

## 3.25 – Discrimination, Harassment and Sexual Misconduct on Campus

### PART 1: STATEMENT OF NON-DISCRIMINATION AND EQUAL OPPORTUNITY

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New Mexico State University (NMSU) is dedicated to providing equal opportunities in areas of employment and academics without regard to age, ancestry, color, disability, gender identity, genetic information, national origin, race, religion, serious medical condition, sex, sexual orientation, spousal affiliation or protected veteran status as outlined in federal and state anti-discrimination statutes (See the **NMSU Notice of Non-Discrimination and Equal Opportunity**). As a federal contractor, NMSU's affirmative action program also supports this effort. **The following is a listing of applicable federal and state laws:**

- A. Age Discrimination in Employment Act of 1967
- B. Americans with Disabilities Act of 1990, as amended
- C. Civil Rights Act of 1991
- D. Title IX of the Education Amendments of 1972
- E. Executive Order 11141
- F. Executive Order 11246
- G. Equal Pay Act of 1963
- H. Pregnancy Discrimination Act
- I. Section 504 of the Rehabilitation Act of 1973, as amended
- J. Title VI and VII of the Civil Rights Act of 1964
- K. Vietnam Era Veterans Readjustment Act
- L. Genetic Information Non-discrimination Act of 2008
- M. NM Human Rights Act, 1969
- N. Campus SaVE Act, 2013

### PART 2: OFFICE OF INSTITUTIONAL EQUITY (OIE)

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The Office of Institutional Equity (OIE) is designated as the office that receives and processes internal discrimination complaints within the NMSU system. The NMSU OIE website will include office address, location and contact information: <http://equity.nmsu.edu/>

### PART 3: TITLE IX NOTICE

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- A. NMSU does not discriminate on the basis of sex in education programs and activities; **Title IX of the Education Amendments 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 (including sexual violence)
  - 2. Sex discrimination (gender bias)
  - 3. Sexual harassment
  - 4. Retaliation

- C. Title IX applies to students, staff and faculty. **Title IX requires reporting from “responsible employees”, defined to include:**
  - 1. Those with authority to address and remedy sex-based discrimination and harassment; and/or
  - 2. Those with responsibility to report sexual misconduct to a supervisor and OIE; and/or
  - 3. Those who a student would responsibly believe have such authority or obligation.
- D. **In cases involving harassing speech, assessing Title IX applicability to off-campus behavior will require a two-prong test:**
  - 1. Does NMSU have control over the harasser (subject to our rules) 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)
- E. NMSU will reserve the option to take off-campus jurisdiction in cases involving sexual violence, sexual assault, or rape that involve students or employees.
- F. The Chancellor will designate an administrator to serve as the NMSU Title IX Coordinator, whose duties will include overseeing all Title IX complaints and identifying and addressing systemic problems that arise during the review of such complaints.
- G. Inquiries concerning the application of Title IX may be referred to the NMSU Title IX Coordinator or the Office of Civil Rights of the United States Department of Education. The NMSU OIE website will include the NMSU Title IX Coordinator’s name, office address, telephone number, and e-mail address as well as the link to the Office for Civil Rights.

## **PART 4: CAMPUS VIOLENCE ELIMINATION ACT (CAMPUS SaVE ACT) NOTICE**

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NMSU does not tolerate any sexual violence to include intimate partner violence which can be defined as any physical, sexual, or psychological harm against an individual by a current or former partner or spouse of the individual. Such sexual violence covers domestic violence, dating violence and stalking. The Campus SaVE Act complements and is a companion to Title IX and assists with the response to and prevention of sexual violence in higher education. The Act provides a framework for educational institutions to address incidents of sexual violence occurring on-campus, on public property within and adjacent to campus, and at non-campus properties like off-campus student organization housing, campus sponsored events and remote classrooms. **Specifically, the Campus SaVE Act outlines provisions for the following:**

- A. **Transparency:** Students or employees reporting victimization will be assisted by campus authorities in reporting a crime to law enforcement and with obtaining or enforcement of no contact directives or restraining orders. Employees and students should be aware of bystander intervention which includes taking action to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault, or stalking against another person. Individuals who make reports will be provided options and assistance in changing academic, living, transportation and working situations if requested and reasonably available. Further, a resource guide will be provided which includes information on counseling, health, local advocacy and legal service agencies. The range of any possible disciplinary actions or sanctions and procedures may be found in the *NMSU Student Social Code of Conduct* and/or the *Administrative Rules and Procedures of NMSU*.
- B. **Accountability:** Provide a fair investigation and resolution of complaints. Additionally, both accuser and accused may be accompanied during proceedings by an advisor of their choice and both parties will receive written outcomes of disciplinary hearings at the same time.
- C. **Education:** Conduct initial and ongoing awareness programming for students and employees that addresses the issues of primary prevention, definition of consent, reporting, bystander intervention and risk reduction.  
Persons with inquiries about the application of the Campus SaVE Act may contact any of the following: Office of Institutional Equity (OIE) Executive Director; the NMSU Police Department

Victim's Assistance Coordinator or the Dean of Students. The NMSU OIE website will include the most current names, office address, telephone number and e-mail address as well as the link to the Office for Civil Rights.

## **PART 5: DISCRIMINATION POLICY**

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- A. NMSU is committed to providing a place of work and learning free of discrimination and harassment on the basis of a person's age, ancestry, color, disability, gender identity, genetic information, national origin, race, religion, serious medical condition, sex, protected veteran status, sexual orientation, or spousal affiliation. Where a violation of NMSU policy, rules or procedures is found to have occurred, NMSU will act to stop the conduct, to prevent its recurrence, to remedy its effects, and to discipline those responsible in accordance with the *Administrative Rules and Procedures of NMSU* or the *NMSU Student Social Code of Conduct, as applicable* (See the **NMSU Notice of Non-Discrimination and Equal Opportunity**).
- B. No employee or student, either in the workplace or in the academic environment, should be subjected to discrimination which includes inappropriate conduct. Even one incident may constitute a violation of policy, rule or procedure. It is expected that students, faculty and staff will treat one another and campus visitors with respect.
- C. **It is against NMSU policy to discriminate in any aspect of employment or education, which includes, but is not limited to:**
1. hiring actions and terminations;
  2. compensation, assignment, or classification of employees;
  3. transfer, promotion, layoff, or recall of employees;
  4. job advertisements;
  5. recruitment actions;
  6. testing;
  7. grading;
  8. acceptance or participation in an academic program or activity;
  9. use of university facilities;
  10. training programs;
  11. benefits;
  12. retirement plans, and paid and unpaid leave programs;
  13. housing;
  14. academic accommodation;
  15. employment accommodation;
  16. financial aid;
  17. other terms and conditions of employment
- D. Determining what constitutes discrimination will be accomplished on a case by case basis and depends upon the specific facts and the context in which the conduct occurs. Some conduct may be inappropriate, unprofessional, and/or subject to disciplinary action, but would not fall under the definition of discrimination. The specific action taken, if any, relating to a particular instance depends on the nature and the seriousness of the conduct that is reported.
- E. **Discriminatory practices include, but are not limited to:**
1. discrimination on the basis of a person's age, ancestry, color, disability, gender identity, genetic information, national origin, race, religion, sex, protected veteran status, sexual orientation, serious medical condition or spousal affiliation;
  2. retaliation against an individual for engaging in a protected activity such as filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices;

3. Use of electronic mail or computer dissemination of offensive material relating to protected categories;
4. Denying or interfering with an employee's or student's authorized reasonable accommodation based on disability or religion;
5. employment or education decisions based on stereotypes or assumptions about the abilities, traits or performance of individuals based on age, ancestry, color, disability, gender identity, genetic information, national origin, protected veteran status, race, religion, serious medical condition, sex, sexual orientation, or spousal affiliation; and
6. conduct that has the purpose or effect of substantially interfering with an individual's academic or work performance, or of creating an intimidating, hostile or offensive environment in which to work or learn.

## **PART 6: SEX DISCRIMINATION/SEXUAL HARASSMENT POLICY**

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- A. NMSU is committed to providing a place of work and learning free of sexual misconduct which includes sexual harassment and sexual violence. Engaging in sexual behavior that is inappropriate, unwanted and unsolicited is a violation of NMSU policy. Where sexual harassment is found to have occurred, NMSU will act to address the reported conduct, to prevent its recurrence, to remedy its effects, and to discipline those responsible in accordance with the *Administrative Rules and Procedures of NMSU* and/or *NMSU Student Social Code of Conduct, as applicable*.
- B. No employee or student, either in the workplace or in the academic environment, should be subjected to unwelcome 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.
- C. Determining what constitutes sexual harassment is dependent upon the specific facts and the context in which the conduct occurs. Some conduct may be unprofessional and/or subject to disciplinary action, but would not fall under the definition of sexual harassment. The specific action taken, if any, depends on the nature and the seriousness of the reported conduct and may include disciplinary processes.
- D. Unwelcome sexual advances, requests for sexual favors, and other non-verbal, verbal or physical conduct of a sexual or gender bias nature, constitute a violation of NMSU policy and/or administrative rules and procedures 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 of creating an intimidating, hostile or offensive environment in which to work or learn.
- E. Sexual harassment may take many forms, subtle and indirect, or blatant and overt.
- F. **Examples of unwelcome conduct of a sexual or sex related nature that may constitute a violation of policy, rules or procedures may include, but are not limited to:**
  1. Rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, stalking, or other sexual violence;
  2. Sexual violence is a physical act perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. Additionally, a person may be unable to give consent due to an intellectual or other disability;
  3. Sexually explicit or gender related statements, comments, questions, jokes, innuendoes, anecdotes, or gestures;

4. Uninvited touching, patting, hugging, or purposeful brushing against a person's body or other inappropriate touching of an individual's body;
5. Remarks of a sexual nature about a person's clothing or body;
6. Use of technology, electronic mail or computer dissemination of sexually oriented, sex-based communications or sexually explicit images;
7. Sexual advances, whether or not they involve physical touching;
8. Requests for sexual favors in exchange for actual or promised job or educational benefits, such as favorable reviews, salary increases, promotions, increased benefits, continued employment, grades, favorable assignments, letters of recommendation;
9. Displaying sexually suggestive objects, pictures, magazines, cartoons, or screen savers; or
10. Inquiries, remarks, or discussions about an individual's sexual experiences or activities and other written or verbal references to sexual conduct.

## **PART 7: RETALIATION**

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- A. Retaliation against an individual who in good faith complains of alleged discrimination or sexual harassment or provides information in an investigation about behavior that may violate NMSU policy, rules or procedures is prohibited and may be grounds for discipline. Retaliation in violation of NMSU policy, rules or procedures may result in discipline up to and including termination and/or expulsion. Any employee or student bringing a discrimination or sexual harassment complaint in good faith or assisting in the investigation of such a complaint will not be adversely affected in terms and conditions of employment and/or academic standing, nor discriminated against, terminated, or expelled because of the complaint.
- B. “**Retaliation**” may include, but is not limited to such conduct or adverse actions as:
1. Adverse action taken to keep someone from opposing a discriminatory practice, or from participating in an discrimination proceeding;
  2. Employment actions such as termination, refusal to hire, and denial of promotion;
  3. Threats, unjustified negative evaluations, unjustified negative references, or increased surveillance;
  4. Action such as an assault or unfounded civil or criminal charges that are likely to deter reasonable people from pursuing their rights; or
  5. An unfair or unjustified grade.
- Note that petty slights and annoyances, such as stray negative comments in an otherwise positive or neutral evaluation, snubbing a colleague, or negative comments that are justified by an employee's or student's poor work/academic performance or history are not considered adverse actions.

## **PART 8: APPLICABILITY AND SANCTIONS**

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All students and employees are subject to NMSU policy and administrative rules and procedures. Any student or employee who violates policy, rules or procedures is subject to discipline up to and including termination and/or expulsion in accordance with the *Administrative Rules and Procedures of NMSU* or in the case of students, the *NMSU Student Social Code of Conduct*. Complaints may also be filed against visitors, consultants, independent contractors and outside vendors whose conduct violates these policies, with the possible sanctions of limiting access to campus facilities and other measures to protect the campus community.

## **PART 9: POLICY STATEMENT DISTRIBUTION**

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The Chancellor's policy statement references the university's position as contained in these administrative rules and procedures. All employees will be provided the Chancellor's policy statement on an annual basis. Human Resource Services (HRS) and the Office of Institutional Equity (OIE) will maintain documentation (written or electronic) that each employee received the Chancellor's policy statement. New employees will be provided a copy of the Chancellor's policy statement at the time of hire, generally at New Employee Orientation (NEO) and documentation will be maintained by HRS. Additionally, the Chancellor's policy statement will be provided to students at least annually. The distribution and receipt documentation may be accomplished electronically for either employees or students. The complete text of this policy will be maintained on the OIE website: <http://equity.nmsu.edu/>

## PART 10: COMPLAINTS AND INVESTIGATION

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- A. Employees and students may file an internal discrimination complaint with OIE within ninety (90) working days from the date of the incident(s). Individuals may use the NMSU Internal Discrimination Complaint Form to submit their complaint. The use of this form facilitates the gathering of information that is necessary to assess the complaint. The OIE Executive Director (or designee) may extend the filing date of a complaint beyond the ninety (90) working days if there are extenuating circumstances.
- B. OIE will provide the option to the complainant of pursuing their complaint through an informal (which may include mediation) or formal process (submittal of the complaint). The formal internal discrimination complaint will be subject to an initial review to determine if the complaint will proceed to the investigation. If the initial review finds that the complaint will not be accepted for investigation, the OIE Executive Director (or designee) will inform the complainant in writing of the decision. The complainant may appeal the decision in writing to the Executive Vice President and Provost (or designee) within five (5) working days of receipt of the notification letter.
- C. If the internal discrimination complaint is accepted, the accused individual(s) will be provided a copy of the complaint and will be extended five (5) working days to provide a written response to OIE. OIE shall initiate the process to investigate the complaint. This process includes interviewing the complainant, respondent, potential witnesses and the gathering of any related documents.
- D. All individuals are required to cooperate with any investigation in response to allegations of discrimination. Refusal to cooperate in an investigation may result in disciplinary action in accordance with university policy, rules and procedures or student social code of conduct, as applicable. A report of inquiry will be generated by the investigator and forwarded to the Executive Vice President and Provost. Within fifteen (15) working days of receipt, the Executive Vice President and Provost (or designee) will review the report and render a decision in writing to the OIE Executive Director. The standard of evidence used for internal discrimination investigations is the “preponderance of the evidence”. Preponderance of the evidence means the greater weight of the evidence. The OIE Executive Director (or designee) will transmit the Executive Vice President and Provost’s (or designee) decision in writing to the complainant, the accused and appropriate administrators. The completion of the decision transmittal exhausts the internal process for employees, students and others or may file complaints.
- E. **Penalties:** Cases for students who are found to have violated the *NMSU Student Social Code of Conduct* and/or the *Regents Policy Manual or Administrative Rules and Procedures of NMSU* will be referred to Assistant Dean of Students. Cases for employees who are found to have violated *Regents Policy Manual or Administrative Rules and Procedures of NMSU* will be referred to Human Resource Services/Employment and Labor Relations. Sanctions for students may include action up to and including expulsion. Sanctions for employees may include employment action up to and including termination in accordance with provisions of the *Administrative Rules and Procedures of NMSU*

## PART 11: GENERAL INFORMATION

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- A. **Supervisors:** If anyone in a supervisory, managerial, administrative or executive role or position, such as a supervisor, department chair, or director of a unit, receives a complaint of alleged discrimination or sexual harassment, or observes or becomes aware of conduct that may constitute discrimination or sexual harassment, **that person must immediately contact OIE.**
- B. **Employees:** An employee who believes that he or she has been subjected to discrimination or sexual harassment by anyone is encouraged, but it is not required, particularly if it may be confrontational, to promptly tell the person that the conduct is unwelcome and ask the person to stop the conduct. An employee is not required to do this before filing a complaint. A person who receives such a request must immediately comply with it and must not retaliate against the employee. If the employee feels uncomfortable about discussing the incident with the immediate supervisor, the employee should feel free to bypass the supervisor and file a complaint with OIE.

- C. **Students:** A student who believes that he or she has been subjected to discrimination or sexual harassment by anyone is encouraged, but it is not required particularly if it may be confrontational, to promptly tell the person that the conduct is unwelcome and ask the person to stop the conduct. A student is not required to do this before filing a complaint. A person who receives such a request must immediately comply with it and must not retaliate against the student. If the student feels uncomfortable about discussing the incident with the faculty member, department head, dean or director of an administrative unit, the student should feel free to bypass the person and file a complaint with OIE. When discriminatory conduct involves a crime of violence or a non-forcible sex offense, FERPA permits NMSU to disclose to the alleged victim the name of the alleged perpetrator, any violation found to have been committed and any sanction imposed). In the event a student is found to have engaged in sexual harassment of another student, NMSU will disclose to the student who was harassed, information about the sanction imposed on the student when the sanction directly relates to the harassed student.
- D. **Internal NMSU Units:** Internal units such as the Dean of Students Office, Housing and Campus Life, Athletics and community colleges will promptly contact and consult with OIE when knowledge is obtained relating to potential discrimination or sexual harassment.
- E. **Non-employees and non-students:** Individuals who are neither NMSU employees nor NMSU students and who believe they have been subjected to discrimination or sexual harassment by an NMSU employee during the employee's work hours or by a NMSU student on campus or at a NMSU-sponsored event may utilize the complaint process set forth above.

## **PART 12: PROMPT ATTENTION**

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Complaints of discrimination or sexual harassment are taken seriously and will be dealt with promptly, impartially, and equitably. Where discrimination is found to have occurred, NMSU will act to stop the reported conduct, to prevent its recurrence, to remedy its effects, if any, and to discipline those responsible.

## **PART 13: CONFIDENTIALITY**

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NMSU recognizes that confidentiality is important. However, confidentiality cannot be guaranteed. The administrators, faculty or staff responsible for implementing these policies, rules and procedures will respect the privacy of individuals reporting or accused of discrimination or sexual harassment to the extent reasonably possible and will maintain confidentiality to the extent possible. Examples of situations where confidentiality cannot be maintained include, but are not limited to, necessary disclosures during an investigation, circumstances where the NMSU is required by law to disclose information (such as in response to legal process), or when an individual is in harm's way.

To the extent provided by law and university policy, rules or procedures, documents concerning a discrimination investigation and investigative results are not subject to public disclosure. Investigative materials and documents contain matters of opinion related to the working relationship between NMSU and its employees. Documents protected by the Family Educational Rights and Privacy Act (FERPA), Privacy Act of 1974, the New Mexico Inspection of Public Records Act, etc. are not subject to disclosure.

## **PART 14: SUPERVISOR RESPONSIBILITIES**

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- A. Every supervisor (includes faculty in academic setting) has responsibility to take reasonable steps to prevent acts of discrimination or sexual harassment, which include, but are not limited to:
1. Monitoring the work and school environment for signs that discrimination or harassment may be occurring;
  2. Refraining from participation in, or encouragement of actions that could be perceived as discrimination or harassment (verbal or otherwise);
  3. Stopping any observed acts that may be considered discrimination or harassment, and taking appropriate steps to intervene, whether or not the involved individuals are within their line of supervision; and

4. Taking immediate action to minimize or eliminate the work and/or school contact among individuals where there has been a complaint of sexual harassment, pending the completion of the investigation.
- B. If a supervisor (or faculty in academic setting) receives a complaint of alleged discrimination or sexual harassment, or observes or becomes aware of conduct that may constitute discrimination or sexual harassment, the supervisor (or faculty in academic setting) must immediately contact OIE.
- C. Failure to take the above action to prevent the occurrence of or stop known discrimination or harassment may be grounds for disciplinary action in accordance with provisions of the *Administrative Rules and Procedures of NMSU*.

## **PART 15: RELATIONSHIP TO FREEDOM OF EXPRESSION**

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NMSU is committed to the principles of free inquiry and free expression. Vigorous discussion and debate are fundamental rights and the university's policy, rules and procedures are not intended to stifle teaching methods or freedom of expression. Discrimination or sexual harassment, however, is neither legally protected expression nor the proper exercise of academic freedom; it compromises the integrity of this institution, the tradition of intellectual freedom and the trust placed in the institution by its members.