

80-12 Unified Response to Dating Violence, Domestic Violence and Sexual Assault

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1. **Purpose.** The purpose of this policy and procedures is to address dating violence, domestic violence and sexual assault at Eastern New Mexico University (the University). The processes defined in this policy supplement other codes of conduct and policies relating to sexual misconduct.
2. **Policy.** It shall be the policy of the University to:
 - A. Clearly identify the University's Campus Security Authority (CSA) personnel.
 - B. Establish and maintain a Victims' Bill of Rights for victims of dating violence, domestic violence, sexual assault or other violent crime.
 - C. Expand crime reporting on campus to include offenses related to dating violence, domestic violence and sexual assault.
 - D. Ensure the University has standard operating policies and procedures for handling incidents of sexual violence.
 - E. Facilitate professional development and training related to awareness, prevention strategies, and reporting of possible administrative violations and/or criminal activity.
3. **Applicability.** This policy and procedures applies to any and all students, faculty, staff and student organizations of the University.
4. **Administration.** This policy, regulations and procedures shall be administered by the vice president for Business Affairs with assistance from the Title IX Coordinator/director of Human Resources and other Campus Security Authorities (CSA's) of the University.
5. **General Definitions.**
 - A. "Complainant" – A party or entity who makes a complaint against another person or entity.
 - B. "Respondent" – A party or entity who has been accused of committing an act.
 - C. "Student" – Any person who has been accepted for admission at the University as an undergraduate, graduate or student of professional studies, whether full-time, part-time or distance education.
 - D. "Title IX Coordinator" – The person who has been designated by the University to coordinate efforts to comply with and implement this policy and its procedures. The Title IX Coordinator is responsible for coordinating administrative investigations related to reports of sexual misconduct and is available to discuss options, provide support, explain the University policies and procedures and provide education on relevant issues. The Title IX Coordinator

may designate one or more assistants to perform these duties. While many responsibilities rest with this individual, it is understood that successful processes are ultimately dependent upon the collaborative effort of the University and involved departments as a whole. The director of Human Resources serves as the Title IX Coordinator for the University.

- E. “Sexual Misconduct”—is a broad term encompassing a range of completed or attempted non-consensual sexual activities or unwelcome behaviors of a sexual nature. See Section 4(G) of the Student Code of Conduct for a discussion of the activities that many constitute “Sexual Misconduct,” The term “Sexual Misconduct,” as used in this policy and procedures, has the meaning set out in Section 4(G) of the Student Code of Conduct whether the Respondent accused of Sexual Misconduct is a student or a non-student.
- F. “University-Affiliated Activity” – Any activity on or off of the University that is initiated, aided, authorized or supervised by the University or by any officially recognized organization of the University.
- G. “University Premises” – Any and all lands, buildings, grounds or residential facilities owned, operated, supervised or controlled by the University.

6. Specific Definitions.

- A. “Sexual Misconduct” – Is a broad term encompassing a range of completed or attempted non-consensual sexual activity or unwelcome behavior of a sexual nature. The term includes sexual assault, sexual exploitation, sexual intimidation, sexual harassment, domestic violence offenses, dating violence offenses and stalking as further defined by this policy and procedures. Sexual misconduct can be committed by men or women, strangers or acquaintances, and can occur between individuals of the same or opposite sex.
- B. “Jurisdiction” – The University has jurisdiction over and will respond to allegations of Sexual Misconduct occurring on University premises, at University-affiliated activities and/or where both the alleged perpetrator or victim are a student, faculty, staff or member of a student organization. A Sexual Misconduct complaint rising to the level of criminal activity may be considered separately under this policy and procedures and in the criminal justice system. Proceedings under this policy and procedures will not be dismissed or delayed because criminal prosecution is pending, charges have been dismissed, or the charges have been reduced. Proceedings may also continue if a party is no longer employed with or is no longer a student of the University.
- C. “Consent” – Consent is an informed and freely and affirmatively communicated willingness to participate in a particular sexual activity. Consent can be expressed either by words or by clear and unambiguous actions, as long as those words or actions create mutually understandable permission regarding the conditions of each instance of sexual activity. It is the responsibility of the person who wants to engage in the sexual activity to ensure that he or she has the consent of the other to engage in each instance of sexual activity. Consent may also be deemed not given for the purposes of an administrative investigation when either party involved in the sexual activity exercises a position of authority over the other.
- D. “Household Member” – means 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 a person with whom a person has had a continuing personal relationship. This definition also includes anyone for which an intimate ongoing personal relationship exists or existed.

Cohabitation is not necessary to be deemed a household member for the purposes of the New Mexico Crimes Against Household Members Act or this policy.

7. Related Crimes.

As well as being a violation of University policy, other forms of sexual violence are defined in New Mexico statute and prohibited by this policy. These include but are not limited to criminal sexual penetration, criminal sexual contact, battery, assault, battery against a household member, assault against a household member, criminal damage to property of a household member, harassment, stalking, kidnapping, false imprisonment, telephone harassment, interference with communications, violation of a restraining order, or any other related crime defined in NMSA 1978 compilation.

8. Prevention. The University will provide training and information for the campus community to prevent or avoid sexual assault and other risk prevention strategies.

9. Bystander Intervention. The University will educate the campus community about the most effective methods of preventing sexual assault, including bystander intervention. This will include recognizing when to intervene, the responsibility to intervene, and how to intervene.

10. Anonymous and Confidential Reporting

A. University personnel can maintain confidentiality to the extent allowed by law and university policy, while others have mandatory reporting and response obligations. University personnel who receive a report of Sexual Misconduct may be required to share the information with appropriate administrative authorities for investigation and follow up. The University will protect the confidentiality of an alleged victim by refusing to disclose the alleged victim's information to anyone outside the University to the maximum extent permitted by law. As for confidentiality of information within the University, the University must balance a victim's request for confidentiality with its responsibility to provide a safe and non-discriminatory environment for the University community. Where the University cannot take disciplinary action against an alleged discriminator or harasser because of a complainant's insistence of confidentiality, the University will pursue other steps to limit the effects of the alleged Sexual Misconduct and attempt to prevent its recurrence.

B. The University's campus crisis counselors can assist in a crisis situation and provide information about options including medical assistance, psychological counseling, victim advocacy resources, legal resources, University disciplinary action, and criminal prosecution. Victims need not reveal their names if calling for information. Crisis counselors will not reveal the victim's identity to anyone without the victim's permission except under very limited exceptions (e.g., if an immediate threat to the victim or others is present, or if the victim is a minor). To obtain contact information for victim advocacy groups, counseling, health, mental health, legal assistance, and other services available to victims, contact Counseling and Career Services or the Title IX Coordinator.

C. A victim (or any individual who has information about an incident of alleged Sexual Misconduct) may submit a report through a secure web-based University reporting system, which allows the option of anonymity. However, the reporter should know that, during the course of an investigation, his or her identity may be discovered. If that occurs, the reporter will receive the same confidentiality safeguards offered to those who make a formal report under this policy.

11. Formal Reporting

- A. The University will support and assist anyone who believes he or she has been the victim of Sexual Misconduct and encourages her or him to report the incident to the reporting source of that person's choice, which can include, but is not limited to the Title IX Coordinator, ENMU Department of Public Safety, vice president for Student Affairs, Office of Civil Rights or any Campus Security Authority (CSA).
- B. Formal reporting as described in this section cannot provide complete anonymity, but the only persons who will be provided information relating to the report are those persons who need to know, unless additional disclosure is required by law. The University will make all reasonable efforts to maintain the confidentiality and privacy of parties involved in Sexual Misconduct investigations. Breaches of confidentiality or privacy committed by anyone involved in any investigation of alleged Sexual Misconduct, including the complainant, the accused, witnesses or the investigators, may be considered a separate violation of this policy and may result in disciplinary sanctions.
- C. When an incident of sexual misconduct is formally reported, the University will consider interim accommodations to protect the alleged victim while the incident is investigated and adjudicated through this policy, related University policies and/or the Student Code of Conduct. Interim accommodations may include changing academic, living, transportation or working situations. In addition, the University will honor any order of protection, no contact order, restraining order or similar lawful order issued by any criminal, civil or tribal court.
- D. As mentioned above, an individual may report an incident of Sexual Misconduct by various means, including reporting to appropriate local law enforcement agencies. Any University employee receiving a report of Sexual Misconduct must promptly contact the Title IX Coordinator. Contact persons and offices are listed below:
- Director, Human Resources, ENMU Title IX Coordinator
TitleIX.Coordinator@enmu.edu
575.562.2991
 - Eastern New Mexico University Department of Public Safety
<http://www.enmu.edu/services/police/>
575.562.2393; Emergency: 911
 - Vice President for Student Affairs,
Jeff.Long@enmu.edu
575.562.2221
 - U.S. Department of Education- Office Civil Rights
wdcrobocolp01.ed.gov
400 Maryland Avenue, SW
Washington, D.C., 20202-1100
800.421.3481
 - Any Campus Security Authority (CSA), that is, any University employee who has significant responsibility for students and campus activities. The CSA will

promptly inform the Title IX Coordinator, vice president for Student Affairs or the University Department of Public Safety of the complaint.

A complaint of Sexual Misconduct involving a student can be brought to the vice president for Student Affairs. A complaint of Sexual Misconduct involving a faculty or staff member can be brought to the Human Resources Department. The Human Resources Department will promptly inform the Title IX Coordinator.

12. Retaliation

The University takes reports of Sexual Misconduct very seriously and will not tolerate retaliation against those who make such reports or participate in the investigatory or adjudicatory process. Retaliation includes, but is not limited to, any adverse employment or educational action taken for making a report of Sexual Misconduct, or otherwise participating under this Policy. Any actual or threatened retaliation or any act of intimidation to prevent or otherwise obstruct the reporting of Sexual Misconduct or the participation in processing relating to Sexual Misconduct, may be considered a separate violation of this Policy and may result in disciplinary sanctions. Any person who believes that they have been subjected to retaliation should immediately report this concern to the Title IX Coordinator.

13. Sexual Misconduct Complaint Procedures

The Title IX Coordinator has primary responsibility for coordinating efforts for investigation, resolution, implementation of corrective measures, and monitoring the educational environment and workplace to stop, remediate, and prevent sexual misconduct. Chairs, deans, department administrators, and supervisors have a duty to identify and report discriminatory behaviors. Employees and persons with responsibility for supervising or ensuring safety of others (including student employees in the course of their employment duties) have a duty to report sexual misconduct behaviors observed or reported to them.

A. Step One: Filing a Complaint

If the victim wishes to pursue a sexual misconduct complaint, s/he will be asked to complete a Formal Complaint Report with the Title IX Coordinator.

B. Step Two: Consideration of Interim Accommodations

The Title IX Coordinator will consider interim accommodations to protect the complainant and the accused while the incident is investigated and adjudicated through this policy. Interim accommodations may include changing academic, living, transportation or working situations.

C. Step Three: Investigation

Upon the receipt of a complaint or other notice of alleged sexual misconduct, a Title IX investigator shall be assigned by the Title IX Coordinator to begin an investigation, including interviewing the complainant, the respondent and any witnesses, as appropriate and the gathering of pertinent information.

D. Step Four: Response to a Complainant

Within five business days after receipt of a complaint, the Title IX investigator will serve the Respondent with a notice of the investigation. The notice shall advise the Respondent of the nature of the charges against him or her and the requirement for confidentiality. The Respondent shall have 10 business days from receipt of the notice to respond in writing to the complaint. The response should address and respond to the specific allegations in the complaint and can include any other rebuttal information. Failure to respond may support an inference that the Respondent committed the offence for which he or she is charged. Also, failure to respond may be considered as a separate violation of this policy and at result in disciplinary action. The Title IX investigator may commence his or her investigation and may interview the Respondent prior to receipt of the Respondent's written response to the charge.

E. Step Five: Finding

Having reviewed the investigator's report, the Title IX Coordinator will issue a finding as soon as practicable (at least within **30** days, unless extended, for good cause, by the University president) from receipt of the complaint. If the Title IX Coordinator determines that this policy was violated, the Coordinator will recommend the University move forward with the formal adjudication process. If the Title IX Coordinator determines that this policy was not violated, the complainant has the right to appeal the Coordinator's decision to the vice president for Student Affairs if the complainant is a student and the area executive administrator if the complainant is an employee within 7 business days of receipt of notice. The Title IX Coordinator will simultaneously notify the complainant and the respondent in writing of the finding, any appeal rights under this policy, and implement any recommended University action.

F. Step Six: Sanctions

If the Title IX coordinator finds a violation of this policy, the Title IX Coordinator will recommend appropriate University action. If a faculty or staff member, any sanction imposed will be determined by and implemented by the appropriate administrator after consultation with HR and consistent with the constituency handbook/manual. If the Title IX Coordinator finds a violation of this policy against a student, the Title IX Coordinator will refer the incident to the vice president for Student Affairs, or his or her designee, for formal University adjudication.

The sanctions for committing an act of sexual misconduct will be commensurate to the offense any may include discipline up to and including probation, suspension, expulsion and/or termination of employment.

G. Hearing for Students

In the case of a student charged with a violation of this policy (or with a violation of Section 4(G) of the *Student Code of Conduct*), a hearing will be conducted by the judicial coordinator. Except as otherwise provided n this policy and procedures 80-12, the procedures set out in Sections 9 through 13 of the Student Code of Conduct shall govern the hearing and related proceedings.

All procedural questions are subject to the final decision of the judicial coordinator. The judicial coordinator's determination shall be made on the basis of whether it is

more likely than not that the accused student violated the specific section(s) of the Student Code of Conduct which the student has been charged with violating. The accused student(s) will be notified in writing of the recommendation of decision of the judicial coordinator. Every attempt will be made to have this notification in the hands of the accused student within 7 working days after the last hearing. A decision reached by the judicial coordinator may be appealed to the University president.

14. **Special Provisions**

- A. **Violations.** Any act that falls within the definition of Sexual Misconduct constitutes a violation of this policy.
- B. **University as Complainant.** The University reserves the right to initiate a complaint, to serve as a Complainant, or to initiate proceedings under this Policy without a formal complaint being filed by the victim of Sexual Misconduct.
- C. **Off campus conduct.** If an individual believes he or she has been subject to Sexual Misconduct off University premises at a non-University affiliated activity, the individual may file a complaint under this Policy. When a faculty, staff or student is alleged to have engaged in Sexual Misconduct off University premises, the University reserves the right to investigate and adjudicate under this Policy.
- E. **Immunity for Victims.** The University encourages the reporting of Sexual Misconduct, Sometimes victims and/or witnesses are hesitant to report because they fear that they themselves may be charged with policy violations, such as underage drinking at the time of the incident. It is in the best interest of the University to report incidents of Sexual Misconduct. To encourage reporting, the University follows a policy of offering victims and witnesses of Sexual Misconduct amnesty from being charged with alcohol or drug-related University policy violations if they had been using drugs or alcohol at or near the time of the Sexual Misconduct incident.
- F. **Notification of Outcomes.** The Title IX Coordinator and/or the designee will simultaneously notify the Complainant and the Respondent (or appellant and appellee) in writing of the outcome of any disciplinary proceeding, the procedures to appeal the results of the disciplinary proceeding, any change to the results that occurs prior to the time that such results become final and when such results become final. The disclosure of the outcome of the disciplinary proceeding shall include only the name of the accused, the violation alleged, and whether any institutional rules or code sections were violated, essential findings supporting such result, and any sanction imposed including description of disciplinary action, date of imposition of such action, and the duration of such action.

15. **Victims' Bill Of Rights.** Victims of sexual assault, domestic violence, dating violence or otherwise violent crime will have the right to the following:

- A. Reasonable changes to academic and living and work situations.
- B. Referral to counseling, victim's advocacy and other resources.
- C. Assistance in notifying law enforcement.
- D. The same opportunity as the accused to have others present at disciplinary hearing(s).

- E. Notification of the outcomes of hearings, sanctions and terms of sanctions in place.
- F. Opportunity and assistance to speak or the choice not to speak to anyone regarding the incident or outcome.
- G. Confidentiality to the extent allowable by law and university policy.

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