What is Sexual Violence?

Sexual violence refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent (e.g., due to someone’s age or use of drugs or alcohol, or because an intellectual or other disability prevents someone from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by school employees, other students, or third parties. All such acts of sexual violence are forms of sex discrimination prohibited by Title IX. (Source U.S. Department of Education. Office of Civil Rights. (2014). Questions and answers on Title IX and sexual violence. Retrieved from https://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf)

While New Mexico Tech continues to update its Title IX policies and procedures, some common terms and related state laws below are provided for general information and reference.

Consent: The affirmative, unambiguous, and voluntary agreement to engage in a specific sexual activity during a sexual encounter.

Under this definition, an individual who was asleep, or mentally or physically incapacitated, either through the effect of drugs or alcohol or for any other reason, or who was under duress, threat, coercion, or force, would not be able to consent. Further, one would not be able to infer consent under circumstances in which consent was not clear, including but not limited to the absence of “no” or “stop,” or the existence of a prior or current relationship or sexual activity.

Dating Violence: Dating Violence is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

Gender-Based Harassment: Gender-based harassment is unwelcome conduct of a nonsexual nature based on someone’s actual or perceived sex, including conduct based on gender identity, gender expression, and nonconformity with gender stereotypes.

Hostile Environment: A “hostile environment” exists when sex-based harassment is sufficiently serious to deny or limit someone’s ability to participate in or benefit from the University’s programs or activities. A hostile environment can be created by anyone involved in a University’s program or activity (e.g., administrators, faculty members, students, and campus visitors).

In determining whether sex-based harassment has created a hostile environment, the University considers the conduct in question from both a subjective and objective perspective. It will be necessary, but not enough, that the conduct was unwelcome to the person who was harassed. But the University will also need to find that a reasonable person in the complainant’s position would have perceived the conduct as undesirable or offensive in order for that conduct
to create or contribute to a hostile environment. To make the ultimate determination of whether a hostile environment exists, the University considers a variety of factors related to the severity, persistence, or pervasiveness of the sex-based harassment, including:

1. the type, frequency, and duration of the conduct;
2. the identity and relationships of persons involved;
3. the number of individuals involved;
4. the location of the conduct and the context in which it occurred; and,
5. the degree to which the conduct affected one or more persons’ education or work experience. The more severe the sex-based harassment, the less need there is to show a repetitive series of incidents to find a hostile environment. Indeed, a single instance of sexual assault may be sufficient to create a hostile environment. Likewise, a series of incidents may be sufficient even if the sex-based harassment is not particularly severe.

**Retaliation:** Retaliation is any conduct which serves as a reprisal with the actual or perceived intent of causing physical or psychological pain, fear, or intimidation to an individual who has initiated a complaint with the institution or who has otherwise voiced concern. Retaliation includes, but is not limited to, unwelcome or repeated contacts by telephone, by letter, by electronic communication, in person, or by third party; offensive acts/gestures; overt threats, or any conduct that would instill fear and trepidation.

It is unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by civil rights laws. This means that if an individual brings concerns about possible civil rights problems to a school’s attention, including publicly opposing sexual violence or filing a sexual violence complaint with the school or any State or Federal agency, it is unlawful for the school to retaliate against that individual for doing so. It is also unlawful to retaliate against an individual because he or she testified, or participated in any manner, in an investigation or proceeding.

Title IX prohibits retaliation, and that school officials will not only take steps to prevent retaliation, but will also take strong responsive action if it occurs.

**Sex-Based Harassment:** Sex-based harassment includes sexual harassment and gender-based harassment.

**Sexual Assault:** Sexual assault is actual or attempted sexual contact with another person without that person’s consent. Sexual assault includes, but is not limited to:

- Intentional touching of another person’s intimate parts without that person’s consent; or
- Other intentional sexual contact with another person without that person’s consent; or
- Coercing, forcing, or attempting to coerce or force a person to touch another person’s intimate parts without that person’s consent; or
- Rape, which is penetration, no matter how slight, of (1) the vagina or anus of a person by any body part of another person or by an object, or (2) the mouth of a person by a sex organ of another person, without that person’s consent.

**Sexual Exploitation:** Sexual exploitation occurs when a person takes sexual advantage of another person for the benefit of anyone other than that person without that person’s consent. Examples of behavior that could rise to the level of sexual exploitation include:

- Trafficking another person;
· Recording images (e.g., video, photograph) or audio of another person’s sexual activity, intimate body parts, or nakedness without that person’s consent;
· Distributing images (e.g., video, photograph) or audio of another person’s sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure and objects to such disclosure; and,
· Viewing another person’s sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person’s consent, and for the purpose of arousing or gratifying sexual desire.

Sexual Harassment: Sexual harassment is unwelcome conduct of a sexual nature, including but not limited to unwelcome sexual advances; requests for sexual favors; or other verbal or nonverbal conduct of a sexual nature, including rape, sexual assault, and sexual exploitation. In addition, depending on the facts, dating violence, domestic violence, and stalking may also be forms of sexual harassment.

Unwelcome Conduct: Conduct is considered “unwelcome” if it is not requested or invited and considered the conduct to be undesirable or offensive. Unwelcome conduct may take various forms, including, name-calling, graphic or written statements (including the use of cell phones or the Internet), or other conduct that may be physically threatening, harmful, or humiliating. Unwelcome conduct does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Unwelcome conduct can involve persons of the same or opposite sex. Participation in the conduct or the failure to complain does not always mean that the conduct was welcome. The fact that someone may have welcomed some conduct does not necessarily mean that they welcomed other conduct. Also, the fact that someone requested or invited conduct on one occasion does not mean that the conduct is welcome on a subsequent occasion.
New Mexico Definitions of Violence Against Women Act Crimes

NMSA 1978, § 30-3A-1 et seq., “Harassment and Stalking Act”:

“Harassment” means knowingly pursuing a pattern of conduct that is intended to annoy, seriously alarm or terrorize another person and that serves no lawful purpose. The conduct must be such that it would cause a reasonable person to suffer substantial emotional distress.

“Stalking” means knowingly pursuing a pattern of conduct, without lawful authority, directed at a specific individual when the person intends that the pattern of conduct would place the individual in reasonable apprehension of death, bodily harm, sexual assault, confinement, or restraint of the individual or another individual. A “pattern of conduct” means two or more acts, on more than one occasion.

“Aggravated stalking” consists of stalking perpetrated by a person:

- who knowingly violates a permanent or temporary order of protection issued by a court, except that mutual violations of such orders may constitute a defense to aggravated stalking;
- in violation of a court order setting conditions of release and bond;
- when the person is in possession of a deadly weapon; or
- when the victim is less than sixteen years of age.

NMSA 1978, § 30-3-10, et seq., “Crimes Against Household Members Act” (includes dating violence):

- “Domestic violence” consists of assault or battery of:
  - a spouse or former spouse, or
  - parent, step-parent, in-law, grandparent, grandparent-in-law, co-parent of a child, or a person with whom a person has had a continuing personal relationship.
- “continuing personal relationship” means a dating or intimate relationship.
- Cohabitation is not necessary to be deemed a household member for purposes of the Crimes Against Household Members Act.

“Assault against a household member” means:

- An attempt to commit a battery against a household member; or
- Any unlawful act, threat or menacing conduct that causes a household member to reasonably believe they are in danger of receiving an immediate battery.

“Aggravated assault against a household member” means:

- Unlawfully assaulting or striking a household member with a deadly weapon; or
- Willfully and intentionally assaulting a household member with intent to commit any felony.
“Assault against a household member with intent to commit a violent felony” means any person assaulting a household member with intent to kill or commit any murder, mayhem, criminal sexual penetration in the first, second, or third degree, robbery, kidnapping, false imprisonment, or burglary.

“Battery against a household member” consists of the unlawful, intentional touching or application of force against a household member when done in a rude, insolent, or angry manner.

“Aggravated battery against a household member” consists of the unlawful touching or application of force against a household member with intent to injure that person or another.

Sexual Assault – Criminal Sexual Penetration (NMSA 1978, § 30-9-11), Criminal Sexual Contact (NMSA 1978, § 30-9-12), and Criminal Sexual Contact with a Minor (NMSA 1978, § 30-9-13)

“Criminal sexual penetration” is the unlawful and intentional causing of a person to engage in sexual intercourse, cunnilingus, fellatio, or anal intercourse or the causing of penetration, to any extent and with any object, or the genital or anal openings of another, whether or not there is any emission.

- Criminal sexual penetration is a felony crime; the degree of the felony (first degree through fourth degree) depends on the age of the victim and the force or coercion used by the perpetrator.
- “Force or coercion” is defined in NMSA 1978, § 30-9-10(A) and means:
  - the use of physical force or physical violence;
  - the use of threats to use physical force or violence against the victim or another;
  - the use of threats, including threats of physical punishment, kidnapping, extortion, or retaliation directed against the victim or another; or
  - committing a criminal sexual penetration or criminal sexual contact when the perpetrator knows or has reason to know that the victim is unconscious, asleep, or otherwise physically helpless or suffers from a mental condition that renders the victim incapable of understanding the nature or consequences of the act.

“Criminal sexual contact” is the unlawful and intentional touching of or application of force, without consent, to the unclothed intimate parts of another who has reached his eighteenth birthday, or intentionally causing another who has reached his eighteenth birthday to touch one’s intimate parts. “Intimate parts” means the primary genital area, groin, buttocks, anus, or breast.

- Criminal sexual contact is a felony crime if perpetrated by the use of force or coercion that results in personal injury to the victim, or if the perpetrator is aided or abetted by others, or when the perpetrator is armed with a deadly weapon.
- Criminal sexual contact is a misdemeanor crime when perpetrated with the use of force or coercion.

“Criminal sexual contact with a minor” is the unlawful and intentional touching of or application of force to the intimate parts of a minor or the unlawful and intentional causing of a minor to touch one’s intimate parts. “Intimate parts” means the primary genital area, groin, buttocks, anus, or breast. A “minor” is a person eighteen years of age or younger.