



## **Title IX Policy and Procedures**

<b>TABLE OF CONTENTS</b>	
Title IX Policy Introduction	3
Presumption of Non-responsibility	3
Equity and Process	3
Applicability/Jurisdiction	3-4
Title IX Coordinator	4
Employees' Responsibilities to Report	4
Definitions	5-6
Prohibited Conduct – Sexual Misconduct	6
Quid Pro Quo Sexual Harassment	6
Title IX Sexual Harassment	6
Clery/VAWA offenses definitions	6
Sexual Assault (Sex Offenses)	6
The Federal definition (from VAWA) of Domestic Violence	7
The Federal definition (from VAWA) of Dating Violence	7
The Federal definition (from VAWA) of Stalking	7
Consent	8
Retaliation and False or Inaccurate Accusations	8
Amnesty for Other Violations	9
Training for Title IX Personnel	9
Record Management	9
Modification and Review of Policy	10
Grievance Process	10
Response to Sexual Harassment	10
Reporting Options	10
Confidentiality	10
Release of Information	11
Supportive Measures	11
Interim Action	11
Presumption of Not Responsible	11
Prompt Timeframes	11
Report vs Formal Complaint	12
Actual Knowledge	12
Notice of Allegations	12
Advisors	12-13
Dismissal of A Formal Complaint	13
Consolidation of Complaints	13
Informal Resolution	13
Investigation	13-14
Standard of evidence	14
Objective Evaluation of Evidence	14
Rape Shield Protections	14
Privileged information	14
Hearing	15-16
Determination of Responsibility	16
Appeals	17
Appendix	18-24

# Title IX Policy

## 1. Introduction

It is the policy of CNM to comply with Title IX of the Education Amendments of 1972 which prohibits discrimination based on sex in CNM's educational programs and activities and extends to admission and employment. Title IX also prohibits retaliation for asserting or otherwise participating in claims of sex discrimination. Inquiries about the application of Title IX may be referred to the College's Title IX Coordinator, to the Assistant Secretary of the Department of Education or both.

The intent of the Title IX policy is to ensure CNM provides due process for all students and employees. On May 6, 2020, the Department of Education issued new final regulations that strengthen Title IX protections for survivors of sexual harassment and ensure due process in campus proceedings so that all students can pursue an education free from sex discrimination. The final rule amends Title IX regulations that were issued by the former U.S. Department of Health, Education, and Welfare in 1975.

The behaviors that fall under the policy include three types of misconduct on the basis of sex, all of which jeopardize the equal access to education. The behaviors covered under Title IX include the following:

1. A school employee conditioning an educational benefit or service upon a person's participation in unwelcome sexual conduct (often called "quid pro quo" harassment);
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity; or
3. Sexual assault, dating violence, domestic violence, or stalking (as those offenses are defined in the Clery Act, 20 U.S.C. § 1092(f), and the Violence Against Women Act, 34 U.S.C. § 12291(a)).

If a behavior does not meet the threshold for Title IX, the behavior will be adjudicated under the Student Code of Conduct or the Code of Conduct and Workplace Behavior policy.

### a. **Presumption of Non-responsibility**

Respondents are presumed non-responsible of allegations until a formal grievance process has been conducted. Reasonable exceptions include emergency removals, administrative leave for employees, and informal resolution of a formal complaint that resolves the allegations without a full investigation but may result in sanctions.

### b. **Equity and Process**

Due process protections are important for both the complainant and respondent. Both parties will be treated equal and have access to a grievance process. CNM will strive to provide a transparent grievance process with strong procedural protections regardless of whether the student or employee is a complainant or respondent.

### c. **Applicability/Jurisdiction**

This policy addresses Title IX Sexual Harassment, which encompasses all of the prohibited conduct described below that occurs on the basis of sex and meets all of the following requirements:

1. Occurs within the United States; and
2. Occurs within the College's education program or activity, meaning a) locations, events, or circumstances over which the College exercises substantial control over both the respondent and the context in which the Title IX Sexual Harassment occurs, and b) any building owned or controlled by a student organization that is officially recognized by the College; and
3. At the time of filing a formal complaint, a complainant is participating in or attempting to participate in the education program or activity at the College.

If a behavior does not meet the threshold for Title IX jurisdiction, the behavior may be adjudicated under the Student Code of Conduct or the Code of Conduct and Workplace Behavior policy.

## 2. Title IX Coordinator

The Title IX Coordinator has the responsibility to coordinate efforts to comply with all Title IX regulations. CNM's Title IX Coordinators are the [Dean of Students](#) and the [Executive Director of Human Resources](#). Their complete contact information may be found in several locations on the CNM website and is made available to all students and employees, as well as, applicants for admission and employment. The Title IX Coordinator may receive reports of sex discrimination, including sexual harassment, in person, mail, by telephone, or by email. Reports may be made at any time, including non-business hours. In addition, the Title IX Coordinator(s) have the responsibility to inform the CNM community of the existence of this policy and other Title IX related policies and materials at least once per calendar year. The Title IX Coordinator may designate trained staff (designee) to help with Title IX responsibilities.

Title IX Coordinators' Contact Information:

Christopher Cavazos  
 Dean of Students  
 Address:  
 CNM Main Campus  
 Student Services Center  
 Room 202B  
 525 Buena Vista SE  
 Albuquerque, NM 87106  
[ccavazos@cnm.edu](mailto:ccavazos@cnm.edu)  
 505-224-4000 x51240

Juliane Ziter  
 Executive Director of Human Resources  
 Address:  
 CNM Main Campus  
 Ted Montoya Building  
 Room TM 104E  
 525 Buena Vista SE  
 Albuquerque, NM 87106  
[JZiter@cnm.edu](mailto:JZiter@cnm.edu)  
 505-224-4000 x51294

## 3. Employees' Responsibilities to Report

CNM will respond promptly in a manner that is not deliberately indifferent when actual knowledge of sexual harassment in a CNM educational program or activity against a person in the United States is received by the Title IX Coordinator or an official with authority.

CNM's officials who have authority to institute corrective measures on behalf of CNM, also known as an "official with authority" include the following: Security, Human Resources, and Supervisors (vice presidents, deans, associate deans, directors, and program and department supervisors).

#### 4. Definitions

Actual knowledge –notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school.

Advisor - An advisor is an individual chosen by a complainant or a respondent to provide guidance during the grievance process.

Business day - is defined as Monday through Friday, excluding holidays.

Complainant – an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Decision maker– (who cannot be same person as the Title IX Coordinator or the investigator) evaluates the evidence and determines responsibility. A decision-maker must issue a written determination regarding responsibility with finding of fact, conclusions about whether the alleged conduct occurred, rationale for the results as to each allegation, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to the complainant.

Designee- trained staff designated to help the Title IX Coordinator with Title IX responsibilities.

Employee - There are two categories of Central New Mexico Community College (CNM) employees: instructional and non-instructional. Instructional employees include exempt and non-exempt instructors and instructional support employees working on an academic-year basis. Instructional support employees include instructional technicians, laboratory technicians and tutors. Non-instructional employees are exempt and non-exempt employees hired to perform duties other than student instruction.

Inculpatory evidence - evidence that shows, or tends to show, a person's involvement in an act, or evidence that can establish guilt.

Exculpatory evidence - evidence favorable to the defendant in a criminal trial that exonerates or tends to exonerate the defendant of guilt.

Formal complaint – a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment.

Hearing Panel – decision-makers that will preside over the live hearing.

Investigator - the investigator is charged with gathering information and determining what occurred.

Program or activity - an educational program or activity includes locations, events, or circumstances over which the institution exercises control over both the respondent and the context in which the sexual harassment occurred.

Remedies –action designed to restore or preserve the complainant’s equal educational access.

Respondent – an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Sanctions – action taken to end the misconduct, prevent its recurrence, and remedy its effects on the reporting party and the College community.

Standard of evidence - All reports of alleged sexual misconduct will be reviewed and investigated thoroughly using a preponderance of the evidence standard of review. This preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence.

Student - "student" means any person enrolled or taking a course at CNM, which includes all campuses and all other CNM instructional locations, and any student organization recognized by CNM.

Supportive measures – individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.

Witness - an individual who has direct knowledge of or information about the allegation being made

## 5. Prohibited Conduct – Sexual Misconduct

CNM is committed to providing an environment that is free of sexual misconduct. This policy applies to all faculty, staff, students and third parties, regardless of sexual orientation or gender identity. Sexual misconduct represents a serious threat to the well-being of all individuals on CNM campuses or centers and will not be tolerated. CNM requires all employees, students and third parties to report suspected violations of this policy whether or not the alleged conduct occurred on or off campus.

The prohibited behaviors listed below are serious offenses and will result in College discipline.

- a. **Quid Pro Quo Sexual Harassment** - An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct
- b. **Title IX Sexual Harassment** - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity

### Clery/VAWA offenses definitions:

**Sexual Assault (Sex Offenses):** Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

- c. **Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This definition includes any gender of victim or perpetrator.
- d. **Fondling:** The touching of the private parts of another person for the purpose of sexual gratification, without the consent of the victim, including

instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

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

g. **The Federal definition (from VAWA) of Domestic Violence: a felony or misdemeanor crime of violence committed:**

- by a current or former spouse or intimate partner of the victim;
- by a person with whom the victim shares a child in common;
- by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; 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 which the crime of violence occurred

h. **The Federal definition (from VAWA) of Dating Violence: the term "dating violence" means violence committed by a person:**

- who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- The existence of such a relationship shall be determined based on the reporting party's statement with consideration of:
  - The length of the relationship;
  - the type of relationship;
  - the frequency of interaction between the persons involved in the relationship
- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse
- Dating violence does not include acts covered under the definition of domestic violence

i. **The Federal definition (from VAWA) of Stalking: engaging in a course of conduct directed at a specific person that would cause a reasonable person to:**

- fear for the person's safety or the safety of others; or
- suffer substantial emotional distress

**For the purposes of this definition:**

- Course of conduct means two or more acts, including, but not limited to, acts which the stalker directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property

- Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling

j. **Consent**

In order to give effective consent, a person must be of legal age. Consent means a voluntary and informed agreement to engage in sexual activity. Consent can be withdrawn at any time. The following list details situations where consent is invalid.

- A person who is incapacitated, unconscious, or asleep cannot give valid consent.
- A person with an intellectual disability may not be able to give valid consent.
- Valid past consent does not imply future consent. In other words, each instance of sexual activity is looked at separately to determine if there was consent by all parties.
- Silence or failure to resist does not imply consent.

Additionally, the use of force or threats to obtain consent renders the consent invalid.

## 6. **Retaliation and False or Inaccurate Accusations**

No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation.

It is important to protect individuals from false, unsubstantiated, or inaccurate accusations. An employee or student who knowingly provides false information or knowingly makes a false report of suspected misconduct or a subsequent false report of retaliation, or who knowingly provides false answers or information in response to an ongoing investigation will be subject to disciplinary action. Holding a party accountable for a knowingly false or bad faith report shall not constitute retaliation by the Recipient. Retaliation complaints may be filed according to the grievance procedures for sex discrimination.

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

## **7. Amnesty for Other Violations**

In order to encourage reports of conduct that is prohibited under this policy, CNM may offer leniency with respect to other violations which may come to light as a result of such reports, depending on the circumstances involved.

## **8. Training for Title IX Personnel**

CNM's Title IX Personnel are unbiased and free from conflicts of interest. All Title IX personnel receive annual training that do not rely on sex stereotypes and promote impartial investigations and adjudications of formal complaints of sexual harassment. Title IX Personnel include the Title IX Coordinator, any investigator, any decision-maker, and any person who facilitates an informal resolution. Any individual designated as a Title IX Coordinator, Investigator, decision-maker, or any person designated to facilitate an informal resolution process does not have a bias for or against complainants or respondents generally or an individual complainant or respondent.

Title IX personnel receive annual training that must not rely on sex stereotypes and must support impartial investigations and adjudications of formal complaints of sexual harassment. Title IX personnel will receive training on the definition of sexual harassment, the scope of the College's education program or activity, how to conduct an investigation and grievance process (including hearings, appeals, and informal resolution processes), and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Title IX personnel will receive training on the technology used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant.

- Decision makers will be trained on the use of technology to manage meetings and the concept of relevance of questions and evidence.
- Investigators will be trained on relevance and to create an investigative report that fairly summarizes relevant evidence.

See Appendix for Training Details.

## **9. Record Management**

CNM will maintain Title IX records for a period of seven years. The Title IX records include: investigatory reports, transcripts and/or recordings of hearings, records of actions, any appeal and the results, any informal resolution and the results, and all Title IX personnel training materials.

CNM will maintain records of each sexual harassment investigation, including any determination regarding responsibility and any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the College's education program or activity.

## **10. Modification and Review of Policy**

CNM reserves the right to modify this policy to take into account applicable legal requirements or extraordinary circumstances. At regular intervals, the College will review this policy to determine whether modifications should be made.

## **Grievance Process**

### **1. Introduction**

Central New Mexico Community College (CNM) prohibits acts of sexual violence. CNM is committed to providing students and employees with a learning and/or working environment that is safe and harassment-free. Alongside HR, the Dean of Students office administers Title IX policy which prohibit discriminating on the basis of sex in any education programs or activities operated by recipients of Federal financial assistance.

### **2. Response to Sexual Harassment**

CNM will respond promptly in a manner that is not deliberately indifferent when actual knowledge of sexual harassment in an educational program or activity is received. A fair and impartial investigation will be conducted to determine what occurred and the necessary steps will be taken to resolve the situation.

Complainants and respondents will be treated equitably by offering supportive measures to a complainant, and by following a grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. CNM may conduct an individualized safety and risk analysis to determine if an emergency removal of a student respondent or administrative leave for an employee is necessary.

### **3. Reporting Options**

Any person who feels he or she has been a victim of sexual misconduct or who witnesses an instance of alleged sexual misconduct is required to immediately report the matter to the appropriate Title IX Coordinator (Dean of Students and Executive Director of Human Resources) or any official with authority (see Employee's Responsibility section for list). Special arrangements may be made to prevent continuation of the alleged misconduct. Victims should also contact CNM's Security Department, (505) 224-3001, to file a report.

### **4. Confidentiality**

Both the complainant and respondent shall be treated respectfully throughout the investigation process. CNM will keep confidential the identity of individuals making reports or complaints of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by FERPA or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

CNM cannot promise absolute confidentiality. Either party has the right to discuss the allegations under investigation or to gather and present relevant evidence.

## **5. Release of Information**

If the CNM Safety and Security Department becomes aware of a serious and continuing threat to the campus community, the Safety and Security Department may issue a timely warning in accordance with federal regulation to protect the health or safety of the community. The Safety and Security Department may also publish a reported incident in the daily crime log or annual security report. CNM will not disclose the name or other personally identifiable information of the complainant unless it has received the express consent of the complainant or unless the release of such information is consistent with legal requirements or mandated by law.

## **6. Supportive Measures**

Supportive measures are available for the complainant and respondent of a Title IX case and are free of charge. They are individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment. Supportive measures provided to parties will be kept confidential, to the extent possible. Supportive measures may include:

- Counseling (available for employees through the EAP)
- Extension of deadlines
- Course related adjustments
- Modification of schedules
- Campus escorts
- Mutual no-contact orders
- Changes in work schedules
- Leave of absence
- Increase security or monitoring

## **7. Interim Action**

Emergency removal may be necessary if a student respondent poses an immediate risk to the physical health or safety of complainant or another person on campus as a result of an allegation. An individualized safety and risk assessment will be conducted to determine that an immediate threat justifies removal. The respondent will be provided notice and an opportunity to challenge the decision immediately following the removal.

A non-student employee respondent may be placed on administrative leave during the pendency of a grievance process.

## **8. Presumption of Not Responsible**

A respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

## **9. Prompt Time Frames**

Students and employees may expect reasonable prompt time frames for conclusion of the grievance process. Including reasonably prompt time frames for filing and resolving appeals and any informal resolution processes available. The grievance process will allow for the temporary delay or the limited extension of time frames for good cause with written notice to

the complainant and the respondent of the delay or extension and the reasons for the action.

## **10. Report vs Formal Complaint**

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Once a report is received the Title IX Coordinator will contact the complainant to discuss availability of supportive measures, and to explain the process to file a formal complaint. A formal complaint is required to initiate a grievance process or informal resolution. The Title IX Coordinator or the parents/guardians of minors may also sign a formal complaint.

## **11. Actual Knowledge**

When a report of sexual harassment is received by the Title IX Coordinator or an official with authority, the Title IX Coordinator will promptly contact the complainant confidentially to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the option and process for filing a formal complaint.

## **12. Notice of Allegations**

Upon receipt of a formal complaint, CNM will provide written (including electronic, such as email) notice to the parties who are known. The notice will include CNM's grievance process and any informal resolution process, reported allegation of sexual harassment, statement that the respondent is presumed not responsible for the alleged conduct, may have an advisor of choice, who may be, but is not required to be an attorney, and CNM's policy regarding making false statements or inaccurate allegations. Depending on the specifics of the allegation, sufficient details will include the identities of the parties involved, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known, and will be provided to the parties such that the respondent understands what they are accused of and can respond. This need not be as detailed as the eventual preliminary investigative report. The written notice will inform the parties that they may inspect and review evidence. Additional notices will be provided as needed for allegations that were not included in the initial notice. Details will be provided with sufficient time to prepare a response before any initial interview. A written notice will include a statement that a determination of responsibility of allegations will be made at the conclusion of the grievance process.

## **13. Advisors**

Throughout the grievance process, each party may have an advisor of their choice; parties may change their advisor at any time during the grievance process. An advisor is an individual chosen by a complainant or a respondent to provide guidance during the grievance process. An advisor may be a member or non-member of the Community, and may be an attorney. If a party does not have an advisor, CNM will provide without fee or

charge to that party, an advisor of our choice, who may be, but is not required to be, an attorney.

The advisor may attend any interview or meeting connected with the grievance process, but the advisor may not actively participate in interviews and may not serve as a proxy for the party.

During the live hearing, cross examination and questioning must be conducted by the party's advisor of choice, and *never* by the party personally.

Any individual who serves as an advisor is expected to make themselves available for meetings and interviews throughout the investigation process, as well as the hearing, as scheduled by the College.

#### **14. Dismissal of A Formal Complaint**

A formal complaint may be dismissed if the conduct alleged in the formal complaint does not constitute sexual harassment as defined by the Title IX regulations, did not occur in a CNM education program or activity, or did not occur against a person in the United States. These complaints may be adjudicated under the Student Code of Conduct or Code of Conduct and Workplace Behavior policy. Parties will be notified promptly if a complaint is dismissed and the reason for dismissal, written notice will be provided simultaneously to the parties.

Formal complaints may also be dismissed if a complainant notifies the Title IX Coordinator in writing their wish to withdraw the formal complaint or any allegations, if the respondent is no longer enrolled or employed by CNM, or specific circumstances prevent CNM from gathering evidence sufficient to reach a determination as to the formal complaint or allegations.

Parties will receive prompt written notice of dismissal and the reasons therefore. Situations may still be appropriate to adjudicate under the Student or Employee Code(s) of Conduct.

#### **15. Consolidation of Complaints**

CNM may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

#### **16. Informal Resolution**

An informal resolution process may be available once a formal complaint has been filed. The informal resolution process is a voluntary, structured interaction between the complainant and respondent to resolve concerns at the earliest stage possible. Parties will be provided written notice regarding the informal resolution process, which both parties must submit their voluntary written consent. At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint. CNM anticipates that cases eligible for an informal resolution process will be completed within 60 days of parties' election to use the informal resolution process. Informal resolutions are not available to resolve allegations that an employee sexually harassed a student. See Appendix for Informal Resolution.

#### **17. Investigation**

CNM must investigate the allegations in any formal complaint and will send written notice to

both parties (complainant and respondent) and their advisors of the allegation(s) upon receipt of a formal complaint. The burden of gathering evidence and burden of proof will remain with CNM. In the course of the investigation notice will be given to all relevant parties that will include the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings. Parties will be given equal opportunity to present fact and expert witnesses and other inculpatory and exculpatory evidence. Both parties will have an equal opportunity to inspect and respond to evidence. Parties are allowed to discuss the allegations or gather evidence. Written notice will be given to a party and witness whose participation is invited or expected with sufficient time to prepare for the investigation.

Both parties will be given equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint. Which will also include evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. The preliminary report of all evidence will be provided to both parties and their advisors to inspect and will be given ten (10) business days to submit a written response, which the investigator will consider prior to completion of the investigative report.

The investigator will provide an investigative report that fairly summarizes relevant evidence to both parties and their advisors at least ten (10) business days prior to a hearing or other time of determination regarding responsibility, for their review and written response.

**a. Standard of evidence**

All reports of alleged Title IX misconduct will be reviewed and investigated thoroughly using a preponderance of the evidence standard of review. This preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence.

**b. Objective Evaluation of Evidence**

An objective evaluation of all relevant evidence will be conducted, including both inculpatory and exculpatory evidence. The credibility determinations will not be based on a person's status as a complainant, respondent or witness.

**c. Rape Shield Protections**

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

**d. Privileged information**

Privileged information will not be used in the grievance process, unless the person holding such privilege has waived the privilege. The College cannot access, consider, disclose, or otherwise use privileged records unless the College obtains

that party's voluntary, written consent to do so for a grievance process.

## **18. Hearing**

CNM's grievance process will provide for a live hearing with cross-examination. The live hearing will be scheduled no less than ten (10) business days after the investigator provides the final investigative report to both parties and their advisors.

A panel of three individuals (Hearing Panel) will hear every case. One of the individuals on the Hearing Panel will serve as the Hearing Panel Chair. The Hearing Panel Chair will have absolute discretion with respect to administering the hearing. The Hearing Panel Chair will be responsible for maintaining an orderly, fair, and respectful hearing and will have broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending individual, including a party, witness, or advisor. The hearing will be recorded. The recording will be the property of CNM and will be available to the respondent and reporting party for examination.

Prior to the hearing, the Hearing Panel will be provided with the case file, investigative report, and any responses to the investigative report. All members of the Hearing Panel shall review the case file (including the parties' responses), ask questions during the hearing as they deem appropriate, and participate in the deliberations leading to a determination of responsibility.

At least five (5) business days prior to the hearing, the parties and their advisors will be notified of the hearing date, time, and location (or relevant electronic information, if the hearing will be conducted remotely).

In advance of the hearing, parties will be required to identify witnesses to be called at the hearing, as well as to provide a brief written explanation of the information each witness would be asked to provide, such that the Hearing Panel can determine their relevance. The Hearing Panel has the discretion to exclude from the hearing evidence/witnesses/questions deemed irrelevant.

At the Hearing Panel's discretion, pre-hearing meetings may be scheduled with each of the parties and their advisors to explain the hearing protocol.

Cross-examination at the live hearing will be conducted directly, orally, and in real time by the party's advisor of choice and never by the complainant or respondent. Parties may request to participate in the live hearing in separate rooms with technology enabling the Hearing Panel and parties to simultaneously see and hear the party or the witness answering questions.

Only relevant cross-examination and other questions may be asked of a party or witness. Before a question is answered, the decision-makers must first determine whether the question is relevant before a party answers a cross-examination or other question and explain any decision to exclude a question as not relevant. Rape Shield Protections, questions and evidence about a Complainant's prior sexual behavior are not relevant, unless offered to prove that someone other than the Respondent committed the alleged

misconduct or are offered to prove consent; and privileged information will not be allowed unless the party holding such privilege has waived privilege.

The Hearing Panel will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. If a party does not have an advisor present, CNM will provide without fee or charge to that party, an advisor of our choice.

#### **19. Determination of Responsibility**

The Hearing Panel (decision-makers), who will not be the same person(s) as the Title IX Coordinator or investigator(s), will issue a written determination regarding responsibility. The preponderance of the evidence standard will be used to reach determination. The notice will be provided to the parties simultaneously. The official determination regarding responsibility becomes final either on the date that CNM provides parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. The Title IX Coordinator will be responsible for implementation of any remedies. Sanctions and remedies are consistent with the Student Code of Conduct and Employee Code of Conduct. CNM may impose sanctions. For employees, sanctions may include written or verbal warning, referral to the Employee Assistance Program, demotion, a no contact directive, training, placement on leave with or without pay or termination of employment. For students, sanctions may include written or verbal warning, disciplinary hold on academic records, probation, degree revocation, suspension or expulsion. The sanctions stated herein should not be considered an exhaustive list.

The Written Determination will include a rationale of how the decision maker's outcome was determined, and will discuss the following:

- Identification of the allegations potentially constituting sexual harassment,
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held,
- Findings of fact supporting the determination,
- Conclusions regarding the application of the recipient's code of conduct to the facts,
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant, and
- The recipient's procedures and permissible bases for the complainant and respondent to appeal.

## **20. Appeals**

CNM will offer both parties an opportunity to appeal the outcome of the Grievance Procedure. The appeal will be considered on the following basis:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Either party may appeal. Parties will be provided written information about how to file an appeal and written notice if the other party appeals. Both parties have a reasonable, equal opportunity to submit a written statement in support of or challenging the outcome. The party requesting an appeal must submit a written statement in support of or challenging the outcome to the Title IX Coordinator within five (5) business days from receipt of determination of responsibility notice. The Title IX Coordinator will provide notice regarding the appeal request and the appeal procedures to both parties. The decision-maker(s) for the appeal will not be the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator. Written notice of the appeal decision and the rationale for that decision will be provided simultaneously to both parties.

*Release date September 24, 2021.*

## **21. Appendix**

- Informal Resolution Process
- Preservation of Evidence
- Protection Orders
- Community Resources
- Education and Prevention
- Training materials used to train Title IX personnel (see website for materials)

## Informal Resolution Process

The informal resolution process is a voluntary, remedies-based process designed to provide members of the CNM community with an option to resolve certain disputes with other members of the CNM community in a forum that is separate and distinct from the College's formal grievance processes under the Title IX Sexual Harassment Policy. Subject to approval by the Title IX Coordinator (see below), the informal resolution process is available in matters involving a student complainant and a student respondent as well as in matters involving a faculty/staff complainant and a faculty/staff respondent; the informal resolution process is not available in matters involving a student and an employee.

The purpose of the informal resolution process is to eliminate the conduct which has been reported by the complainant (and prevent its recurrence), and place both individuals in a position to pursue their academic, working, and non-academic interests in a safe, respectful, and productive educational and working environment. Under this process, there will be no disciplinary action taken against a respondent, and the resolution will not appear on the respondent's disciplinary record.

Prior to participating in the informal resolution process, parties will be provided a written notice disclosing the requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

The following are features of the informal resolution process:

- Participation in the informal resolution process is completely voluntary.
  - No party will be required to participate in the informal resolution process and the College will not require, encourage, or discourage the parties from participating in the informal resolution process.
  - All parties must consent in writing to participation in the informal resolution process.
- The College may offer the informal resolution process only under the following circumstances:
  - A formal complaint has been filed by the complainant;
  - The College's Title IX Coordinator has determined, through an initial assessment, that the alleged conduct, if substantiated, would constitute Title IX Sexual Harassment.
  - The College's Title IX Coordinator has determined that the informal resolution process is appropriate for this matter.
- All parties will be provided with a written notice disclosing the allegations, the requirements of the informal resolution process, and any outcomes resulting from participating in the informal resolution process.
- At any time prior to signing an informal resolution agreement, any party has the right to withdraw from the informal resolution process and resume the formal grievance process.
- Under the informal resolution process, there will be no disciplinary action taken against a respondent, and the resolution will not appear on the respondent's disciplinary record. If a formal complaint is filed against the respondent in a subsequent matter under the Title IX Sexual Harassment policy, the respondent's participation in a prior informal

resolution process will not be considered relevant and will not be taken into account in the resolution of the subsequent complaint.

- Parties may be accompanied by a member of the College community who will serve as a support person to any meeting related to the informal resolution process. However, the College support person may not actively participate in meetings and may not serve as a proxy for the party. Any individual who serves as a College support person is expected to make themselves available for meetings as scheduled by the College. The College (including any official acting on behalf of the College) has the right at all times to determine what constitutes appropriate behavior on the part of a College support person and to take appropriate steps to ensure compliance with this policy.
- Any agreements reached as part of the informal resolution process must be approved by the Title IX Coordinator in order to ensure consistency with the College's federal obligations. If the Title IX Coordinator determines at any time prior to the signing of the informal resolution agreement that the informal resolution process is no longer appropriate, the Title IX Coordinator may terminate the process.
- Upon signing the informal resolution agreement, the parties are bound by its terms and cannot opt for a formal grievance process based on the conduct alleged in the formal complaint.
- Failure to comply with the signed agreement may result in disciplinary action for either party.
- If the parties' circumstances change significantly, they may request a supplemental agreement; the Title IX Coordinator will determine whether it is appropriate to proceed.

Release date July 30, 2021.

## **Preservation of Evidence**

Many sexual misconduct offenses are also crimes in the state or locality where the incident occurred. Victims of sexual misconduct often have legal options that they can pursue. These options are available solely at the discretion of victims. CNM encourages those individuals who have experienced sexual misconduct to preserve evidence to the greatest extent possible. CNM does not conduct forensic tests as part of the investigation process; however, the results of such testing conducted by law enforcement may be submitted as evidence to be considered as part of CNM's investigation process.

Some general evidence preservation guidelines are:

1. Do not alter, dispose of, or destroy any physical evidence.
2. Preserve evidence of electronic communications by saving them and taking screen shots of all relevant electronic messages.
3. If there is suspicion that a drink may have been drugged, inform a medical assistance provider or law enforcement so they can attempt to collect possible evidence from the drink or through other means.

Evidence preservation guidelines for sexual assault

- Victims of sexual assault who wish to preserve evidence should go to a hospital or medical facility immediately to seek a medical examination for evidence collection.
- Victims of sexual assault should not shower, bathe, douche, smoke, brush teeth, eat, drink or change clothes or bedding before going to a medical facility.
- Victims who do change clothes or bedding should not wash the clothes or worn bedding used during the assault and should bring these items to the hospital in a non-plastic bag.

## Protection Orders

CNM complies with New Mexico State law in recognizing orders of protection. Any person who obtains an order of protection from New Mexico or any reciprocal state should provide a copy to the Security Department. When someone within the CNM Security department is approached by an individual wishing to file a protective order, the requesting party will receive immediate assistance from security staff, and with a security Supervisor's approval, law enforcement will be contacted. The requesting party will also be offered support resources.

Upon receipt of a Civil/Domestic Order the Security Department will engage a Security Supervisor to manage the situation and ensure an incident report is generated. Assure the safety of complainant/petitioner and contact law enforcement if the situation appears to be escalating into violence. Confirm any and all associations of the parties in the Order to CNM (student, staff or faculty). Verify identity of person presenting the document. The Incident will be forwarded to the Dean of Students office and/or the CNM Human Resources office. The Order will remain in an archive file for a minimum of three years.

A complainant may then meet with Security, Dean of Students office or Human Resources to develop a plan to reduce the risk of harm while on campus or coming and going from campus. This plan may include, but is not limited to: mutual no contact orders, safety escorts, special parking arrangements, changing classroom/work site location, or working with Achievement Coaches on alternative class possibilities, allowing a student to complete assignments from home, or allowing an employee to develop a flexible work schedule, etc.

Civil/Domestic Orders in Albuquerque are filed with the Second Judicial District Court.

Second Judicial District Court  
400 Lomas Blvd NW  
Albuquerque, NM 87102  
Phone: (505) 841-8400  
Phone 2: (505) 841-6737 or (505) 841-6731 Domestic Violence Division  
URL: <https://www.nmcourts.gov/seconddistrictcourt/>

## Community Resources

A complete list of community resources may be found at <https://www.cnm.edu/cnm-community/community-resources>. *Fees may apply.*

### Counseling and Mental Health

- AGORA Crisis Center  
505 - 277 - 3013 ( 24 hrs. a day)  
1 - 866 - HELP- 1 – NM  
Online Chat: [www. agoracare. org](http://www.agoracare.org)
- New Mexico Crisis and Access Line  
855 - 662 - 7474 ( 24 hrs. a day)  
855 - 466 - 7100 Peer- to- Peer Warmline  
call- 3 : 30 pm- 11 : 30 pm, text- 6 : 00 pm- 11 : 00 pm
- UNM Manzanita Counseling Center  
505 - 277 – 7311

### Health Services

- Casa de Salud  
505 - 907 - 8311
- First Choice Community Healthcare  
505 - 873 - 7400

### Victim Advocacy

- Albuquerque Family Advocacy Center  
505 - 243 - 2333
- Enlace Comunitario  
505 - 246 - 8972
- Albuquerque SANE Collaborative  
505 - 884 - SANE ( 7263 )— Emergency  
505 - 883 - 8720
- Rape Crisis Center of Central NM  
505 - 266 - 7711 — 24 - Hour Hotline  
505 - 266 - 7712 — office
- Domestic Violence Resource Center  
505 - 248 - 3165 — 24 hrs. a day

### Legal Assistance

- New Mexico Legal Aid 505 - 633 - 6694

### Visa and Immigration Services

- American Civil Liberties Union of NM  
505 - 266 - 5915
- Catholic Charities  
505 - 724 - 4670 - Main Switchboard  
505 - 724 - 4662 or 505 - 724 - 4631 - CICLA

## **Education and Prevention**

CNM's educational programming consists of primary prevention and awareness programs for all incoming students and new employees and ongoing awareness and prevention campaigns. Programs and campaigns for all students and employees are designed to provide ongoing education and programming around issues of sexual violence – including sexual assault, domestic violence, dating violence, and stalking. Campaign strategies include face-to-face presentations, online training programs, printed and electronic materials, self-defense programming, etc.

### **Updated Title IX trainings are now available for employees and students.**

- Online Training for Employees are access through Talent Management. Log into your myCNM account. <https://lp5portal.cnm.edu/>
- Online Training for Students is available through the Dean of Students Office. <https://www.cnm.edu/depts/dean-of-students/title-ix-campus-save-act>

## Training

Annual training is required for Title IX personnel. Title IX personnel include the Title IX Coordinator, any investigator, any decision-maker, and any person who facilitates an informal resolution (such as mediation). Personnel is trained to serve impartially including specific training for investigators and decision-makers on issues of relevance. Title IX personnel trainings are available for review on the CNM Title IX webpage.

- Orientation to role of Decision Maker
- Title IX Overview\_Decision Maker\_Session 1
- Title IX Overview\_Decision Maker\_Session 2
- Orientation to Role of Advisor
- Title IX Advisor Training: Session 1
- Title IX Advisor Training: Session 2 and ATIXA Advising the Reporting Party, and discussion (online video)
- Overview Grievance Process
- Debrief of ATIXA Training (Title IX and Beyond)
- ATIXA Training "Title IX and Beyond"
- ATIXA Training for Advisors
- ATIXA Training for Coordinators and Administrators Certification – Level One
- Trauma Informed Interviewing (*please refer to the Rape Crisis Center of NM for content*)