

16.21 – No Trespass Directive – Restricted Campus Access v092919

PART 1: CONDUCT ON NMSU CONTROLLED PROPERTY

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. *The University officials and administrators authorized by this rule to take action may designate an alternate university official or employee to take such action on their behalf.*

- A. **Use of NMSU Property:** NMSU property and facilities are for the use of individuals engaged in activities undertaken in furtherance of the NMSU mission. Academic space is reserved for educational purposes, and campus housing and immediately surrounding property are reserved for use by qualifying members of the university community. Some university facilities and the grounds may be open to the general public during university business hours, and all activities and events must be scheduled consistent with NMSU rules and regulations (e.g. **ARP 3.63**, **ARP 12.70**, **ARP 12.71**, **ARP 16.04**, **ARP 16.05** and **ARP 18.61**). The public may contact the appropriate [facility scheduling authority](#) to inquire about the use of a specific space or facility controlled by NMSU.
- B. **No Overnight Stays:** NMSU prohibits 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 are required to abide by applicable state and federal laws, as well as NMSU policies, rules and procedures (“policies”) while on university property. Conduct which violates university policies or 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, if the consequences of the conduct will have a continuing adverse impact to NMSU or to members of its community.
- D. **Consequences for Violation:** Sanctions for violations will be commensurate with the degree of harm or damage threatened or resulting from the violation and include: warning, arrest and removal from the campus, issuance of a No Trespass Directive, civil or criminal prosecution, or other disciplinary action or sanction afforded under NMSU policies or state or federal law.

PART 2: DEFINED TERMS

The following definitions apply for purposes of this rule, and capitalization indicates that it is a defined term:

- A. **Day:** Day is defined as a university business day (Monday through Friday, from 8:00 a.m. to 5:00 p.m.), and excludes NMSU official holidays and other closures.
- B. **No Trespass Directive (or NTD):** A written notification that the individual named in the NTD must not enter the specified property or facilities owned or controlled by NMSU for a specified time. An

NTD provides notice that any future physical presence or interference with the specified property will be an illegal trespass, which may result in criminal charges or subject the individual to administrative or civil action for violating the directive.

- C. **Relevant Campus President:** The president of the NMSU campus responsible for the location where the incident giving rise to action pursuant to this rule occurred.
- D. **Student:** See definition of Student in **ARP 5.20 – Student Social Code of Conduct**, Part 6 S.
- E. **Visitor:** Any person on campus who is not a NMSU student or employee.

PART 3: OFFICIALS AUTHORIZED TO ACT

The officials listed below are authorized to initiate an appropriate administrative response to violations of this rule (See Part 1 D.), which may include issuance of a No Trespass Directive. No Trespass Directives may be temporary in nature or of longer duration, and may restrict an individual's access from a specific location or from all NMSU owned or controlled property.

- A. **NMSU Police Department:** NMSU police officers may issue a Temporary No Trespass Directive to any person, for the protection of public safety and the protection of personal and real property located on university premises.
- B. **Office of Institutional Equity:** The Office of Institutional Equity (OIE) may issue a Temporary No Trespass Directive to any person as an interim measure imposed in conjunction with a Title IX case.
- C. **Dean of Students:** The dean of students may issue a No Trespass Directive to a student as an interim protective measure, or as part of a sanction pursuant to the Student Social Code of Conduct.
- D. **Human Resource Services:** The assistant vice president of human resource services may issue a No Trespass Directive to an employee in conjunction with placing an employee on administrative leave pending internal investigation, or as part of the employee disciplinary process or sanction.
- E. **Relevant Campus President:** Each campus president or authorized designee may issue a No Trespass Directive to Visitors.

PART 4: GROUNDS JUSTIFYING NO TRESPASS DIRECTIVE

No Trespass Directives may be issued when one or more of the following applies:

- A. **Criminal Charging Pending for Crime against NMSU:** 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.
- B. **Criminal Conviction for Crime against NMSU:** 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.
- C. **Unreasonable Risk of Harm to NMSU:** The individual's conduct presented, or continuing presence on campus is reasonably believed to constitute, an unreasonable risk of harm to NMSU property or the safety, security and well-being of Students or other members of the university community, including their personal property, based on credible facts as may be determined by the relevant NMSU official.

PART 5: NTD ISSUANCE, EFFECTIVE PERIOD; CONSEQUENCES FOR VIOLATION

A No Trespass Directive may be issued for only a specific campus or location on campus, or may apply generally to prohibit access to all NMSU owned or controlled property.

- A. **Temporary No Trespass Directive:** To be able to timely address incidents that occur at all hours and locations, the issuance of a Temporary No Trespass Directive is authorized when one or more of the grounds described above in Part 4 are met.
1. Form: A template for a Temporary NTD may be obtained from NMSU Police Department.
 2. Effective Period: A Temporary NTD is typically delivered in person and remains in effect no later than 5:00 p.m. of the second full Day following its issuance. (Examples: If a Temporary NTD is issued at 3:00 a.m. early Tuesday morning, it will be valid through 5:00 p.m. on Wednesday; if a Temporary NTD is issued at 3:00 p.m. on Tuesday afternoon, it will be valid through 5:00 p.m. on Thursday.)
- B. **No Trespass Directive:** Pursuant to the following, the campus presidents (or their respective authorized designees) are authorized to issue No Trespass Directives:
1. Form: A template for an NTD may be obtained from the NMSU Police Department.
 2. Review by Legal Counsel: Requests for NTD's will be reviewed in consultation with university legal counsel as needed to determine whether the facts provided in support of the request meet the criteria provided in Part 4 above.
 3. Effective Period: The NTD will be valid upon valid notice to the individual, and effective through the date indicated on the NTD. If no date is indicated, the NTD will be considered a continuing NTD, and will be subject to the petition process described below in Part 7 C.
 4. Notice to Individual: Upon issuance of an NTD, the individual will be notified (1) through personal delivery, (2) by email or USPS mail, or (3) by any other means determined reasonably likely to give the individual actual notice. Notice will be deemed complete upon receipt when personally delivered, and upon third calendar day following the date of dispatch.
 5. Delivery Certification: The method of delivery to the individual subject of the NTD will be signed by the NMSU representative causing it to be delivered. This delivery certification will be forwarded to the issuing administrator, who will send a copy of the complete NTD with delivery certification to the NMSU Police Department and to the University General Counsel.
- C. **Consequences for Violation of NTD:** A violation of a NTD may result in legal action against the individual, including criminal charges. Any local police department with jurisdiction is authorized, and requested to, arrest any individual found to be present on NMSU property in violation of a NTD.

PART 6: ENTRY OF NO TRESPASS DIRECTIVE INTO CENTRALIZED DATABASE

The NMSU Police Department will provide an electronically maintained databased for the authorized departments' viewing and recording purposes. The issuance and expiration dates of a No Trespass Directive any other changes in the status of an NTD must promptly be recorded by the issuing department (or by the Police Department on that department's behalf) to enable law enforcement action to be taken based on the entry.

PART 7: CHALLENGES TO, AND EXCEPTIONS FROM, NO TRESPASS DIRECTIVE

- A. **Challenge to NTD Issued in Conjunction with Student/Employee Disciplinary Process:** Students and employees who receive an NTD as part of a student conduct process or employee discipline must utilize the applicable disciplinary appeal process if they wish to challenge an NTD.
- B. **Challenge to Issuance of NTD:** Visitors who believe they have been wrongfully issued an NTD, due to a mistake in the material facts provided in support of the NTD, a hardship resulting from the

restriction or other impropriety in the issuance of the NTD, may submit a written Request for Relief from NTD, attaching relevant supporting documentation, if any.

1. The NMSU official who issued the NTD will consider the Request for Relief with new information provided, if any, in consultation with their supervisor and/or Relevant Campus President.
2. A Determination will be issued that either upholds, modifies or rescinds the NTD.
3. The Determination will be emailed or mailed, as appropriate to the individual at the email or other address provided by the individual on the Request for Relief from NTD.
4. The NTD remains in effect while this reconsideration is pending.
5. Requests to access university property for a specific purpose and time duration as a permitted exception to the terms of a NTD that is in effect will only be considered if submitted via email, mail or in person delivery by someone other than the individual subject to the NTD to the NMSU Police Department.

C. Petition to Terminate Continuing 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 Petition to Terminate NTD to the Relevant Campus President. With respect to individuals convicted of criminal acts against the university, its Students, or employees, such requests may not be submitted until at least one year after the individual has completed their sentence, the details of which must be addressed in the Petition.

1. Petitions will be considered by the Relevant Campus President, in consultation with legal counsel and the university police department, taking into consideration the justification provided by the petitioner, the interests of the university and those of other third parties potentially affected by termination of the NTD.
2. If granted, the Petitioner must confirm that any NTD terminated pursuant to this provision is entered into the NMSU Police Department database before accessing the previously restricted NMSU property.

Details

Scope: NMSU System

Source: ARP Chapter 16 | Safety and Risk Management

Rule Administrator: Campus Presidents

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Related

Cross-Reference:

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