

## ***New Mexico Tech INTERIM Sexual Misconduct & Title IX Offenses Policy***

The federal gender equity law, Title IX of the Education Amendments Act of 1972, protects people from discrimination based on sex in education programs and activities that receive federal financial assistance, including New Mexico Institute of Mining and Technology. The law states:

*“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”*

Examples of the types of discrimination that are prohibited under Title IX include sexual harassment, sexual assault, stalking, the failure to provide equal opportunity in academics, athletics & other programs, and discrimination based on pregnancy. Title IX is enforced by the U.S. Department of Education’s Office for Civil Rights.

New Mexico Institute of Mining and Technology is currently reviewing its Title IX procedures and is in the process of developing updated policies and protocols to address sexual misconduct and discrimination all its forms.

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

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

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

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

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

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

**CONSENT:** “The affirmative, unambiguous, and voluntary agreement to engage in a specific sexual activity during a sexual encounter.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Confidentiality**

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

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

Victims who chose to disclose information related to sexual assault or harassment to Ms. Ward or her designee may be asked if they would consent to their information to being shared with the Title IX Coordinator and/or Campus Police through normal reporting procedures or anonymously. The purpose for sharing such information is to better protect the community and promote a healthy and respectful culture on campus. Other off-campus resources are available for victims who wish to disclose

confidentially, including the Socorro Mental Health clinic. Additional area resources are listed below. A victim who speaks to a professional or non-professional counselor or advocate must understand that, if the victim wants to maintain confidentiality, the University will be unable to conduct an investigation into the particular incident or pursue disciplinary action. Even so, the victim will still be assisted in receiving other necessary protection and support. A victim who at first requests confidentiality may later decide to file a complaint with the University or report the incident to local law enforcement.

## FERPA

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

## Timely Warning Alerts/Emergency Notification

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

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

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

### COMMUNITY RESOURCES

Socorro Fire/Ambulance	911
New Mexico Tech Campus Police	575-835-5434
NMT Student Health Center	575-835-5094
NMT Counseling & Disabilities Office	575-835-6619
Socorro General Hospital	575-835-1140, Emergency Room: 575-835-8370
Socorro Mental Health Clinic, 1200 US Route 60	575-835-2444
NMT Title IX/Affirmative Action Director	575-835-5005
Socorro County Sheriff	575-835-0941/575.835.0741
New Mexico State Police: District 11-Socorro	575-835-0741
The National Domestic Violence Hotline	800-799-7233
National Sexual Assault Hotline	800-656-4673
New Mexico Coalition of Sexual Assault Programs, Inc. E-mail: nmcsaas@swcp.com	505-883-8020
Albuquerque Rape Crisis 1025 Hermosa Dr. SE, Albuquerque, NM 87108 E-mail: <a href="http://www.rape-crisis.org">www.rape-crisis.org</a>	505-266-7711
Sexual Assault Nurse Examiners (SANE) 625 Silver, SW - 2nd Floor, ABQ, NM 87102 505.883.8720 • Emergency SANE Contact: 505.884.7263 <a href="http://abqsane.org/">http://abqsane.org/</a>  Free Services Provided: <ul style="list-style-type: none"> <li>• Protect sexual assault or domestic violence survivor from further harm</li> <li>• Treatment for sexually transmitted infections</li> <li>• Evaluate pregnancy risk and offer prevention</li> <li>• Assess, document and provide care for injuries</li> <li>• Appropriate referral for immediate and follow-up counseling and medical care</li> <li>• Timely, thorough and professional forensic evidence collection, documentation &amp; preservation</li> <li>• Photo document injuries</li> <li>• Testimony in court of law if needed</li> <li>• Follow-up care, education &amp; resource referral</li> </ul>	



## Sexual Assault Reporting Procedures

*If you or someone you know has been sexually assaulted, please consider telling someone what happened:*

- Notify New Mexico Tech Campus Police at: 575.835.5555, CamPo is located in the Student Activities Center (SAC).
- Notify Tech's Dean of Students at: 575.835.5880, the dean is located on the 2<sup>nd</sup> floor of Brown Hall.
- Notify Tech's Chief of Campus Police at: 575.835.5005, located in the Student Activities Center (SAC).
- Notify a Residential Life Coordinator, a Resident Assistant, or talk to a trusted professor or administrator.
- Talk with a Provider or Counselor at the Student Health and Counseling & Disabilities Office, 1<sup>st</sup> floor Fidel: 575.835.5094/575.835.6619

## NMT's PROCESS & OPTIONS FOR STUDENTS

### **Option 1.**

#### **Pursue internal (college) disciplinary action.**

- Legal options and support will be explained by NMT Campus Police.
- The Dean of Students will explain college judicial process, options and support.
- Federally mandated notice may be sent to campus community by Campus Police.\* *Name(s) of complainant(s) will not be disclosed.*
- Physical evidence can be collected by police.
- All relevant witnesses can be interviewed by police.
- Investigation can take several days to several weeks, based on circumstances.
- Upon completion of the investigation, reports are forwarded to the Dean of Students for follow-up and possible adjudication.
- Dean of Students receives investigation report and witness testimony in regards to the charges pending.
- Victims, suspects, and witnesses are notified of any college adjudication.
- The accuser and the accused are equally entitled to have others present during any college disciplinary proceeding.
- Both the accuser and the accused shall be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense.

### **Option 2.**

#### **Pursue criminal charges**

- Investigation is conducted by NMT Campus Police.
- Upon completion of the investigation, report is forwarded to the Socorro County District Attorney for possible prosecution.

### **Option 3.**

#### **Pursue both internal and criminal charges**

- Process outline in Option 1 & 2 occur simultaneously.
- Internal college judicial and criminal adjudication processes occur independently.

### **Option 4.**

#### **Report assault, but choose not to pursue charges at present time**

- A "no contact order" may be issued between complainants and suspect (if known).
- Federally mandated notice may be sent to campus community by NMT Campus Police. *Name(s) of complainant(s) will not be disclosed.*
- The stated time, date and location of the assault and any additional related crimes will be reported in Tech's crime log and statistic records as mandated by The Clery Act\*. Names will remain anonymous.

### **IMPORTANT CONSIDERATIONS:**

- ✚ Counseling is strongly encouraged in all cases.
- ✚ Medical treatment is recommended as appropriate.
- ✚ Complainant may elect to continue with the process or stop at any time.
- ✚ Complainant may choose not to participate in the formal process and instead decide to approach a counselor.

\*The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, commonly referred to as the Clery Act, requires higher education institutions to collect, report and disseminate crime data to the campus community and U.S. Department of Education; to provide warnings of reported crimes that represent a threat to the safety of students or employees "in a manner that is timely and will aid in the prevention of similar crimes"; and to make public their campus security policies and procedures.

Crime Alerts are usually posted for the following crimes: arson, aggravated assault, homicide, robbery, and sex offenses. Crime alerts may also be posted for other classifications as deemed necessary. Crime Alerts are posted through electronic mail and the posting of bulletins at various locations on campus when a crime has occurred and there is a possibility that an outstanding suspect could pose a danger to the campus community.