Sexual Misconduct & Title IX Offenses Policy

The federal gender equity law, Title IX of the Education Amendments Act of 1972, protects people from discrimination based on sex in education programs and activities that receive federal financial assistance, including New Mexico Institute of Mining and Technology. The law states: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Examples of the types of discrimination that are prohibited under Title IX include sexual harassment, sexual assault, stalking, the failure to provide equal opportunity in academics, athletics & other programs, and discrimination based on pregnancy. Title IX is enforced by the U.S. Department of Education’s Office for Civil Rights. New Mexico Institute of Mining and Technology is currently reviewing its Title IX procedures and is in the process of developing updated policies and protocols to address sexual misconduct and discrimination all its forms.

During this period of review, the University has established the following temporary Sexual Misconduct & Title IX Offenses Policy:

New Mexico Tech is committed to maintaining a healthy and safe learning, living, and working environment which promotes responsibility, dignity, and respect for all persons. Sexual harassment, sexual violence, and all forms of gender- and sex-based discrimination are strictly prohibited and will not be tolerated.

Examples of conduct of a sex or gender-related nature that may constitute a violation of this policy may include, but are not limited to:

⇒ a. Rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, stalking, or any form of sexual violence including any act where consent is not affirmed;
⇒ b. Unwelcome sexual advances, regardless of whether they involve physical touching (e.g. gestures made toward another for sexual gratification);
⇒ c. Sexually explicit or gender-based statements, comments, questions, jokes, innuendoes, anecdotes, or gestures;
⇒ d. Use of technology, electronic mail or computer dissemination of gender-based communications or sexually explicit images;
⇒ e. The posting of pornography or other sexually explicit materials in University offices, classrooms or any other public area owned or controlled by the University;
⇒ f. Requests for sexual favors in exchange for actual or promised job or educational benefits.

As New Mexico Tech augments its policies and procedures to more effectively address sexual misconduct, the University will work toward adopting specific definitions of various aspects of prohibited conduct including: sexual harassment, hostile environment, sexual assault, domestic violence, dating violence, sexual exploitation, stalking, retaliation and intimidation. In the interim, the University will reference the language and definitions found in existing discrimination policies as well as all applicable local, state and federal laws.

For the purposes of this interim policy, the University has adopted the following definition of consent:

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.
Sexual Misconduct & Title IX Offenses Policy

Continued...

Title IX offenses can occur on-campus or off-campus at any academic, educational or other University/University-related program. Offenses can occur between students, faculty/staff to student, student to faculty/staff, or faculty/staff to faculty/staff. Complaints may also involve visitors, consultants, independent contractors and outside vendors whose conduct affects any member of our community on campus or in a University/University related program. Any person, regardless of gender, can be a victim or survivor. Title IX offenses include criminal offenses, such as rape, fondling, domestic violence, dating violence, and stalking, and can also include violations of the University’s Guide to Conduct and Citizenship.

New Mexico Tech is dedicated to preventing Title IX Offenses by providing:

⇒ Awareness and prevention programming
⇒ Assistance and support for students and employees affected by violence and other forms of discrimination or harm, including interim support measures.
⇒ Prompt Attention -- Complaints of sexual harassment and any form of discrimination will be taken seriously and dealt with promptly and equitably. Where offenses are found to have occurred, New Mexico Tech will act to stop the reported conduct, prevent its reoccurrence, remedy its effects and discipline those found responsible.
⇒ Processes for reliable and impartial investigation and adjudication that includes appropriate disciplinary sanctions for those who commit Title IX Offenses, including limiting access to campus facilities, suspension and dismissal.

The University in its view and response to Title IX offenses will be blind to the sexual orientation or preferences of individuals engaging in sexual activity or sexually exploitative behavior.

Any retaliatory action or behavior taken toward an alleged victim as a consequence of the decision to report a violation, pursue University judicial review, or criminal charges is prohibited. Retaliation by either alleged victims or persons accused may result in immediate judicial action and/or criminal charges.

All University protocols employed and under review will comply with applicable state and federal laws. Typically, when responding to reports of Title IX Offenses the University will:

⇒ Provide guidance and information for students and/or employees who have been victims/survivors of Title IX Offenses.
⇒ Provide guidance and information for persons who have been accused of Title IX Offenses.
⇒ Outline the University’s student and/or employee disciplinary response to alleged conduct violations.
⇒ Identify relevant places within the University and community for support and compliance related to Title IX Offenses.

Under Title IX, all parties involved have the right to have any complaints of discrimination or sexual harassment directed to their institution’s Title IX Coordinator.

Mr. Randy Saavedra serves as the University’s Director of Affirmative Action and Title IX Coordinator. Mr. Saavedra may be reached at Fitch 213, New Mexico Tech, 801 Leroy Place, Socorro, New Mexico 87801, 575-835-5005 or rsaavedra@admin.nmt.edu.

Mr. Saavedra is available during regular business hours to meet with students or employees who need information or guidance about Title IX Offenses.

The Title IX Coordinator can help victims (students and/or employees):

⇒ Access medical and mental health treatment.
⇒ Report offenses to police.
Sexual Misconduct & Title IX Offenses Policy

Continued...

⇒ Report offenses to the Dean of Students/Vice President of University Relations for disciplinary action.
⇒ Access victim support resources.
⇒ Assist persons in obtaining a University no contact order, a court-issued restraining order, or other lawful order of protection.]

New Mexico Tech encourages anyone who has been the victim of a Title IX Offense to report the incident and report the identities of the person or persons they believe to have committed the offense. The University will conduct an investigation and/or file a disciplinary complaint regardless if criminal charges are made. A criminal investigation and a University investigation may be pursued at the same time. A person charged with sexual misconduct, including acquaintance or date rape, can be prosecuted under New Mexico criminal statutes. Even if the law enforcement authorities choose not to prosecute, the University can pursue disciplinary action. Victim/survivor support and resources are available regardless of criminal charges, University investigations or University disciplinary action.

New Mexico Tech encourages victims of sexual violence to seek support and obtain medical attention. The University will make every effort to be responsive and sensitive to victims of crimes. Protection of victims and prevention of continued trauma is a priority. If a victim of and an accused student live in the same University residence, the option of altering living arrangements will be offered to both parties. Upon request, assistance with any academic concerns will be reviewed and options provided by the Vice President of Academic Affairs or his/her designee. During the disciplinary process, all involved individuals have the right to have an advisor of their choice accompany them throughout the hearing process.

Confidentiality New Mexico Tech encourages victims of sexual violence to talk to somebody about what happened so victims can get the support they need and so the University can respond appropriately. The University recognizes that confidentiality is important. However, complete confidentiality cannot be guaranteed. According to guidance from the Federal Office of Civil Rights, a “responsible employee” has an obligation to report Title IX violations to the University’s Title IX Coordinator. At New Mexico Tech, a “responsible employee” is anyone working directly for the University who has the authority to take action to address sexual violence or whom a student or employee could reasonably believe has the authority or duty of reporting or responding to incidents of sexual misconduct. Therefore, University faculty, administrators and other professional staff who receive information involving known or perceived sexual misconduct must report it to our designated Title IX Coordinator, even if little information is known. To the extent possible, information reported to a responsible employee will be shared only with the Title IX Coordinator. The responsible employee will not share personally identifiable information with Campus Police or other law enforcement without the victim’s consent or unless the victim has also reported the incident to law enforcement.

While the University will make every reasonable effort to protect the privacy of any and all victims, it is important for all New Mexico Tech students and employees to understand that currently the University’s Counseling & Disabilities Office in Fidel is the only location on campus where disclosures of sexual assault may be made confidentially to Director Janet Ward or her designee. Other individuals who work or volunteer in the Student Health Center/Office of Counseling & Disabilities can generally talk to a victim without revealing any personally identifiable information about an incident to the Title IX Coordinator. A victim can seek assistance and support from the medical personnel and support staff in the Student Health Center/Office of Counseling & Disabilities without triggering a University investigation.

Victims who chose to disclose information related to sexual assault or harassment to Ms. Ward or her designee may be asked if they would consent to their information to being shared with the Title IX Coordinator and/or Campus Police through normal reporting procedures or anonymously. The purpose for sharing such information is to better protect the community and promote a healthy and respectful culture on campus. Other off-campus resources are available for victims who wish to disclose confidentially, including the Socorro Mental Health clinic. Additional area resources are listed below. A victim who speaks to a professional or non-professional counselor or advocate must understand that, if the victim wants to maintain confidentiality, the University will be unable to conduct an investigation into the particular incident or pursue disciplinary action.
Sexual Misconduct & Title IX Offenses Policy

Continued...

Even so, the victim will still be assisted in receiving other necessary protection and support. A victim who at first requests confidentiality may later decide to file a compliant with the University or report the incident to local law enforcement.

FERPA The Family Educational Rights and Privacy Act (FERPA) protects students’ educational records, including reports made to the Coordinator and disciplinary complaints. FERPA prohibits the University from releasing these records to persons outside the institution without the student’s consent except in response to a lawful subpoena or other special circumstances as required by law. As required by law and in compliance with the Department of Education, New Mexico Tech will notify alleged victims of crimes of violence or non-forcible sex offenses of the outcome of University disciplinary proceedings and any sanctions imposed to either parties.

Timely Warning Alerts/Emergency Notification If a report of a Title IX Offense reveals there is an immediate threat to the health or safety of students or employees on campus or that an on-going serious or continuing threat to the campus community exists, an Emergency Notification or a Timely Warning will be issued. The purpose of a Timely Warning is to enable persons to protect themselves, heighten safety awareness, and seek information that will lead to an arrest and conviction of the perpetrator. The victim’s name and other personally identifying information will NOT be included in any Emergency Notification or Timely Warning.

Reports of sexual assault, domestic violence, dating violence, and stalking will be included in the University’s Annual Security and Fire Safety Report/Crime Statistics at http://www.nmt.edu/campuspolice

Resources listed in this section are available for support. This is not an exhaustive list:

COMMUNITY RESOURCES

Socorro Fire/Ambulance 911
New Mexico Tech Campus Police 575-835-5434
NMT Student Health Center 575-835-5094
NMT Counseling & Disabilities Office 575-835-6619
Socorro General Hospital 575-835-1140
Socorro Mental Health Clinic, 1200 US Route 60 575-835-2444
NMT Title IX/Affirmative Action Director 575-835-5005
Socorro County Sheriff 575-835-0941
New Mexico State Police: District 11-Socorro 575-835-0741
The National Domestic Violence Hotline 800-799-7233
National Sexual Assault Hotline 800-656-4673
New Mexico Coalition of Sexual Assault Programs, Inc. E-mail: nmcsaas@swcp.com 505-883-8020
Albuquerque Rape Crisis 1025 Hermosa Dr. SE 575-835-0741
Albuquerque, NM 87108 E-mail:www.rape-crisis.org 505-266-7711
Sexual Assault Nurse Examiners (SANE) 505-883-8720
625 Silver, SW - 2nd Floor, ABQ, NM 87102 505.884.7263
Emergency SANE Contact: http://abqsane.org/

Free Services Provided:

⇒ Protect sexual assault or domestic violence survivor from further harm
⇒ Treatment for sexually transmitted infections • Evaluate pregnancy risk and offer prevention
⇒ Assess, document and provide care for injuries • Appropriate referral for immediate and follow-up counseling and medical care
⇒ Timely, thorough and professional forensic evidence collection, documentation & preservation
⇒ Photo document injuries
⇒ Testimony in court of law if needed
⇒ Follow-up care, education & resource referral
Preventing and Responding to Dating Violence, Domestic Violence, Sexual Assault, and Stalking

Dating violence, domestic violence, sexual assault, and stalking are serious concerns on college campuses throughout the country. To address these issues, the University provides orientation to incoming students and new employees with information intended to prevent rape, acquaintance rape, sexual assault, domestic violence, dating violence, and stalking before it occurs through the changing of social norms and other approaches. The Information comprises definitions and a clear statement that the University prohibits such acts. Additionally, training and materials are provided defining consent, options for bystander intervention, risk reduction, and our policies and procedures for responding to these incidents. Ongoing prevention and awareness campaigns are offered throughout the year. These programs include the New Student Orientation Program, “It’s On us” campaign, Make Your Move! End sexual violence Posters distributed throughout the campus, consent descriptions, bystander and CSA training.

In addition, the University also provides services for individuals who have been impacted by dating violence, domestic violence, sexual assault, and stalking and accessible, prompt, and equitable methods of investigation and resolution for those students who report instances of dating violence, domestic violence, sexual assault, and stalking.

Workplace Violence

New Mexico Tech expects and requires all employees to use common courtesy and engage in safe and appropriate behavior at all times while on the job, on New Mexico Tech property, or representing New Mexico Tech away from the job. Any involvement in physical violence, threats or provocative remarks that are intended to incite violence are unacceptable. Employees engaging in such activities are subject to immediate and severe disciplinary action up to and including termination.

An employee’s actions may indicate signs of losing control that could lead to impending violence. Employees who are targets of workplace violence or who observe violent acts should follow these procedures:

⇒ Notify your supervisor immediately. All acts of violence, physical and verbal, should be reported. Your supervisor will contact campus police if the situation dictates that such action is necessary.

⇒ If your supervisor is not available, call campus police at x3434. Explain the situation to the dispatcher who will determine if further emergency care is required.

Campus Sex Crimes Prevention Act

The Campus Sex Crimes Prevention Act (section 1601 of Public Law 106-386) is a federal law enacted on October 28, 2000, that provides for the tracking of convicted, registered sex offenders enrolled as students at institutions of higher education, or working or volunteering on campus.

The Act amends the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act to require sex offenders already required to register in a state to provide notice, as required under state law, of each institution of higher education in that state at which the person is employed, carries on a vocation, or is a student.

It also mandates that state procedures ensure that this registration information is promptly made available to law enforcement agencies with jurisdiction where the institutions of higher education are located and that it is entered into appropriate state records or data systems.

A listing of all registered sex offenders in the state of New Mexico is maintained by the New Mexico Department of Public Safety

This information is available online at http://www.dps.state.nm.us/index.php/lerb/
Explaination of How Crime Statistics Are Compiled

The statistics contained in this report include crimes on campus and crimes in adjacent public areas, are collected by the New Mexico Tech Campus Police Department and are based on crimes reported directly to Campus Police and other local police agencies.

In preparation for annual reporting, persons with significant responsibility for student and campus affairs, including disciplinary affairs (known as Campus Security Authorities), are surveyed for knowledge of crimes that may not have been reported to law enforcement. These individuals include Deans of Students, Residence Life Coordinators, administrative heads of student groups, and Student Affairs personnel.

Crimes that are reported to law enforcement and included in the statistical report are classified by what is referred to as “Clery Geography.” The three distinct classifications are “on campus,” “non-campus,” and “public property.” The following are definitions for each classification:

- **On Campus:** (1) Any building or property owned or controlled by an institution within the core campus (same reasonably contiguous geographic area) and used by the institution in direct support of, or in a manner related to, the institution’s educational purposes, including residence halls; and (2) any building or property that is within or reasonably contiguous to the area identified in paragraph (1), that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes (such as food or retail vendor).

- **Non-campus:** (1) Any building or property owned or controlled by a student organization that is officially recognized by the institution; or (2) any building or property owned or controlled by an institution that is used in direct support of, or in relation to, the institution’s educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution.

- **Public Property:** All public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus.

Crimes that occurred in residence halls are reported both in the “On Campus” category and in the “Residence Hall” category. Thus, “Residence Hall” is a subset of “On Campus.”
Definitions of Clery Reportable Offenses

The following definitions of reportable crimes are taken from the FBI UCR Handbook and the National Incident Based Reporting System (NIBRS), which may differ from the definition of comparable crimes under the New Mexico State Statute or University discipline policies.

The Clery Act also requires reporting of hate crimes incidents in the defined categories where the evidence suggests the victim was intentionally selected because of the victim’s actual or perceived race, gender, religion, sexual orientation, ethnicity, gender identity, national origin, or disability.

Aggravated Assault: An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by a means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used that could and probably would result in serious personal injury if the crime were successfully completed.)

Arson: Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

Burglary: The unlawful entry of a structure to commit a felony or theft. For reporting purposes this definition includes unlawful entry with intent to commit a larceny or felony, breaking and entering with intent to commit a larceny, housebreaking, safecracking, and all attempts to commit any of the aforementioned acts.

Clergy Geography: See p. 17.

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of the relationship is determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Domestic Violence: Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the applicable domestic or family violence laws, or by any other person against an adult or youth victim who is protected from that person’s acts under the applicable domestic or family violence laws.

Drug Abuse Violations: Violations of state and local laws relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs. The relevant substances include opium or cocaine and their derivatives (morphine, heroin, codeine); marijuana; synthetic narcotics (Demerol, methadone); and dangerous nonnarcotic drugs (barbiturates, benzodrine).

FBI Uniform Crime Reporting Program: The FBI’s UCR program serves as the basis for the definitions of crimes that are reportable under the Clery Act.

Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

Hate Crimes: Any crime that manifests evidence that the victim was intentionally selected because of the victim’s actual or perceived race; religion; gender; sexual orientation; national origin; ethnicity; religion, gender identity, or disability.

This includes murder and non-negligent manslaughter, negligent manslaughter, rape, statutory rape, incest, fondling, robbery, aggravated assault, burglary, motor vehicle theft, arson, and also larceny-theft, simple assault, intimidation, and destruction/damage/vandalism.

Hierarchy Rule: The requirement in the FBI’s UCR program that, for purposes of reporting crimes in that system, when more than one criminal offense is committed during a single incident, only the most serious offense is to be included in the institution’s Clery Act statistics. An exception to the rule would apply only in cases where a sexual assault and a murder occur in the same incident.

Incest: Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Liquor Law Violations: The violation of laws or ordinances prohibiting the manufacture, sale, transporting, furnishing, possessing of intoxicating liquor; maintaining unlawful drinking places; bootlegging; operating a still; furnishing liquor to a minor or intemperate person;
# Definitions of Clery Reportable Offenses

<table>
<thead>
<tr>
<th>Offense</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Motor Vehicle Theft</strong></td>
<td>The theft or attempted theft of a motor vehicle. (Classify as motor vehicle theft all cases where automobiles are taken by persons not having lawful access even though the vehicles are later abandoned, including joy-riding.)</td>
</tr>
<tr>
<td><strong>Murder and Non-negligent Manslaughter</strong></td>
<td>The willful (non-negligent) killing of one human being by another.</td>
</tr>
<tr>
<td><strong>Negligent Manslaughter</strong></td>
<td>The killing of another person through gross negligence.</td>
</tr>
<tr>
<td><strong>Programs to Prevent Dating Violence, Domestic Violence, Sexual Assault, and Stalking</strong></td>
<td>A comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to end dating violence, domestic violence, sexual assault, and stalking that are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research or assessed for value, effectiveness, or outcome which consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community, and societal levels. These programs to prevent dating violence, domestic violence, sexual assault, and stalking also include both primary prevention and awareness programs directed at incoming students and new employees and ongoing prevention and awareness campaigns directed at students and employees.</td>
</tr>
<tr>
<td><strong>Rape</strong></td>
<td>The 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, without the consent of the victim.</td>
</tr>
<tr>
<td><strong>Robbery</strong></td>
<td>The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.</td>
</tr>
<tr>
<td><strong>Sex Offenses</strong></td>
<td>Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.</td>
</tr>
<tr>
<td><strong>Stalking</strong></td>
<td>Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.</td>
</tr>
</tbody>
</table>

**Statutory Rape:** Non-forcible sexual intercourse with a person who is under the statutory age of consent.

**Weapon Law Violations:** The violation of laws or ordinances dealing with weapon offenses, regulatory in nature, such as manufacture, sale, or possession of deadly weapons; carrying deadly weapons, concealed or openly; furnishing deadly weapons to minors; aliens possessing deadly weapons; and all attempts to commit any of the aforementioned acts.

In addition to any of the crimes above, the following acts are now reportable as Hate Crimes under the Clery Act, when the evidence suggests the victim was intentionally selected because of the victim’s actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability.

**Larceny-Theft:** The unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another.

**Simple Assault:** An unlawful physical attack by one person upon another where neither the offender displays a weapon, nor the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness.

**Intimidation:** To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

**Destruction/Damage/Vandalism of Property (Except “Arson”):** To willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or the person having custody or control of it.