

**New Mexico State University**

**Alamogordo**

**2020**

**Annual Security Report**

**Release Date: December 2020**

## **INTRODUCTION**

This report contains information regarding safety and security programs, policies, and procedures in place at New Mexico State University's Alamogordo (NMSU-A) campus. It complies with the requirements established by 20 USC 1092, also known as the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, as well as the requirements imposed by the Violence Against Women Act (VAWA). Select crime statistics from 2017 through 2019 required by this Act are included. The Office of Safety and Security is responsible for ensuring the safety and security of the NMSU-A campus community. This booklet will provide you with information on policies and procedures for reporting crime, crime statistics and other information to assist you in maintaining your safety and security.

For ease in locating information, this report has been separated into sections. If you have any difficulty locating information in this report, or if you need this report in a different format, please contact the Vice President's Office for Business and Finance at (575) 439-3601 for assistance.

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## **SECTION 1 – OVERVIEW**

### **ABOUT THE UNIVERSITY**

New Mexico State University Alamogordo (NMSU-A) recently celebrated its 62nd anniversary. The campus is located at 2400 North Scenic Drive, and is situated at the base of the Sacramento Mountains on 581 acres. The campus consists of twelve campus buildings and nine parking lots.

The students at NMSU-A are considered its most valuable asset, and we are committed to protecting their health and welfare. NMSU-A has maintained an excellent safety record. However, maintaining a safe campus is everyone's responsibility. Through active participation of all university members, campus resources and community partners, we have been successful with campus safety.

The following information has been prepared to increase your awareness of the current programs that exist to assist you with your safety. Portions of the information are provided in compliance with the federal law, specifically the Clery Act. NMSU-A does everything it can to keep you safe. However, it is also the responsibility of every student, faculty and staff to protect themselves and their possessions.

### **PUBLIC SAFETY AGENCIES AT NMSU-A**

The Security Office is under the Office of Business and Finance. The Security Office is responsible for patrolling the campus, assisting students, faculty and staff with safety issues and monitoring building security. Campus Security has the authority to ask persons for identification and to determine whether individuals have lawful business at NMSU-A. Campus Security does not have the authority to make arrests.

Alamogordo Police Department (APD) handles all investigations of criminal incidents. APD, NMSU Police, Otero County Sheriff's Office and the State Police have jurisdiction at the NMSU-A campus.

NMSU-A maintains close working relationships with the APD, NMSU Police, Otero County Sheriff's Office and the State Police. The campus relies on the telephone or two-way radios to contact APD for criminal, fire or medical needs.

### **SAFETY – EVERYONE'S BUSINESS**

A campus community relies on a peaceful, safe, and secure environment. Preserving this environment is a responsibility everyone on campus shares. Members of the community are expected to be aware of policies and procedures of the university and to promptly report any crime or suspicious activity.

Everyone needs to also be conscious of personal safety. While the NMSU-A Security Department and other campus safety entities work to keep the campus safe, they cannot do so when people intentionally choose to engage in risky activity. Everyone is encouraged to be aware of their surroundings and avoid suspicious or dangerous situations whenever possible and to encourage employees and students to be responsible for their own security and the security of others. Campus community members are also encouraged to follow common safety practices that include locking doors and windows, using seatbelts, and avoiding the over-consumption of alcohol.

**SECURITY OF BUILDINGS AND FACILITIES**

NMSU-A is an open campus. However, all campus buildings and grounds are closed to students, staff, faculty and community members from 11:00 pm to 5:00 am.

**MAINTENANCE OF CAMPUS FACILITIES**

The facilities and grounds are maintained to minimize conditions that might pose a danger. All buildings are in compliance with ADA regulations.

Please report all malfunctioning lights and unsafe conditions to the Facilities Department at [problemnmsua@nmsu.edu](mailto:problemnmsua@nmsu.edu).

## **SECTION 2 – EMERGENCIES AND INCIDENTS**

### **REPORTING PROCEDURES**

#### **Non-Emergency**

NMSU-A Security Staff can be reached by dialing 439-3634. Students, faculty, staff and community members are encouraged to report all accidents, injury, classroom discipline, confrontation, and other non-emergency crimes and safety related issues to the Security personnel in a timely manner.

#### **Emergency**

For Emergencies dial 8-911. Then contact NMSU-A Security at 439-3634.

#### **Incident/Accident Report**

All incidents or accidents whether emergency, non-emergency, or criminal must be followed up with an Incident/Accident Report. Forms can be picked up from the Security Office located in the Facilities Building, 439-3634.

NMSU-A strongly encourages accurate and prompt reporting of all crimes to the Security Office and appropriate police agencies when the victim of a crime elects to or is unable to make such a report. In response to a call, Security will take the required action, either by dispatching a Security Officer to the scene or by contacting APD. The Security Officer will request that the caller fill out an Incident Report. All reports are forwarded to Vice President for Academic Affairs, Vice President for Student Success, and the Vice President for Business and Finance. Depending on the type of incident (academic or behavioral) the report is referred for potential action. APD will be notified if it is deemed necessary.

[Safety@nmsu.edu](mailto:Safety@nmsu.edu) is available for reporting safety and/or security issues and concerns. The “Safety” e-mail account is monitored by the Assistant Facilities Manager. This is NOT an anonymous reporting system, but if requested the reporter’s name will be kept confidential. All incidents that are reported, no matter the method, that fall into one of the required reporting classifications will be disclosed as a statistic in the Annual Safety Report.

### **TIMELY WARNINGS AND ALERTS**

When there are major incidents or emergencies that affect a large number of people and that present an immediate threat to health or safety, NMSU-A will issue advisories, alerts, or warnings as appropriate and as long as doing so will not impede the public safety response or further endanger lives. Advisories that are not involving an immediate danger may be sent out via digital media, while those involving immediate danger are usually sent out using the NMSU Emergency Notification System (ENS). Participation in the ENS is mandatory for all students and employees at NMSU, with e-mail being the default notification. In order to receive text messages and phone calls, the student or employee must register the appropriate contact information at <http://emergency.nmsu.edu>. An emergency message will generally contain the following information:

**WHAT:** This is a brief description of what is taking place. For example, it may indicate there is a tornado warning, a fire, a bomb threat, or a person shooting. If the message is not an emergency (e.g., a test message), it will be indicated here.

**WHERE:** This provides information about where the emergency is taking place. It will be as specific as the particular situation allows, but should always include which campus(es) is being affected.

**ACTION:** This is where recipients will find specific guidance on what to do as a result of the emergency (e.g., be on the lookout, shelter in place, evacuate, etc.). In order to make the system work as fast as possible, these messages are necessarily kept very brief, and additional information will usually be made available on the NMSU-A website homepage. (NOTE: On-scene direction from public safety personnel, media releases, update e-mails, and other forms of communication may also be used as appropriate. Follow the most current and specific guidance provided.)

NMSU-A does not employ any pastoral or professional counselors. NMSU-A is not required to issue a timely warning with respect to crimes reported to a pastoral or professional counselor.

**MORE INFO:** This section will explain where to go to get more detailed information regarding the emergency. This will usually include the university's website ([www.nmsua.edu](http://www.nmsua.edu)), but depending on the nature of the incident, other sources may also be provided.

More information is also available at <http://nmsu.edu/emergencyplanning/>. The final decision on whether to issue one of the above notices, and the information contained therein, rests with the NMSU-A Clery Compliance Officers. The President may make the decision not to issue a notice if the situation is deemed not to warrant one, or if doing so might hamper the ability of public safety personnel to respond to and contain the incident.

### **IMMEDIATE THREAT**

The NMSU-A Assistant Facilities Manager receives Incident/Accident Reports and verbal information from various offices on campus, students, community members and APD with regard to potential crimes and suspicious situations. If the Assistant Facilities Manager or the Vice President for Academic Affairs confirms that there is an emergency or dangerous situation that poses a threat to the health and safety of the campus community, NMSU-A will use some or all of the systems described below to communicate the threat to the NMSU-A community. NMSU-A may, without delay, and taking into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing a notification will, in the judgement of the first responders (including, but not limited to, security, APD, Otero County Sheriff's Department, NM State Police Department or emergency medical services), compromise the efforts to assist the victim or to contain, respond to, or otherwise mitigate the emergency. These methods of communication include network e-mails, emergency text messages sent to all Everbridge users, cell or desk phone, building fire alarm systems, and face-to-face communication if necessary. The university may post updates during and after a critical incident on the NMSU-A website. ([www.nmsua.edu](http://www.nmsua.edu))

The types of incidents that could cause an immediate threat to the community could include but are not limited to emergencies such as an armed intruder on campus, hostage/barricade situation, a riot, suspicious package with confirmation of a device, a tornado, a fire/explosion, death, structural damage to a university owned building, biological threat (anthrax, etc.), significant flooding, a gas leak, hazardous material leak, or a bomb threat.

NMSU-A community members are required to notify campus security of any incident on campus that involves an emergency or dangerous situation that may involve an immediate or on-going threat to the health and safety of students, faculty or staff. Campus security will respond to the incident to determine if it poses a threat to the community. If the incident does pose a threat, federal law mandates that the university notify the entire campus community.

The campus may post updates during and after critical incidents on the NMSU-A website. The NMSU-A Vice President for Academic Affairs provides updates to the media.

### **EMERGENCY ACTIONS**

If you are involved in a dangerous or life-threatening emergency, take the following steps immediately:

- Get to a safe place as quickly as possible. Generally, the further you can get away from the scene, the safer you will likely be.
- Report the emergency by calling 911. Say, “This is an **EMERGENCY**”, give your **LOCATION**, and briefly tell **WHAT** is happening.
- Notify others of the danger so they can also stay away.
- Monitor the situation to see if it gets worse or if circumstances (like wind direction) change. Notify the emergency services dispatcher (911 operators) of the changes.

All students and employees are also encouraged to prepare in advance for emergencies, whether from natural disasters (such as floods, tornados, earthquakes, extreme heat, lightning, disease outbreak, etc.) or manmade incidents (including traffic crashes, hazardous chemical releases, downed electrical lines, criminal activity, terrorism, arson, etc.). The Safety and Security Manual includes information detailing the Emergency Action Plan and guidelines for appropriate responses for campus or building evacuation and other campus emergencies. The manual is reviewed and updated annually. The Safety and Security Manual is also available on line and can be located at <http://nmsua.edu/safety-manual/>.

When a serious incident occurs that causes an immediate threat to the campus, the first responders to the scene are generally NMSU-A Security personnel, APD and/or medical personnel. They typically respond and work together to manage the incident. Depending on the nature of the incident, other local and federal agencies could also be involved in responding to the incident. The local and federal agencies for Alamogordo include:

- Alamogordo Police Department
- Alamogordo Fire Department
- HAFB Bomb Squad
- Border Patrol bomb and drug detection dogs
- NM Department of Health—Otero County Public Health
- Otero County Sheriff's Department
- NM State Police

In an effort to provide timely notice to the NMSU-A community, and in the event of a serious incident that may pose an on-going threat, a blast e-mail emergency alert is sent out to the NMSU-A community instantly and simultaneously to all registered mobile phones, smart phones, satellite phones, and e-mail addresses. These alerts are also posted on the NMSU-A website.



NMSU-A reviews information that is reported to Campus Security by community members, by campus security authorities, and by APD to determine if a reported crime poses a serious on-going threat to members of the NMSU-A community.

Campus Security instigates an unannounced evacuation fire drill each semester in campus buildings to test the emergency evacuation procedure. The purpose of the evacuation drill is to educate and train the occupants of the buildings and make them aware of the locations of emergency exits. Building occupants also receive instruction on the direction they should travel when exiting the facility, and become aware of fire issues specific to their building. The campus Assistant Facilities Manager monitors the evacuation drills to evaluate egress and to time how long it takes to evacuate the building and get all occupants to a safe location. Fire alarms alert the campus community of possible hazards. When a fire alarm sounds, it is mandatory that all occupants evacuate the building. Occupants must use the stairs to evacuate the building. If an individual is caught in the elevator, push the red emergency button. The emergency phones in the Library and Student Services elevators are programmed to ring at the Library circulation desk. The Science Center elevator is programmed to ring at a monitoring station. The monitoring station will contact Campus Security or the APD.

However, students and employees should not rely on these being the only times they think about emergency evacuations. Anytime a person enters a building, they should also look to see what other avenues of emergency escape exist, whether through additional doors, designated fire exits, or even windows. Students and employees should also know where the designated escape routes and exits are in those buildings they live and/or work in, as well as any potential specific challenges (such as stairs might present for a person in a wheelchair). Newer buildings on campus also have designated "safe haven" areas where a person may call for assistance and wait for fire personnel. However, these areas are not a guarantee, and the person should continually evaluate the conditions and decide whether or not it is still safe to remain in that area.

#### **Fire Protection Equipment and Systems**

NMSU-A contracts with local experts for the annual inspection and testing of fire evacuation equipment, including automatic fire detection systems, fire extinguishers and fire sprinkler systems.

NMSU-A is a non-residential campus. NMSU-A has had zero incidences of building fires.

#### **PROCEDURES FOR STUDENTS AND EMPLOYEES IN THE EVENT OF A FIRE**

If the fire alarm sounds, remain calm and immediately evacuate the building to the nearest exit.

If you observe smoke or a fire and the alarm is not sounding, leave the building immediately. While doing so, attempt to find the nearest pull stations and activate the fire alarm if possible. Close doors behind you if safe and possible to do so. Do not use elevators. Call APD at 8-911 to report fire.

If the fire is small, use the fire extinguisher to put it out.

#### **MISSING PERSON REPORTS**

NMSU-A does not have any policies that address missing students since we are a non-residential campus.

#### **IF YOU ARE THE VICTIM OF A CRIME**

If you are the victim of a crime while at NMSU-A, or experience a fire or medical emergency, report it immediately to the Security Office. For all types of emergency, call 8-911. For non-emergencies, call (575) 439-3634. When you call, give your name, the location you are calling from, a brief description of

what occurred, and whether the person who committed the crime is still in the area. Prompt reporting and specific information will increase the chances of solving your case. A security officer will be dispatched to meet with you and obtain all of the necessary information. If evidence from the crime is still intact, please do not move or destroy it. This is especially important in sexual assault cases. Showering, changing clothes, or grooming can destroy vital evidence.

Many students worry about reporting crimes to the police because they do not want to testify in a trial. Victims are nevertheless encouraged to at least contact the NMSU-A Vice President for Student Success Office so they can be made aware of other services (counseling services, medical treatment, etc.) that might lessen the trauma of the incident.

Students who are victims of crimes may also pursue recourse through the NMSU Student Judicial System. While this is not a substitute for the criminal justice system, it affords students the opportunity to have their side heard in a less formal environment. If an accused student is found to have violated the Student Code of Conduct by engaging in forcible or non-forcible sex offenses, he or she may be subject to disciplinary action. The level of disciplinary action administered depends on the specific circumstances of the case, but can range from warnings and attendance at mandatory programs up to and including expulsion. Both the victim and accused will be afforded the same opportunities within the student judicial process, including the ability to have others present during disciplinary proceedings, and both shall be informed of the outcome of any campus disciplinary proceedings alleging sexual assault. Students interested in this course of action may call the Vice President for Student Success Office at 439-3716, the office responsible for upholding the Student Code of Conduct. As always, students may also contact the Police Department for assistance and guidance.

Any NMSU-A officials who are approached by a person who has been the victim of a sexual assault or other crime on the NMSU-A campus are required to assist the person in notifying the police department.

### **SEXUAL ASSAULT, HARASSMENT, AND STALKING**

The issue of sexual assault and other sexual misconduct is at the forefront of universities nationwide. NMSU-A specifically prohibits sexual misconduct and will assist victims in seeking counseling services, such as obtaining medical treatment (available through the Student Health Center and local hospitals), changing room assignments, making academic changes, and in any other way possible, including criminal prosecution through the District Attorney's Office (if the victim so desires). Students, faculty, staff, and visitors are reminded that they can contact the APD for assistance at any time, and do not have to file an official police report in order to be helped. If a report is filed with the APD, it will be fully investigated with the findings being referred to the District Attorney's Office for prosecutorial decisions.

New Mexico State University at Alamogordo prohibits sexual misconduct by students and employees, as reflected in the following excerpt from the Student Handbook. In this policy, sexual misconduct includes the following:

- Forced Sexual Contact - Any harmful, insulting or non-consensual verbal or physical contact of a sexual nature with another person (including touching, fondling, exposure, disrobing, etc.) that is accomplished toward another without his/her consent including any such act accomplished by means of actual or implied force, threat, coercion, or helplessness. Forcing or intimidating a person to touch another's intimate parts shall also constitute sexual contact.

- Forced Sexual Penetration - Intercourse (vaginal penetration); sodomy (anal penetration); oral copulation (oral-genital contact); or penetration with any object (including a finger), by the use of force, threats, coercion, or by taking advantage of a victim's helplessness.

*Information regarding student discipline hearings can be found at:*

<https://studenthandbook.nmsu.edu/student-social-code-of-conduct/part-v-students-rights-and-responsibilities-student-discipline-and-appeal-hearing-processes/>

## **PART V: Students' Rights and Responsibilities; Student Discipline and Appeal Hearing Processes**

### **1. Student Rights**

1. To be accompanied by an advocate at meetings or hearings related to charges.
2. To be notified of alleged facts and evidence supporting the charge(s) at least five (5) days prior to any scheduled disciplinary hearing.
3. To examine evidence the university has concerning the incident.
4. To receive notice of any witnesses the university plans to call to testify at the hearing.
5. To participate in a fact finding hearing with an impartial hearing officer: A student party to the proceedings may challenge the impartiality of a designated hearing or appeal officer. The challenged hearing or appeal officer may elect voluntary recusal. If the challenged official does not voluntarily recuse, the Chief Judicial Officer shall determine the validity of the challenge and if applicable, appoint an alternate hearing officer.
6. To call witnesses to present relevant testimony on behalf of the student, as determined by Hearing Officer.
7. To question witnesses who are called to present testimony in support of the charge(s).
8. To choose not to answer questions during the investigative process and to not testify at the disciplinary hearing, without the student's silence being treated as evidence of being responsible for violating the Code.
9. The right to appeal the decision of the disciplinary Hearing Officer to a higher authority.

### **2. Student Responsibilities:**

1. Charged students, as well as students who are witnesses, shall be honest and cooperative with university officials during investigative and hearing/appeal processes. This responsibility is subject to a student's constitutional right to remain silent in order to not implicate oneself in a violation or crime. If a student exercises the right to not testify or chooses to not participate at all in the proceedings, the Hearing Officer may choose to proceed based upon the evidence gathered from other sources.
2. A charged student electing to contest the charges shall, at least three (3) days in advance of the hearing, provide the Hearing Officer with a list indicating the witnesses who the student intends to call upon to testify at the hearing, and shall also submit copies of the documentation or identify other evidence, if any, in support of the student's position relative to the charge.
3. If the student is found ultimately responsible for violating the code, and a sanction is imposed, the student shall complete all sanctions(s) required in the final decision and report such completion to the Office of the Dean of Students.

3. **Students' Rights when Title IX is Implicated:** Victims/complainants, as defined in this policy, especially with regard to alleged violations of Title IX (sexual discrimination, including sexual misconduct and harassment, sexual assault/violence, domestic violence, dating violence,

stalking and other crimes of violence), have the right to special consideration and assistance during the investigation, hearing and resolution phases of the student disciplinary process. In order to ensure fairness to all parties in the proceedings, the student charged is entitled to request the same consideration:

1. **Questioning During Investigation and Hearing:** A victim/complainant or student charged may provide a list of questions and request that they be asked during the investigative or hearing stages of the student discipline processes. In order to be considered, the questions must be submitted in writing to the Hearing Officer, as appropriate, and at least three (3) days in advance of any scheduled disciplinary hearing.
  2. **Hearing Modifications:** A victim/complainant or student charged may request reasonable alternate arrangements relating to participation in the disciplinary hearing, such as submission of questions in written form rather than verbal direct questioning, or to be allowed to provide information from a separate location. As long as the integrity of the hearing is not compromised, and the parties and the hearing official are able to see and communicate with each witness (including the victim/complainant and the accused), reasonable requests will be granted.
  3. **Past Behavior:** A victim/complainant or student charged has a right to have past unrelated behavior excluded from the disciplinary hearing. The issue of whether past behavior is related or relevant will be determined by the Hearing Officer.
  4. **Victim Impact Statement:** If the charged student(s) is found responsible, the victim/complainant has a right to submit a victim impact statement to the Hearing Officer for consideration at the sanctioning phase only. The statement may include a description of how the victim was impacted by the conduct violation and may include recommendations for sanctions, penalties, or restitution. However, the Hearing Officer is not bound by these recommendations.
  5. **Notification:** In cases involving arson, assault, burglary, criminal homicide, destruction/damage/vandalism of property, dating violence, domestic violence, kidnapping, robbery, forcible sex offenses, non-forcible sex offense, stalking or any other crime or attempted crime of violence, the victim/complainant has a right to be notified by the Office of the Dean of Students of the final results of the investigation and disciplinary proceedings conducted with respect to the alleged offense. The notification of final results will include (1) the name of the charged student(s); (2) the violation with which the student was charged; (3) whether the student was found “responsible” or “not responsible”; and (4) any sanction(s) imposed, to the extent that the sanction may affect the victim/complainant.
  6. **Appeal:** As is the case for all violations of the code, in incidents involving violations of Title IX (sexual discrimination, including sexual misconduct and harassment, sexual assault/violence, domestic violence, dating violence, stalking and other crimes of violence); the victim/complainant and the charged student each have the right to appeal the outcome of the fact finding/sanction hearing, as outlined below in this Part V, Section 5.
4. **Investigation and Educational Conference**
    1. **Determination of Charges**
      1. Alleged violations of the code may be reported to the appropriate administrator by any member of the community including but not limited to: (a.) university departments, (b.) university police, (c.) faculty, staff, or students or (d.) third parties.

2. The appropriate administrator, or designee, will review the information to determine if a student/student organization will be charged with violating the code.
  3. The appropriate administrator, or designee, may not charge a student/student organization with a violation of the Code more than one year after the date the conduct occurred or was discovered, whichever is later.
- 2. Notification of Charges and Date/Time of Educational Conference**
1. The appropriate administrator or designee will notify the student/student organization in writing of the allegations and charge(s).
  2. The notice will include the date and time of an Educational Conference. The conference will be scheduled no earlier than five (5) days and no later than ten (10) days from the date of the notice unless requested by the student/student organization representative(s). If the time or date of the conference is not feasible to the student/student organization representative(s), the student/student organization representative(s) must notify the appropriate office based on the information provided in the notification within two (2) business days of the scheduled Educational Conference to reschedule.
  3. If at any time during the course of the judicial process, the appropriate administrator determines that either charges are not warranted or that insufficient evidence exist to continue, then the charges may be withdrawn, and the student/student organization representative(s) will be so notified in writing.
- 3. Educational Conference**
1. Educational Conferences are facilitated by individuals identified by the Chief Judicial Officer. Individual Educational Conference for cases will be delegated by the appropriate administrator.
  2. The purpose of the Educational Conference is to review with the student/student organization representative(s) the allegations and charges, the code, the judicial process, the hearing forum, possible sanctions, and to answer questions the student/student organization representative(s) may have.
  3. During the conference the charged student/student organization:
    1. Will be presented with a list of rights and responsibilities as a charged student/student organization. The charged student/student organization will be requested to sign the document indicating that the rights have been explained and that the student/student organization's representative understands them.
    2. Have the opportunity to accept or deny responsibility for the alleged violations. An acceptance of responsibility for the violations will constitute a waiver of the student/student organization's right to a hearing and appeal.
  4. If the student/student organization's representative fails to attend the Educational Conference without notice of reasonable cause, the case may be forwarded to the next step in the process.
- 4. Hearing**
1. A student has the right to a fact finding hearing before a Hearing Officer.
  2. The purpose of the hearing is for the university to present the evidence related to the alleged violation, provide a time to allow the accused student/student organization to give a statement or present evidence, and to hear from witnesses.

3. Absent a time extension, a hearing shall be scheduled no less than five (5) days from notice and no more than ten (10) days from the Educational Conference. Extensions may be granted to either the Hearing Officer (requests will be considered by the Chief Judicial Officer) or to a student (requests will be considered by the Hearing Officer) provided all parties are notified about the request for time extension and the reason for the need for an extension.

5. **Fact Finding Hearing and Determination of Sanctions, if Warranted**

1. **Hold on Student's Record:** The University may place a hold on the records or registration of any student who fails to respond to a university disciplinary notice or fulfill any sanctions previously issued by the university. All pending disciplinary matters must be resolved prior to a student's graduation, transfer from or continued education at the university.
2. **Standard of Proof:** The duty to prove a disciplinary case rests with the university and the standard of proof shall be preponderance of the evidence. "Preponderance of the evidence" means that the information presented supports the findings that it was more likely than not that the violation occurred.
3. **Advocate:** A charged student/student organization is entitled to have any one (1) person at the hearing to serve in the capacity as the Advocate. Student/student organization may consult with their advocate during the hearing process. However, this consultation must take place in a manner that does not disrupt the proceedings. The advocate shall not speak on behalf of the student, question witnesses, present information or argue before the panel. The advocate shall not serve as a witness. The student must notify the appropriate administrator no later than three (3) days prior to the hearing if the student will have an advocate present during the hearing.
4. **Confidentiality:** All hearings shall be closed and confidential.
5. **Accommodations for Students with Disabilities:** Any student with a disability may request reasonable accommodations during the disciplinary process. This request must be made to the appropriate office which handles accommodations for students with disabilities at least three (3) days in advance of the hearing. If necessary, the Hearing Officer may postpone the hearing to provide reasonable accommodations.
6. **Safety Procedures:** The Hearing Officer may accommodate concerns for the safety of the individuals involved by providing separate facilities or other alternatives.
7. **Pre-hearing Information Notice:** The University will make available pre-hearing information including a copy of the hearing procedures and copies of records that will be presented by the university at the hearing. The pre-hearing information will be available at least three (3) days in advance of the hearing.
8. **Failure to Appear:** If a charged student fails to appear, without giving notice of extenuating circumstances, the hearing may proceed in the student's absence.
9. **Role of the Hearing Officer:**
  1. Accept information for consideration as deemed to be relevant. Repetitive testimony offered for the same purpose is an example of evidence the Hearing Officer might deem to not be necessary.
  2. Make procedural decisions relating to the hearing. Examples include requests for time extensions, assertions of conflict of interest affecting impartiality of hearing officer.
  3. Make procedural modifications in the interest of fairness or safety.
  4. Take action deemed necessary to maintain order in the hearing process.

10. **Right Not to Testify:** No student will be compelled to make self-incriminating statements.
  11. **Information:** The Hearing Officer and the charged student/student organization will be given an opportunity to provide information. This may include, but is not limited to, pertinent records, documents, written or oral statements. The student/student organization will also be given an opportunity to inspect records held by the appropriate office.
  12. **Witnesses:** The Hearing Officer and the charged student/student organization may call witnesses. In order to preserve the educational atmosphere of the hearing and to avoid creation of an adversarial environment, all questions for witnesses will be directed through the Hearing Officer. If a witness cannot appear, their written or recorded statement may be considered. Witnesses will be required to wait outside until their point of participation and will be asked to leave the hearing after being questioned.
  13. **Multiple Students Charged:** In cases involving multiple students charged from the same incident, information obtained in one hearing may be used at another hearing subject to FERPA, HIPAA and other individual privacy considerations, and provided that each charged student involved has the opportunity to review and respond to the information at their hearing.
  14. **Effective Date of Sanctions:** When the Hearing Officer's decision affects a student's academic status, the change will be effective immediately, and may only be changed based on the terms contained in the Hearing Officer's decision (e.g. a one-year suspension) or based on the terms of a decision on appeal.
  15. **Decisions of "responsible" or "not responsible" on the charge(s):** The Hearing Officer's decision letter shall be based on the information presented at the hearing. The Hearing Officer shall determine whether or not the student is responsible for violating the code as charged.
  16. **Record:** There shall be a single record of all student/student organization conduct hearings and shall be maintained in the Office of the Dean of Students. This record is the official record and is the property of the university. For hearings before a Hearing Officer, the Officer's notes will become part of the record. The student/student organization may request a copy in writing which will be provided.
  17. **Notice of Hearing Officer's Decision:** The Hearing Officer shall issue a written decision letter to the student/student organization within five (5) days following the conclusion of the hearing. This time may be extended, provided the student/student organization shall be notified of any such extensions. The decision letter shall explain the basis for the Hearing Officer's finding(s) on each charge and sanction for each charge if found responsible for the charge.
  18. **Notice of Right to Appeal/Final Review:** The decision letter shall also inform the student/student organization of their right to appeal to an Appeal Officer, in writing, within five (5) days from the date of receipt of the Hearing Officer's decision letter.
6. **Appeal from Decision of Hearing Officer**
1. The Appeal Officer will review the notice of intent to appeal and determine:
    1. Whether the appeal was submitted timely; if not submitted timely, the Appeal Officer may decide to accept the appeal, if the appealing student requests a waiver of the time limit and provides the reason for the late submission which indicates an extenuating circumstance outside the student's control prevented a timely appeal; and

2. Whether or not the notice of appeal states a permissible ground for appeal. If grounds for appeal have not been identified in the written notice of appeal, the appeal shall not be considered further, and the decision of the Hearing Officer will be upheld.
  3. Grounds for appeals are:
    1. procedural or prejudicial error was committed, or
    2. evidence not available at the time of the hearing is now available.
  2. If proper grounds for appeal have been identified, and the appeal has been deemed timely, the Appeal Officer will proceed to review the matter.
  3. Each party may submit a statement in writing explaining why they think the determination of the Hearing Officer should be upheld, reversed, or modified.
    1. The statement from the student/student organization must be included with the request for appeal.
    2. The statement from the Hearing Officer will be submitted to the Appeal Officer, along with the hearing record, at the time the request for appeal is received. Absent a time extension, the Hearing Officer must submit the statement and the hearing record within two (2) days of receipt of appeal. The Appeal Officer may grant a time extension, upon notice to all parties.
  4. The Appeal Officer will review the evidence presented at the hearing, any relevant policies or law, the decision of the Hearing Officer and the submittals from the parties in order to issue a decision of the appeal in writing.
  5. The student/student organization will be notified of the decision by the Appeal Officer within five (5) days from receipt of the Request for Appeal, absent notification to all parties that additional time is needed in which to review. Delivery of the decision may be accomplished electronically to the student's official NMSU email address via the conduct database used by the university.
  6. The decision by the Appeal Officer will be final.
- 7. Records**
1. Records of all disciplinary actions imposed within the NMSU system shall be forwarded to the Office of the Dean of Students to maintain as the official student conduct record.
  2. Students found "not responsible" or cases in which charges are dropped are considered not to have a judicial record. However, the records will be maintained by the university in accordance with applicable State record retention laws or university policy whichever is longer.
- 8. Transcript Notations**
1. A notation will be placed on the student's transcript during any period of permanent probation, suspension, dismissal or expulsion. In the case of permanent probation, suspension, or dismissal of the student, after a period of one year or term of sanction whichever is longer, may request to have the notation removed from the transcript by submitting a letter to the Dean of Students or Vice President for Student Success with the reason the notation should be removed. The Dean of Students or Vice President for Student Success will make the determination if the notation should be removed. The Dean of Students or Vice President of Student Success's decision is final.
  2. If a student is expelled, a permanent notation will be placed on the student's transcript.

Sexual misconduct often overlaps with crimes of sexual assault, sexual harassment, stalking, dating



violence and domestic violence. As a result, sexual misconduct cases may be handled both by NMSU for policy violations, as well as by law enforcement for criminal violations. Each system has its own processes and standards.

In an effort to reduce the risk of sexual misconduct as well as the crimes of rape, sexual assault, sexual harassment, stalking, dating violence and domestic violence occurring among its students, the University utilizes a range of campaigns, strategies and initiatives to provide awareness, education, risk reduction and prevention programming. Educational programs are offered to raise awareness for all incoming students and employees, and are conducted during new student and new employee orientation and throughout an incoming student's first semester. These programs and others offered throughout the year include strong messages regarding not just awareness, but also primary prevention (including normative messaging, environmental management and bystander intervention), and discuss institutional policies on sexual misconduct as well as the State of New Mexico definitions of domestic violence, sexual assault, stalking and consent in reference to sexual activity. Bystander engagement is encouraged through safe and positive intervention techniques and by empowering third-party intervention and prevention such as calling for help, identifying allies, and/or creating distractions.

Programs also offer information on risk reduction that strives to empower victims, teaches them how to recognize warning signals and how to avoid potential attacks, and to do so without victim-blaming approaches. Throughout the year, ongoing awareness and prevention campaigns are directed to students and employees, including faculty, often taking the form of presentations in University 150 classes, information booths at community events, emails, regularly scheduled crime prevention and personal protection classes, and a variety of programs offered through WAVE.

### **Measures Taken by NMSU-A**

In the event that sexual misconduct, gender-based violence or the crimes of sexual assault, stalking, dating violence or domestic violence occur, the University takes the matter very seriously. The University employs interim protection measures such as interim suspension and/or no contact orders in any case where a student's behavior represents a risk of violence, threat, pattern or predation. If a student is accused of sexual misconduct, other gender-based violence or the crimes of rape, sexual assault, sexual harassment, stalking, dating violence or domestic violence, he/she is subject to action in accordance with the NMSU Student Code of Conduct in the student handbook. A student wishing to officially report such an incident to the university may do so by contacting the Title IX Coordinator, Laura Castille at (575) 646-3635. The student may also report to police if they wish to pursue criminal charges. NMSU- A employees with knowledge about sexual misconduct or gender-based violence or the crimes of rape, sexual assault, sexual harassment, stalking, dating violence or domestic violence are encouraged to report it immediately.

If you are the victim of sexual misconduct, gender-based violence or the crimes of rape, acquaintance rape, sexual assault, sexual harassment, stalking, dating violence or domestic violence, some or all of these safety suggestions may guide you after an incident has occurred:

1. Go to a safe place and speak with someone you trust. Tell this person what happened. If there is any immediate danger, contact the APD at 8-911.
2. Consider getting immediate professional support (e.g.: counseling, victim advocacy, medical services, etc.) to assist you in the crisis.
3. If you are on campus during regular business hours, you may go to the Vice President for Student Success (439-3716) for support and guidance.
4. For your safety and well-being, immediate medical attention is encouraged. Further, being examined as soon as possible, ideally within 24 hours, is important in the case of rape or sexual assault. The hospital will arrange for a specific medical examination at no charge. To preserve evidence, it is recommended that you do not bathe, shower, douche, eat, drink, smoke, brush your teeth, urinate, defecate or change clothes before receiving medical attention. Even if you have already taken any of these actions, you are still encouraged to have prompt medical care, and evidence may still be recoverable. Typically, if police are involved or will be involved, they will obtain evidence from the scene, and it is best to leave things undisturbed until their arrival. They may gather bedding, linens or unlaundered clothing and any other pertinent articles that may be used for evidence. It is best to allow police to secure items in evidence containers, but if you are involved in transmission of items of evidence, such as to the hospital, secure them in a clean **paper** bag or clean sheet, to avoid contamination. If you have physical injuries, photograph or have them photographed, with a date stamp on the photo. Record the names of any witnesses, and their contact information. This information may be helpful to the proof of a crime, to obtain an order of protection or to offer proof of a campus policy violation. Try to memorize details (physical description, names, license plate number, car description, etc.), or even better, write notes to remind you of details, if you have time and the ability to do so. If you obtain external orders of protection (e.g. restraining orders, injunctions, protection from abuse), please notify the APD so that those orders are enforceable on campus.
5. Even after the immediate crisis has passed, consider seeking support from a counselor and/or the Vice President for Student Success Office.
6. Contact the NMSU-A Vice President for Student Success if you need assistance with concerns, such as for no-contact orders or other protective measures.

For offenses including sexual misconduct or other gender-based violence, which typically include the crimes of domestic violence, dating violence, sexual harassment, sexual misconduct and stalking, sanctions against student offenders range from warnings through expulsion. Serious and violent incidents and acts of sexual offenses by employees usually result in suspension, expulsion or termination of employment.

Procedurally, when NMSU-A receives a report of sexual misconduct, gender-based violence, or other sex or gender discrimination, the campus Title IX Liaison is notified. If the victim wishes to access local community agencies and/or law enforcement for support, the University will assist the victim in making these contacts. The Title IX Coordinator will offer assistance to victims in the form of interim or long-term measures such as opportunities for academic accommodations, changes in housing for the victim or the responding student, visa and immigration assistance, changes in working situations and other assistance as may be appropriate and available on campus or in the community (such as no contact orders, campus escorts, transportation assistance, targeted interventions, etc). If the victim so desires, they will be connected with a counselor off-campus, as well as an off-campus victim's advocate. No victim is required to take advantage of these services and resources, but the University provides them in the hopes of offering help and support without condition or qualification. A summary of rights, options, supports and procedures is provided to all victims, whether they are a student, employee, guest or visitor by the Title IX Coordinator (or designee).

When appropriate upon receipt of notice, the Title IX Coordinator will cause a prompt, fair and impartial process to be initiated, commencing with an investigation which may lead to the imposition of sanctions upon an individual found responsible, based upon a preponderance of evidence (preponderance of evidence means that the hearing officer believes it is more likely than not that the incident occurred). Procedures detailing the investigation and resolution processes of the University can be found in the NMSU Policy Section 3.25 (contained below). The Coordinator is ultimately responsible to assure in all cases that the behavior is brought to an end, the University acts to reasonably prevent its recurrence, and the effects on the victim and the community are remedied. The Coordinator is also responsible to assure that training is conducted annually for all advocates, investigators, hearing officers, panelists and appeals officers that encompasses a hearing process that protects the safety of victims and promotes accountability. Training will focus on sexual misconduct, domestic violence, dating violence, sexual assault, stalking, sexual harassment, retaliation and other behaviors that can be forms of sex or gender discrimination covered by Title IX and Clery Act. Training will help those decision-makers in the process to protect the safety of victims and to promote accountability for those who commit offenses.

In any complaint of sexual misconduct, sexual assault, stalking, dating violence, domestic violence or other sex or gender-based discrimination covered under the federal law, Title IX, the person bringing the accusation and the responding party are entitled to the same opportunities for a support person or advisor of their choice throughout the process, including any meeting, conference, hearing or other procedural action. Once complete, the parties will be informed, in writing, of the outcome, including the finding, the sanctions (if any) and the rationale therefore. Delivery of this outcome to the parties will occur without undue delay between notifications. All parties will be informed of the University's appeal processes and their rights to exercise a request for appeal. Should any change in outcome occur prior to finalization, all parties will be timely informed in writing and will be notified when the results of the resolution process become final.

## **NMSU Policies and Procedures**

Below is an excerpt of the NMSU Policy and Procedures related to discrimination, sexual misconduct, and harassment. The complete NMSU Policies and Procedures can be found at <http://manual.nmsu.edu/policies-and-procedures/>.

### **NMSU Policy 3.25 Discrimination, Harassment and Sexual Misconduct on Campus**

A. New Mexico State University (NMSU) is dedicated to providing equal opportunities in areas of employment and academics without regard to age, ancestry, color, disability, gender identity, genetic information, national origin, race, religion, serious medical condition, sex, sexual orientation, spousal affiliation or protected veteran status as outlined in federal and state anti-discrimination statutes. As a federal contractor, NMSU's affirmative action program also supports this effort. The following is a listing of applicable federal and state laws:

1. Age Discrimination in Employment Act of 1967
2. Americans with Disabilities Act of 1990, as amended
3. Civil Rights Act of 1991
4. Title IX of the Education Amendments of 1972
5. Executive Order 11141
6. Executive Order 11246
7. Equal Pay Act of 1963
8. Pregnancy Discrimination Act
9. Section 504 of the Rehabilitation Act of 1973, as amended
10. Title VI & VII of the Civil Rights Act of 1964
11. Vietnam Era Veterans Readjustment Act
12. Genetic Information Non-discrimination Act of 2008
13. NM Human Rights Act, 1969
14. Campus SaVE Act, 2013

B. The Office of Institutional Equity (OIE) is designated as the office that receives and processes internal discrimination complaints within the NMSU system. The NMSU OIE website will include office address, location and contact information: <http://equity@nmsu.edu/>.

C. Title IX Notice:

1. NMSU does not discriminate on the basis of sex in education programs and activities; Title IX of the Education Amendments Act of 1972 is a federal law that states:  
*"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."*
2. Title IX prohibits:
  - a. Sexual misconduct (including sexual violence)
  - b. Sex discrimination (gender bias)
  - c. Sexual harassment
  - d. Retaliation

3. Title IX applies to students, staff and faculty. Title IX requires reporting from “responsible employees” for which purposes of policy can be defined to include:
    - a. Those with authority to address and remedy sex-based discrimination and harassment; and/or
    - b. Those with responsibility to report sexual misconduct to a supervisor and OIE; and/or
    - c. Those who a student would responsibly believe have such authority or obligation.
  4. In cases involving harassing speech, assessing Title IX applicability to off-campus behavior will require a two-prong test:
    - a. Does NMSU have control over the harasser (subject to our rules) and
    - b. Does NMSU have control over the context of the harassment (on our property, in our programs, on land we lease or control, or at events we sponsor)
  5. NMSU will reserve the option to take off-campus jurisdiction in cases involving sexual violence, sexual assault, or rape that involve students or employees.
  6. The President will designate an administrator to serve as the NMSU Title IX Coordinator, whose duties will include overseeing all Title IX complaints and identifying and addressing systemic problems that arise during the review of such complaints.
  7. Inquiries concerning the application of Title IX may be referred to the NMSU Title IX Coordinator or the Office of Civil Rights of the United States Department of Education. The NMSU OIE website will include the NMSU Title IX Coordinator's name, office address, telephone number, and e-mail address as well as the link to the Office for Civil Rights.
- D. Campus Violence Elimination Act (Campus SaVE Act) Notice:  
NMSU does not tolerate any sexual violence to include intimate partner violence which can be defined as any physical, sexual, or psychological harm against an individual by a current or former partner or spouse of the individual. Such sexual violence covers domestic violence, dating violence and stalking. The Campus SaVE Act complements and is a companion to Title IX and assists with the response to and prevention of sexual violence in higher education. The Act provides a framework for educational institutions to address incidents of sexual violence occurring on-campus, on public property within and adjacent to campus, and at non-campus properties like off-campus student organization housing, campus sponsored events and remote classrooms.

Specifically, the Campus SaVE Act outlines provisions for the following:

- a. Transparency: Students or employees reporting victimization will be assisted by campus authorities in reporting a crime to law enforcement and with obtaining or enforcement of no contact directives or restraining orders. Employees and students should be aware of bystander intervention which includes taking action to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault, or stalking against another person. Individuals who make reports will be provided options and assistance in changing academic, living, transportation and working situations if requested and reasonably available. Further, a resource guide will be provided which includes information on counseling, health, local advocacy and legal service agencies. The range of any possible disciplinary actions or sanctions and procedures may be found in the *NMSU Student Code of Conduct* and/or the *NMSU Policy Manual*.

- b. Accountability: Provide a fair investigation and resolution of complaints. Additionally, both accuser and accused may be accompanied during proceedings by an advisor of their choice and both parties will receive written outcomes of disciplinary hearings at the same time.
- c. Education: Conduct initial and ongoing awareness programming for students and employees that addresses issues of primary prevention, definition of consent, reporting, bystander intervention and risk reduction.
- d. Inquiries concerning the application of the Campus SaVE Act may contact any of the following: Office of Institutional Equity (OIE) Executive Director; the NMSU Police Department Victim's Assistance Coordinator or the Dean of Students. The NMSU OIE website will include the most current names, office address, telephone number and e-mail address as well as the link to the Office for Civil Rights.

E. Discrimination Policy:

1. NMSU is committed to providing a place of work and learning free of discrimination and harassment on the basis of a person's age, ancestry, color, disability, gender identity, genetic information, national origin, race, religion, serious medical condition, sex, protected veteran status, sexual orientation, or spousal affiliation. Where a violation of policy is found to have occurred, NMSU will act to stop the conduct, to prevent its recurrence, to remedy its effects, and to discipline those responsible in accordance with the *NMSU Policy Manual* and/or *NMSU Student Code of Conduct*.
2. No employee or student, either in the workplace or in the academic environment, should be subjected to discrimination which includes inappropriate conduct. Even one incident may constitute a violation of policy. It is expected that students, faculty and staff will treat one another and campus visitors with respect.
3. It is against NMSU policy to discriminate in any aspect of employment or education, which includes, but is not limited to:
  - a. hiring actions and terminations;
  - b. compensation, assignment, or classification of employees;
  - c. transfer, promotion, layoff, or recall of employees;
  - d. job advertisements;
  - e. recruitment actions;
  - f. testing;
  - g. grading;
  - h. acceptance or participation in an academic program or activity;
  - i. use of university facilities;
  - j. training programs;
  - k. benefits;
  - l. retirement plans, and paid and unpaid leave programs;
  - m. housing;
  - n. academic accommodation;
  - o. employment accommodation;
  - p. financial aid;
  - q. other terms and conditions of employment

4. Determining what constitutes discrimination under this policy will be accomplished on a case by case basis and depends upon the specific facts and the context in which the conduct occurs. Some conduct may be inappropriate, unprofessional, and/or subject to disciplinary action, but would not fall under the definition of discrimination. The specific action taken, if any, relating to a particular instance depends on the nature and the seriousness of the conduct that is reported.
5. Discriminatory practices include, but are not limited to:
  - a. Discrimination on the basis of a person's age, ancestry, color, disability, gender identity, genetic information, national origin, race, religion, sex, protected veteran status, sexual orientation, serious medical condition or spousal affiliation;
  - b. Retaliation against an individual for engaging in a protected activity such as filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices;
  - c. Use of electronic mail or computer dissemination of offensive material relating to protected categories;
  - d. Denying or interfering with an employee's or student's authorized reasonable accommodation based on disability or religion;
  - e. Employment or education decisions based on stereotypes or assumptions about the abilities, traits or performance of individuals based on age, ancestry, color, disability, gender identity, genetic information, national origin, protected veteran status, race, religion, serious medical condition, sex, sexual orientation, or spousal affiliation; and
  - f. Conduct that has the purpose or effect of substantially interfering with an individual's academic or work performance, or of creating an intimidating, hostile or offensive environment in which to work or learn.

F. Sex Discrimination/Sexual Harassment Policy:

1. NMSU is committed to providing a place of work and learning free of sexual misconduct which includes sexual harassment and sexual violence. Engaging in sexual behavior that is inappropriate, unwanted and unsolicited is a violation of NMSU policy. Where sexual harassment is found to have occurred, NMSU will act to address the reported conduct, to prevent its recurrence, to remedy its effects, and to discipline those responsible in accordance with the *NMSU Policy Manual* and/or *NMSU Student Code of Conduct*.
2. No employee or student, either in the workplace or in the academic environment, should be subjected to unwelcome non-verbal, verbal or physical conduct that is of a sexual nature. Even one incident may constitute a violation of NMSU policy.
3. Determining what constitutes sexual harassment under this policy is dependent upon the specific facts and the context in which the conduct occurs. Some conduct may be unprofessional and/or subject to disciplinary action, but would not fall under the definition of sexual harassment. The specific action taken, if any, depends on the nature and the seriousness of the reported conduct and may include disciplinary processes.
4. Under this policy, unwelcome sexual advances, requests for sexual favors, and other non-verbal, verbal or physical conduct of a sexual or gender bias nature, constitute a violation of policy when:
  - a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic status;
  - b. Submission to or rejection of the conduct is used as a basis for academic or employment decisions or evaluations, or permission to participate in an activity;

c. The conduct has the purpose or effect of substantially interfering with an individual's academic or work performance, or of creating an intimidating, hostile or offensive environment in which to work or learn.

5. Sexual harassment may take many forms, subtle and indirect, or blatant and overt.

6. Examples of unwelcome conduct of a sexual or sex related nature that may constitute a violation of policy may include, but are not limited to:

- a. Rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, stalking, or other sexual violence;
- b. Sexual violence is a physical act perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. Additionally, a person may be unable to give consent due to an intellectual or other disability;
- c. Sexually explicit or gender related statements, comments, questions, jokes, innuendoes, anecdotes, or gestures;
- d. Uninvited touching, patting, hugging, or purposeful brushing against a person's body or other inappropriate touching of an individual's body;
- e. Remarks of a sexual nature about a person's clothing or body;
- f. Use of technology, electronic mail or computer dissemination of sexually oriented, sex-based communications or sexually explicit images;
- g. Sexual advances, whether or not they involve physical touching;
- h. Requests for sexual favors in exchange for actual or promised job or educational benefits, such as favorable reviews, salary increases, promotions, increased benefits, continued employment, grades, favorable assignments, letters of recommendation;
- i. Displaying sexually suggestive objects, pictures, magazines, cartoons, or screen savers; or
- j. Inquiries, remarks, or discussions about an individual's sexual experiences or activities and other written or verbal references to sexual conduct.

G. Retaliation:

1. Retaliation against an individual who in good faith complains of alleged discrimination or sexual harassment or provides information in an investigation about behavior that may violate this policy is prohibited and may be grounds for discipline. Retaliation in violation of this policy may result in discipline up to and including termination and/or expulsion. Any employee or student bringing a discrimination or sexual harassment complaint in good faith or assisting in the investigation of such a complaint will not be adversely affected in terms and conditions of employment and/or academic standing, nor discriminated against, terminated, or expelled because of the complaint.

2. "Retaliation" may include, but is not limited to such conduct or adverse actions as:

- a. Adverse action taken to keep someone from opposing a discriminatory practice, or from participating in a discrimination proceeding;
- b. Employment actions such as termination, refusal to hire, and denial of promotion;
- c. Threats, unjustified negative evaluations, unjustified negative references, or increased surveillance;
- d. Action such as an assault or unfounded civil or criminal charges that are likely to deter reasonable people from pursuing their rights; or
- e. An unfair or unjustified grade.

Note that petty slights and annoyances, such as stray negative comments in an otherwise positive or neutral evaluation, snubbing a colleague, or negative comments that are justified by



an employee's or student's poor work/academic performance or history are not considered adverse actions.

H. Applicability and Sanctions:

All students and employees are subject to this policy. Any student or employee who violates this policy is subject to discipline up to and including termination and/or expulsion in accordance with the *NMSU Policy Manual* or in the case of students, the *NMSU Student Code of Conduct*. Complaints may also be filed against visitors, consultants, independent contractors and outside vendors whose conduct violates these policies, with the possible sanctions of limiting access to campus facilities and other measures to protect the campus community.

I. Policy Statement Distribution:

The President's policy statement references the University's position as contained in this policy.

All employees will be provided the President's policy statement on an annual basis. Human Resource Services (HRS) and the Office of Institutional Equity (OIE) will maintain documentation (written or electronic) that each employee received the President's policy statement. New employees will be provided a copy of the President's policy statement at the time of hire, generally at New Employee Orientation (NEO) and documentation will be maintained by HRS. Additionally, the President's policy statement will be provided to students at least annually. The distribution and receipt documentation may be accomplished electronically for either employees or students. The complete text of this policy will be maintained on the OIE website: <http://eeo.nmsu.edu/>.

J. Complaints and Investigation:

1. Employees and students may file an internal discrimination complaint with OIE within fifteen (15) working days from the date of the incident(s). Individuals may use the NMSU Internal Discrimination Complaint Form to submit their complaint. The use of this form facilitates the gathering of information that is necessary to assess the complaint. The OIE Executive Director (or designee) may extend the filing date of a complaint beyond the fifteen (15) working days if there are extenuating circumstances.
2. OIE will provide the option to the complainant of pursuing their complaint through an informal (which may include mediation) or formal process (submittal of the complaint). The formal internal discrimination complaint will be subject to an initial review to determine if the complaint will proceed to the investigation. If the initial review finds that the complaint will not be accepted for investigation, the OIE Executive Director (or designee) will inform the complainant in writing of the decision. The complainant may appeal the decision in writing to the Executive Vice President and Provost (or designee) within five (5) working days of receipt of the notification letter.
3. If the internal discrimination complaint is accepted, the accused individual(s) will be provided a copy of the complaint and will be extended five (5) working days to provide a written response to OIE. OIE shall initiate the process to investigate the complaint. This process includes interviewing the complainant, respondent, potential witnesses and the gathering of any related documents.
4. All individuals are required to cooperate with any investigation in response to allegations of discrimination. Refusal to cooperate in an investigation may result in disciplinary action in accordance with university policy or student code of conduct. The completion of the investigation will be within sixty (60) days of initiation unless there are extenuating circumstances. A report of

inquiry will be generated by the investigator and forwarded to the Executive Vice President and Provost. Within fifteen (15) days of receipt, the Executive Vice President and Provost (or designee) will review the report and render a decision in writing to the OIE Executive Director. The standard of evidence used for internal discrimination investigations is the “preponderance of the evidence”. Preponderance of the evidence means the greater weight of the evidence. The OIE Executive Director (or designee) will transmit the Executive Vice President and Provost’s (or designee) decision in writing to the complainant, the accused and appropriate administrators. The completion of the decision transmittal exhausts the internal process available under this policy for employees, students and others or may file complaints.

5. Penalties: Cases for students who are found to have violated the *NMSU Student Code of Conduct* and/or *NMSU Policy Manual* will be referred to Assistant Dean of Students. Cases for employees who are found to have violated *NMSU Policy Manual* will be referred to Human Resource Services/Employee and Management Services. Sanctions for students may include action up to and including expulsion. Sanctions for employees may include employment action up to an including termination in accordance with provisions of the *NMSU Policy Manual*.

#### K. General Information

1. Supervisors: If anyone in a supervisory, managerial, administrative or executive role or position, such as a supervisor, department chair, or director of a unit, receives a complaint of alleged discrimination or sexual harassment, or observes or becomes aware of conduct that may constitute discrimination or sexual harassment, that person must immediately contact OIE.
2. Employees: An employee who believes that he or she has been subjected to discrimination or sexual harassment by anyone is encouraged, but it is not required, particularly if it may be confrontational, to promptly tell the person that the conduct is unwelcome and ask the person to stop the conduct. An employee is not required to do this before filing a complaint. A person who receives such a request must immediately comply with it and must not retaliate against the employee. If the employee feels uncomfortable about discussing the incident with the immediate supervisor, the employee should feel free to bypass the supervisor and file a complaint with OIE.
3. Students: A student who believes that he or she has been subjected to discrimination or sexual harassment by anyone is encouraged, but it is not required particularly if it may be confrontational, to promptly tell the person that the conduct is unwelcome and ask the person to stop the conduct. A student is not required to do this before filing a complaint. A person who receives such a request must immediately comply with it and must not retaliate against the student. If the student feels uncomfortable about discussing the incident with the faculty member, department head, dean or director of an administrative unit, the student should feel free to bypass the person and file a complaint with OIE.
4. When discriminatory conduct involves a crime of violence or a non-forcible sex offense, FERPA permits NMSU to disclose to the alleged victim the name of the alleged perpetrator, any violation found to have been committed and any sanction imposed).

In the event a student is found to have engaged in sexual harassment of another student, NMSU will disclose to the student who was harassed, information about the sanction imposed on the student when the sanction directly relates to the harassed student.

5. Internal NMSU Units: Internal units such as the Dean of Students Office, Housing and Campus Life, Athletics and community colleges will promptly contact and consult with OIE when knowledge is obtained relating to potential discrimination or sexual harassment.
6. Non-employees and non-students: Individuals who are neither NMSU employees nor NMSU students and who believe they have been subjected to discrimination or sexual harassment by an NMSU employee during the employee's work hours or by a NMSU student on campus or at a NMSU-sponsored event may utilize the complaint process set forth above.

L. Prompt Attention:

Complaints of discrimination or sexual harassment are taken seriously and will be dealt with promptly, impartially, and equitably. Where discrimination is found to have occurred, NMSU will act to stop the reported conduct, to prevent its recurrence, to remedy its effects, if any, and to discipline those responsible.

M. Confidentiality:

NMSU recognizes that confidentiality is important. However, confidentiality cannot be guaranteed. The administrators, faculty or staff responsible for implementing this policy will respect the privacy of individuals reporting or accused of discrimination or sexual harassment to the extent reasonably possible and will maintain confidentiality to the extent possible. Examples of situations where confidentiality cannot be maintained include, but are not limited to, necessary disclosures during an investigation, circumstances where the NMSU is required by law to disclose information (such as in response to legal process), or when an individual is in harm's way.

To the extent provided by law and university policy, documents concerning a discrimination investigation and investigative results are not subject to public disclosure. Investigative materials and documents contain matters of opinion related to the working relationship between NMSU and its employees. Documents protected by the Family Educational Rights and Privacy Act (FERPA), Privacy Act of 1974, the New Mexico Inspection of Public Records Act, etc. are not subject to disclosure.

N. Supervisor Responsibilities:

1. Every supervisor (includes faculty in academic setting) has responsibility to take reasonable steps to prevent acts of discrimination or sexual harassment, which include, but are not limited to:
  - a. Monitoring the work and school environment for signs that discrimination or harassment may be occurring;
  - b. Refraining from participation in, or encouragement of actions that could be perceived as discrimination or harassment (verbal or otherwise);
  - c. Stopping any observed acts that may be considered discrimination or harassment, and taking appropriate steps to intervene, whether or not the involved individuals are within their line of supervision; and
  - d. Taking immediate action to minimize or eliminate the work and/or school contact among individuals where there has been a complaint of sexual harassment, pending the completion of the investigation.

If a supervisor (or faculty in academic setting) receives a complaint of alleged discrimination or sexual harassment, or observes or becomes aware of conduct that may constitute discrimination or sexual harassment, the supervisor (or faculty in academic setting) must immediately contact OIE. Failure to

take the above action to prevent the occurrence of or stop known discrimination or harassment may be grounds for disciplinary action in accordance with provisions of the *NMSU Policy Manual*.

O. Relationship to Freedom of Expression:

NMSU is committed to the principles of free inquiry and free expression. Vigorous discussion and debate are fundamental rights and this policy is not intended to stifle teaching methods or freedom of expression. Discrimination or sexual harassment, however, is neither legally protected expression nor the proper exercise of academic freedom; it compromises the integrity of this institution, the tradition of intellectual freedom and the trust placed in the institution by its members.

**Sex Offenders**

In accordance to the Campus Sex Crimes Prevention Act of 2000, the University is providing a link to the State of New Mexico Sex Offender Registry. All sex offenders are required to register in the state of New Mexico and to provide notice of each institution of higher education in New Mexico at which the person is employed, carries a vocation or is a student. The registry, maintained by the State of New Mexico can be found at <http://www.nmsexoffender.dps.state.nm.us>. In addition to other legal requirements, any convicted sex offender who is a student or employee of NMSU is required to register with the NMSU Police Department, as well as make notification to either the Registrar's Office (if a student) or the department head of their employing department (if an employee), or both (if both a student and an employee).

In addition to the above notice to the State of New Mexico, all sex offenders are required to deliver written notice of their status as a sex offender to the University's Police Department no later than three (3) business days **prior to** their enrollment in, employment with, volunteering at or residence in the University. Such notification may be disseminated by the University to, and for the safety and well-being of, the University community, and may be considered by the University for enrollment and discipline purposes.

Final regulations updated this requirement to reference the Adam Walsh Child Protection Act of 2006 (42.U.S.C.16921)

## SECTION 3 – PROGRAMS

### SAFETY PROGRAMS UNDER NMSU

The primary functions of the NMSU Police Department are law enforcement, criminal investigation, and emergency response. Integral to these are the crime prevention and public education programs the officers and crime prevention specialists teach on campus each year to help reduce the likelihood of crimes. These programs include:

- **Personal Self Defense and Fight Like A Girl:** learn and practice techniques that can help stop an attack in these programs
- **Pepper Spray:** learn to use pepper sprays for self defense
- **Active Shooter Response:** learn what to do if caught in an active shooter/killer incident
- **Operation Identification:** check out an engraver and learn how to mark and log down your valuable property
- **Traffic Safety Issues:** refresh on the rules of the road and how to avoid problems
- **Rape Awareness & Prevention:** learn about stranger, date, and acquaintance rape, and some ways to avoid situations common to rapes
- **Alcohol & Drug Awareness:** learn the effects of alcohol and drugs on the body, and the dangers they can pose
- **Dealing with Difficult People and Violence in the Workplace:** learn about the causes of workplace violence and how to reduce its likelihood
- **Emergency Preparedness and Community Emergency Response Team (CERT):** learn how to prepare for emergencies, help yourself, and help others
- **First Aid & CPR:** learn how to treat medical emergencies until help arrives
- **RAD Kids:** a safety program for young children

Programs are scheduled at the request of any on-campus and most off-campus groups or organizations. In addition, the Police Department works with others on campus (such as the Department of Housing and Residence Life) to design specific public education programs for the needs of each area. The NMSU Police Department also teaches segments of academic courses at the request of instructors and faculty. Courses are tailored for each audience, and range in length from 15 minutes to 8 hours. Further information, including a list of currently scheduled courses, how to request a course, descriptions of the courses, or discussion of specific needs is available by contacting the NMSU Police Department at 646-3311. Additional information regarding safety can also be found at [www.nmsupolice.com](http://www.nmsupolice.com) and [safety.nmsu.edu](http://safety.nmsu.edu).

People interested in the activities of the NMSU Police Department can find regular news reports on local radio and television stations, as well as articles in the local newspapers. The campus also submits its crime statistics to the U.S. Department of Justice's Uniform Crime Reports.

### TIPS TO PREVENT CRIME

The following are some things each person can do to reduce chances of becoming a victim of a crime:

- Mark or engrave all valuables (including textbooks), and keep a record of these in a safe place. Include their make, model, and serial numbers whenever possible.

- Lock the doors and windows to your room every time you leave. Do not leave valuables where they can be easily seen by someone passing by, even if it is just for a few minutes.
- Always be aware of your surroundings and of any strangers near you. If someone is acting suspiciously, move away toward large groups and well lit areas.
- Don't leave valuables unattended in unlocked lockers, study areas, or classrooms.
- Alcohol and drug use can reduce your ability to recognize a dangerous situation and your ability to defend yourself. If you are going to drink alcohol, do it legally, responsibly, in a safe place, and with people you can trust.

In addition to the tips above, additional information can be found on the NMSU Police Department website ([www.nmsupolice.com](http://www.nmsupolice.com)), or by contacting the Crime Prevention Office at 646-3311.

### **DRUGS AND ALCOHOL**

Use of alcohol is a concern with many high school and college students. Alcohol is strictly prohibited. The APD does arrest and/or cite for these offenses. Anyone selling or giving alcohol to a minor is guilty of a 4<sup>th</sup> degree felony in New Mexico. The possession, use, and sale of alcoholic beverages may result in criminal charges and administrative sanctions. The Student Judicial Affairs Office will also charge students who violate university policies and state laws, with penalties ranging from mandatory education programs up to and including expulsion from NMSU-A.

In addition to alcohol, illegal drug abuse (to include prescription drug abuse) is a concern on college campuses. Possession, sale, or use of any prohibited substance may result in criminal charges and administrative sanctions, up to and including expulsion from NMSU-A. Violations of federal and state controlled substance laws are investigated by the APD and referred for prosecution.

For those wanting to know more about the effects of alcohol and drugs, as well as issues like sexual assault, the WAVE (Wellness, Alcohol, and Violence Education) peer educator program is available to offer assistance. Counseling services are also available for those with substance abuse problems, and there are flyers and other information regarding drug and alcohol abuse available through a variety of locations on campus.

Any student who may have an alcohol or drug problem is encouraged to obtain confidential and voluntary counseling and/or treatment. In Alamogordo there are several resources for help: Otero County Council on Alcohol Abuse and Alcoholism, Presbyterian Medical Behavioral Health, and Alamogordo Mental Health Services. Referral services are also available on campus. Students should contact the Vice President for Student Success Office (439-3716) for information and confidential referral.

## **SECTION 4 – CRIME STATISTICS**

The annual crime statistics are a compilation of reports generated from the APD, the NM State Police, the Otero County Sheriff's Department, campus CSA's and the Campus Security Office Incident Reports. Crime statistics reported to any of these sources are recorded in the calendar year the crime was reported. All statistics are gathered, compiled, and reported to the campus community via this report entitled "Annual Security Report" which is published by the Office of Facilities Management (OFM). The Facilities Director submits the annual crime statistics to the Department of Education. The statistical information gathered by the Department of Education is available to the public through the Department of Education website.

Statistics on the following crimes and offenses are reported in the annual security report:

**Murder/Non-Negligent Manslaughter:** the willful (non-negligent) killing of one human being by another. NOTE: Deaths caused by negligence, attempts to kill, assaults to kill, suicides, accidental deaths, and justifiable homicides are excluded.

**Manslaughter by Negligence:** the killing of another person through gross negligence.

**Robbery:** the taking or attempting to take anything from value of the care, custody or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.

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

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

**Motor Vehicle Theft:** The theft or attempted theft of a motor vehicle. (Classify as motor vehicle theft all cases where automobiles are taken by persons not having lawful access, even though the vehicles are later abandoned - including joy riding)

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

**Domestic Violence:** The term "domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the

victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth

victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. In New Mexico there are several laws that protect victims from domestic violence crimes. These laws set forth specific penalties for certain violent behaviors. Generally, under New Mexico law a crime may be considered a domestic violence crime if it includes a pattern of controlling behavior directed at an intimate partner or that person's property, family members, animals, or associates.

The primary laws most commonly used to address domestic violence in New Mexico include:

1. Family Violence Protection Act,
2. Crimes Against Household Members Act, and
3. Harassment and Stalking Act.

**Dating Violence:** The term "dating violence" means violence committed by a person—(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors:(i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship.

**Stalking:** The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to— (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.

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

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

**Liquor Law Violations:** The violation of laws or ordinance prohibiting: the manufacture, sale, transporting, furnishing, possessing of intoxicating liquor; maintaining unlawful drinking places; bootlegging; operating a still; furnishing liquor to minor or intemperate person; using a vehicle for illegal transportation of liquor; drinking on a train or public conveyance; all attempts to commit any of the aforementioned. (Drunkenness and driving under the influence are not included in this definition.)

### **Sex Offenses**

**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 consent of the victim. This definition includes any gender of victim or perpetrator.



**Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or, not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental incapacity.

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

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

## **HATE CRIMES**

New Mexico State University Alamogordo is also required to report statistics for hate (bias) related crimes by the type of bias as defined below for the following classifications: murder/non-negligent manslaughter, sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, arson (see definitions above) and larceny, vandalism, intimidation, and simple assault (see definitions below).

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

**Vandalism:** To willfully or maliciously destroy, injure, disfigure, or deface any public or private property, real or personal, without the consent of the owner or person having custody or control by cutting, tearing, breaking, marking, painting, drawing, covering with filth, or any other such means as may be specified by local law.

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

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

### **Definitions of Clery Act Locations (General)**

**"On-Campus"** is defined as any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls. This also includes any building or property that is within or reasonably contiguous to the geographic area that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes (such as a food or other retail vendor).

**"Non-Campus"** is defined as any building or property owned or controlled by an institution that is used in direct support of, or in relation to, the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution. This also includes any building or property owned or controlled by a student organization that is officially recognized by the institution.

“Public Property” is defined as all public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus.

There are no Non-Campus locations associated with the Alamogordo campus.

The previous 3 years of crime statistics: **CRIMINAL OFFENSES**

Offense	Year	On-Campus Property	Public Property
<i>Murder/Non-Negligent Manslaughter</i>	2019	0	0
	2018	0	0
	2017	0	0
<i>Manslaughter By Negligence</i>	2019	0	0
	2018	0	0
	2017	0	0
<i>Rape</i>	2019	0	0
	2018	0	0
	2017	0	0
<i>Fondling</i>	2019	0	0
	2018	0	0
	2017	0	2
<i>Incest</i>	2019	0	0
	2018	0	0
	2017	0	0
<i>Statutory Rape</i>	2019	0	0
	2018	0	0
	2017	0	0
<i>Robbery</i>	2019	0	0
	2018	0	0
	2017	0	0
<i>Aggravated Assault</i>	2019	0	0
	2018	0	0
	2017	0	0
<i>Burglary</i>	2019	0	0
	2018	0	0
	2017	0	0
<i>Motor Vehicle Theft</i>	2019	0	0
	2018	0	0
	2017	0	0
<i>Arson</i>	2019	0	0
	2018	0	0
	2017	0	0

**VAWA OFFENSES**

Offense	Year	On-Campus Property	Public Property
<i>Domestic Violence</i>	2019	0	0
	2018	0	0
	2017	0	0
<i>Dating Violence</i>	2019	0	0
	2018	0	0
	2017	0	0
<i>Stalking</i>	2019	0	0
	2018	0	0
	2017	1	0

**ARRESTS AND REFERRALS**

Offense	Year	On-Campus Property	Public Property
<i>Arrests: Weapons Violations</i>	2019	0	0
	2018	1	0
	2017	0	0
<i>Disciplinary Referrals: Weapons Violations</i>	2019	0	0
	2018	0	0
	2017	0	0
<i>Arrests: Liquor Violations</i>	2019	0	0
	2018	1	0
	2017	0	0
<i>Disciplinary Referrals: Liquor Violations:</i>	2019	0	0
	2018	0	0
	2017	0	0
<i>Arrests: Drug Violations</i>	2019	0	0
	2018	1	0
	2017	0	0
<i>Disciplinary Referrals: Drug Violations</i>	2019	0	0
	2018	0	0
	2017	0	0

**Hate Crimes:** There were no reported hate crimes for the years 2017, 2018 or 2019. The total number of unfounded crimes for the 2019 calendar year at this campus is 0. The total number of unfounded crimes for the 2018 calendar year at this campus is 0. The total number of unfounded crimes for the 2017 calendar year at this campus is 0.

**CRIME LOG**

The Crime Log may be viewed during normal business hours (M-F, 8 – 5) at the Facilities Office, 439-3611.

### **OFF-CAMPUS CRIME**

Crime occurring off campus involving students or chartered NMSU-A organizations is reported to and handled by a variety of agencies, including the APD or the Otero County Sheriff's Department. NMSU-A also works closely with the NMSU Police Department. While the NMSU Police Department assists other agencies when asked pursuant to mutual aid agreements, the reporting and tracking of crime is done by the agency of primary jurisdiction. The university does not routinely monitor nor track incidents that are on private property or public property not owned by NMSU. Anyone wanting specific information on off-campus crime should contact the appropriate agency(s). See the Phone Number Reference Guide on the last page of this report for contact information.

### **WE NEED YOUR HELP – REPORT CRIME!**

Please help us in deterring crime on our campus by promptly calling the NMSU-A Security Office at 439-3634 or 911 (in case of emergencies) to report suspicious activity, safety problems, or crimes. In accordance with state law, the NMSU Police Department cannot accept anonymous reports, and must disclose certain information to prosecutors and defense counsel. However, it will take steps in sensitive cases to keep personal information confidential to the extent possible. This includes cases of sexual assault, as well as cases where there is a concern of possible retaliation. The NMSU Police Department also encourages 3<sup>rd</sup> party reports from non-NMSU counselors, pastors, and other mental health practitioners.

### **RESPONSIBILITY FOR POLICY MONITORING AND ENFORCEMENT**

The university has assigned responsibility for monitoring the above policies to the Police Department. If violations of policy are found to have occurred, the violations are referred to the President's Office for enforcement.

### **LEGAL DEFINITIONS OF CRIMES IN NEW MEXICO**

Rape is generally defined as forced sexual penetration of the body of another. It may also include situations where the victim is incapable of giving consent due to incapacitation by means of disability or alcohol or other drugs. In New Mexico, the term "rape" is not used in statute. Instead, the term is "criminal sexual penetration". Many rapes are committed by someone the victim knows, such as a date or friend. Under New Mexico State Law, Criminal sexual penetration is defined as follows:

#### **30-9-11. Criminal sexual penetration.**

- A. Criminal sexual penetration is the unlawful and intentional causing of a person to engage in sexual intercourse, cunnilingus, fellatio or anal intercourse or the causing of penetration, to any extent and with any object, of the genital or anal openings of another, whether or not there is any emission.
- B. Criminal sexual penetration does not include medically indicated procedures.
- C. Aggravated criminal sexual penetration consists of all criminal sexual penetration perpetrated on a child under thirteen years of age with an intent to kill or with a depraved mind regardless of human life. Whoever commits aggravated criminal sexual penetration is guilty of a first degree felony for aggravated criminal sexual penetration.
- D. Criminal sexual penetration in the first degree consists of all criminal sexual penetration perpetrated:
  - (1) on a child under thirteen years of age; or
  - (2) by the use of force or coercion that results in great bodily harm or great mental anguish to the victim.

Whoever commits criminal sexual penetration in the first degree is guilty of a first degree felony.

- E. Criminal sexual penetration in the second degree consists of all criminal sexual penetration perpetrated:
- (1) by the use of force or coercion on a child thirteen to eighteen years of age;
  - (2) on an inmate confined in a correctional facility or jail when the perpetrator is in a position of authority over the inmate;
  - (3) by the use of force or coercion that results in personal injury to the victim;
  - (4) by the use of force or coercion when the perpetrator is aided or abetted by one or more persons;
  - (5) in the commission of any other felony; or
  - (6) when the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual penetration in the second degree is guilty of a second degree felony. Whoever commits criminal sexual penetration in the second degree when the victim is a child who is thirteen to eighteen years of age is guilty of a second degree felony for a sexual offense against a child and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a minimum term of imprisonment of three years, which shall not be suspended or deferred. The imposition of a minimum, mandatory term of imprisonment pursuant to the provisions of this subsection shall not be interpreted to preclude the imposition of sentencing enhancements pursuant to the provisions of the Criminal Sentencing Act [31-18-12 NMSA 1978].

- F. Criminal sexual penetration in the third degree consists of all criminal sexual penetration perpetrated through the use of force or coercion not otherwise specified in this section. Whoever commits criminal sexual penetration in the third degree is guilty of a third degree felony.

- G. Criminal sexual penetration in the fourth degree consists of all criminal sexual penetration:
- (1) not defined in Subsections D through F of this section perpetrated on a child thirteen to sixteen years of age when the perpetrator is at least eighteen years of age and is at least four years older than the child and not the spouse of that child; or
  - (2) perpetrated on a child thirteen to eighteen years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least eighteen years of age and is at least four years older than the child and not the spouse of that child, learns while performing services in or for a school that the child is a student in a school.

Whoever commits criminal sexual penetration in the fourth degree is guilty of a fourth degree felony.

### ***Other Sexual Offenses***

Besides Criminal sexual penetration, other sexual offenses include the following:

#### **30-9-12. Criminal sexual contact.**

- A. Criminal sexual contact is the unlawful and intentional touching of or application of force, without consent, to the unclothed intimate parts of another who has reached his eighteenth birthday, or intentionally causing another who has reached his eighteenth birthday to touch one's intimate parts.
- B. Criminal sexual contact does not include touching by a psychotherapist on his patient that is:
- (1) inadvertent;
  - (2) casual social contact not intended to be sexual in nature; or
  - (3) generally recognized by mental health professionals as being a legitimate element of psychotherapy.
- C. Criminal sexual contact in the fourth degree consists of all criminal sexual contact perpetrated:
- (1) by the use of force or coercion that results in personal injury to the victim;
  - (2) by the use of force or coercion when the perpetrator is aided or abetted by one or more persons;  
or
  - (3) when the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual contact in the fourth degree is guilty of a fourth degree felony.

- D. Criminal sexual contact is a misdemeanor when perpetrated with the use of force or coercion.
- E. For the purposes of this section, "intimate parts" means the primary genital area, groin, buttocks, anus or breast.

**30-9-13. Criminal sexual contact of a minor.**

- A. Criminal sexual contact of a minor is the unlawful and intentional touching of or applying force to the intimate parts of a minor or the unlawful and intentional causing of a minor to touch one's intimate parts. For the purposes of this section, "intimate parts" means the primary genital area, groin, buttocks, anus or breast.
- B. Criminal sexual contact of a minor in the second degree consists of all criminal sexual contact of the unclothed intimate parts of a minor perpetrated:
  - (1) on a child under thirteen years of age; or
  - (2) on a child thirteen to eighteen years of age when:
    - (a) the perpetrator is in a position of authority over the child and uses that authority to coerce the child to submit;
    - (b) the perpetrator uses force or coercion that results in personal injury to the child;
    - (c) the perpetrator uses force or coercion and is aided or abetted by one or more persons; or
    - (d) the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual contact of a minor in the second degree is guilty of a second degree felony for a sexual offense against a child and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a minimum term of imprisonment of three years, which shall not be suspended or deferred. The imposition of a minimum, mandatory term of imprisonment pursuant to the provisions of this subsection shall not be interpreted to preclude the imposition of sentencing enhancements pursuant to the provisions of Sections 31-18-17, 31-18-25 and 31-18-26 NMSA 1978.

- C. Criminal sexual contact of a minor in the third degree consists of all criminal sexual contact of a minor perpetrated:
  - (1) on a child under thirteen years of age; or
  - (2) on a child thirteen to eighteen years of age when:
    - (a) the perpetrator is in a position of authority over the child and uses this authority to coerce the child to submit;
    - (b) the perpetrator uses force or coercion which results in personal injury to the child;
    - (c) the perpetrator uses force or coercion and is aided or abetted by one or more persons; or
    - (d) the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual contact of a minor in the third degree is guilty of a third degree felony for a sexual offense against a child.

- D. Criminal sexual contact of a minor in the fourth degree consists of all criminal sexual contact:
  - (1) not defined in Subsection C of this section, of a child thirteen to eighteen years of age perpetrated with force or coercion; or
  - (2) of a minor perpetrated on a child thirteen to eighteen years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least eighteen years of age and is at least four years older than the child and not the spouse of that child, learns while performing services in or for a school that the child is a student in a school.

Whoever commits criminal sexual contact in the fourth degree is guilty of a fourth degree felony.

**30-9-14. Indecent exposure.**

- A. Indecent exposure consists of a person knowingly and intentionally exposing his primary genital area to public view.
- B. As used in this section, "primary genital area" means the mons pubis, penis, testicles, mons veneris, vulva or vagina.
- C. Whoever commits indecent exposure is guilty of a misdemeanor.
- D. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted for committing indecent exposure to participate in and complete a program of professional counseling at his own expense.

**30-9-14.3. Aggravated indecent exposure.**

- A. Aggravated indecent exposure consists of a person knowingly and intentionally exposing his primary genital area to public view in a lewd and lascivious manner, with the intent to threaten or intimidate another person, while committing one or more of the following acts or criminal offenses:
  - (1) exposure to a child less than eighteen years of age;
  - (2) assault, as provided in Section 30-3-1 NMSA 1978;
  - (3) aggravated assault, as provided in Section 30-3-2 NMSA 1978;
  - (4) assault with intent to commit a violent felony, as provided in Section 30-3-3 NMSA 1978;
  - (5) battery, as provided in Section 30-3-4 NMSA 1978;
  - (6) aggravated battery, as provided in Section 30-3-5 NMSA 1978;
  - (7) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or
  - (8) abuse of a child, as provided in Section 30-6-1 NMSA 1978.
- B. As used in this section, "primary genital area" means the mons pubis, penis, testicles, mons veneris, vulva or vagina.
- C. Whoever commits aggravated indecent exposure is guilty of a fourth degree felony.
- D. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted for committing aggravated indecent exposure to participate in and complete a program of professional counseling at his own expense.

**30-9-20. Voyeurism prohibited; penalties.**

- A. Voyeurism consists of intentionally using the unaided eye to view or intentionally using an instrumentality to view, photograph, videotape, film, webcast or record the intimate areas of another person without the knowledge and consent of that person:
  - (1) while the person is in the interior of a bedroom, bathroom, changing room, fitting room, dressing room or tanning booth or the interior of any other area in which the person has a reasonable expectation of privacy; or
  - (2) under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.
- B. Whoever commits voyeurism is guilty of a misdemeanor, except if the victim is less than eighteen years of age, the offender is guilty of a fourth degree felony.
- C. As used in this section:
  - (1) "intimate areas" means the primary genital area, groin, buttocks, anus or breasts or the undergarments that cover those areas; and
  - (2) "instrumentality" means a periscope, telescope, binoculars, camcorder, computer, motion picture camera, digital camera, telephone camera, photographic camera or electronic device of any type.

**30-37-2. Offenses; books; pictures.**

It is unlawful for a person to knowingly sell, deliver, distribute, display for sale or provide to a minor, or knowingly to possess with intent to sell, deliver, distribute, display for sale or provide to a minor:

- A. any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body, or any replica, article or device having the appearance of either male or female genitals which depicts nudity, sexual conduct, sexual excitement or sado-masochistic abuse and which is harmful to minors; or
- B. any book, pamphlet, magazine, printed matter however produced or sound recording which contains any matter enumerated in Subsection A of this section or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse and which, taken as a whole, is harmful to minors.

### **30-37-3.2. Child solicitation by electronic communication device.**

- A. Child solicitation by electronic communication device consists of a person knowingly and intentionally soliciting a child under sixteen years of age, by means of an electronic communication device, to engage in sexual intercourse, sexual contact or in a sexual or obscene performance, or to engage in any other sexual conduct when the perpetrator is at least four years older than the child.
- B. Whoever commits child solicitation by electronic communication device is guilty of a:
  - (1) fourth degree felony if the child is at least thirteen but under sixteen years of age; or
  - (2) third degree felony if the child is under thirteen years of age.
- C. Whoever commits child solicitation by electronic communication device and also appears for, attends or is present at a meeting that the person arranged pursuant to the solicitation is guilty of a:
  - (1) third degree felony if the child is at least thirteen but under sixteen years of age; or
  - (2) second degree felony if the child is under thirteen years of age.
- D. In a prosecution for child solicitation by electronic communication device, it is not a defense that the intended victim of the defendant was a peace officer posing as a child under sixteen years of age.
- E. For purposes of determining jurisdiction, child solicitation by electronic communication device is committed in this state if an electronic communication device transmission either originates or is received in this state.
- F. As used in this section, "electronic communication device" means a computer, video recorder, digital camera, fax machine, telephone, cellular telephone, pager, audio equipment or any other device that can produce an electronically generated image, message or signal.

### **30-37-1. Definitions.**

As used in this act:

- A. "minor" means any unmarried person who has not reached his eighteenth birthday;
- B. "nudity" means the showing of the male or female genitals, pubic area or buttocks with less than a full opaque covering, or the depiction of covered male genitals in a discernibly turgid state;
- C. "sexual conduct" means act of masturbation, homosexuality, sodomy, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be female, breast;
- D. "sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal;
- E. "sado-masochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained;
- F. "harmful to minors" means that quality of any description of representation, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse, when it:
  - (1) predominantly appeals to the prurient, shameful or morbid interest of minors; and



- (2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
- (3) is utterly without redeeming social importance for minors; and
- G. "knowingly" means having general knowledge of, or reason to know, or a belief or reasonable ground for belief which warrants further inspection or inquiry or both, of:
  - (1) the character and content of any material described herein, which is reasonably susceptible of examination by the defendant;
  - (2) the age of the minor.

The complete State of New Mexico rape and sexual assault offenses, definitions and penalties can be found in New Mexico State Statutes 30-9-1 through 20. Additionally, New Mexico State Statute 30-6A-1 through 4 provides definitions of the crime of Sexual Exploitation of Children.

### **Domestic Violence, Dating Violence and Stalking**

The New Mexico State Statutes relating to domestic violence, dating violence and stalking are as follows:

#### **30-3-11. Definitions.**

As used in the Crimes Against Household Members Act:

- A. "household member" means a spouse, former spouse, parent, present or former stepparent, present or former parent in-law, grandparent, grandparent-in-law, a co-parent of a child or a person with whom a person has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for the purposes of the Crimes Against Household Members Act; and
- B. "continuing personal relationship" means a dating or intimate relationship.

#### **30-3-12. Assault against a household member.**

- A. Assault against a household member consists of:
  - (1) an attempt to commit a battery against a household member; or
  - (2) any unlawful act, threat or menacing conduct that causes a household member to reasonably believe that he is in danger of receiving an immediate battery.
- B. Whoever commits assault against a household member is guilty of a petty misdemeanor.

#### **30-3-13. Aggravated assault against a household member.**

- A. Aggravated assault against a household member consists of:
  - (1) unlawfully assaulting or striking at a household member with a deadly weapon; or
  - (2) willfully and intentionally assaulting a household member with intent to commit any felony.
- B. Whoever commits aggravated assault against a household member is guilty of a fourth degree felony.

#### **30-3-14. Assault against a household member with intent to commit a violent felony.**

- A. Assault against a household member with intent to commit a violent felony consists of any person assaulting a household member with intent to kill or commit any murder, mayhem, criminal sexual penetration in the first, second or third degree, robbery, kidnapping, false imprisonment or burglary.
- B. Whoever commits assault against a household member with intent to commit a violent felony is guilty of a third degree felony.

#### **30-3-15. Battery against a household member.**

- A. Battery against a household member consists of the unlawful, intentional touching or application of force to the person of a household member, when done in a rude, insolent or angry manner.
- B. Whoever commits battery against a household member is guilty of a misdemeanor.

- C. Upon conviction pursuant to this section, an offender shall be required to participate in and complete a domestic violence offender treatment or intervention program approved by the children, youth and families department pursuant to rules promulgated by the department that define the criteria for such programs.
- D. Notwithstanding any provision of law to the contrary, if a sentence imposed pursuant to this section is suspended or deferred in whole or in part, the period of probation may extend beyond three hundred sixty-four days but may not exceed two years. If an offender violates a condition of probation, the court may impose any sentence that the court could originally have imposed and credit shall not be given for time served by the offender on probation; provided that the total period of incarceration shall not exceed three hundred sixty-four days and the combined period of incarceration and probation shall not exceed two years.

**30-3-16. Aggravated battery against a household member.**

- A. Aggravated battery against a household member consists of the unlawful touching or application of force to the person of a household member with intent to injure that person or another.
- B. Whoever commits aggravated battery against a household member by inflicting an injury to that person that is not likely to cause death or great bodily harm, but that does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body, is guilty of a misdemeanor.
- C. Whoever commits aggravated battery against a household member by inflicting great bodily harm or doing so with a deadly weapon or doing so in any manner whereby great bodily harm or death can be inflicted is guilty of a third degree felony.
- D. Upon conviction pursuant to Subsection B of this section, an offender shall be required to participate in and complete a domestic violence offender treatment or intervention program approved by the children, youth and families department pursuant to rules promulgated by the department that define the criteria for such programs.
- E. Notwithstanding any provision of law to the contrary, if a sentence imposed pursuant to the provisions of Subsection B of this section is suspended or deferred in whole or in part, the period of probation may extend beyond three hundred sixty-four days but may not exceed two years. If an offender violates a condition of probation, the court may impose any sentence that the court could originally have imposed and credit shall not be given for time served by the offender on probation; provided that the total period of incarceration shall not exceed three hundred sixty-four days and the combined period of incarceration and probation shall not exceed two years.

**30-3-17. Multiple convictions of battery or aggravated battery.**

- A. Whoever commits three offenses of battery against a household member as provided in Section 30-3-15 NMSA 1978 or aggravated battery against a household member as provided in Subsection B of Section 30-3-16 NMSA 1978, or any combination thereof, when the household member is a spouse, a former spouse, a co-parent of a child or a person with whom the offender has had a continuing personal relationship is guilty of a fourth degree felony.
- B. Whoever commits four or more offenses of battery against a household member as provided in Section 30-3-15 NMSA 1978 or aggravated battery against a household member as provided in Subsection B of Section 30-3-16 NMSA 1978, or any combination thereof, when the household member is a spouse, a former spouse, a co-parent of a child or a person with whom the offender has had a continuing personal relationship is guilty of a third degree felony.
- C. For the purpose of determining the number of offenses committed, each offense must have been committed after conviction for the preceding offense.

**30-3-18. Criminal damage to property of household member; deprivation of property of household member.**

- A. Criminal damage to the property of a household member consists of intentionally damaging real, personal, community or jointly owned property of a household member with the intent to intimidate, threaten or harass that household member.
- B. Whoever commits criminal damage to the property of a household member is guilty of a misdemeanor, except that when the damage to the household member's interest in the property amounts to more than one thousand dollars (\$1,000), the offender is guilty of a fourth degree felony.
- C. Deprivation of the property of a household member consists of intentionally depriving a household member of the use of separate, community or jointly owned personal property of the household member with the intent to intimidate or threaten that household member.
- D. Whoever commits deprivation of the property of a household member is guilty of a misdemeanor.

**30-3A-2. Harassment; penalties.**

- A. Harassment consists of knowingly pursuing a pattern of conduct that is intended to annoy, seriously alarm or terrorize another person and that serves no lawful purpose. The conduct must be such that it would cause a reasonable person to suffer substantial emotional distress.
- B. Whoever commits harassment is guilty of a misdemeanor.

**30-3A-3. Stalking; penalties.**

- A. Stalking consists of knowingly pursuing a pattern of conduct, without lawful authority, directed at a specific individual when the person intends that the pattern of conduct would place the individual in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint of the individual or another individual.
- B. As used in this section:
  - (1) "lawful authority" means within the scope of lawful employment or constitutionally protected activity; and
  - (2) "pattern of conduct" means two or more acts, on more than one occasion, in which the alleged stalker by any action, method, device or means, directly, indirectly or through third parties, follows, monitors, surveils, threatens or communicates to or about a person.
- C. Whoever commits stalking is guilty of a misdemeanor. Upon a second or subsequent conviction, the offender is guilty of a fourth degree felony.
- D. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted of stalking to participate in and complete a program of professional counseling at the person's own expense or a domestic violence offender treatment or intervention program.

**30-3A-3.1. Aggravated stalking; penalties.**

- A. Aggravated stalking consists of stalking perpetrated by a person:
  - (1) who knowingly violates a permanent or temporary order of protection issued by a court, except that mutual violations of such orders may constitute a defense to aggravated stalking;
  - (2) in violation of a court order setting conditions of release and bond;
  - (3) when the person is in possession of a deadly weapon; or
  - (4) when the victim is less than sixteen years of age.
- B. Whoever commits aggravated stalking is guilty of a fourth degree felony. Upon a second or subsequent conviction, the offender is guilty of a third degree felony.
- C. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted of aggravated stalking to participate in and complete a program of professional counseling at his own expense.

**30-3A-4. Exceptions.**

The provisions of the [Harassment and] Stalking Act [30-3A-1 NMSA 1978] do not apply to:

- A. picketing or public demonstrations that are lawful or that arise out of a bona fide labor dispute; or
- B. a peace officer in the performance of his duties.

## **SECTION 5 - PHONE NUMBER REFERENCE GUIDE**

Alamogordo Police Department	<b>EMERGENCY.....8-911</b>
	Non-emergency.....439-4300
Alamogordo Fire Department	Non-emergency.....439-4119
NMSU-A Security Office.....	439-3634
NMSU-A Vice President for Student Success.....	439-3716
NMSU-A Human Resources.....	439-3697
NMSU-A Title IX Liaison.....	439-3717
NMSU Office of Institutional Equity.....	646-3635
WAVE Program.....	646-2813
Presbyterian Medical Behavioral Health.....	437-7404

### **Off-Campus Law Enforcement Agencies:**

Alamogordo Police Department.....	(575) 439-4300
Otero County Sheriff's Office.....	(575) 437-2210
New Mexico State Police.....	(575) 382-2500
Federal Bureau of Investigation.....	(575) 526-2351
Drug Enforcement Administration.....	(575) 526-0700
US Marshals Service.....	(575) 527-6850
US Customs and Border Protection.....	(575) 528-6600