

80-12 Title IX Policy

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1. Purpose

The Eastern New Mexico University System (ENMU) is committed to providing an educational and employment environment that is free from sex discrimination, sex-based harassment, and retaliation for engaging in protected activity.

ENMU values and upholds the equal dignity of all members of its community and strives to balance the rights of the Parties in the resolution process during what is often a difficult time for all involved.

To ensure compliance with federal, state, and local sex discrimination laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the education program or activity, ENMU has developed policies and procedures that provide for prompt, fair, and impartial resolution of allegations of sex discrimination, sex-based harassment, or retaliation.

2. Notice of Nondiscrimination

ENMU seeks to comply with all federal, state, and local laws, regulations, and ordinances prohibiting sex discrimination in public post-secondary education institutions.

ENMU does not discriminate against any employee, applicant for employment, student, or applicant for admission based on actual or perceived sex.

This Policy covers sex discrimination in both employment and access to educational opportunities. Therefore, any member of the ENMU community whose acts deny, deprive, unreasonably interfere with or limit the education or employment, residential and/or social access, benefits, and/or opportunities of any member of the ENMU community, guest, or visitor based on that person's actual or perceived sex, is in violation of this Policy.

ENMU will promptly and effectively address any such discrimination of which it has Knowledge/Notice using the resolution process in the Sex Discrimination, Sex-Based Harassment, and Retaliation Procedures.

3. Title IX Team Contacts

ENMU has appointed the Title IX Team, comprised of the following individuals, to coordinate ENMU's compliance with federal, state, and local sex discrimination laws and ordinances:

For sex discrimination, sex-based harassment, and retaliation allegations:

Rick Sommer
 ENMU System Title IX Coordinator
 Quay Hall, Room 109
 1500 S. Avenue K, Station 2
 Portales, New Mexico, 88130
 (575)562-2235
TitleIX.coordinator@enmu.edu

ENMU-Portales Campus
 Benito Gonzales
 Deputy Title IX Coordinator
 Administration Building, Room 101A
 1500 S. Avenue K, Station 2
 Portales, New Mexico, 88130
 (575) 562-2115
Benito.gonzales@enmu.edu

ENMU-Roswell Campus
 Kay Meyers
 Deputy Title IX Coordinator
 Roswell Instructional Center, Room 201B
 Roswell, New Mexico, 88203
 (575) 624-7043
Kay.meyers@roswell.enmu.edu

ENMU-Ruidoso Campus
 Christi Melton
 Deputy Title IX Coordinator
 709 Mechem Drive, Room 248
 Ruidoso, New Mexico, 88345
 (575) 315-1205
Christi.melton@enmu.edu

Collectively, these individuals are responsible for providing comprehensive sex discrimination education and training; coordinating ENMU's timely, thorough, and fair response, investigation, and resolution of all alleged prohibited conduct under this Policy; and monitoring the effectiveness of this Policy and related procedures to ensure an education and employment environment free from sex discrimination, sex-based harassment, and retaliation.

ENMU recognizes that allegations under this Policy may include multiple forms of sex discrimination and sex-based harassment, as well as violations of other ENMU policies; may

involve various combinations of students, employees, and other members of the ENMU community; and may require the simultaneous attention of multiple ENMU departments. Accordingly, all ENMU departments will share information, combine efforts, and otherwise collaborate, to the maximum extent permitted by law and consistent with other applicable ENMU policies, to provide uniform, consistent, efficient, and effective responses to alleged sex discrimination, sex-based harassment, or retaliation.

External Contact Information

Concerns about the ENMU's application of this Policy and compliance with Title IX of the Education Amendments of 1972 may also be addressed to:

Office for Civil Rights (OCR)
 U.S. Department of Education
 400 Maryland Avenue, SW
 Washington, D.C. 20202-1100
 Customer Service Hotline: (800) 421-3481
 Facsimile: (202) 453-6012
 TDD: (877) 521-2172
 Email: OCR@ed.gov
 Web: <http://www.ed.gov/ocr>

Office of Civil Rights
 Denver Office
 U.S. Department of Education
 Cesar E. Chavez Memorial Building
 1244 Speer Boulevard, Suite 310
 Denver, Colorado, 88204-3582
 Telephone: (303) 844-5695
 Facsimile: (303) 844-4303
 Email: OCR.Denver@ed.gov

U.S. Department of Housing and Urban Development
 Albuquerque Field Office
 500 Gold Avenue SW
 7th Floor, Suite 7301
 Mailing Address: P.O. Box 906
 Albuquerque, New Mexico 87103-0906
 Telephone: (505) 346-6463
 Facsimile: (505) 346-6927
 Email: NM_Webmanager@hud.gov
 Website: <https://www.hud.gov/nm>

For Complaints involving employee-on-employee conduct:
[Equal Employment Opportunity Commission \(EEOC\)](#):
 EEOC Albuquerque Location
 505 Marquette Avenue, NW
 Suite 900 - 9th Floor

Albuquerque, NM 87102
 United States
 Phone: [1-800-669-4000](tel:1-800-669-4000)
 Fax: [505-248-5192](tel:505-248-5192)
 TTY: [1-800-669-6820](tel:1-800-669-6820)
 ASL Video Phone: [844-234-5122](tel:844-234-5122)

4. Mandated Reporting and Confidential Employees

All ENMU faculty and employees (including student-employees), other than those deemed Confidential Employees, are Mandated Reporters and are expected to promptly report all known details of actual or suspected sex discrimination, sex-based harassment, retaliation, and/or Other Prohibited Conduct to appropriate officials immediately, although there are some limited exceptions. Supportive measures may be offered as the result of such disclosures without formal ENMU action.

Complainants may want to carefully consider whether they share personally identifiable details with Mandated Reporters, as those details must be shared with the Title IX Coordinator.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report alleged crimes and/or Policy violations, and these employees will immediately pass Notice to the Title IX Coordinator (and/or police, if desired by the Complainant or required by law), who will act when an incident is reported to them.

When a disclosure occurs at public awareness events, such as “Take Back the Night” marches or speak-outs, or through a college sponsored online platform (such as a college social media page), Mandated Reporters are required to share these disclosures with the Title IX Coordinator. Upon receipt, the Title IX Coordinator is not required to act in response to those disclosures unless the disclosure indicates an imminent and serious threat to the health or safety of a complainant, student, employee, or other person. Regardless, the Title IX Coordinator will collect information related to any such disclosures to help inform the College’s efforts to prevent sex-based harassment.

The following sections describe the ENMU’s reporting options for a Complainant or third party (including parents/guardians when appropriate):

Confidential Employees

There are three categories of Confidential Employees:

- 1) Those with confidentiality bestowed by law or professional ethics, such as lawyers, medical professionals, clergy, and mental health counselors.
- 2) Those whom ENMU has specifically designated as Confidential Resources for purposes of providing support and resources to the Complainant; and
- 3) Those conducting human subjects research as part of a study approved by the ENMU’s Institutional Review Board (IRB).

For those in category 1), above, to be able to respect confidentiality, they must be in a confidential relationship with the person reporting, such that they are within the scope of their licensure, professional ethics, or confidential role at the time of receiving the Notice. These individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor, elder, or individual with a disability, or when required to disclose by law or court order.

To enable Complainants to access support and resources without filing a Complaint, ENMU has designated specific employees as Confidential Resources. Those designated by ENMU as Confidential Resources are not required to report actual or suspected sex discrimination, sex-based harassment, or retaliation in a way that identifies the Parties. They will, however, provide the Complainant with the Title IX Coordinator's contact information and offer options and resources without any obligation to inform an outside agency or ENMU official unless a Complainant has requested the information be shared.

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with the following Confidential Employees:

Confidential Employees

On-campus licensed professional counselors and administrative staff in their respective ENMU mental health counseling department.

On-campus health service providers and staff

On-campus members of the clergy/chaplains working within the scope of their licensure or ordination

Institutional counselors are available to help students free of charge and may be consulted on an emergency basis during normal business hours at their respective campus in person at Student Academic Services building, room 232 or via phone (575)562-2211. After hours, Portales's students can contact the crisis line number at 575-607-5689. Portales's students can also text 575-825-1978 for immediate help.

Ruidoso students, faculty and staff can call (575)562-9176 to reach the counselor who will respond as soon as practicable.

Roswell Campus Services:

ENMU Roswell contracts with TimelyCare for Virtual mental health and health care services, which are available 24 hours a day seven days a week for students, faculty, and staff. The log in address is: <https://app.timelycare.com/auth/login>

Employees who have confidentiality as described above, and who receive Notice within the scope of their confidential roles will timely submit anonymous statistical information for Clery Act statistical reporting purposes unless they believe it would be harmful to their client, patient, or parishioner.

Failure of a Mandated Reporter, as described above in this section, to report an incident of sex discrimination, sex-based harassment, or retaliation of which they become aware is a violation of ENMU Policy and can be subject to disciplinary action for failure to comply/failure to report.

This also includes situations when a harasser is a Mandated Reporter. Such individuals are obligated to report their own misconduct, and failure to do so is a chargeable offense under this Policy.

A Mandated Reporter who is themselves a target of discrimination, harassment, or other misconduct under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.

In addition, Complainants may speak with individuals unaffiliated with ENMU without concern that Policy will require them to disclose information to the institution without permission:

- Licensed professional counselors and other medical providers.
- Local rape crisis counselors.
- Domestic violence resources.
- Local or state assistance agencies.
- Clergy/Chaplains.
- Attorneys.

Portales Services:

Arise Sexual Assault Services are available to any community member:

<https://www.arisenm.org/contact> Portales Office (575)468-1010, 24/7 Hotline (575)226-7263

5. Scope

This Policy is only applicable to alleged incidents that occur on or after August 1, 2024. For alleged incidents of sex discrimination or sexual harassment occurring prior to August 1, 2024, the policy and procedures in place at the time of the alleged incident apply. Applicable versions of those policies and procedures are available from the Title IX Coordinator.

This Policy applies to all faculty, employees, students, and other individuals participating in or attempting to participate in ENMU's program or activities, including education and employment.

This Policy prohibits all forms of sex discrimination, and may be applied to incidents, to patterns, and/or to the institutional culture/climate, all of which may be addressed in accordance with this Policy.

6. Jurisdiction

This Policy applies to ENMU's education programs and activities (defined as including locations, events, or circumstances in which the ENMU exercises substantial control over both the Respondent and the context in which the conduct occurred), circumstances where ENMU has disciplinary authority, and to misconduct occurring within any building owned or controlled by an ENMU-recognized student organization.

This Policy may also apply to the effects of off-campus misconduct that limit or deny a person's access to ENMU's education program or activities. ENMU may also extend jurisdiction to off-campus and/or to online conduct when the conduct affects a substantial ENMU interest.

A substantial ENMU interest includes:

Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law.

Any situation in which it is determined that the Respondent poses an imminent and serious threat to the health or safety of any student, employee, or other individual.

Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder.

Any situation that substantially interferes with ENMU's educational interests or mission.

For disciplinary action to be issued under this Policy, the Respondent must be an ENMU faculty member, student, or employee at the time of the alleged incident. If the Respondent is unknown or is not a member of the ENMU community, the Title IX Coordinator will offer to assist the Complainant in identifying appropriate institutional and local resources and support options and will implement appropriate supportive measures and/or remedial actions (e.g., trespassing a person from campus). ENMU can also assist in contacting local or institutional law enforcement if the individual would like to file a police report about criminal conduct.

All vendors serving ENMU through third-party contracts are subject to the policies and procedures of their employers and/or to these policies and procedures to which their employer has agreed to be bound by their contracts.

When a party is participating in a dual enrollment program, ENMU will coordinate with the party's home institution to determine jurisdiction and coordinate providing supportive measures and responding to the complaint under the appropriate policy and procedures based on the allegations and identities of the Parties.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in contacting the appropriate individual at that institution, as it may be possible to pursue action under that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences sex discrimination or sex-based harassment in an externship, study abroad program, or other environment external to ENMU where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give the Complainant recourse. If there are effects of that external conduct that impact a student or employee's work or educational environment, those effects can often be addressed remedially by the Title IX Coordinator if brought to their attention.

7. Supportive Measures

ENMU will offer and implement appropriate and reasonable supportive measures to the Parties upon Notice of alleged sex discrimination, sex-based harassment, and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and

reasonably available. They are offered, without fee or charge to the Parties, to restore or preserve access to ENMU's education program or activity, including measures designed to protect the safety of all Parties and/or ENMU's educational environment and/or to deter sex discrimination, sex-based harassment, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the Parties upon receiving Notice/Knowledge or a Complaint. At the time that supportive measures are offered, if a Complaint has not been filed, ENMU will inform the Complainant, in writing, that they may file a Complaint with ENMU either at that time or in the future. The Title IX Coordinator will work with a party to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

ENMU will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair ENMU's ability to provide those supportive measures. ENMU will act to ensure as minimal an academic/occupational impact on the Parties as possible. ENMU will implement measures in a way that does not unreasonably burden any party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation assistance
- Implementing contact restrictions (no contact orders) between the Parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass, or Be-On-the-Lookout (BOLO) orders
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders or other restrictions may be referred to appropriate student or employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing Complaint under this Policy.

The Parties are provided with a timely opportunity to seek modification or reversal of ENMU's decision to provide, deny, modify, or terminate supportive measures applicable to them. A request to do so should be made in writing to the Title IX Coordinator. An impartial employee other than the employee who implemented the supportive measures, who has authority to modify or reverse the decision, will determine whether to provide, deny, modify, or terminate the supportive measures if they are inconsistent with the Title IX regulatory definition of supportive

measures. ENMU will also provide the Parties with the opportunity to seek additional modification or termination of supportive measures applicable to them if circumstances materially change. ENMU typically renders decisions on supportive measures within seven (7) business days of receiving a request and provides a written determination to the impacted party(ies) and the Title IX Coordinator.

8. Online Harassment and Misconduct

ENMU policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on ENMU's education programs and activities, or when they involve the use of ENMU networks, technology, or equipment.

Although ENMU may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to ENMU, it will engage in a variety of means to address and mitigate the effects. These means may include use of the Resolution Process to address off-campus conduct whose effects contribute to limiting or denying a person access to ENMU's education program or activity.

Nothing in this Policy is intended to infringe upon or limit a person's rights to free speech. Any online posting or other electronic communication by students, including technology-facilitated bullying, stalking, harassment, etc., occurring completely outside of ENMU's control (e.g., not on ENMU networks, websites, or between ENMU email accounts) will only be subject to this Policy when such online conduct can be shown to cause (or will likely cause) a substantial in-program disruption or infringement on/harm to the rights of others. Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided.

Off-campus harassing speech by employees, whether online or in person, may be regulated by ENMU only when such speech is made in an employee's official or work-related capacity.

9. Inclusion Related to Gender Identity or Expression

ENMU strives to ensure that all individuals are safe, included, and respected in their education and employment environments, regardless of their gender identity or expression, including intersex, nonbinary, transgender, agender, two-spirit, and gender-diverse students and employees.

Discrimination and harassment on the basis of gender identity or expression are not tolerated by ENMU. If a member of the ENMU community believes they have been subjected to discrimination under this Policy, they should follow the appropriate reporting process described herein.

In upholding the principles of equity and inclusion, ENMU supports the full integration and healthy development of those who are gender diverse and seeks to eliminate any stigma related to gender identity and expression.

ENMU is committed to fostering a climate where all identities are valued, contributing to a more vibrant and diverse community. ENMU will administratively address issues that some students and employees, including those identifying as intersex, transgender, agender, nonbinary, and gender diverse, may confront as they navigate systems originally designed around the assumption that gender is binary. As our society's understanding of gender evolves, so do the ENMU's processes and policies.

Concepts like misgendering and deadnaming may not be familiar to all but understanding them is essential to ENMU's goal of being as welcoming and inclusive a community as possible.

Misgendering or mispronouncing is the intentional or unintentional use of pronouns or identifiers that are different from those used by an individual. Unintentional misgendering is usually resolved with a simple apology if someone clarifies their pronouns for you. Intentional misgendering is inconsistent with the type of community we hold ourselves out to be and may constitute a Policy violation if the effect is greater than de minimis harm. We each have a right to determine our own gender identity and expression, but we don't get to choose or negate someone else's.

Deadnaming, along with misgendering, can be very traumatic to a person who is transgender, transitioning, nonbinary, or gender diverse. Deadnaming means using someone's birth-assigned (cisgender) name, rather than the name they have chosen.

To a person who is transgender, transitioning, nonbinary, or gender diverse, their cisgender identity may be something that is in their past — dead, buried, and behind them. To then revive their deadname could trigger issues, traumas, and experiences of the past that the individual has moved past, or is moving past, and can interfere with their health and well-being.

Again, unintentional deadnaming can often be addressed by a simple apology and an effort to use the person's chosen name. Intentional deadnaming could be a form of bullying, outing, or otherwise harassing an individual, and thus should be avoided.

This Policy should be interpreted consistent with the goals of maximizing the inclusion of intersex, transgender, transitioning, agender, nonbinary, and gender-diverse students and employees, including:

- Maintaining the privacy of all individuals consistent with the law.
- Ensuring all students have equal access to educational programming, activities, and facilities, including restrooms and locker rooms.
- Ensuring all employees have equal access to employment opportunities and work, service, or health-related facilities.
- Providing professional development for employees and education for students on topics related to gender inclusion.
- Encouraging all students and employees to respect the pronoun usage and identities of all members of the ENMU community.

ENMU uses several interventions to address concerns that are raised related to gender-based harassment or discrimination, including problem-solving, intervention, confrontation,

investigation, and Policy enforcement. When conflicts arise between the right of members of the community to be free from gender-identity discrimination and those exercising their right to religious freedom, ENMU will try to balance rights and interests to find mutually agreeable *outcomes or compromises*. *When that is not possible, ENMU will offer remedial solutions or enforce its Policies while also respecting the rights of all members of its community.*

10. Prohibited Conduct

Students and employees are entitled to an educational and employment environment that is free of sex discrimination, sex-based harassment, and retaliation. This Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive, subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited sex discrimination, sex-based harassment, and retaliation that are also prohibited under ENMU Policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of ENMU Policy, though supportive measures will be offered to those impacted.

All offense definitions below encompass actual and/or attempted offenses.

Any of the following offenses can be charged as or combined as pattern offenses, in which case the Notice of Investigation and Allegation (NOIA) will clearly indicate that both individual incidents and a pattern of conduct are being investigated. A pattern may exist and be charged when there is a potential substantial similarity to incidents where the proof of one could make it more likely that the other(s) occurred, and vice versa. Patterns may exist based on target selection, similarity of offense, or other factors. Where a pattern is found, it can be the basis to enhance sanctions, accordingly.

A. Sex Discrimination

Sex discrimination is different treatment with respect to a person's employment or participation in an education program or activity based, in whole or in part, upon the person's actual or perceived sex.

Discrimination can take two primary forms:

- Disparate Treatment Discrimination:
 - Any intentional differential treatment of a person or persons that is based on a person's actual or perceived sex and that:
 - Excludes a person from participation in;
 - Denies a person benefits of; or
 - Otherwise adversely affects a term or condition of a person's participation in an ENMU program or activity.
- Disparate Impact Discrimination:

- Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on the basis of sex that:
- Excludes a person from participation in.
- Denies a person benefits of; or Otherwise adversely affects the term or condition of a person's participation in an ENMU program or activity.

B. Sex-based Harassment (Applicable under Title IX, Title VII, and the Fair Housing Act)

Sex-based Harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex (throughout this Policy, "on the basis of sex" means conduct that is sexual in nature, or that is directed to the Complainant because of his/her/their actual or perceived sex or gender identity), including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity; sexual assault, dating violence, domestic violence, and stalking.

C. Quid Pro Quo

An employee, agent, or other person authorized by ENMU, to provide an aid, benefit, or service under ENMU's education program or activity, explicitly or impliedly conditioning the provision of such aid, benefit, or service, on a person's participation in unwelcome sexual conduct.

D. Hostile Environment Harassment

Unwelcome sex-based conduct, that based on the totality of the circumstances, is subjectively and objectively offensive, and is so severe or pervasive, that it limits or denies a person's ability to participate in or benefit from ENMU's education program or activity.

ENMU reserves the right to address offensive conduct and/or harassment that (1) does not rise to the level of creating a hostile environment, or (2) that is of a generic nature and not prohibited by law.

Addressing such conduct will not result in the imposition of discipline under ENMU Policy, but may be addressed through respectful conversation, remedial actions, education, effective Alternative Resolution, and/or other Informal Resolution mechanisms.

For assistance with Alternative Resolution and other Informal Resolution techniques and approaches, contact the Title IX Coordinator.

E. Sexual Assault Rape

Penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person,

oral penetration of Complainant by a sex organ of Respondent without the consent of the Complainant.

F. Fondling:

The touching of the private body parts of the Complainant (buttocks, groin, breasts), for the purpose of sexual gratification, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental incapacity.

G. Incest

Sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by New Mexico law.

H. Statutory Rape

Sexual intercourse, with a person who is under the statutory age of consent of 16 years.

I. Dating Violence

Violence, on the basis of sex, committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition—

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

Dating violence does not include acts covered under the definition of domestic violence.

J. Domestic Violence

Violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of New Mexico, or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of New Mexico.

K. Stalking

Engaging in a course of conduct, on the basis of sex, directed at the Complainant, that would cause a reasonable person to fear for the person's safety, or the safety of others; or Suffer substantial emotional distress.

For the purposes of this definition—

Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

A reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.

Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

L. Sexual Misconduct

Sexual Exploitation

A person taking non-consensual or abusive sexual advantage of another, that does not constitute Sex-based Harassment as defined above, for their own benefit or for the benefit of anyone other than the person being exploited.

Examples of Sexual Exploitation include, but are not limited to:

- a) Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed).
- b) Invasion of sexual privacy.
- c) Knowingly making an unwelcome disclosure of (or threatening to disclose) a person's sexual orientation, gender identity, or gender expression.
- d) Taking pictures, video, or audio recording of another person in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of non-consensual pornography.
- e) Prostituting another person.
- f) Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection.
- g) Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity.

- h) Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing).
- i) Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity.
- j) Knowingly soliciting a minor for sexual activity.
- k) Engaging in sex trafficking.
- l) Knowingly creating, possessing, or disseminating child sexual abuse images or recordings.
- m) Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (i.e., Deepfakes).

11. Other Prohibited Conduct

A. Bullying

Repeated and/or severe aggressive behavior that is likely to intimidate or intentionally hurt, control, or physically or mentally diminish the Complainant, that is not speech or conduct that is otherwise protected by the First Amendment.

B. Endangerment

threatening or causing physical harm; extreme verbal, emotional, or psychological abuse; or other conduct which threatens or endangers the health or safety of any person or damages their property.

C. Hazing

Any act or action which does or is likely to endanger the mental or physical health or safety of any person as it relates to a person's initiation, admission into, or affiliation with any ENMU group or organization.

For the purposes of this definition:

It is not necessary that a person's initiation or continued membership is contingent upon participation in the activity, or that the activity was sanctioned or approved by the student group or student organization, for an allegation of hazing to be upheld.

It shall not constitute an excuse or defense to a hazing allegation that the participants took part voluntarily, gave consent to the conduct, voluntarily assumed the risks or hardship of the activity, or that no injury was suffered or sustained.

The actions of alumni, active, new, and/or prospective members of a student group or student organization may be considered hazing.

Hazing is not confined to the student group or student organization with which the person subjected to the hazing is associated.

D. Retaliation

Adverse action, including intimidation, threats, coercion, or discrimination, against any person, by any ENMU student, employee, or a person authorized by ENMU to provide aid, benefit, or service under ENMU's education program or activity, for the purpose of interfering with any right or privilege secured by law or Policy, or because the person has engaged in protected activity, including reporting information, making a Complaint, testifying, assisting, or participating or refusing to participate in any manner in an investigation or Resolution Process under the Title IX Procedures, including an Informal Resolution process, or in any other appropriate steps taken by ENMU to promptly and effectively end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects.

The exercise of rights protected under the First Amendment does not constitute retaliation. It is also not retaliation for ENMU to pursue policy violations against those who make materially false statements in bad faith in the course of a resolution under Title IX. However, the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

E. Unauthorized Disclosure

Distributing or otherwise publicizing materials created or produced during an investigation or Resolution Process except as required by law or as expressly permitted by ENMU; or publicly disclosing institutional work product that contains personally identifiable information without authorization or consent.

F. Failure to Comply/Process Interference

- Intentional failure to comply with the reasonable directives of Title IX coordinator in the performance of their official duties, including with the terms of a no contact order.
- Intentional failure to comply with emergency removal or interim suspension terms.
- Intentional failure to comply with sanctions.
- Intentional failure to adhere to the terms of an Informal Resolution agreement.
- Intentional failure to comply with mandated reporting duties as defined in this Policy.
- Intentional interference with the Resolution Process, including, but not limited to:
 - Destruction of or concealing of evidence.
 - Actual or attempted solicitation of knowingly false testimony or providing false testimony or evidence.
- Intimidating or bribing a witness or party.

12. Sanction Ranges

The following sanction ranges apply for Prohibited Conduct under this policy. Sanctions can be assigned outside of the specified ranges based on aggravating or mitigating circumstances, or the Respondent's cumulative conduct record.

- Sex Discrimination: warning through expulsion or termination.
- Quid Pro Quo Harassment: warning through expulsion or termination.
- Hostile Environment Harassment: warning through expulsion or termination.
- Rape: suspension through expulsion or termination.
- Fondling: warning through suspension (termination for employees).
- Incest: warning through probation.
- Statutory Rape: warning through suspension (termination for employees).
- Stalking: probation through expulsion or termination.
- Dating/Domestic Violence: probation through expulsion or termination.
- Sexual Exploitation: warning through expulsion or termination.
- Bullying: warning through expulsion or termination.
- Endangerment: warning through expulsion or termination.
- Hazing: warning through expulsion or termination.
- Retaliation: warning through expulsion or termination.
- Unauthorized Disclosure: warning through expulsion or termination.
- Failure to Comply/Process Interference: warning through expulsion or termination.

13. Affirmative Consent, Force, and Incapacitation

As used in this Policy, the following definitions and understandings apply:

Affirmative Consent is defined as affirmative, conscious, and voluntary agreement by all parties to engage in sexual activity. The consent cannot be implied, assumed, or inferred from silence or lack of protest/resistance. Consent can be revoked at any time. The existence of a dating relationship or sexual relations shall not alone be affirmative consent

Individuals may perceive and experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent is evaluated from the perspective of what a reasonable person would conclude are mutually understandable words or actions. Reasonable reciprocation can establish consent. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain their consent to be kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, sexual activity should cease within a reasonably immediate time.

Silence or the absence of resistance alone should not be interpreted as consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Consent to some sexual contact (such as kissing or fondling) cannot be assumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected. If a sexual partner shares the clear expectation for the use of a condom, or to avoid internal ejaculation, and those expectations are not honored, the failure to use a condom, removing a condom, or internal ejaculation can be considered acts of sexual assault.

Proof of consent or non-consent is not a burden placed on either party involved in a Complaint. Instead, the burden remains on ENMU to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged misconduct occurred and any similar and previous patterns that may be evidenced.

Going beyond the boundaries of consent is prohibited. Thus, unless a sexual partner has consented to slapping, hitting, hair pulling, strangulation, or other physical roughness during otherwise consensual sex, those acts may constitute dating violence or sexual assault.

Force

Force is the use of physical violence and/or physical imposition to gain sexual access. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Force is conduct that, if sufficiently severe, can negate consent.

Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” which elicits the response, “Okay, don’t hit me. I’ll do what you want.”).

Coercion is an unreasonable pressure for sexual activity. Coercive conduct, if sufficiently severe, can render a person’s consent ineffective, because it is not voluntary. When someone makes clear that they do not want to engage in sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive. Coercion is evaluated based on the frequency, intensity, isolation, and duration of the pressure involved.

Incapacitation

Incapacitation is a state where a person is incapable of giving consent. An incapacitated person cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction). A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including because of alcohol or other drug consumption.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances.

Incapacitation is determined through consideration of all relevant indicators of a person's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

If the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated, the Respondent is not in violation of this Policy. "Should have known" is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

14. Unethical Relationships

ENMU AGP&P 30-6 outlines expectations regarding professional and ethical relationships. No employee shall engage in conduct that invites or encourages a romantic or consensual relationship with a student or subordinate over whom the employee has instructional, supervisory or evaluative responsibility. This includes faculty, staff, graduate assistants, athletic coaches, supervisors of student employees, advisors and directors of student organizations, residence hall directors, and others who advise, mentor, or evaluate students.

15. Standard of Proof

ENMU uses the preponderance of the evidence standard of proof when determining whether a Policy violation occurred. This means that ENMU will decide whether it is more than likely based upon the available information at the time of the decision, that the Respondent is in violation of the alleged Policy violation(s).

16. Reports/Complaints of Sex Discrimination, Sex-Based Harassment, and/or Retaliation

A Report provides notice to ENMU of an allegation or concern about sex discrimination, sex-based harassment, or retaliation and provides an opportunity for the Title IX Coordinator to provide information, resources, and supportive measures. A Complaint provides notice to ENMU that the Complainant would like to initiate an investigation or other appropriate resolution procedures. A Complainant or individual may initially make a report and may decide at a later time to make a Complaint. Reports or Complaints of sex discrimination, sex-based harassment, and/or retaliation may be made using any of the following options:

File a complaint with, or give verbal notice directly to, the Title IX Coordinator or to any member of the Title IX Team. Such a Complaint may be made at any time (including during non-business hours) by using the telephone number, email address, or by mail to the office of the Title IX Coordinator or any other Title IX Team member listed in this Policy.

Anonymous Reports are accepted via <https://my.enmu.edu/forms/title-ix> , but the report may give rise to a need to try to determine the Parties' identities. Anonymous reports typically limits the ENMU's ability to investigate, respond, and provide remedies, depending on what information is shared. Measures intended to protect the community or redress or mitigate harm

may be enacted. It also may not be possible to provide supportive measures to Complainants who are the subject of anonymous reports.

Reporting carries no obligation to initiate a Complaint, and in most situations, ENMU is able to respect a Complainant's request to not initiate a resolution process. However, there may be circumstances, such as pattern behavior, allegations of severe misconduct, or a compelling threat to health and/or safety, where ENMU may need to initiate a resolution process. If a Complainant does not wish to file a Complaint, ENMU will maintain the privacy of information to the extent possible. The Complainant should not fear a loss of confidentiality by giving Notice that allows ENMU to discuss and/or provide supportive measures, in most circumstances.

17. Time Limits on Reporting

There is no time limitation on providing Notice/Complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to ENMU's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.

Acting on Notice/Complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of Policy) is at the Title IX Coordinator's discretion; they may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

18. False Allegations and Evidence

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a determination of a Policy violation.

Additionally, witnesses and Parties who knowingly provide false evidence, tamper with or destroy evidence, or deliberately mislead an official conducting an investigation or resolution process can be subject to discipline under appropriate ENMU policies.

19. Confidentiality/Privacy

ENMU makes every effort to preserve the Parties' privacy. ENMU will not share the identity of any individual who has made a Complaint of sex discrimination, sex-based harassment, or retaliation; any Complainant; any individual who has been reported to be the perpetrator of sex discrimination, sex-based harassment, or retaliation; any Respondent; or any witness, except as permitted by, or to fulfill the purposes, of applicable laws and regulations (e.g., Title IX), Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, or as required by law; including any investigation, or resolution proceeding arising under these policies and procedures.

20. Unauthorized Disclosure of Information

Parties and Advisors are prohibited from disclosing information obtained by ENMU through the Resolution Process, to the extent that information is the work product of ENMU (meaning it has

been produced, compiled, or written by ENMU for purposes of its investigation and resolution of a Complaint), without authorization. It is also a violation of ENMU Policy to publicly disclose institutional work product that contains a party or witness's personally identifiable information without authorization or consent. Violation of this Policy is subject to significant sanctions.

21. Emergency Removal/Interim Actions/Leaves

ENMU can act to remove a student Respondent accused of sex discrimination, sex-based harassment, or retaliation from its education program or activities, partially or entirely, on an emergency basis when an individualized safety and risk analysis has determined that an imminent and serious threat to the health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator and may be done in conjunction with the Behavioral Intervention Team using its standard objective violence risk assessment procedures. Employees are subject to existing procedures for interim actions and leaves.

22. Federal Timely Warning Obligations

ENMU must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the ENMU community.

ENMU will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

23. Amnesty

The ENMU community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to give Notice to ENMU officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the ENMU community that Complainants choose to give Notice of misconduct to ENMU officials, that witnesses come forward to share what they know, and that all Parties be forthcoming during the process.

To encourage reporting and participation in the process, ENMU offers Parties and witnesses amnesty from minor policy violations, such as underage alcohol consumption or the use of illicit drugs, related to the incident. Granting amnesty is a discretionary decision made by ENMU, and amnesty does not apply to more serious allegations, such as physical abuse of another or illicit drug distribution.

Students

ENMU also maintains an amnesty policy for students in addition to witnesses who offer help to others in need.

Employees

Sometimes, employees are hesitant to report sex discrimination, sex-based harassment, or retaliation they have experienced for fear of getting in trouble themselves. ENMU may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident.

24. Preservation of Evidence

The preservation of evidence is critical to potential criminal prosecution and to obtaining restraining/protective orders, and it is particularly time sensitive. ENMU will inform the Complainant of the importance of preserving evidence by taking actions such as the following:

Sexual Assault

Seek forensic medical assistance at the nearest hospital, ideally within 120 hours of the incident (sooner is better).

Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.

If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.

If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or a secure evidence container (if provided one by law enforcement)

Seeking medical treatment can be essential, even if it is not for the purpose of collecting forensic evidence.

Stalking/Dating Violence/Domestic Violence/Sex-Based Harassment

Evidence in the form of text and voice messages will be lost in most cases if the Complainant changes their phone number.

Make a secondary recording of any voice messages and/or save the audio files to a cloud server.

Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook).

Save copies of email and social media correspondence, including notifications related to account access alerts.

Take time-stamped photographs of any physical evidence, including notes, gifts, etc., in place when possible.

Save copies of any messages, including those showing any request for no further contact.

Obtain copies of call logs showing the specific phone number being used rather than a saved contact name if possible.

During the initial meeting between the Complainant and Title IX Coordinator, the importance of taking these actions will be discussed, if timely.

25. Federal Statistical Reporting Obligations

Certain institutional officials (those deemed Campus Security Authorities) have a duty to report the following for federal statistical reporting purposes (Clery Act):

All “primary crimes,” which include criminal homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson

Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property
Violence Against Women Act (VAWA-based crimes), which include sexual assault, domestic violence, dating violence, and stalking

Arrests and referrals for disciplinary action for weapons law violations, liquor law violations, and drug law violations

All personally identifiable information is kept private, but statistical information regarding the type of incident and its general location (on- or off-campus or in the surrounding area, but no addresses are given) must be shared with the Department of Public Safety for publication in the Annual Security Report and daily campus crime log. Campus Security Authorities include student affairs/student conduct staff, campus law enforcement/public safety/security, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

26. Independence and Conflicts of Interest

The Title IX Coordinator manages the Title IX Team and acts with independence and authority, free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this Policy and these procedures. The members of the Resolution Pool are vetted and trained to ensure they are not biased for or against any party in a specific Complaint, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias, conflict of interest, misconduct, or discrimination by the Title IX Coordinator, contact the Executive Director of ENMU System Human Resources, Policy/Planning or the appropriate campus president. Concerns of bias, misconduct, discrimination, or a potential conflict of interest by any other Resolution Pool member should be raised with the Title IX Coordinator.

27. Revision of this Policy

This Policy succeeds previous policies addressing sex discrimination, sex-based harassment, sexual misconduct, and/or retaliation, though previous policies and procedures remain in force for sexual harassment incidents occurring before August 1, 2024. The Title IX Coordinator reviews and updates these policies and procedures regularly. ENMU reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

If government laws or regulations change or court decisions alter the requirements in a way that impacts this document, this document will be construed to comply with the most recent government laws, regulations, or court holdings.

This document does not create legally enforceable protections beyond the protections of the background state and federal laws that frame such policies and codes, generally.

President's Approval, July 31, 2024
Board of Regent approved, DATE

BASED ON THE 2024 ATIXA TITLE IX MODEL POLICY AND PROCEDURES (AMPP).
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While ENMU has implemented these Policies and Procedures to align with the 2024 Title IX regulations, those regulations are subject to ongoing court challenges and rulings. As a result, there may be a need for the University to switch between different Policies and Procedures in the future based on court orders. If this happens, ENMU will notify the community, and revisions will be clearly posted at GOVERNANCE LINK. A change required by a court could occur in the midst of an investigation or resolution process. If that happens, ENMU will adjust Policy and Procedures accordingly, and notify the parties of any mid-process changes that take place. This could even include entirely replacing Policies and Procedures, which might necessitate restarting the investigation or resolution process. ENMU will make every effort to prevent such disruption to its investigations or resolution processes, or to minimize the impact on the parties as much as possible if changes are unavoidable