.

## **PART 5: NMSU RESPONSE AND RESOLUTION**

- A. Initial Review: Complaints and reports will be reviewed upon receipt and assessed based upon the risk of harm alleged. Complaints or reports which do not allege facts that would violate this rule will be dismissed. The complainant or reporter will be notified regarding whether the complaint was accepted for investigation or dismissed.
- B. Fact Finding Investigation: When warranted by the allegations, the appropriate NMSU office (HR-ELR or Dean of Students office) will conduct a fact-finding investigation in accordance with their standard procedures.
- C. Standard to Determine Violation: A violation of this rule occurs when the investigating office evaluates the evidence and finds, by a preponderance of the evidence, that the alleged Hostile Misconduct was sufficiently severe, pervasive or persistent such that a similarly situated reasonable person would be significantly and adversely impacted in their ability to benefit from the educational or work opportunities provided by the institution. A violation also occurs when the investigating offices finds that an adverse action was threatened or taken against an individual and was motivated by the individual's act of reporting Hostile Misconduct or participation in the resolution of a Hostile Misconduct allegation.
- E. Corrective/Disciplinary Action for Violators: Students or employees found to have violated this rule are subject to disciplinary action, imposed through the applicable university procedures. The relevant appeal process provided in policy relating to the specific disciplinary action will be available to any individual found in violation of this rule.
- F. Relief for Affected Individual(s): HR-ELR and the Dean of Students office will implement protective and remedial measures determined to be appropriate and necessary to prevent further acts of Hostile Misconduct and to remedy the effects upon those who are adversely impacted by Hostile Misconduct. Other NMSU units will cooperate with reasonable requests designed to implement protective and remedial measures.

---

### **Details**

**Scope:** NMSU System

**Source:** ARP Chapter 3 | Ethics, Equity and Equal Opportunity

**Rule Administrator:** [AVP Human Resource Services](#)

**Last Updated:** 03/14/2011

### **Related**

#### **Cross-Reference:**

#### **Revision History:**

2017 Recompilation, formerly Rule 3.99

03/14/2011 Amendment approved by Board of Regents

07/29/2009 Policy adoption approved by Board of Regents

10/14/2008 Policy approved by Administrative Council