



NEW MEXICO TECH

TITLE IX

PROCEDURES

Title IX Procedures

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New Mexico Tech TITLE IX PROCEDURE

Effective August 14, 2020.

I. PREAMBLE

Under Title IX of the Education Amendments of 1972 (20 U.S.C. 1681) and its implementing regulations (34 C.F.R. 106) sexual harassment is a form of prohibited sex discrimination. Title IX provides:

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 educational program or activity receiving Federal financial assistance.

New Mexico Tech the University is committed to fostering a campus environment that is free from unlawful discrimination on the basis of sex, including sexual harassment and sexual assault. In support of that commitment, New Mexico Tech takes steps to increase awareness of such sexual harassment and sexual assault, eliminate its occurrence on campus and in University programs and activities, encourage reporting, provide support for survivors, promptly respond to all reports of sexual harassment and sexual assault, deal fairly with accused Respondents,¹ and take appropriate action against those found responsible.

This Title IX Procedure is intended to ensure a safe and non-discriminatory educational and work environment and describe the process by which New Mexico Tech meets its obligations under Title IX and its implementing regulations.

II. SCOPE, APPLICABILITY, AND JURISDICTION

All students, faculty, staff, postdoctoral scholars affiliates and others participating in University programs and activities in the United States are subject to this Title IX Procedure. This Procedure applies to conduct occurring on or after August 14, 2020.

The Title IX regulations define “sexual harassment” to include three types of misconduct on the basis of sex which jeopardize the equal access to education that Title IX is designed to protect. These types of misconduct include: any instance of quid pro quo harassment by a University employee; any conduct on the basis of sex that in the view of a reasonable person is so severe and pervasive and objectively offensive that it effectively denies a person equal access to a University education program or activity; and any instance of sexual assault, dating violence, domestic violence, or stalking (collectively “Title IX Prohibited Conduct,” defined in

¹ Capitalized terms that have special meaning within this document are defined in Appendix A.

Sexual Misconduct Policy. To the extent that receipt of notice of Title IX Prohibited Conduct also triggers the University's responsibilities under New Mexico Human Rights Act NMSA 1978 sections 28-1-1 to 28-1-7.2 to 28-1-9 to 28-1-14, this Title IX Procedure is also designed to meet the University's concurrent obligations under those laws.²

To fall within the jurisdiction of Title IX, the alleged Title IX Prohibited Conduct must have taken place in a University Program or Activity, and against a person in the United States at the time the conduct occurred. A University Program or Activity includes locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the Title IX Prohibited Conduct occurs, and includes any building (including off-campus buildings) owned or controlled by a student organization that is officially recognized by the University. An off-campus event (in the United States) such as an academic or professional conference may constitute a University Program or Activity if, for example, it is a University-sponsored event or the University otherwise maintains substantial control over the event and Title IX Prohibited Conduct occurs within the context of such an event. Study-abroad programs are not covered by the Title IX regulations.

Given the federal mandates of Title IX and its implementing regulations, the rights and obligations provided in this Title IX Procedure necessarily supersede any conflicting rights or obligations provided in Constitution and By Laws of the Student Government Association of New Mexico Institute of Mining and Technology, NMT Student Handbook, Employee Handbook, Regulations Governing Academic Freedom and Tenure or any other NMT policy, staff grievance procedures, and University policies. Conduct that falls outside the jurisdictional or definitional scope of Title IX, however, may still violate NMT's Sexual Misconduct Policy or other institutional policies, and may be addressed through other University processes.

III. REPORTING TITLE IX PROHIBITED CONDUCT

A. What to Report

The types of sexual harassment covered by this Title IX Procedure (collectively "Title IX Prohibited Conduct") includes conduct on the basis of sex that satisfies one or more of the definitions below. Note that sexual misconduct or other discrimination on the basis of sex that does not fall within these specific definitions may still violate University policy (e.g. NMT Sexual Misconduct Policy, and should be reported to the Title IX Office.

It is also a violation of the NMT Sexual Misconduct Policy to attempt to commit any of the acts defined below or to knowingly aid or facilitate another person to commit any of the acts defined below, and such attempts or knowing facilitation is also conduct subject to this Title IX Procedure.

² This Procedure is also designed to comply with the Violence against Women Act ("VAWA") (42 U.S.C. 13925) and it's implementing regulations (24 C.F.R. 5.2001) if reauthorized.

1. **Title IX Sexual Harassment**³ Conduct, on the basis of sex that satisfies one or more of the following:

- a. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to University Programs or Activities.
- b. An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct also known as quid pro quo harassment.

2. **Sexual Assault**⁴: Any sexual act⁵ directed against a Complainant without the Affirmative Consent of the Complainant, including instances in which the Complainant is incapable of giving consent, including because of Incapacitation.

- a. **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, without the Affirmative Consent of the Complainant.
- b. **Sodomy.** Oral or anal sexual intercourse with another person, without the Affirmative Consent of the Complainant, including instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical Incapacitation.
- c. **Sexual Assault with an Object.** To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, without the Affirmative Consent of the Complainant, including instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical Incapacitation.

³ Policy provides additional definitions of sexual harassment under Title VII, New Mexico law, and under University policy.

⁴ Section 106.30(a) of the Title IX regulations provides that "sexual assault" for purposes of Title IX is defined in 20 U.S.C. 1092(f)(6)(A)(v), which in turn provides that "[t]he term 'sexual assault' means an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation." The definitions for forcible and non-forcible sex offenses are derived from the FBI's Summary Reporting System and/or National Incident-Based Reporting System. On August 13, 2020, OCR provided guidance that a university may use definitions from either system, so long as the university includes in its definition of sexual assault all forcible and non-forcible sex offenses described by the FBI—regardless of whether the FBI system uses the label forcible or non-forcible or requires force as an element. Consistent with this guidance, New Mexico Tech has elected to use the definitions from each system that provide the most flexibility and that do not use the requirement of force as an element. New Mexico Tech has also made slight, non-substantive modifications to the FBI definitions for clarity and consistency with defined terms used within this Title IX Procedure, such as "Complainant," "Affirmative Consent," and "Incapacitation."

⁵ The following sexual acts covered by this definition are required to be included by federal regulations and are derived from the FBI's Summary Reporting System and National Incident-Based Reporting System User Manual definitions:

- d. **Fondling.** The touching of the private body parts of another person for the purpose of sexual gratification without the Affirmative Consent of the Complainant, including in instances where the Complainant is

3. **Non-forcible Sexual Violations**

- a. **Incest.** Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by New Mexico law.⁶
- b. **Statutory Rape.** Non-forcible sexual intercourse with a person who is under the statutory age of consent of California. The age of consent in New Mexico is 18.⁷

4. **Dating Violence**⁸

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship is 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:

- a. Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- b. Dating Violence does not include acts covered under the definition of Domestic Violence

5. **Domestic Violence**⁹ An act that could be classified as a felony or misdemeanor crime of violence committed:

- a. By a current or former spouse or intimate partner of the Complainant;

⁶ This definition is derived from the FBI's National Incident-Based Reporting System User Manual.

⁷ This definition is derived from the FBI's National Incident-Based Reporting System User Manual.

⁸ Section 106.30(a) of the Title IX regulations provides that "dating violence" for purposes of Title IX is defined in 34 U.S.C. 12291(a)(10). This definition is derived from that section, with non-substantive modifications for clarity and consistency with this Title IX Procedure.

⁹ Section 106.30(a) of the Title IX regulations provides that "domestic violence" for purposes of Title IX is defined in 34 U.S.C. 12291(a)(8). This definition is derived from that section, with non-substantive modifications for clarity and consistency with this Title IX Procedure.

- b. By a person with whom the Complainant shares a child in common;
- c. By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
- d. By a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of New Mexico;
- e. 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.

To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

Special Note: New Mexico Tech also utilizes the term Intimate Partner Violence in reference to both Dating and Domestic Violence in its Sexual Misconduct Policy.

6. Stalking¹⁰

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- a. Fear for the person's safety or the safety of others; or
- b. Suffer substantial emotional distress.
- c. For the purposes of this definition:
 - Course of conduct means two or more acts, including, but not limited to, acts in which the stalker 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.
 - 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.

¹⁰ Section 106.30(a) of the Title IX regulations provides that "stalking" for purposes of Title IX is defined in 34 12291(a)(30). This definition is derived from that section, with non-substantive modifications for clarity and consistency with this Title IX Procedure.

7. Related Terms

a. **Affirmative Consent** means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that the person has the Affirmative Consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean Affirmative Consent, nor does silence mean Affirmative Consent. Affirmative Consent must be ongoing throughout a sexual activity and can be revoked at any time. Affirmative Consent may be based on a condition(s), *e.g.*, the use of a condom, and that condition(s) must continue to be met throughout an activity, unless there is mutual agreement to forego or change the condition. When there is no Affirmative Consent present during sexual activity, the activity at issue necessarily occurred “against the person’s will.”

- The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of Affirmative Consent.
- In evaluating Affirmative Consent, it cannot be a defense that a Respondent’s belief that the complainant consented to the sexual activity arose under either of the following circumstances:
 - The Respondent’s belief in Affirmative Consent arose from the
 - Intoxication or recklessness of the Respondent.
 - The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant gave Affirmative Consent.

b. **Incapacitation** means a person lacks the ability to voluntarily agree (that is, to give Affirmative Consent) to sexual activity because the person is asleep, unconscious, under the influence of an anesthetizing or intoxicating substance such that the person does not have control over their body, is otherwise unaware that sexual activity is occurring, or is unable to appreciate the nature and quality of the act. Incapacitation is not necessarily the same as legal intoxication.

- A party who engages in sexual conduct with a person who is incapacitated, under circumstances in which a reasonable sober person in similar circumstances would have known the person to be incapacitated is responsible for Title IX Prohibited Conduct. Except for sanction considerations, it is not a defense that the Respondent’s belief in Affirmative Consent arose from their own intoxication.
- Incapable of giving consent because of age or because of temporary or permanent mental or physical Incapacitation.

B. Where to Report

1. Title IX Coordinator

The Title IX Coordinator is the individual designated by the University to coordinate its efforts to comply with Title IX responsibilities. All reports of Title IX Prohibited Sexual Conduct or other violations Sexual Harassment policy should be reported to the **New Mexico Tech Title IX Coordinator**.

Any person may report Title IX Prohibited Conduct (whether or not the individual reporting is the person alleged to have experienced the conduct), in person, by mail, by telephone, or by email, using the contact information listed below. Such a report may be made at any time, including during non-business hours, by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator.

Title IX Coordinator

Peter Phaiah, Ph.D.
Brown Hall (2ND Floor) 216
801 Leroy Place
Socorro, NM, 87801
(575)835-5880 (office)
(575) 322-0001 (cell.)
titleixcoordinator@nmt.edu

2. Deputy Title IX Coordinator

The Title IX Coordinator may delegate responsibility for handling a report to a Deputy Title IX Coordinator, as appropriate, or to another office or individual in the event the matter reported falls outside of the scope of this Title IX Procedure.

Deputy Title IX Coordinator

Randy Saavedra
Affirmative Action/EEOC Director & ADA Compliance Officer
Brown Hall (Lower Level) 20D
801 Leroy Place
Socorro, NM, 87801
(575) 835-5005
randy.saavedra@nmt.edu

3. Other Senior University Officials

Notice of allegations of Title IX Prohibited Conduct to the Title IX Coordinator, a Deputy Title IX Coordinator, or an official with authority to institute corrective measures on the University's behalf, triggers the University's response obligations under Title IX. At New Mexico Tech, such officials include the President, Deans, Directors, Vice Presidents of the University, and supervisors

4. **Online Reporting Form**

Reports of Title IX Prohibited Conduct or violations of the NMT Sexual Misconduct Policy can also be reported online utilizing [Title IX & Sexual Misconduct Report](#). This report is sent directly to the Title IX Coordinator and Deputy Title IX Coordinator. Reports may be sent anonymously, however, the University's ability to respond to the allegations and Investigate may therefore be limited.

5. **Reports to Law Enforcement**

If the individual is in immediate danger, or believes there could be an ongoing threat to the individual or the community, please call 911 or 9-911 from a campus phone or use a blue emergency phone tower on campus.

For conduct that could also constitute a crime under New Mexico law, a Complainant is encouraged—but not required—to contact the police by dialing 911 or the local police agency in the jurisdiction in which the alleged incident occurred. New Mexico also provides that individuals who experience sexual violence are encouraged to preserve evidence and to note the identity and location of Witnesses. Contacting law enforcement to make a report allows for forensic evidence to be collected, including a SANE exam if needed, which may be helpful if a decision is made to pursue criminal charges. For more information about how to obtain a SANE exam, see: <http://abqsane.org>

University officials will assist students and employees in contacting local law enforcement authorities, if you request assistance. If you believe that there is an ongoing threat to your safety from a particular individual, you may request an emergency protective restraining order from NMT Police Department or Socorro Police Department. The Title IX Coordinator or Dean of Students also has the ability to issue **No Contact Orders** that are limited to the NMT campus and campus programs and activities. If the alleged incident occurred on the New Mexico Tech campus (and the alleged incident is not ongoing), individuals may contact the New Mexico Tech University campus police at its non-emergency telephone number (575) 835-5011.

Additionally, Residence Life staff, Graduate Life Office Dean, and the Confidential Support Team staff, are available to assist students in making such a report.

Additionally, the Employee Assistance Program (EAP) staff is available to assist faculty, staff, and postdoctoral scholars in making such a report.

C. When to Report and Confidential Resources

There is no specific time frame for individuals who have experienced conduct that may constitute Title IX Prohibited Conduct to make an Initial Report pursuant to this Title IX Procedure. Individuals are, however, encouraged to make a report soon after the incident in question in order to maximize the University's ability to investigate and reach a finding.

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At any time (whether or not an individual decides to make a report of Title IX Prohibited Conduct to the Title IX Coordinator, Deputy Title IX Coordinator or other Senior University Official), an individual may contact University Confidential Resources that can provide emotional support and counseling.

The University makes available Confidential Resources for consultation regarding reports of Title IX Prohibited Conduct or other offenses. Confidential Resources do not disclose information received by them with any other office or person, including the Title IX office, and therefore meeting with a Confidential Resource will never lead to a University response or Investigation. However, Confidentiality does not extend to reasonable belief that a minor (under age 18) has been harmed or is at risk of being harmed, which by law must be reported to law enforcement or child protective services.

¹¹ Similarly, if a client, or a close relation of the client, makes a specific threat of planning to kill or seriously harm another person to a Confidential counselor, this also requires a report to law enforcement. In

The University's Confidential Resources and Confidential community resources can be found at counseling@nmt.edu.

When the allegations described could be a crime under the Clery Act or New Mexico law,¹² University staff members designated as [Campus Security Authorities](#) are also required by New Mexico law to notify the New Mexico Tech University campus police. Under New Mexico law, violent crimes, including sexual assault, and hate crimes must be reported immediately by calling 9-1-1 or 575-835-5555.

Except in the event the person who is the subject of the potential criminal act is a minor, the name of this individual should not be released to the New Mexico Tech Campus Police without the individual's consent.

¹¹ Individuals who meet the definition of a mandated reporter under New Mexico Penal Code statutes chapter 30 article 6 30-6-1 through 30-6-4, must report those incidents of child abuse and neglect as directed by the applicable statute. A person under the age of 18 years of age is a minor subject to these provisions. In addition, physicians and nurses who treat any physical injury sustained during sexual violence are required to report such cases to law enforcement.

¹² Questions about whether conduct could be a crime should be directed to the Title IX Office or New Mexico Tech Campus Police.

D. How to Report

Complainants who experience any type of sexual harassment or violence are encouraged to seek help as identified above. Any person may report Title IX Prohibited Conduct, whether or not the individual reporting is the person alleged to have experienced the conduct. To make an Initial Report of Title IX Prohibited Conduct, the Title IX Office will ask for the following information, if known:

1. Name of Complainant
2. Complainant's role, if any, within the University (undergraduate student, graduate student, faculty, staff, postdoctoral scholar, fellow, alumni, other [describe])
3. Name of Respondent
4. Respondent's role within the University (undergraduate student, graduate student, faculty, staff, postdoctoral scholar, fellow)
5. Date of the incident
6. Location of the incident
7. Time of the incident
8. Nature of the conduct (provide specific details of the report)
9. Date of previous report (if any)
10. To whom any previous report was made (if any)

IV. PROCEDURE: INITIAL RESPONSE, FORMAL COMPLAINT, INVESTIGATION, INFORMAL RESOLUTION, HEARING, AND APPEAL

A. Receipt of an Initial Report of Title IX Prohibited Conduct

1. Offer of Supportive Measures

Upon receipt of notice of an Initial Report of Title IX Prohibited Conduct (which may come from any individual), the Title IX Coordinator or Deputy Title IX Coordinator (or their designee) will promptly contact the Complainant and inform the Complainant:

- a. of the availability of Supportive Measures, including that the Supportive Measures

- are available with or without filing a Formal Complaint;
- b. of the availability of confidential counseling resources both on and off campus;
- c. how to file a Formal Complaint;
- d. that, if the reported conduct could be a crime, the Complainant has the right but not the obligation to file a police report, and that if there is a police investigation, the Title IX Coordinator will coordinate with law enforcement; and
- e. of the importance of preserving evidence and identification and location of Witnesses.

If on the face of the Initial Report, the Title IX Coordinator determines that the conduct alleged does not fall within the scope of Title IX, the Title IX Coordinator may also inform the Complainant that the matter may be referred to another University process. Even if the matter is referred, the Complainant will still receive an offer of Supportive Measures.

Supportive Measures will be different for every matter and will be based on individualized review. New Tech Mexico offers confidential counseling to community members, through the New Mexico Counseling Center for students, and through the Faculty/Employee Assistance Program (EAP) for others. Other Supportive Measures may include extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the Parties (e.g. No Contact Order, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The University will maintain as Private any Supportive Measures) provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the Supportive Measures.

The Title IX Coordinator or Deputy Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures. The Title IX Coordinator or Deputy Title IX Coordinator will consider the Complainant's wishes with respect to Supportive Measures.

2. Privacy and Confidentiality

Notice to the Title IX Coordinator, Deputy Title IX Coordinator, or other Senior University Official of conduct that could constitute Title IX Prohibited Conduct triggers the University's obligations under this Title IX Procedure. If the Title IX Coordinator, Deputy Title IX Coordinator, or other Senior University Official becomes aware that Title IX Prohibited Conduct is alleged to have occurred, the University has an obligation to review the available information and determine whether to proceed to an Investigation. In this context, Privacy and Confidentiality have distinct meanings.

- a. **Privacy** means that information related to a complaint will be shared with only a limited number of University employees who “need to know” in order to assist in the assessment, Investigation, and resolution of the report. All employees who are responsible for the University’s response to Title IX Prohibited Conduct receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”), and the privacy of employee records will be protected in accordance with New Mexico law and University policy.
- b. **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. The University has designated individuals who have the ability to have privileged communications as Confidential Resources.

The University will make reasonable and appropriate efforts to preserve an individual’s Privacy and to protect the Confidentiality of information. However, because of laws relating to reporting and other state and federal laws, the University cannot guarantee Confidentiality relating to incidents of Title IX Prohibited Conduct except where those reports are privileged communications to Confidential Resources. Even then, there are exceptions to maintaining Confidentiality set by law; for example, physicians and nurses who treat any physical injury sustained during a sexual assault are required to report it to law enforcement. Also, physicians, nurses, psychologists, psychiatrists, teachers and social workers must report a sexual assault committed against a person under age 18.

Except for Confidential Resources, information shared with other individuals is not legally protected from being disclosed. However, the University takes requests for Privacy and Confidentiality seriously; to the extent it can do so while at the same time fulfilling its responsibility to provide a safe and nondiscriminatory environment for all students and the University community. The University in such circumstances will make sure the Complainant is aware they are protected from Retaliation.

Should a Complainant make a request that the University not disclose the Complainant’s identity to the Respondent, the Title IX Coordinator will inform the Complainant that the University’s ability to respond to the allegations and Investigate may therefore be limited if the request is granted. A Complainant who initially requests Confidentiality is not prohibited from later requesting that the University conduct a full Investigation.

Whether or not the Complainant Requests Confidentiality, the University will keep Private the identity of all Complainants, Respondents, and Witnesses, except as

necessary to carry out this Procedure or as may be required by FERPA or other law.

3. Emergency Removal/Interim Suspension/Administrative Leave

a. Individualized Safety and Risk Analysis.

Based on an Initial Report or Formal Complaint of Title IX Prohibited Conduct, the Title IX Coordinator, in consultation with the Behavior Intervention Team (BIT) or others as appropriate, may undertake an individualized safety and risk analysis to determine whether the allegations indicate the Respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Title IX Prohibited Conduct. If the University determines removal is appropriate, the Respondent will be provided with notice and an opportunity to challenge the decision immediately following the removal.

b. Administrative Leave of a Non-Student Respondent.

The University may place a non-student Respondent on administrative leave after notice of a report of Title IX Prohibited Conduct and during the pendency of resolution of the matter.

B. Filing a Formal Complaint

After the Initial Report, the Title IX Procedure will not move forward until a Formal Complaint is filed. A Formal Complaint can be filed in one of two ways:

- 1. Complainant submits Formal Complaint.** A Complainant may complete and sign a Formal Complaint alleging Title IX Prohibited Conduct against a Respondent and requesting that the University Investigate the allegation of Title IX Prohibited Conduct.
- 1.** At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in one of the University's Programs or Activities. Attempting to participate includes circumstances where the Complainant has taken a leave of absence or has otherwise discontinued participation in University Programs or Activities, but intends to return to their University affiliation.
- 2. Title IX Coordinator submits Formal Complaint.** The Title IX Coordinator may complete and sign a Formal Complaint.
- 1.** A Complainant may request that the University not proceed with an Investigation or further resolution under this Procedure. A Complainant's wishes with respect to whether the University Investigates will be respected

unless the Title IX Coordinator determines that signing a Formal Complaint over the wishes of the Complainant is not clearly unreasonable in light of the known circumstances.

2. The Title IX Coordinator will inform the Complainant that due to various federal and state laws and/or in order to protect the safety of the campus community some circumstances require the University to move forward with an Investigation, even if the Complainant requests otherwise. The University's decision is subject to a balancing test that requires the University to consider a range of factors, including:
 - i. The status of the Respondent and whether the Respondent has authority over students and/or staff.
 - ii. Whether there have been multiple reports of Title IX Prohibited Conduct (or other violations of the Sexual Harassment Policy relating to a single Respondent;
 - iii. The seriousness of the alleged Title IX Prohibited Conduct (e.g., whether the alleged conduct involved a weapon, physical restraints or battery);
 - iv. Whether there is a likelihood that the Respondent would be a danger to the Complainant or the New Mexico Tech community;
 - v. The age of the Complainant;
 - vi. Whether the report of Title IX Prohibited Conduct can be effectively addressed through another type of intervention; and
 - vii. The ability of the University to obtain relevant evidence.

C. Receipt of a Formal Complaint of Title IX Prohibited Conduct

1. **Notice of Formal Complaint.** Upon receipt of a Formal Complaint, the University will provide a Notice of Formal Complaint to the Parties for whom the University knows their identity, including the following details:
 - i. A description of the University's Title IX Procedure, including any Informal Resolution process.
 - ii. A description of the allegations including sufficient details known at the time such as:
 - iii. the identities of the Parties involved in the incident;

- iv. the conduct allegedly constituting Title IX Prohibited Conduct; and
- v. the date and location of the alleged incident.

1. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of a Hearing.
2. A statement that the Parties may have an Advisor or Support Person of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence as described herein.

The Notice of Formal Complaint will be provided with sufficient time to respond and prepare for any investigative interviews.

Once a Notice of Formal Complaint is issued, a Respondent student's ability to receive a degree is placed on hold as well as a hold is placed on the student's account prohibiting official transcripts from being issued until the case has been resolved.

After receiving Notice of Formal Complaint, both the Complainant and the Respondent will be asked to identify any academic, employment, or other significant conflicts that would affect the timing of the Investigation and potential Hearing. The Deputy Title IX Coordinator will consider this input in finalizing any Hearing Schedule.

2. **Ongoing Notice Requirement.** If, in the course of an Investigation, the University decides to investigate allegations about the Complainant or Respondent that is not included in the initial Notice of Formal Complaint provided, the University will provide notice of the additional allegations to the Parties whose identities are known.

D. Rights and Responsibilities of Parties and Witnesses

During an Investigation and Hearing under this Title IX Procedure, the Parties and Witnesses have the following responsibilities and rights:

1. Responsibilities of the Parties and Witnesses

- i. The responsibility to be truthful, to cooperate with the process, and to follow the directions of University staff and agents responsible for administering this process;
- ii. The responsibility not to Retaliate against or Intimidate any individual who has reported Title IX Prohibited Conduct or who has participated as a Party or Witness in the process; and

1. The responsibility to keep private (by not disseminating beyond Support Persons) documents, materials, and information received from the University during this process; and,
2. The responsibility to destroy, when so directed by the University, evidentiary materials and/or writings submitted by the other Party as party of the process.¹³

2. Rights of all Parties and Witnesses

1. The right to be protected from Retaliation and Intimidation where one has reported Title IX Prohibited Conduct or participated as a Party or Witness in the process;
2. The right to exercise First Amendment rights and not be subject to investigation for Retaliation for the exercise of such rights;
3. The right to receive information regarding consequences for knowingly making false statements or knowingly submitting false information during the Title IX Procedure under the Student Code of Conduct, the Employee Handbook, and the Regulation Governing Academic Freedom and Tenure(RGAFT)
4. The right to take breaks during cross-examination at a Hearing, as needed and as permitted by the Hearing Officer.

3. Rights of Student Parties and Student Witnesses

1. The right not to be disciplined for drug and alcohol violations (relating to voluntary ingestion) or similar Student Code of Conduct offenses in connection with the reported incident that do not place the health or safety of any other person at risk.

4. Rights of Student Parties

1. The right to be treated equitably and receive the same equitable access to Supportive Measures;
2. The right to have each phase of the Title IX Procedure completed within a reasonably prompt timeframe (as set forth in Appendix C);

¹³ A Party or Witness may not distribute materials obtained through the process and may not engage in Retaliatory or Intimidating conduct aimed at any other participants in the process. The University will investigate allegations of a person engaging in any of these prohibited acts. The University recognizes, however, that it cannot otherwise prevent individuals from speaking openly about their experience and the University process.

3. The right to an Advocate/Advisor to support and/or advise the Party (as described in Section IV.I.1.b.);
4. The right to receive a Notice of Formal Complaint that provides sufficient detail about the allegations and the applicable University policies for the Respondent to be able to respond and for both Parties to understand the scope of the Investigation;
5. The right to decline to give a statement about the allegations or attend a Hearing;
6. The right to participate in the Investigation, including by identifying fact Witnesses and Expert Witnesses and identifying and/or providing inculpatory, exculpatory and other relevant information and evidence to the Investigator;
7. The right to receive any Notice of Dismissal
8. The right to appeal any Notice of Dismissal (as described in Section IV.H.1.e.);
9. The right to review all evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the Parties to inspect, review, and respond to the evidence.
10. The right to receive an Investigative Report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for the Parties to respond;
11. The right to have the matter heard at a live Hearing by a neutral panel who will determine the matter using Clear and Convincing Evidence standard and who will not prejudge the outcome of a case;
12. The right to a Hearing Support Person (as described in Section IV.G.1.c.) who will conduct oral cross-examination at the live Hearing on behalf of the Party;
13. The right to jointly agree with the other Party to waive cross-examination through the Hearing Support Persons and instead submit written cross-examination questions to the Hearing Panel to conduct the examination. Parties will not be pressured to make this election or be penalized in any way for electing to conduct cross-examination through their Hearing Support Person;

14. The right to receive a Written Determination Regarding Responsibility (if any) (as described in Section IV.J.7.);
 15. The right to appeal the Written Determination Regarding Responsibility to a neutral Appeal Officer (as described in Section IV.O.1.);
 16. The right to receive a Notice of Outcome of Appeal;
 17. Prompt and fair resolution of prohibited contact reports; and
 18. Information about applicable support advocacy resources
- 5. Responsibility of the Respondent**
- a. In accordance with University procedures, the Respondent must attend the initial meeting (e.g. physically, via video conferencing) with the designated University Official to hear the allegations and better understand the process. The Respondent has the right to not to say anything and bring a Support Person/Advocate with them, but they must attend the meeting.
 - b. Haven been given adequate notice, failure to attend this initial meeting with adequate notice will result in an Interim Suspension until which time the Respondent does attend the meeting.

6. Rights of the Respondent

1. The right not to have any disciplinary Sanctions imposed before a finding of responsibility in accordance with this Title IX Procedure; and
2. The right to be presumed not responsible for the alleged Title IX Prohibited Conduct until a determination regarding responsibility is made at the conclusion of the Hearing.

E. Initial Assessment of Formal Complaint

The Title IX Coordinator shall make an initial assessment as to whether a Formal Complaint submitted by a Complainant contains sufficient allegations on its face to describe an act of Title IX Prohibited Conduct covered by this Title IX Procedure. If it does not, the University may seek new or additional information from the Complainant, and may inform the Complainant about other University procedures that may be more applicable to the alleged conduct.

1. Request for More Information Prior to Investigation or Resolution

If an assessment of a Formal Complaint submitted by a Complainant reveals that

there are insufficient allegations in the Formal Complaint to determine whether a Title IX Investigation can go forward and/or issue a Notice of Formal Complaint (for example, the identity of the Respondent is not provided), the Title IX Coordinator can request additional information from the Complainant, and inform the Complainant that a Notice of Formal Complaint cannot be issued and an Investigation cannot go forward until more information is provided.

F. Informal Resolution

1. Informal Resolution Process¹⁴

At any time after a Formal Complaint is filed, the Title IX Coordinator or Deputy Title IX Coordinator may, in their discretion, choose to offer and facilitate an Informal Resolution process, so long as both Parties give voluntary, informed, written consent to attempt Informal Resolution. The University may not require the Parties to participate in an Informal Resolution process or require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, and election to participate in an Informal Resolution does not constitute a waiver of the right to a formal Investigation and adjudication of Formal Complaints of Title IX Prohibited Conduct. Any person who facilitates an Informal Resolution will be experienced and trained in dispute resolution and trained on this Title IX Procedure.

G. Withdrawing from an Informal Resolution Process

At any time prior to agreeing to an Informal Resolution, any Party has the right to withdraw from the Informal Resolution process and resume the process with respect to the Formal Complaint.

H. Matters Not Eligible for Informal Resolution

1. No Informal Resolution process will be offered before a Formal Complaint is filed.

¹⁴ The University will consider different models of Informal Resolution, including restorative justice or alternative dispute resolution suggestions made by the Parties (where allowed).

2. No Informal Resolution process will be offered to resolve Formal Complaints involving a student as Complainant and a staff or faculty member as Respondent.¹⁵

I. Investigation

For any allegations in any Formal Complaint not subject to dismissal under this Title IX Procedure, the matter will proceed to an Investigation. The formal Investigation phase is the period during which the Investigator gathers information about the allegations. This period of time is the Parties' opportunity to provide input regarding the collection of evidence, but the burden of gathering evidence and the burden of proof is on the University. The University may, in its discretion, consolidate the Investigation of multiple Formal Complaints where the allegations arise out of the same facts.

1. Support During the Investigation and Hearing Process

a. Process Support Person

The Process Support Person serves as an advisor or advocate to the Party. The Process Support Person may assist a Party on written submissions provided they are verified by the Party. The Process Support Person does not speak or advocate on behalf of the Party in University proceedings, except as provided in Section IV.G.1.c., below. Any Process Support Person who violates these expectations may not be permitted to participate further in the process or as a Hearing Support Person.

Only one Process Support Person will be allowed to accompany a Party to meetings with Investigators (including meetings that occur using technology, such as Zoom).

b. Hearing Support Person

In the event a matter proceeds to a Hearing, University-Identified support person will be made available to all Parties (students, faculty, staff, and postdoctoral scholars) available for assistance with the pre-Hearing stage, plus time for the actual Hearing, plus up to two hours for any appeals. The University-Identified support person will provide guidance around Hearing preparation, conduct oral cross-examination during a Hearing, and may provide assistance during an appeal period or with any Informal Resolutions that are offered after a matter has been set for Hearing. Parties are not obligated to use this resource or to follow their guidance provided by a support person. Parties will be informed of this resource, and should Parties wish to avail themselves of this resource, Title IX Office will provide a list of the University-Identified support person. Each Party is responsible for selecting their own University-identified support person from this list. If a student Party has elected to use a University-Identified support person for

¹⁵ This requirement is set forth in section 106.45(b)(9)(iii) of the Title IX regulations

consultation prior to the Hearing stage, and elects to use this resource for the Hearing stage, the student Party will be offered the same University- Identified support person that provided the consultation services to serve as the student Party's Hearing Support Person. A student Party may choose a different University-identified Support Person from the available list to serve as the Hearing Support Person, but the overall time allotted if the student Party Switches University-Identified support person will not increase.

As described in Section IV.J.4.a., below, if the matter proceeds to a Hearing, all oral cross-examination must be conducted by a Party's Hearing Support Person (which may be the same as the Party's Process Support Person), not by the Parties themselves. If a Party arrives at a Hearing without a Hearing Support Person, the University will designate a Hearing Support Person of the University's choosing to conduct the oral cross-examination on behalf of the Party.

c. Roles and Responsibilities of Support Persons

New Mexico Tech has created a Roles and Responsibilities of Support Persons document to clearly articulate the Process Support Persons' role and Hearing Support Persons' role in Sexual Misconduct and Title IX cases. Both the Party and their designated Support Person must sign the form to acknowledge their roles and responsibility in these procedures.

1. Investigation Process

- **Investigator.** The Title IX Coordinator or Deputy Title IX Coordinator will designate an individual to conduct the Investigation of a Formal Complaint.
- **Notice of Interviews, Meetings or Hearings.** The University will send the Parties advance written notice of any investigative interviews, meetings, or Hearings at which the Party is expected to be present.
- **Method of Information Gathering.** The Investigator may gather information in multiple ways. The Investigator may collect relevant documents and other information and may also interview Parties and/or Witnesses. In addition, a Complainant or Respondent may:
 - i. submit documentary information to the Investigator;
 - ii. submit a list of Witnesses to be interviewed by the Investigator; and/or
 - iii. request that the Investigator attempt to collect documents and other information that are not accessible to the requesting Party.

1. Medical Records

For purposes of this Title IX Procedure, the University will not access, consider, disclose, or otherwise use a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless the University obtains that Party's voluntary, written consent to do so.

2. Past Sexual History

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

3. Disclosure of information.

After the Investigator has concluded the collection of evidence, the Investigator will send the Parties and their Support Persons all evidence directly related to the allegations, in electronic format or hard copy, with at least ten (10) calendar days for the Parties to inspect, review, and respond to the evidence.

This is the opportunity for the Parties to identify New Evidence or Rebuttal Evidence. New Evidence is evidence that was not available earlier in the process, could not have been available based on reasonable and diligent inquiry, and is relevant to the matter. Rebuttal Evidence is evidence presented to contradict other evidence in the file, which could not have been reasonably anticipated by a Party to be relevant information at the time of the Investigation. New Evidence and Rebuttal Evidence may be included or excluded from the file, but in no event is this section intended to permit a Party who has declined to give a statement about the incident during the Investigation to give such a statement for the first time after the Investigator has concluded the collection of all other evidence. This section is intended to be invoked in rare instances to allow for the inclusion of information that was not available during the Investigation or that could not have been reasonably anticipated to be relevant to rebut an issue that came to light.

4. Investigative Report.

After the Investigator has received and considered the Parties' responses to the evidence, the Investigator will complete an Investigative Report that fairly summarizes the relevant evidence. The Title IX Coordinator will make the Investigative Report available to the Parties and their Support Persons in electronic format or hard copy, with at least ten (10) calendar days for the Parties to respond in writing to the Investigative Report. After the Title IX Coordinator has reviewed the Parties' responses to the Investigative Report, the Title IX Coordinator will make the determination whether to dismiss the Formal Complaint or proceed to a Hearing.

J. Post-Investigation Options

1. Dismissal of Formal Complaint After Investigation

- a. **Mandatory Dismissal.** The University must dismiss the Formal Complaint if after the Investigation it is determined by the Title IX Coordinator that the conduct alleged in the Formal Complaint does not constitute Title IX Prohibited Conduct or did not occur against a person in the United States. Any conduct dismissed under this Title IX Procedure that could constitute a violation of NMT's Sexual Misconduct Policy or any other University policy may be referred to another applicable University process. If the Formal Complaint alleges multiple claims that arise out of the same facts and circumstances, and the Title IX Coordinator determines that some conduct is covered under Title IX and some is not, all claims may proceed together to be resolved under this Title IX Procedure. If, however, the Title IX Coordinator determines some claims do not arise out of the same facts and circumstances, are not covered by Title IX, and could violate other University policy, that conduct will be dismissed and referred to another University process, and the Title IX Procedure will precede with respect to the covered conduct only.
- b. **Discretionary Dismissal.** The University may dismiss the Formal Complaint if:
 - The Respondent is no longer enrolled or employed by the University;¹⁶
 - Specific circumstances prevent the University from gathering sufficient evidence to reach a determination; or
 - The Complainant informs the Title IX Coordinator in writing that the Complainant desires to withdraw the Formal Complaint or allegations therein.
 - A Complainant may notify the Title IX Coordinator at any time that the Complainant does not wish to proceed with the Investigation and/or Hearing process. If such a request is received, the Title IX Coordinator

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In the event that the Respondent is no longer enrolled or employed by the University after a Formal Complaint is filed, but the Complainant wishes to proceed with an Investigation, the Title IX Coordinator will do so to the extent feasible.

will inform the Complainant that the University's ability to respond to the allegation may be limited if the allegations are withdrawn.

- The Title IX Coordinator will consider the factors in Section IV.B.2.b. in reaching a determination as to whether to terminate the Investigation and/or Hearing process. In the event that the Title IX Coordinator determines that the Investigation will continue, the Title IX Coordinator will notify the Complainant of that determination. The Title IX Coordinator will include in that notification a statement that the Complainant is not required to participate in the Investigation and/or Hearing process but that the process will continue. In the event that the Title IX Coordinator determines that the Investigation will be terminated, both Parties will be notified.
- c. **Referral.** In the event of dismissal after the Investigation (mandatory or discretionary), the Title IX Coordinator may refer some or all of the matter for consideration under another applicable University policy or procedure, if any.
- d. **Notice of Dismissal after Investigation.** Upon dismissal, the University shall promptly send a Notice of Dismissal (mandatory or discretionary) and reason(s) for the dismissal simultaneously to the Parties. If the matter is being referred to another University procedure because it does not constitute Title IX Prohibited Conduct, but could violate other University policy, that information will be included in the notice as well.
- e. **Right to Appeal Notice of Dismissal.** The Parties may appeal a Notice of Dismissal. Each Party may submit a written appeal of up to 6,000 words in length, which will be shared with the other Party. The Parties must submit the appeal by the date determined by the Title IX Office, generally ten calendar days from the receipt of the Notice of Dismissal. The appeal is submitted to an External Sexual Harassment/Assault Process Specialist and will be limited to the following grounds:
 - Were there any procedural irregularities that substantially affected the outcome of the matter to the detriment of the Complainant?
 - Was there any substantive new evidence that was not available at the time of the decision that could not have been available based on reasonable and diligent inquiry that would substantially affect the outcome of the decision?
 - Is the decision one that a reasonable person might have made?

Upon receipt of a Party's appeal, the Hearing Coordinator will share it with the other Party. Each Party may submit a response to the other Party's appeal (no more than 3,000 words). Each Party must submit this response by the date determined by the Hearing Coordinator, generally seven (7) calendar days after the other Party's appeal has been shared. The appealing Party will have access to the other Party's response to the appeal, but no further responses will be permitted.

The Title IX Coordinator is permitted, but not required, to file a response to a Party's appeal to respond to concerns relating to procedural irregularities including the Investigation. The Title IX Coordinator may submit one response for each Party that files an appeal (that raises a procedural irregularity). Each response by the Title IX Coordinator should be no more than 1,500 words. The

Parties will have access to the Title IX Coordinator response(s) to the appeal, but no further responses will be permitted.

The remedy is limited to directing the Title IX Coordinator to issue a Notice of Hearing and proceed to a Hearing.

2. **Informal Resolution.** As set forth in Section IV.F.1, the Title IX Coordinator may offer an Informal Resolution for eligible matters at any time after a Formal Complaint is filed, including after the Investigation has concluded.
3. **Notice of Hearing/Setting of Hearing.** For any Formal Complaints not subject to Dismissal or Informal Resolution after Investigation, the matter will proceed to a Hearing. The Title IX Coordinator will notify both the Complainant and the Respondent in writing that the matter has been charged and referred to a Hearing Officer to decide the matter. The Hearing Coordinator will promptly set the Hearing based on the availability of the Parties, Witnesses, and Hearing Panel.
4. **Creation of Hearing File.** The Hearing Coordinator (working with the Investigator) will create the initial Hearing File within seven (7) calendar days after the issuance of the Notice of Hearing. However, in more complex cases involving, for instance, multiple allegations and/or Witnesses, the creation of the Hearing File may take longer. Before the Hearing File is made available to the Parties, the Investigator/Hearing Coordinator will redact personally identifying information from the Hearing File, such as phone numbers, addresses, and medical information. The Investigator/Hearing Coordinator will also propose redactions of non-permissible and unrelated information in the Hearing File, and highlight those proposed redactions to the Parties. The Parties will receive electronic access (e.g. secured shared drive) to view the Hearing File. Parties will also receive a log describing gathered materials that were not included in the Hearing File.

K. Pre-Hearing Process

1. Expert Witnesses

Expert Witnesses may be permitted only if:

- a. the Hearing Panel needs special expertise in order to understand a technical matter, such as relevant forensic evidence;
- b. an understanding of that technical matter is likely to affect the Hearing Panel's finding; and/or
- c. there is not a more efficient method of obtaining the information necessary to resolve that technical matter.

If allowed, an Expert Witness may be retained by a Party or by the Title IX Office. If an Expert Witness is retained by a Party, that Party will be responsible for any costs incurred, and the other Party will be allowed to respond to that Expert's written or oral testimony. If an Expert Witness is consulted by the Title IX Office and the expert's opinion or testimony is included in the Hearing File or offered to the Hearing Panel Chair, the Parties will be allowed to respond to that Expert's written or oral testimony. A Party's Expert Witness must be identified in the Investigation phase, unless good cause is shown as to a late discovery of need for such testimony, and must be willing to submit to an interview with the Investigator, in part to determine whether the proposed testimony meets the standard set forth above.

2. Evidentiary Review Process

After reviewing the Hearing File, a Party is permitted to make a written request to have evidentiary concerns considered by the Hearing Panel, including any objections to proposed red-actions in the Hearing File. Requests to review evidentiary concerns should include all evidentiary issues in one document, which should be no more than 1,500 words in length (including headers, footnotes, captions, charts, audio and/or video statements, and everything else except for the submission of proposed new or rebuttal evidence). The requests should be submitted to the Hearing Coordinator, who will forward all information from the Parties to the Hearing Panel Chair.

In order to consider evidentiary concerns to the Hearing File, the Hearing Panel Chair will have access to all materials gathered by the Investigator during the Investigation. The Parties must submit the written request by the date set in the Hearing Schedule, generally five (5) calendar days after the date the Hearing File is made available to the Parties. The Title IX Coordinator is permitted, but not required, to submit responses to the Parties' evidentiary objections to the Hearing Panel. The Hearing Panel has the authority to make all evidentiary decisions relating to what information is relevant; that is, what information should be admitted at the Hearing. If the Hearing Panel proposes to add New or Rebuttal

Evidence to the Hearing File that not all Parties have reviewed, the Hearing Panel is permitted to grant Parties the opportunity to review and bring forward evidentiary issues, limited to the New or Rebuttal Evidence that was added.

During the Hearing, Parties, Support Persons, and Witnesses must comply with the evidentiary decisions that have been made by the Hearing Panel.

Objections to the inclusion or exclusion of evidence cannot be the basis for appeal unless they were made through the Evidentiary Review process before the Hearing. The standard for review of evidentiary decisions on appeal will be whether the evidentiary decision was clearly erroneous and substantially affected the Hearing Panel's decision to the detriment of the appealing Party.

3. Response Statement to Hearing File

Each Party may submit a written statement of their position to the Hearing Coordinator that is no more than 1,500 words in length (including headers, footnotes, captions, charts, audio and/or video statements).

- a. This statement is each Party's opportunity to respond to the Hearing File and the charges made and to provide a statement to the Hearing Panel about what the Party believes the evidence shows.
- b. No attachments will be accepted; references to evidence should be made to material in the Hearing File.
- c. No New and/or Rebuttal Evidence may be submitted.
- d. No information may be submitted that goes beyond the scope of the matter that is charged.

The Parties must submit this statement by the date set in the Hearing Schedule (see Appendix C), but generally five (5) calendar days from the date the Hearing File is made available to the Parties.

The Hearing Coordinator, in consultation with the Investigator, will remove information from a position statement that goes beyond the scope of the charge.

L. Hearing Schedule

Within seven (7) days of when the Notice of Hearing is issued, the Hearing Coordinator will reach out to all Parties, Witnesses, and the Hearing Panel to schedule key dates for the matter (Hearing Schedule). The Hearing Schedule will take into consideration the academic and other conflicts identified in response to the Written Notice of Formal Complaint. Unless an extension is granted based on a showing of good cause, the Parties are obligated

to follow the Hearing Schedule. The Hearing Schedule will be case-specific but generally will follow the timeframes set forth in Appendix C.

M. Hearings

1. Format of Hearing.

Hearings may be conducted with any or all Parties, Witnesses, and other participants appearing at the live, face-to-face Hearing unless circumstances such as a pandemic necessitate a live virtual Hearing. In the case of a live virtual Hearing, there will be appropriate technology enabling participants simultaneously to see and hear each other, or with all Parties physically present in the same geographic location. The presumption will be that the Hearing will take place in-person, unless either Party requests otherwise or the University otherwise determines that a virtual Hearing is appropriate. If the Hearing takes place with all Parties physically present, the University will provide for the option for the Hearing to occur with the Parties located in separate rooms with technology enabling the Hearing Officer and Parties to simultaneously see and hear the Party or the Witness answering questions. All hearings are closed.

2. Parties Attendance

The Respondent and Complainant are not required to attend a scheduled Hearing. Advance notice prior to the Pre-Hearing meeting if there is a legitimate schedule conflict or if the Party does not plan to attend. A Party's failure to attend has no direct bearing on the determination of responsibility; however their attendance may impact the panel's ability to ask needed questions. The scheduled Hearing will continue in absentia or that party unless the party notifies the Hearing Panel Chair at least two (2) hours prior to the hearing and the Hearing Panel Chair in consultation with the Title IX Coordinator agrees there are appropriate grounds for rescheduling the Hearing.

3. Recording of the Hearing.

Hearings will be recorded through audio or audiovisual means and the University will make the recording available to the Parties for inspection and review upon request.

4. Role of Hearing Support Persons.

If a Party does not have a Hearing Support Person present at the Hearing, the University will provide a list of trained advocates. The advocate can serve as the Party's Hearing Support Person and conduct cross-examination on behalf of that Party. The Hearing Support Persons must at all times follow the instructions of the Hearing Panel, including abiding by all relevance and evidentiary determinations made. The Hearing Support Persons must conduct themselves in a professional and courteous manner and may not badger or harass any Witness or Party.

5. Role of the Hearing Panel or Hearing Panel.

The Hearing Panel will be neutral decision-makers trained in adjudicating matters of civil rights, sexual harassment and/or sexual violence and trained on this Title IX Procedure and on trauma-informed decision-making, as required by New Mexico law. The Hearing Panel will preside over the Hearing and will issue the Written Determination Regarding Responsibility.

The Hearing Panel will be identified to the Parties before the Hearing at least three days prior to the Hearing or as early as the Pre-Hearing meeting. Additionally, no person who has a conflict of interest may serve on the Hearing panel. A conflict of interest exists if there is prior involvement in or knowledge of the allegations at issue in the case, has a personal relationship with one of the Parties or Witnesses, or has some other source of bias.

Either Party may assert, in writing, that a Hearing Panelist has a conflict of interest. A request to recuse a Hearing Panelist based on a conflict must be submitted within one (1) business day's receipt of the names of the Hearing Panelists. The request is submitted to the Hearing Coordinator. A determination will be made whether a Hearing Panelists have a conflict of interest, and if so that Hearing Panelist will be replaced by an alternate.

6. Role of the Hearing Panel Chair.

- a. **Permit Cross-examination.** At the Hearing, the Hearing Panel Chair will permit each Party's Hearing Support Person to ask the other Party and any Witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the Hearing must be conducted directly, orally, and in real time by the Party's Hearing Support Person of choice and never by a Party personally. The Parties may, however, jointly agree in advance to waive oral cross-examination and instead submit written cross-examination to the Hearing Panel Chair to conduct the examination. Even if the Parties so agree, the Parties are still required to have a Hearing Support Person present at the Hearing. The University has discretion to otherwise restrict the extent to which Hearing Support Person may participate in the proceedings. The Hearing Panel Chair will permit Parties and witnesses to take breaks, as needed, during cross-examination. The Hearing Panel Chair will also ensure the Hearing Support Persons are conducting any live cross-examination in a professional and courteous manner. The Hearing Panel Chair will not permit the Hearing Support Persons to badger or harass Witnesses or Parties.
- b. **Determine Relevance of Questions.** Only relevant cross-examination and other questions may be asked of a Party or Witness. Before a Complainant, Respondent, or Witness answers a cross-examination or other question, the Hearing Panel Chair must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

- c. **Provide Rape Shield Protections for Complainants.** The Hearing Panel Chair will prohibit any questions and evidence about the Complainant's sexual predisposition or prior sexual behavior as not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
- d. **Exclude Statements, as Relevant, in Reaching a Determination Regarding Responsibility.** If a Party or Witness does not submit to cross-examination at the live Hearing, the Hearing Panel must not rely on any statement of that Party or Witness in reaching a determination regarding responsibility. The Hearing Panel cannot draw an inference about the determination regarding responsibility based solely on a Party's or Witness's absence from the live Hearing or refusal to answer cross-examination or other questions.

7. Hearing Process.

See **Title IX Hearing Proceedings** for a summary of the step-by-step or order of the proceedings. The Hearing Panel will gather for the Hearing for the purpose of making findings of fact. The Investigator will be available to answer any questions from the Hearing Panel or Hearing Support Persons about the Investigation. The Parties, Hearing Support Persons, and Witnesses may not speak to matters beyond the scope of the Hearing File (e.g. by raising potential misconduct allegations that go beyond the scope of the charged conduct). Parties, Hearing Support Persons, and Witnesses must not disclose or reference information to the Hearing Panel that was excluded from the Hearing File. The Hearing Panel and Hearing Support Persons may ask questions of the Investigator, Parties and/or Witnesses.

Parties and Hearing Support Persons are permitted to listen to Witnesses as they are speaking to the Hearing Panel. The Hearing Panel is not obligated to speak to all Witnesses.

The Hearing Panel Chair may ask the Parties to submit Sanctions statements at the conclusion of the Hearing. The Hearing Panel Chair may also consult with University personnel regarding any Sanctions and Remedies appropriate to the specific Respondent and Complainant using the guidelines provided in Appendix B.

8. Written Determination Regarding Responsibility.

The Hearing Panel shall issue a Written Determination Regarding Responsibility, applying the Clear and Convincing evidence standard, which shall include:

- a. Identification of the allegations potentially constituting Title IX Prohibited Conduct;

- b. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the Parties, interviews with Parties and Witnesses, site visits, methods used to gather other evidence, and Hearings held;
- c. Findings of fact;
- d. Conclusions about whether the alleged Title IX Prohibited Conduct occurred, applying the definitions set forth in this Title IX Procedure to the facts;
- e. The rationale for the result as to each allegation;
- f. Any disciplinary Sanctions imposed on the Respondent;
- g. Whether Remedies or Supportive Measures will be provided to the Complainant;

The Hearing Panel Chair must explain decisions on responsibility and Sanctions (if applicable) and Remedies with enough specificity for the Parties to be able to file meaningful appeals.

The consideration of whether Remedies and Sanctions go into immediate effect or are held in abeyance pending appeal or some combination thereof will be determined on a case-by-case basis by the Title IX Coordinator.

The Sanction determination will be provided to the Title IX Coordinator who will be responsible for implementing the Supportive Measures and/or Remedies, including the continuation of any Supportive Measures and/or any additional or on-going accommodations for both Parties. The Title IX Coordinator will cause the Written Determination Regarding Responsibility to be sent to both Parties and their Hearing Support Persons simultaneously. The Title IX Coordinator will provide copies of the Written Determination Regarding Responsibility and Sanctions and/or Remedies (if any) for the purpose of maintaining records as follows:

- a. For students, to the Dean of Students
- b. For staff, to University Human Resources
- c. For faculty, to the Vice President for Academic Affairs
- d. For postdoctoral scholars and fellows, to the appropriate administrative manager (e.g. Dean of Graduate Studies)

9. The Written Determination Regarding Responsibility becomes final:

- a. if an appeal is not filed by the appeal deadline or
- b. If an appeal is filed on the date that University provides written determination of the result of the appeal.

N. Appeals of the Hearing Panel Decision

1. Appeal of a Written Determination Regarding Responsibility

- a. Submission of Appeal
- b. Both Parties have the right to an appeal from a Written Determination Regarding Responsibility on the bases set forth below. Appeals may be submitted by a Complainant or Respondent in writing to the Hearing Coordinator, who will forward the appeal to a designated Appeal Officer to decide the appeal. The Appeal Officer will be a professional neutral decision-maker (i.e. administrator, professional outside the University, a share professional with other Institutions of Higher Education) experienced and trained in adjudicating matters of civil rights, sexual harassment and/or sexual violence and trained on this Title IX Procedure. Additionally, no person who has a conflict of interest may serve as the Appeal Officer. A conflict of interest exists if the Appeal Officer has prior involvement in or knowledge of the allegations at issue in the case, has a personal relationship with one of the Parties or Witnesses, or has some other source of bias.

Each Party may submit a written appeal of up to 6,000 words in length, which will be shared with the other Party. The Parties must submit the appeal by the date determined by the Title IX Office, generally ten (10) calendar days from the receipt of the Written Determination Regarding Responsibility (if any).

2. The grounds for appeal are limited to the following:

- a. Were there any procedural irregularities that substantially affected the outcome of the matter to the detriment of the appealing Party?¹⁷
- b. Was there any substantive new evidence that was not available at the time of the decision or Hearing and that could not have been available based on reasonable and diligent inquiry that would substantially affect the outcome of the decision?
- c. Did the Title IX Coordinator, Investigator(s), or Hearing Panel have a conflict of interest or bias for or against Complainants or Respondents that affected the outcome of the matter?
- d. For matters that proceeded to Sanctioning and imposition of Remedies, is the Sanction and/or Remedies ones that could have been issued by reasonable persons given the findings of the case?

¹⁷ As stated in Section IV.I.2., objections to the inclusion or exclusion of evidence cannot be the basis for appeal unless they were made through the evidentiary review before the Hearing. The standard for review of evidentiary decisions on appeal will be whether the evidentiary decision was clearly erroneous and substantially affected the Hearing Officer's decision to the detriment of the appealing student.

In composing appeals, Parties should format their arguments following these four grounds as the organizational structure.

Upon receipt of a Party's appeal, the Hearing Coordinator will share it with the other Party. Each Party may submit a response to the other Party's appeal (no more than 3,000 words). Each Party must submit this response by the date determined by the Hearing Coordinator, generally ten (10) calendar days after the other Party's appeal has been shared. The appealing Party will have access to the other Party's response to the appeal, but no further responses will be permitted.

The Title IX Coordinator is permitted, but not required, to file a response to a Party's appeal to respond to concerns relating to procedural irregularities or bias in the Investigation and Hearing process. The Title IX Coordinator may submit one response for each Party that files an appeal (that raises a procedural irregularity). Each response by the Title IX Coordinator should be no more than 1,500 words. The Parties will have access to the Title IX Coordinator's response(s) to the appeal, but no further responses will be permitted.

In matters involving staff Respondents, the Director for Human Resources is permitted, but not required, to file an appeal on the basis that the sanctions imposed by the Hearing Officer are not severe enough, even if the Complainant does not appeal on that basis. An appeal by the Director for Human Resources should be no more than 6,000 words, and must be submitted by the date determined by the Hearing Coordinator generally ten (10) calendar days from the receipt of the Written Determination Regarding Responsibility (if any). The Human Resources appeal will be shared with the Respondent, and the Respondent will be permitted to submit a response of no more than 3,000 words by the date determined by the Hearing Coordinator, generally ten (10) calendar days after the Human Resources appeal has been shared.

3. Appeal Decision

The Appeal Officer will provide the **Notice of Outcome of Appeal** no later than ten (10) calendar days after receipt of all appeal documents. The Title IX Coordinator will cause the Notice of Outcome of Appeal to be sent to the Parties simultaneously.

As needed, the Appeal Officer will consult with the Title IX Coordinator regarding the management of ongoing Remedies. The Appeal Officer may reject the appeal in whole or in part, issue a new decision regarding responsibility, issue new or revised Sanctions and Remedies, or refer the matter to a new Hearing Panel.

V. ADDITIONAL INFORMATION AND APPENDICES

A. Retaliation and Intimidation.

It is a violation of the Sexual Harassment Policy, Student Code of Conduct, University Policy and Procedures, Employee Handbook, and the RGAFT to Intimidate or Retaliate against any person making a complaint or responding to a complaint under this Title IX Procedure or against any person participating in the Investigation of any such allegation under this Title IX Procedure (including being the Respondent or testifying as a Witness). No person may threaten, coerce, or discriminate against any individual for pursuing or exercising any right or privilege secured by Title IX, or because the individual has made a report or complaint, responded to a complaint, testified, assisted, or participated or refused to participate in any manner in an Investigation, proceeding, or Hearing related to this Title IX Procedure.

Retaliation/Intimidation includes, but is not limited to, adverse action related to employment, academic opportunities, participation in University programs or activities, or similar punitive action. Retaliation can be direct such as changing an employee's work location, pay or schedule, or for students, changing a grade or denying access to a program, or it can be indirect such as Intimidating, threatening, or harassing an employee or student who has raised a claim or participated as a witness in an investigation. Intimidation can be a form of Retaliation, and includes any threatening statement or conduct made with the intent to prevent or dissuade any Party or Witness from reporting or participating in the process.

All Parties to a concern and all persons participating in the Investigation of a concern are prohibited from engaging in actions intended to retaliate or intimidate directly or through Support Persons.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of an Investigation does not constitute Retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any Party made a materially false statement in bad faith. The exercise of rights protected under the First Amendment does not constitute Retaliation.

Reports of alleged violations of University Directives (e.g. No Contact Order) or Court Orders prior to a finding of responsibility either will be incorporated into the pending matter or referred separately to another University process. After a Respondent has been found responsible for Title IX Prohibited Conduct, if there is a new allegation that the Respondent has engaged in Retaliation, Intimidation, or violated a Court Order or University Directive relating to the matter, the Title IX Office will investigate the allegation and determine whether to refer the matter to be handled through another University process.

B. Process for Evaluating Requests for Disability Accommodations.

Parties or Witnesses may request disability-related accommodations from the Title IX Office. Upon receipt of a request for a disability-related accommodation, the Title IX Office will coordinate a meeting with the ADA compliance Office and the individual requesting the accommodation to explain the steps involved in the applicable Title IX process (e.g.,

attorney meetings, interview, document submissions, Hearing). If a participant requests accommodations, if needed, an Investigation under this Title IX Procedure may be delayed (or that person's participation postponed) until the participant requesting such

accommodations has had their request evaluated and, as appropriate, until accommodations have been implemented.

The ADA Compliance Office will confirm with the participant their specific accommodation requests; the ADA Compliance Office may coordinate with other University offices, such as the Office of Affirmative Action/ EEOC and ADA Compliance or Human Resources, to confirm existing accommodations.

If the participant is already registered with the ADA Compliance Office will confirm their eligibility for accommodations. If the participant is not currently registered with the ADA Compliance Office may request medical documentation from their treating healthcare provider to support the requested accommodation.

The ADA Compliance Office will inform the Title IX Office of the appropriate recommended accommodations and assist with coordination as needed, in addition to other relevant offices such as for students and Human Resources for staff.

In the circumstance that the Title IX Coordinator determines that the recommended accommodations create a fundamental alteration of the applicable review or Investigation process, the Title IX Coordinator will confer with the ADA Compliance Office to identify alternate accommodations, if any. The Title IX Coordinator will provide a written statement of the accommodations that will be provided in the process.

If a Party seeking an accommodation does not agree with the statement of accommodations, the Party may seek written review of the accommodations from the Director of the ADA Compliance Office or their designee. The request to review the accommodations must be made in writing. The Director of the ADA Compliance Office will review and respond to the request, generally within three (3) days. The accommodations recommended by the Director of the ADA Compliance Office are final unless there is a change of circumstance. A Party who continues to be dissatisfied with accommodations may raise the concern as procedural error at the conclusion of a Hearing.

Appendix A: Definitions

Affirmative Consent: affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that the person has the Affirmative Consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean Affirmative Consent, nor does silence mean Affirmative Consent. Affirmative Consent must be ongoing throughout a sexual activity and can be revoked at any time. Affirmative Consent may be based on a condition(s), e.g., the use of a condom, and that condition(s) must continue to be met throughout an activity, unless there is mutual agreement to forego or change the condition. When there is no

Affirmative Consent present during sexual activity, the activity at issue necessarily occurred

“against the person’s will.”

- The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of Affirmative Consent.
- In evaluating Affirmative Consent, it cannot be a defense that a Respondent’s belief that the complainant consented to the sexual activity arose under either of the following circumstances:
 - The Respondent’s belief in Affirmative Consent arose from the intoxication or recklessness of the Respondent.
 - The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant gave Affirmative Consent.

Appeal Officer: a professional neutral decision-maker (such as a retired judge) experienced and trained in adjudicating matters of civil rights, sexual harassment and/or sexual violence and trained on this Title IX Procedure, who will review the Parties’ appeals and issue the Notice of Outcome of Appeal.

Clear and Convincing Evidence Standard: In the clear and convincing evidence standard the degree of certainty is that it is substantially more likely to be true than untrue; highly probable. This is a more stringent standard than a preponderance of the evidences standard but less stringent than a beyond a reasonable doubt standards.

Complainant: the Party to the process who is reported to have experienced Title IX Prohibited Conduct.

Confidential Resource: a person who by law is exempted from the obligation to report an allegation of conduct that could constitute Title IX Prohibited Conduct to any entity, including the University’s Title IX Coordinator or law enforcement in circumstances in which the reported conduct could be a crime (except, as to law enforcement, if the Complainant is a minor or if there is a belief that there is an imminent threat of harm to self or others).

Confidentiality: exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses.

Court Order: any formal order issued by a state or federal court or authorized police officer that restricts a person’s access to another New Mexico Tech community member, such as an

emergency, temporary or permanent restraining order.

Dating Violence: violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant, including sexual or physical abuse or the threat of such abuse, but excluding acts covered under the definition of Domestic Violence.

Deputy Title IX Coordinator: a person designated by the Title IX Coordinator to handle a report of Title IX Prohibited Conduct.

Domestic Violence: an act that could be classified as a felony or misdemeanor crime of violence committed: (i) by a current or former spouse or intimate partner of the Complainant; (ii) by a person with whom the Complainant shares a child in common; (iii) by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner; (iv) by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of New Mexico; (v) 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. To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

Duress: a direct or implied threat of force, violence, danger, hardship, or retribution that is enough to cause a reasonable person of ordinary sensitivity to do or submit to something that they would not otherwise do or submit to. When deciding whether the act was accomplished by duress, all the circumstances, including the age of the Complainant and their relationship to the Respondent, are relevant factors.

Expert Witness: a Witness identified by a Party or the Title IX Office that has special expertise in a technical matter, such as forensic evidence.

Force: an act is accomplished by force if a person overcomes the other person's will by use of physical force or induces reasonable fear of immediate bodily injury.

Formal Complaint: a document filed and signed by a Complainant or filed and signed by the Title IX Coordinator alleging Title IX Prohibited Conduct against a Respondent and requesting that the University investigate the allegations.

Hearing: a live hearing conducted with all Parties physically present in the same geographic location or with participants appearing virtually with technology enabling participants simultaneously to see and hear each other. During the Hearing, the Hearing Panel permits each Party's Hearing Support Person to ask the other Party and Witnesses all relevant questions and follow-up questions, including those challenging credibility. A recording or transcript of the hearing will be made.

Hearing Coordinator: the person who manages Hearings under this Title IX Procedure.

Hearing File: the information collected during the Investigation that is deemed relevant to be considered by the Hearing Officer.

Hearing Panel Chair/Panelist: A professional neutral decision-maker (e.g. a retired judge or lawyer, a shared professional from another Institution of Higher Education) experienced and trained in adjudicating matters of civil rights, sexual harassment and/or sexual violence and trained on this Title IX Procedure who will preside over the Hearing and will issue the Written Determination Regarding Responsibility.

Hearing Schedule: a time-table specific to each matter that schedules key dates for the matter after it has been charged.

Hearing Support Person: the person who will attend the Hearing with a Party and conduct the oral cross-examination of the other Party and Witnesses. The Hearing Support Person may be the same as the Party's Process Support Person. This person is also referred to as an advocate or advisor in Tech's non-Title IX procedures and Sexual Misconduct Policy.

Incapacitation: a person lacks the ability to voluntarily agree (that is, to give Affirmative Consent) to sexual activity because the person is asleep, unconscious, under the influence of an anesthetizing or intoxicating substance such that the person does not have control over their body, is otherwise unaware that sexual activity is occurring, or is unable to appreciate the nature and quality of the act. Incapacitation is not necessarily the same as legal intoxication.

- A party who engages in sexual conduct with a person who is incapacitated, under circumstances in which a reasonable sober person in similar circumstances would have known the person to be incapacitated is responsible for Title IX Prohibited Conduct. Except for sanction considerations, it is not a defense that the Respondent's belief in Affirmative Consent arose from their own intoxication.

Informal Resolution: a voluntary process that the Parties may consent to participate in, as described in Section IV.H.

Initial Report: a report of conduct that may constitute Title IX Prohibited Conduct, which may be made by any individual, even if not the person alleged to have experienced the conduct. An Initial Report is made prior to a Formal Complaint, and triggers the Title IX Coordinator's obligation to contact the Complainant and inform the Complainant of Supportive Measures, as described in Section IV.A.1.

Intimidation: can be a form of Retaliation, and includes any threatening statement or conduct made with the intent to prevent or dissuade any Party or Witness from reporting or participating in the Title IX Procedure.

Investigation: the phase of the Title IX Procedure when the Parties are invited to provide evidence and identify Witnesses to the Investigator related to the allegations in the Notice of Formal Complaint.

Investigative Report: a formal written document that fairly summarizes the relevant evidence gathered during the Investigation and that is provided to the Parties with at least 10 days to respond.

Investigator: the person assigned by the Title IX Coordinator to investigate Formal Complaints under this Title IX Procedure. The Investigator shall have been trained on all elements of an Investigation as required by federal and state law.

Menace: a threat, statement, or act showing intent to injure someone.

New Evidence: evidence that was not available at the time of the charge decision, could not have been available based on reasonable and diligent inquiry, and is relevant to the matter.

Non-forcible Sexual Violations: Any of the following acts:

- **Incest.** Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by New Mexico law.
- **Statutory Rape.** Non-forcible sexual intercourse with a person who is under the statutory age of consent of New Mexico. The age of consent in New Mexico is 18.

Notice of Hearing: the formal notification issued by the Title IX Coordinator following an Investigation that the matter will proceed to a Hearing.

Notice of Dismissal: the formal notification issued by the Title IX Coordinator following a determination that the matter does not meet the definitional or jurisdictional standards of Title IX and stating the reasons for dismissal.

Notice of Formal Complaint: the formal notification issued by the Title IX Coordinator that a Formal Complaint has been filed and including the details set forth in Section IV.C.1.

Notice of Outcome of Appeal: a written determination describing the Appeal Officer's final decision of a matter brought forward on appeal.

Party/Parties: the generic or collective term used to refer to Complainant(s) and Respondent(s).

means that information related to a complaint will be shared with only a limited number of University employees who "need to know" in order to assist in the assessment

Pre-Hearing Meeting: *Pre hearing means for a settlement of administrative disputes and a hearing Panel has the power to hold a pre hearing for the settlement or simplification of the issues*

Privacy: means that information related to a complaint will be shared with only a limited number of University employees who “need to know” in order to assist in the assessment

Investigation, and resolution of the report. All employees who are responsible for the University’s response to Title IX Prohibited Conduct receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”), and the privacy of employee records will be protected in accordance with NewMexico law and University policy.

Process Support Person: an individual that serves as an advisor to the Party after a Notice of Formal Complaint is issued, at the Party’s choosing, and that is permitted to be, but need not be, an attorney.

Rebuttal Evidence: evidence presented to contradict other evidence in the Hearing File, which could not have been reasonably anticipated by a Party to be relevant information at the time of the Investigation.

Remedies: individualized measures implemented after a Hearing or as part of an Informal Resolution that are designed to restore or preserve equal access to University Programs or Activities, and may include Supportive Measures, but need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

Respondent: the person alleged to have engaged in Title IX Prohibited Conduct.

Retaliation: includes, but is not limited to, adverse action related to employment, academic opportunities, participation in University programs or activities, or similar punitive action taken against an individual because that person has made an Initial Report or Formal Complaint, responded to a Formal Complaint, testified, assisted, or participated or refused to participate in any manner in an Investigation, proceeding, or Hearing.

Sanctions: individualized measures implemented after a Hearing that may be disciplinary in nature, as described in Appendix B.

Senior University Official: employees of the University (other than the Title IX Coordinator and Deputy Title IX Coordinator) with authority to institute corrective measures on the University’s behalf, and for whom notice of a report of Title IX Prohibited Conduct constitutes actual knowledge of the University. At New Mexico Tech these individuals include: the President, the, Deans, the Director of the sports clubs, Vice Presidents.

Sexual Assault: Any sexual act directed against a Complainant without the Affirmative Consent of the Complainant, including instances in which the Complainant is incapable of giving consent, including because of Incapacitation. The following sexual acts covered by this

definition are required to be included by federal regulations and are derived from the FBI's Summary Reporting System and National Incident-Based Reporting System User Manual definitions:

- **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, without the Affirmative Consent of the Complainant.
- **Sodomy.** Oral or anal sexual intercourse with another person, without the Affirmative Consent of the Complainant, including instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical Incapacitation.
- **Sexual Assault with an Object.** To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, without the Affirmative Consent of the Complainant, including instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical Incapacitation.
- **Fondling.** The touching of the private body parts of another person for the purpose of sexual gratification without the Affirmative Consent of the Complainant, including in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical Incapacitation.

Stalking: engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (i) fear for the person's safety or the safety of others; or (ii) suffer substantial emotional distress. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker 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. 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. If an individual is notified that their behavior or actions are unwanted and requests a cease and desist.

Standard of Evidence: The degree of certainty required to establish a violation has occurred. New Mexico Tech utilizes the clear and convincing standard of evidence for resolving complaints under this policy. In the clear and convincing evidence standard the degree of certainty is that it is substantially more likely to be true than untrue; highly probable. This is a more stringent standard than a preponderance of the evidence standard but less stringent than a beyond a reasonable doubt standard.

Supportive Measures: non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the

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Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to University Programs or Activities without unreasonably burdening the other Party, including measures designed to protect the safety of all Parties or the University educational environment, or deter sexual harassment. Supportive measures may include extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

Title IX Coordinator: the individual at New Mexico Tech responsible for overseeing the University's compliance with Title IX, the Clery Act, and New Mexico Education Code section 6.13.

Title IX Prohibited Conduct: the collective term used in this Title IX Procedure to refer to the conduct described in the definitions for Title IX Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking. This term also includes attempts to commit any such conduct or knowingly aiding or facilitating another person to commit any such conduct.

Title IX Sexual Harassment: conduct, on the basis of sex that satisfies one or more of the following:

- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it denies a person equal educational access.
- An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct. e.g. Quid Pro Quo

University Directive: a directive issued by the University restricting activities of an individual in connection with an allegation or finding of violation under this Title IX Procedure e.g. No Contact Order

University Program or Activity: locations, events, or circumstances over which the University exercised substantial control over both the alleged Respondent and the context in which the Title IX Prohibited Conduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.

Violence: the use of physical force to cause harm or injury.

Witness: a person asked to give information or a statement under this Title IX Procedure.

Written Determination Regarding Responsibility: the formal written notification issued by the Hearing Panel after a Hearing that includes: (i) identification of the allegations potentially constituting Title IX Prohibited Conduct; (ii) a description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the Parties, interviews with Parties and Witnesses, site visits, methods used to gather other evidence, and Hearing held; (iii) findings of fact; (iv) conclusions about whether the alleged

Title IX Prohibited Conduct occurred, applying the definitions set forth in this Title IX Procedure to the facts; (v) the rationale for the result as to each allegation; (vi) any disciplinary Sanctions imposed on the Respondent; (vii) whether Remedies or Supportive Measures will be provided to the Complainant; and (viii) information about how to file an appeal.

Appendix B: Remedies and Sanctioning Guidelines

A. Remedies

Following a determination of responsibility under this Title IX Grievance Procedure that the Respondent engaged in Title IX Prohibited Conduct directed at the Complainant, Remedies are provided to a Complainant. Remedies must be designed to restore or preserve access to the University's educational Program or Activity. Remedies may include disciplinary Sanctions or other actions against a Respondent. They may include the same individualized services as those offered as Supportive Measures; however, Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

The Hearing Panel may consult with the Title IX Coordinator or other appropriate University office in crafting Remedies. The Hearing Panel will decide on the Remedies as the Hearing Panel deems appropriate for the particular case.

The Hearing Panel should provide remedies that will remediate a hostile environment for the Complainant and/or provide safety protections for the Complainant or for New Mexico Tech community members.

1. Remedies Relating to the Respondent

Remedies relating to all Respondents could include the following restrictions:

- a.** Directive not to contact (directly or indirectly) the Complainant e.g. no contact order
- b.** Limiting or denying access to all or parts of campus
- c.** Limiting or denying participation in campus programs or activities
- d.** Limiting or denying the opportunity to hold leadership positions

Additionally, for student Respondents, remedies could include the following restrictions:

- e.** Limiting or denying housing on campus or part of campus (e.g., not permitting Respondent to live near the Complainant)
- f.** Requiring that the Respondent not enroll in a course that the Complainant is enrolled in or teaching
- g.** Limiting or prohibiting attendance at campus parties or social events

Additionally, for faculty or teaching Respondents, remedies could include the following restrictions:

- h.** Limiting or denying certain advising activities
- i.** Limiting or denying certain teaching activities
- j.** Limiting access to students in private spaces

Remedies for all Respondents could include the affirmative requirement for personalized education or coaching.

2. Additional Remedies for the Complainant

Additional Remedies for the Complainant will be directed by the Hearing panel and/or Title IX Coordinator. Unless one of these Remedies affects the Respondent, these should remain confidential and should only be included in the Written Determination Regarding Responsibility for the Complainant.

- a.** Academic or workplace accommodations
- b.** Safety accommodations
- c.** Other reasonable and appropriate accommodations

3. Timeframe for Remedies

The Hearing Panel should indicate a timeframe for the Remedies (noting that it might be appropriate for some Remedies to have different timeframes; e.g., no leadership position for two years and no housing for three years.) Restrictions should be put in place for a certain amount of time, to achieve the appropriate remedy. Generally, the remedy may be achieved in a number of months up to five years.

4. Implementation

The Title IX Coordinator is responsible for effective implementation of any Remedies under this Title IX Grievance Procedure. Remedies may be modified by the Title IX Coordinator as circumstances change over the course of a Complainant's or Respondent's student or work career at New Mexico Tech. The request for reconsideration may be submitted to the Title IX Coordinator, and the basis for such reconsideration will be limited to whether, given the changed circumstances, the Remedies are ones that could have been issued by reasonable persons. Upon request by a Party to reconsider a remedy, which if granted would impact the other Party; the Title IX Coordinator will provide notice and an opportunity to respond to the other Party. The Title IX Coordinator's decision on reconsideration will be provided in writing and maintains jurisdiction over the Remedies as the Parties move through the University.

B. Sanctions

Every violation of the Sexual Harassment Policy is a serious matter and requires an appropriate Sanction issued after individualized review. A violation of the Sexual Harassment Policy could lead to termination/separation from the University for faculty, staff, and

Postdoctoral fellows, as well as expulsion for students. The Hearing Panel must impose Sanctions that reflect the seriousness of the incident and the harm caused to the Complainant and, as relevant, the New Mexico Tech community.

The University offers the following guidance for disciplinary Sanctions for all policy violations under the Sexual Harassment Policy. The Hearing Panel may consult with the Title IX Coordinator or other appropriate University office in crafting Sanctions. The Hearing Panel will decide on the Sanctions as the Hearing Officer deems appropriate for the particular case.

1. Most Serious Offenses, Termination/Expulsion

While any violation under the Sexual Harassment Policy is of concern and while any violation may lead to separation/termination or expulsion depending on the individual circumstances of the case, the University considers the following offenses to be particularly egregious and likely warrant separation/termination or expulsion unless there are significant mitigating circumstances that overcome the presumption:

- a.** Rape, Sodomy, Sexual Assault with an Object including an aggravating factor
- b.** Domestic or Dating Violence with a serious injury
- c.** Any violation including two or more aggravating factors or if a weapon was used

2. Aggravating Factors

While any violation is of concern, the University considers the following factors to be aggravating factors that warrant increased Sanctions:

- a.** The act is accomplished by Force, Violence, Duress, or Menace
- b.** Inducing Incapacitation through involuntary ingestion or knowingly taking advantage of an Incapacitated person
- c.** Past violations of University policy by the Respondent relating to Sexual Harassment and Prohibited Sexual Conduct as defined in the Sexual Harassment Policy (or prior policies)
- d.** More than one perpetrator
- e.** More than one Complainant or person experiencing the alleged conduct by the same Respondent

- f. Acts committed in the context of an initiation into membership and/or hazing
- g. Knowingly using the Respondent's power/authority within the University to obtain submission or to accomplish the violation
- h. Dishonesty during the investigation
- i. Acts of intimidation or threats towards the Complaint or Witnesses

3. Mitigating Factors

- a. The Respondent did not have an intent to violate University policy
- b. The Respondent has taken responsibility for their actions
- c. Other considerations that a reasonable Hearing Officer would rely on

4. Other Sanctions

Following a determination that termination/expulsion is not appropriate, a Hearing Panel may consider other Sanctions. The offenses listed above in Section B.1. are extremely serious and (in instances in which termination/expulsion is not warranted), for student and faculty Respondents separation from the University for some period of time is expected.

A Hearing Panel should consider the aggravating factors listed above in Section B.2. when imposing Sanctions. When one or more aggravating factors are present, the Hearing Panel should impose a Sanction that includes a reflection of the seriousness of the aggravating factor(s).

a. For Students

Aside from expulsion, other Sanctions could include the following:

- i. Suspension from the University for a period of between one – semester (up to three academic years).
- ii. Prohibited from being on campus and taking face to face on site classes
- iii. Delay in the conferral of degree for a period of between one – twelve quarters (that is, up to three academic years) – this Sanction is only available for students in their final semester at New Mexico Tech.
- iv. Probation with a Suspended Suspension period of one or two semesters – time away from the University is not immediately imposed but should the Respondent face any other disciplinary matter at New Mexico Tech that decision- making body would be informed in the Sanction phase that the

student was on probation, would consider the probation as an aggravating factor in setting discipline, and would minimally impose the suspended suspension period as an actual suspension.

- v. Probation – Should the Respondent face any other disciplinary matter at Stanford that decision-making body would be informed in the Sanction phase that the student was on probation and would consider the probation as an aggravating factor in imposing discipline.
 - vi. Required personalized education or coaching.
 - vii. Community service hours, or other sanctions in the Student Code of Conduct.
- b. For Faculty**

Aside from termination, other Sanctions include the following:

- i. Suspension for a period of time.
- ii. Denying a pay raise for a period of time.
- iii. Denying the opportunity to hold committee or community roles, such as serving as a Supervisor or Department Chair.
- iv. Denying the opportunity for promotion.
- v. Letter in personnel file.
- vi. Public or private censure.
- vii. Required personalized education or coaching.

c. For Staff

Aside from termination, other Sanctions include the following:

- i. Suspension for a period of time.
- ii. Denying a pay raise for a period of time.
- iii. Denying the opportunity to hold committee or community roles, such as serving as a Resident Fellow or Department Manager.
- iv. Denying the opportunity for promotion.

- v. Written warning in personnel file.
- vi. Required personalized education or coaching.

Appendix C: Timeframes for Title IX Procedure

The University will strive to complete this Title IX Procedure as expeditiously as possible. Generally, the University will seek to complete a Hearing within approximately 120 days from the filing of a Formal Complaint. This 120-day guideline is based on the specific timeframes for each phase of the Title IX Procedure as set forth below.¹⁸ The Title IX regulations require that the Parties have two 10-day periods to review the evidence and respond to the Investigative Report, which necessarily extend the total time for resolution of a matter under this Title IX Procedure beyond the 60-day guideline adopted under previous Title IX guidance. In addition, the 120-day timeframe builds in time to account for unavoidable and reasonable delays, such as University breaks (when Parties and/or Witnesses may be unavailable) and extensions to the Parties granted for good cause, which may extend the total time for resolution. In any event, the University will not compromise a thorough and fair process in order to meet the 120-day guideline from the filing of a Formal Complaint to a Hearing outcome. If any Party chooses to appeal the Hearing outcome, the timeframes below provide for an additional 30-day period to submit, respond to, and decide the appeal. If any deadline under the guidelines set forth below falls on a weekend or holiday, there will be an automatic extension to the next business day.

After receiving a Written Notice of Formal Complaint, both the Complainant and the Respondent will be asked to identify any academic, employment, or other significant conflicts that would affect the timing of the Investigation and potential. The Hearing Coordinator will consider this input in finalizing any Hearing Schedule.

If the Parties elect to engage in an Informal Resolution, the timeframes below will be suspended during the pendency of that process.

Extensions are only granted for good cause. A request for an extension must be made, in writing and with reasons provided, to the Hearing Coordinator. The Hearing Coordinator will endeavor to respond to an extension request promptly, in writing, ideally within 24 hours.

The timeframe guidelines for each phase of the Title IX Procedure after the filing of a Formal Complaint are as follows:

1. The Title IX Coordinator will endeavor to determine whether to proceed with a Written Notice of Formal Complaint within **5 calendar days** of receiving a Formal Complaint signed by the Complainant. In the situation where the Complainant declines to file a Formal Complaint, and the Title IX Coordinator determines that proceeding over the wishes of the Complainant is not clearly unreasonable in light of the known circumstances, the Title IX Coordinator will sign the Formal Complaint

¹⁸ When added together, and accounting for overlapping time periods, such as the scheduling of the Hearing in step 6 and the Parties' Response to the Hearing File in step 7, the total time periods from step 1 to step 9 add up to 91 days, without accounting for any delays, extensions, or deadlines falling on weekends or holidays.

and issue the Written Notice of Formal Complaint within **5 calendar days** of that determination.

2. The Investigator will endeavor to complete the Investigation within **1 calendar month** of the date the Written Notice of Formal Complaint is sent to the Parties. Both Parties have the opportunity to present evidence and identify Witnesses during this timeframe. This timeframe may be extended in complex matters or matters with multiple Witnesses to give the Investigator enough time to gather relevant evidence and schedule Witness interviews.
3. As required by the Title IX regulations, after the Investigator has concluded the collection of evidence, the Parties will be given **10 calendar days** to review the evidence and provide a response.
4. After the Investigator has received the Parties' response to the evidence, the Title IX Coordinator will endeavor to send the Investigative Report to the Parties within **14 calendar days**. This timeframe may be extended, however, if the Parties' responses identify new sources of evidence that require additional Investigation.
5. As required by the Title IX regulations, the Parties will be given **10 calendar days** to review and provide a response to the Investigative Report.
6. The Title IX Coordinator will endeavor to issue either a Notice of Dismissal or Notice of Hearing within **5 calendar days** of receipt of the Parties' responses to the Investigative Report.
7. Within **7 calendar days** of the issuance of a Notice of Hearing, the Hearing Coordinator will:
 - a. Make the Initial Hearing File available to the Parties;
 - b. Identify the Hearing Panel to the Parties and give the Parties the opportunity to object to the Hearing Panel on the basis of a conflict of interest, as set forth in Section IV.J.4. If either Party objects to the Hearing Panel, the timeframe for the Hearing Schedule will be delayed until the alleged conflict of interest can be reviewed and a new Hearing Panel identified and agreed to, if necessary; and
 - c. Reach out to all Parties, Witnesses, and the Hearing Officer to coordinate the Hearing Schedule. The scheduling of the Hearing will be determined by the availability of the Parties, Witnesses, the Parties' Hearing Support Persons, and the Hearing Panel.

8. Within **5 calendar days** of the creation of the Hearing File, the Parties may submit a response to the Hearing File (as set forth in Section IV.I.3.) and any objections to the Hearing file (as set forth in Section IV.I.2.). Any objections to the Hearing File will be resolved by the Hearing Panel at the outset of the Hearing.
9. At the conclusion of the Hearing, the Hearing Panel may ask the Parties to submit additional materials or Sanctions statements. The Hearing Panel will endeavor to issue the Written Determination Regarding Responsibility within **10 calendar days** of receipt of those materials by the Parties or within **10 calendar days** of the conclusion of the Hearing if no additional materials are requested.
10. Any Party wishing to appeal the Written Determination Regarding Responsibility must do so within **10 calendar days** of the issuance of the Written Determination Regarding Responsibility. The other Party will have **10 calendar days** to respond to an appeal.
11. The Appeal Officer will endeavor to issue an Appeal Outcome within **10 calendar days** after any response to an appeal is received.