



# Proposal to Amend ARP 16.21

*NOTE: POLICY SPONSORS COMPLETE FORM ONLY THROUGH SUMMARY BOX*

<b>No.</b> ARP 16.21; <b>Title:</b> No Trespass Directive; Restricted Campus Access	
<b>Proposal Sponsor:</b> University General Counsel (UGC)	
<b>Name, Position and Contact Information:</b> Liz Ellis; 646-2446; lellis@nmsu.edu	
<b>Policy/Rule Administrator:</b> Campus Presidents	
<b>Name, Position and Contact Information:</b>	
<b>Summary:</b> This proposal substantively amends the current Restricted Access/ Prohibited Access policy in ARP 16.21. The purpose is to update consistent with law and best practices, to clarify the reasons for which someone may be denied access to NMSU campuses and property. A change in policy administrator is proposed from the Dean of Students to the relevant campus president or president’s designee, partly because this policy is primarily applied in situations involving members of the public, not students. In lieu of a “ban letter”, the process will now include the use of a template form “No Trespass Directive”, to be completed with the facts relating to each situation, which will both relay the significance of the situation to the recipient, as well as streamline the process. Due the nature of the proposed revisions (rewrite), a redlined compare version is not provided; a copy of the policy (rule) currently in effect is included.	
<b>AAG Meeting Date:</b> February 4, 2019	<b>Review Period Ends:</b> March 18, 2019
<b>Assigned Review Track:</b> <input type="checkbox"/> Academic Track <input checked="" type="checkbox"/> Administrative Track	

Assigned Review Groups:					
	ACADEMIC DEANS COUNCIL (ADC)		EHS (Environmental Health and Safety)		OFS – OFFICE OF FACILITIES AND SERV.
	ADI		EMPLOYEE COUNCIL	√	POLICE
	ADMINISTRATION & FINANCE		FACULTY SENATE		PRESIDENT’S ADVISORY COUNCIL (PAC)
	ARROWHEAD CENTER		UNIVERSITY ADVANCEMENT		REAL ESTATE
	ASSOCIATE DEANS ACADEMIC COUNCIL		HUMAN RESOURCE SERVICES		UNIVERSITY RESEARCH COUNCIL
	ASSOCIATED STUDENTS OF NMSU		ICT – INFORMATION AND COMMUNICATION TECHNOLOGY	√	VP SAEM
√	COMMUNITY COLLEGE PRESIDENTS’ COUNCIL		NMDA		

***All Academic Track Proposals are Subject to Final Review and Recommendation by the Faculty Senate.***

***ALL PROPOSALS are Subject to Final Review and Recommendation by the University Administrative Council.***

## 16.21 No Trespass Directive – Restricted Campus Access

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### PART 1: CONDUCT ON NMSU CONTROLLED PROPERTY

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In order to establish a safe environment and preserve university property for educational purposes, the NMSU Board of Regents (NMSU) reserves the right to prohibit or restrict access to any property under its control. *Any act to be performed under this rule by a university official or administrator may be performed by a designee of that official or administrator.*

- A. **Use of NMSU Property:** NMSU property and facilities are maintained for the use of individuals engaged in activities undertaken in furtherance of the NMSU mission. Academic space is generally reserved for educational purposes only, and campus housing and immediately surrounding property are reserved for use by qualifying members of the university community. While some university facilities and the grounds are open to the general public, all activities must be scheduled and authorized, and any use of NMSU property must be consistent with NMSU rules and regulations. (E.g. ARP 12.70, ARP 12.71, ARP 16.04, ARP 16.05 and ARP 18.61.) Members of the public may contact the appropriate facility scheduling authority (listing available at –insert web address–) regarding permission to use any specific space or facility controlled by NMSU.
- B. **No Overnight Stays:** NMSU forbids overnight stays on NMSU controlled property, including but not limited to, in motor vehicles, or in temporary or permanent structures, without (1) a contract or other written permission to do so. The relevant campus president is authorized to issue written permits for overnight stays.
- C. **Prohibited Conduct:** Individuals who come onto NMSU controlled property, regardless of status, are required to abide by all applicable state and federal laws, as well as NMSU policies, rules and regulations. Conduct which violates the law, interferes with educational mission, creates an actual or perceived risk to the safety of the campus community, or which disrupts, impairs or obstructs university activities, procedures, functions or residential life on campus is prohibited. Such conduct is governed by this rule regardless of whether that conduct occurs on or off NMSU controlled property, provided that the consequences of the conduct impact NMSU or members of its community.
- D. **Consequences for Violation:** Sanctions for violations of this rule will be commensurate with the degree of harm or damage threatened or resulting from the conduct and may include: warning, probation, suspension, termination, removal from the campus, arrest, No Trespass Directive, civil or criminal prosecution, or any other sanction afforded under NMSU policies or state or federal law.

### PART 2: NO TRESSPASS DIRECTIVE (NTD)

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- A. **Definition:** No Trespass Directive (“NTD”) is a written notification issued to an individual by an authorized NMSU administrator which informs an individual that the individual is prohibited from entering upon specified property or facilities owned or controlled by NMSU, that any physical presence on the specified property will be considered an illegal trespass, and that the individual may be charged with criminal trespass or subject to civil action for violating the directive.

- B. Grounds:** A NTD may be issued to any individual who meets any one of the following criteria:
1. The individual is charged with criminal acts relating to damage to NMSU property or direct threat or actual harm to any students or other members of the university community, but the individual may petition for termination of the directive in the event that the charges are dismissed without a finding of guilt.
  2. The individual is convicted of criminal acts resulting in damage to NMSU property or direct threat or actual harm to students or other members of the university community.
  3. The individual is reasonably believed to create an unreasonable risk of harm to NMSU property or the safety, security and well-being of students or other members of the university community based on credible facts as may be determined by the relevant NMSU official, after consultation with the university's legal counsel.
- C. Duration:** The NTD commences upon notification of the named individual and will typically indicate a termination date of one year or less from the date of issuance. An NTD with no termination date continues in effect indefinitely, unless otherwise modified or terminated by the relevant campus president pursuant to the process set forth in Part 4 F.
- D. Consequences for Violation:** A violation of a NTD may result in legal action against the individual, including criminal charges. The relevant police department is authorized and requested to arrest any individual found to be present on NMSU property in violation of a NTD.

### **PART 3: ROLES AND RESPONSIBILITIES**

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- A. Dean of Students - Students:** In the case of students, disciplinary action and sanctions are imposed by the Dean of Students in accordance with the Student Social Code of Conduct. A NTD may be included in a notification of interim suspension or a notification of suspension or expulsion issued by the Dean of Students following a disciplinary proceeding under the Student Social Code of Conduct.
- B. Human Resource Services - Employees:** In the case of employees, disciplinary action and sanctions are imposed through the employee disciplinary processes under the direction of the HR Employee Labor Relations unit. A NTD may be included in any written notification that an employee has been placed on administrative leave or other leave, with or without pay, issued by or with the approval of the Associate Vice President of Human Relations.
- C. Campus President - Non-Students/Non-Employees:** All other individuals who engage in prohibited conduct are subject to sanctions as may be determined by the relevant campus president. A NTD may be issued by the relevant NMSU campus president, based upon the determination of adequate grounds.
- D. NMSU Police Department – Temporary Prohibition of Campus Access:** The NMSU Police Department is authorized to issue a written temporary NTD when a police officer has cause to believe that grounds for a NTD exist. The temporary NTD remains in effect no later than 5:00 p.m. of the first full university business day after the NTD is issued. The NMSU Police Department will notify the relevant campus administrator when a temporary NTD has been issued.

## PART 4: PROCEDURES FOR TRESPASS DIRECTIVE

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- A. **Review by Legal Counsel:** Except in the case of a temporary NTD issued by a police officer, University representatives authorized to issue a NTD will consult in advance with the university's legal counsel regarding the justification, form and content of each NTD.
- B. **Notice to Individual:** The NTD will be served upon the individual by (1) in-person delivery, or (2) email or USPS mail, followed by a copy sent by certified mail, or (3) any other means determined reasonably likely to give the individual actual notice. A statement of service describing the method(s) of delivery will be signed by the individual serving the notice and maintained by the office issuing the NTD. The issuing administrator will send a copy of the notice and statement of service to the NMSU Police Department and the University General Counsel.
- C. **Effective Date of NTD:** The NTD is effective upon notification of the individual. Notification by personal delivery is effective immediately. Notification by email or USPS mail is deemed effective 3 business days after dispatch.
- D. **Right to Contest Grounds:** Students and employees may appeal the issuance of a NTD in accordance with the relevant disciplinary appeal process. Any other individual who is the subject of a NTD may, within 3 business days after notification of the NTD, request an informal hearing to rebut the facts provided in the notice as provided in Part 4. E. below. The request must be in writing and delivered to the office of the relevant NMSU campus president. The NTD remains in effect pending any such hearing.
- E. **Informal Fact Finding Hearing:** Upon receipt of a timely request for hearing, the relevant campus president will schedule and conduct an informal fact finding hearing to determine whether adequate grounds exist to justify the NTD. The campus president will make a written determination within five (5) business days after the hearing and will notify the individual of the determination. The decision of the campus president is final.
- F. **Petition to Terminate Indefinite NTD:** After a minimum of one year from the date of issuance, an individual subject to a continuing NTD may petition for termination of the NTD, by submitting a written request to the relevant campus president. With respect to individuals convicted of criminal acts against the university, its students, or employees, the request will not be considered until at least one year after the individual is released from any incarceration resulting from the conviction.
1. Petitions are granted at the discretion of the relevant campus president, in consultation with the university's legal counsel, taking into consideration the justification provided by the petitioner and the interests of the university and other third parties potentially affected by termination of the NTD.
  2. In the event that the campus president terminates a NTD, the campus president will send a copy of the determination to the NMSU Police Department and the University General Counsel.
  3. Upon issuance of the determination, the affected individual will be entitled to enter upon NMSU controlled property effective the next regular business day.

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**COPY OF ARP 16.21 CURRENTLY IN EFFECT:**

### 16.21 – Restricted/Prohibited Access to Campus

## **PART 1: RESTRICTIVE ACCESS RULE**

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In order to establish an appropriate environment and preserve university property for educational purposes, the university reserves the right to restrict access to some of its lands and facilities. Academic spaces are generally used for educational purposes only, and buildings which serve as residences for students are restricted to students, their guests, and appropriate university employees. While some other university facilities and grounds are available to the general public, activities must be scheduled and authorized, and facilities/grounds must be used according to university rules and regulations. No individual(s), except for those contracted to reside on campus, shall temporarily or permanently remain overnight on the property of the Board of Regents, or dwell on the property of the board, including but not limited to, in motor vehicles, or in temporary or permanent structures, without the specific prior approval of the vice president for student affairs and enrollment management (or designee). Members of the campus community, as well as visitors, are expected to behave in ways that do not interfere with the rights of others to pursue an education and/or do not disrupt community living on campus. Behaviors of any individuals that interfere with, disrupt, impair, or obstruct the processes, procedures, or functions of the university are prohibited. Failure to comply with this Rule could subject the individual to warning, probation, and removal from the campus, arrest, barring from the campus, or any other sanctions applicable under the Student Code of Conduct, university personnel policies, or state or federal laws. Actions taken under this Rule will be initiated by the appropriate dean or vice president (or designee). Contested administrative actions may be appealed in writing to the executive vice president and provost within 3 working days after receipt of the decision made by the appropriate dean or vice president. The decision of the executive vice president and provost is final.

## **PART 2: PROHIBITED ACCESS RULE**

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The following individuals may be prohibited from entering upon land or buildings owned or used by the board, its colleges, departments, community colleges, experiment stations, ranches, and all property owned or occupied by agencies supervised by the board:

1. Persons charged with criminal acts against the board or students or employees during the pendency of such criminal charges.
2. Persons found guilty by a court of competent jurisdiction of criminal acts against the board or students or employees.
3. Any individual whose presence on the campus constitutes a clear and present danger to the persons, property, or peace of the board, or students, employees, or agents (contractors).
4. Any individual whose presence on campus, given all attendant circumstances, could reasonably cause injury against the persons or property of the board or students or employees.
5. Any student ordered withdrawn under the Medical/Psychiatric Withdrawal Rule (available in the Office of the Vice President for Student Affairs and Enrollment Management).

In order to be prohibited from use of university lands and buildings, individuals must be notified in writing of the prohibition by the vice president for student affairs and enrollment management (or designee). Notice may be made personally or by certified mail. Individuals so notified shall be immediately barred subject to the right to request a hearing within 3 days of the service of the notification or within 6 days of the date of mailing the certified letter. Extension of time will be given to the next business day for any day that occurs on a weekend or a holiday as established

by the university. Appeals shall be made by giving written notice to the Office of the Executive Vice President and Provost of intent to appeal. Hearing on the appeal shall be within 7 days from the receipt of the notice of appeal. Neither the individual prohibited nor the university shall be represented at the hearing by legal counsel.

The hearing need not conform to the strict rules of legal evidence. In the event that the executive vice president and provost reverses the prohibition, the individual shall be immediately entitled to enter upon university land or property. In the event that the executive vice president and provost affirms the decision, the individual's prohibition shall continue. The decision of the executive vice president and provost is final. Under most circumstances, prohibitions under this Rule will be for one year or less. When the prohibition is indefinite, the affected individual may petition for the removal of the prohibition after one calendar year by submitting a written request to the vice president for student affairs and enrollment management. With respect to individuals convicted of criminal acts against the university, its students, or employees, the one year shall commence at the time the individual is released from incarceration resulting from the conviction. Any violation of such prohibition may result in legal action by the board against the individual, including such criminal charges as may be appropriate under the circumstances, including criminal trespass.

### **PART 3: VACATING UNIVERSITY BUILDINGS OR PROPERTY**

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The university recognizes the importance of providing a venue where members of the community can freely and openly express their ideas. However, if an individual(s) and/or organization improperly or illegally occupies university buildings or property, the following statement will be read:

*You are violating university regulations and/or state laws concerning improper occupation of buildings or property. If you leave within the next 10 minutes, no further action will be taken. If you do not leave within 10 minutes, you may be arrested. If you are a student, you may also be subject to disciplinary action as outlined in the Student Code of Conduct.*

In the event a crime (other than the peaceful but illegal occupation of a building or property) has occurred, is occurring, or is about to occur, action may be taken without regard to the above statement by the appropriate university officials in order to protect the safety, lives, and property of the university community.