



## **Policy Statement Regarding the Prevention of and Response to Sex Offenses, Domestic Violence, Dating Violence, and Stalking**

### **INTRODUCTION**

Members of the NMHU community, guests and visitors have the right to be free from all forms of violence, including sex offenses, domestic violence, dating violence and stalking. All members of the campus community are expected to conduct themselves in a manner that does not interfere with the rights of others. NMHU believes that sex offenses, domestic violence, dating violence and stalking prevent their victims from being able to have full access to their education, and as a result, prevent victims from benefiting from the full range of opportunities that come with higher education. Therefore, NMHU has no tolerance for sex/gender-based violence or misconduct. When an allegation of violence or misconduct is brought to the attention of NMHU faculty or staff, an administrator will be notified immediately and measures will be taken to ensure that an investigation is conducted and discipline issued to the perpetrator when appropriate. Discipline include sanctions, up to and including expulsion, when a respondent is found to have violated this policy.

For the purposes of this policy, the term sex offense will be used to include dating violence, domestic violence, stalking, non-consensual sex offenses, and sexual harassment.

This policy is developed in order to reaffirm NMHU principles and beliefs and provide a method of recourse for individuals whose rights have been violated.

### **TITLE IX COORDINATOR**

NMHU has a Title IX Coordinator who oversees compliance with all aspects of the sex/gender-based violence and misconduct policy. The Coordinator reports directly to the President of NMHU, and is housed in the office of Human Resources. Any questions related to this policy should be directed to the Title IX Coordinator. Reports of sex/gender-based violence and/or misconduct should be made directly to the Title IX Coordinator:

Name: Donna Castro

Title: Human Resources Director/Title IX Coordinator

Office of Human Resources

Location/Address: Rodgers Administration Building Room 201

Phone Number: (505) 426-2240

Email: [dcastro@nmhu.edu](mailto:dcastro@nmhu.edu)

In the event that an incident involves alleged misconduct by the Title IX Coordinator, reports should be made directly to the President of the University.

## OVERVIEW

NMHU strives to educate students, staff and faculty about domestic violence, dating violence, stalking or a forcible or non-forcible sex offense, including sexual assault, rape and acquaintance rape, through the following programs:

1. New Student Orientation; and
2. NMHU Center for Advocacy Resources Education & Support (CARES), which provides educational outreach and coordinates trainings for students, faculty and staff.

## **Procedures**

First, if you are a victim/complainant of a sex offense, get to a safe place. Then, obtain necessary medical and behavioral health treatment.

Next, NMHU strongly encourages victims/complainants of a sex offense to report the incident in a timely manner. Time is a critical factor for collection and preservation of evidence.

## **Confidential Reporting Options:**

A sex offense of any kind should be reported ***confidentially*** to one or more of the following:

- NMHU Center for Advocacy Resources Education & Support (CARES) (505) 454-3529 or (505) 795-3665 (after-hours)
- Student Health Center (505) 454-3218
- NMHU Counseling Center (505) 454-3085

Additionally, anyone who holds a license to provide counseling, or is a religious or pastoral counselor, and is acting in that capacity, is a confidential person to whom you may report. While confidentiality can be maintained at one of the designated confidential reporting places or persons, aggregate data shall be submitted to be included in NMHU's Annual Security Report. If the incident warrants an emergency notification to the campus, notice shall be given through the standard emergency notification protocol.

## **Non-Confidential Reporting Options:**

A sex offense of any kind should be reported to one or more of the following:

- Title IX Coordinator
- On-Campus Emergency Number (Campus Police) (505) 454-3278/5555
- Off-campus emergency number 911
- New Mexico State Police (505) 425-6771
- Las Vegas Police Department (505) 425-7504
- After-Hours Rape Crisis (off campus) (505) 425-1048
- Dean of Students (505) 454-3020
- Residence hall staff in any residence hall
- Student adviser

If a reporting party requests confidentiality, a written request shall be made to the Title IX Coordinator. A decision to grant or deny the request will be made by the Title IX Coordinator.

The University shall take all reasonable steps to respond and investigate consistent with the request so long as the University is not prevented from responding effectively and stopping the harassment of any member of the campus.

### **Reporting Process:**

Making a report to law enforcement does not obligate a victim/complainant to pursue the matter through the criminal justice system. However, in certain circumstances, the state may bring charges against the perpetrator without the cooperation of a victim. Regardless of whether a victim pursues the matter through the criminal justice system, the victim of a sex offense is encouraged to obtain an exam to collect evidence that might not be available later and could assist the victim and law enforcement in any subsequent prosecution. Ideally, a victim of a sex offense should not wash, douche, use the toilet or change clothing prior to an exam.

Once a report is made to NMHU Center for Advocacy Resources Education & Support (CARES), Student Health Center, Dean of Students, student adviser or residence hall staff member regarding an incident involving a sex offense, the victim shall be informed of the following rights:

- The victim/complainant's option to notify law enforcement and to receive assistance from NMHU personnel in doing so. NMHU shall comply with a victim's request for assistance in notifying law enforcement.
- Access to opportunities for counseling, mental and behavioral health, and services for victims of domestic violence, dating violence, stalking and sex offenses, including sexual assault, both on campus and in the community. The list of available resources is attached to this policy and is also available online at [www.nmhu.edu/prevention](http://www.nmhu.edu/prevention).
- If the victim/complainant is a student, the option to change the student's academic, on-campus living situation, transportation, and/or work schedule if requested, and if the changes are reasonably available.
- The victim/complainant's option to request an order of protection and to receive assistance from NMHU personnel in doing so. NMHU shall comply with a victim's request for assistance in requesting an order of protection.

### **Incidents Involving Students:**

If NMHU is notified of an incident involving a sex offense committed by a student, NMHU shall investigate the matter promptly and appropriately and take action pursuant to NMHU's Student Code of Conduct. Pursuant to the NMHU Student Code of Conduct, the standard of evidence used in administrative responses/investigations of alleged nonacademic misconduct is "preponderance of the evidence." In other words, when examining and assessing evidence, the dean of students and/or designee shall consider whether the incident is more likely than not to have occurred. If determined by preponderance of evidence to have occurred, the dean of students and/or designee shall decide whether the student code of conduct or other University policies were violated and follow the student discipline process in determining disciplinary

measures or sanctions to be imposed in response to and as a consequence of the offense. NMHU's Student Code of Conduct is found in the Student Handbook.

### **Disciplinary Hearings:**

At any disciplinary hearing pursuant to the Student Code of Conduct, both the complainant and the respondent student have the right to have an adviser or support person of his/her choosing present during any meeting and hearing. The adviser/support person may not participate in the hearing itself, unless asked to do so by the hearing committee. Both the Complainant (or next of kin if Complainant is deceased) and Respondent shall be notified in writing of the outcome of any disciplinary proceeding brought alleging a crime of sexual violence as defined under this policy. The notification shall only include the name of the Respondent, the violation alleged, and the sanction(s), imposed by NMHU on the Respondent. Compliance with these provisions does not constitute a violation of section 444 of the General Education Provisions Act (20 USC 1232g), also known as the Family Educational Rights and Privacy Act (FERPA).

Discipline imposed on a student who is found to have violated the Student Code of Conduct may include:

- Warning
- Probation
- Suspension
- Expulsion
- Withholding Diploma
- Transcript Notation
- Organizational Sanctions
- Restrictions
- Restitution
- Disciplinary Reprimand, and
- Other Actions listed in the Student Handbook, Page 91-92

Both Complainant and Respondent have the opportunity to appeal the result of an institutional disciplinary proceeding pursuant to the appeal process outlined in the Student Code of Conduct.

### **Incidents Involving an NMHU Employee:**

If NMHU is notified of an incident involving a sex offense committed by an employee, faculty or staff member, NMHU shall investigate the matter and take action as appropriate pursuant to NMHU's policies and the Collective Bargaining Agreement, if applicable. The Complainant and the Respondent shall have the right to have an adviser of his/her choosing throughout the process and shall be notified of the outcome of the process.

Sanctions for an employee found to have violated NMHU policy include:

- Warning – Written or Verbal
- Performance Improvement Plan
- Required Counseling
- Required Training or Education

- Demotion
- Loss of Annual Pay Increase
- Suspension without Pay
- Suspension with Pay
- Revocation of Tenure
- Termination
- Other Actions listed in the Employee Handbook, Policy 425

### **Violations of Policy and the Law:**

The administrative investigation and administrative hearing is separate from any and all criminal proceedings. They may run parallel to one another, but the administrative process is not dependent on whether or not a criminal investigation is initiated, criminal charges are filed, and adjudication through the courts occurs. The standard of evidence in criminal proceedings is “beyond a reasonable doubt.”

Respondents may be accountable to both law enforcement authorities and to the University for acts that constitute violations of the law and of University policies. Those accused of violations are subject to University disciplinary proceedings despite any pending civil or criminal proceedings or any other University proceedings regarding the same conduct. Accused individuals may not challenge the University disciplinary proceedings on the grounds that criminal charges, civil actions, or other University proceedings regarding the same incident are pending or have been terminated, dismissed, reduced, or not yet adjudicated. Likewise, the imposition of discipline through the University, in addition to criminal or civil penalties, does not constitute double jeopardy. The University will refer matters to federal and/or state authorities for prosecution when appropriate.

### **Training:**

Administrative investigations and administrative hearings in cases involving a sex offense committed by a student shall be conducted by officials who, at a minimum, receive annual training on the issues related to dating violence, domestic violence, sexual assault and stalking, as well as how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability. Administrative investigations and administrative hearings in cases involving a sex offense committed by an employee will be conducted pursuant to the Collective Bargaining agreement, when applicable.

If you have any questions about this policy or would like more information regarding domestic violence, dating violence, stalking, or a forcible or non-forcible sex offense, including sexual assault, rape and date rape, please contact the NMHU Center for Advocacy Resources Education & Support (CARES) at (505) 454-3529 or [preventviolence@nmhu.edu](mailto:preventviolence@nmhu.edu) or view available resources online at [www.nmhu.edu/prevention](http://www.nmhu.edu/prevention).

The President or his/her designee is authorized to and shall prepare procedures to implement this policy statement.

## **Definitions**

New Mexico Highlands University main campus and center campuses adopt, for the purpose of this policy, the following definitions for offenses:

### **Sex Offenses**

#### ***Sexual Harassment***

Sexual harassment may take many forms, including unwelcome conduct of a sexual nature and conduct that is not necessarily sexual in nature, but which is unwelcome and directed at a person because of his or her gender.

A. Sexual harassment involving unwelcome conduct of a sexual nature can include sexual advances, requests for sexual favors or other verbal, non-verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- Submission or rejection of such conduct by an individual is used as the basis for employment decisions affecting the employee; or
- Such conduct is so severe or pervasive that it affects an individual's work performance or creates an intimidating, threatening or abusive working environment.
- Sexual harassment is distinguished from voluntary sexual relationships because the conduct directed toward you is unwelcome. Conduct of a sexual nature is unwelcome when you did not request or invite the conduct and view the conduct as offensive and undesirable.
- Conduct of a sexual nature can include, but is not limited to:
  - Verbal, non-verbal or physical sexual advances,
  - Pressure for sexual favors,
  - Touching of a sexual nature,
  - Sexual assault,
  - Sexual gestures,
  - Sexual or "dirty" jokes,
  - Offensive personal jokes and comments of a sexual nature,
  - Displaying or distributing sexually explicit drawings, pictures and written materials.

B. Sexual harassment can also involve acts of verbal, non-verbal or physical aggression, intimidation or hostility based on sex or sex-stereotyping, but not involving conduct of a sexual nature, when such conduct is so severe or pervasive that it affects a student's/employee's ability to work, participate in or benefit from an education program or activity or creates an intimidating, threatening or abusive educational environment. Such conduct can include, but is not limited to:

- Offensive jokes or comments, not necessarily sexual in nature, but directed at a person because of his or her gender or sexual orientation,
- Threats or insinuations that lack of sexual favors will result in reprisals, withholding support for promotions or transfers, change of assignments, or poor performance reviews,
- Sexual harassment against an employee/student can involve any member of the New Mexico Highlands University community, including faculty, staff, employees, students, guest speakers, visiting students or contractors.

The University's Sexual Harassment Policy can be found in the Student Handbook on page 84 and in the Employee Handbook under Policy 350.

### ***Sexual Assault***

Sexual assault is any sexual act directed against another person, forcibly and/or against that person's will where the victim is incapable of giving consent; including anal and oral intercourse; the use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person; and the inappropriate touching or fondling of another's intimate areas.

*Consent:* is an affirmative, unambiguous, and conscious decision by each participant to engage in mutually agreed upon sexual activity. Consent is voluntary meaning that it must be given without coercion, force, threats, or intimidation. Consent can be withdrawn at any time. Consent to sexual activity in one occasion is not consent to engage in sexual activity on another occasion. Even when in a relationship, there must be mutual consent for sexual activity. Consent must be given and received on-going. Once consent is revoked, the sexual activity must stop immediately. Consent cannot be granted if a person is incapacitated due to alcohol or drugs; is unconscious or coming in and out of consciousness, asleep or physically helpless, or suffers from a mental condition that does not allow him/her to understand the nature of the act.

### **Domestic Violence**

Dating violence is behavior that includes physical, sexual, verbal, emotional, or psychological abuse by a current or former spouse, by a person who the complainant shares a child in common, by a person who has or is cohabitating with the complainant, or any other person who is protected under the domestic violence laws.

*Abuse:* means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable fear of imminent bodily injury to themselves. Abuse may include:

- Physical abuse involves hitting, slapping, pushing, punching, kicking, and choking. It could involve the use of a weapon or object to hurt or threaten to hurt someone. It also includes throwing, smashing, or breaking personal items and hurting or killing pets.
- Sexual abuse involves pressuring or forcing someone to engage in nonconsensual acts, including producing pictures or videos.
- Verbal abuse involves put downs, name calling, yelling, or swearing.
- Emotional abuse involves ignoring someone or using looks or actions or speaking in ways that are threatening.

### **Dating Violence**

Dating violence is behavior that includes physical, sexual, verbal, emotional, or psychological abuse by a person who is or has been in a relationship that is romantic or of an intimate nature with the complainant. (The definition of abuse is reflected in the section above)

### **Stalking**

Stalking is a pattern of repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that would cause a reasonable person to feel fear. Stalking can include repeated, unwanted, intrusive, and frightening communication from the perpetrator by phone, mail, and/or email; repeatedly leaving or sending victim unwanted items, presents, or flowers; following or lying in wait for the victim at places such as home, school, work or recreation place; making direct or indirect threats to harm the victim, friends, family, or pets; damaging or threatening to damage the victim's property; harassing victim through the internet and/or posting information or spreading rumors about the victim on the internet, in a public place, or by word of mouth; and obtaining personal information about the victim.

*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.

### **Resources**

Highlands University recognizes the harm caused by sexual violence and the need to provide services to students and to educate the University community regarding this issue. Educational programs and local resources for the main and center campuses can be viewed at <http://www.nmhu.edu/campus-life/hu-cares/resources/>