



## OFFICE OF COMPLIANCE, ETHICS & EQUAL OPPORTUNITY

### ANALYSIS OF CLAIMS

This document outlines the types of claims accepted and investigated by the [Office of Compliance, Ethics & Equal Opportunity \(CEEEO\)](#). Each numbered criterion for each claim must be met for a decision maker (Hearing Officer) to establish a policy violation. When investigating claims, CEEEO will collect evidence that tends to prove or disprove the elements outlined for each claim. Policies checked below each charge indicate which University Administrative Policy governs the claim.

#### **Protected Statuses**

Age; Ancestry; Citizenship or Immigration Status; Color; Disability (mental or physical); Ethnicity; Gender; Gender Identity; Genetic Information; Medical Condition; Military Status; National Origin; Pregnancy and Related Conditions; Race; Religion; Sex (including sex stereotypes and sex characteristics); Sexual Orientation; Spousal Affiliation; Veteran Status.

#### **Applicable UNM Policies**

- [University Administrative Policy \(UAP\) 2720: Prohibited Discrimination and Equal Opportunity \(Interim\)](#)
- [UAP 2740: Sexual Harassment Including Sexual Assault \(Interim\)](#)
- [UAP 2745: Clery Act Compliance](#)
- [UAP 2310: Reasonable Accommodation for Students with Disabilities](#)
- [UAP 2760: Pregnancy or Related Conditions \(Interim\)](#)
- [UAP 3110: Reasonable Accommodation for Employees, Job Applicants, and Participants with Disabilities](#)
- [Student Code of Conduct](#)

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## I. DISCRIMINATION & HARASSMENT

### A. DIFFERENTIAL TREATMENT

1. The Complainant was treated differently because of their protected status.
  - Evidence of differential treatment may include whether the Respondent treated the Complainant differently than another individual with a different selected status than Complainant, given the same or similar circumstances.
2. The decision maker also considers whether the Respondent had a legitimate, nondiscriminatory reason for any difference in treatment.
3. The decision maker considers whether the asserted nondiscriminatory reason for the difference in treatment was pretext:
  - Respondent's reasons for the different treatment have no basis in fact,
  - Even if based in fact, Respondent was not motivated by the stated reasons,
  - The reasons are insufficient to motivate an adverse employment decision.

UAP 2720    UAP 2740    Code of Conduct

### B. DISPARATE IMPACT

1. There is an applicable policy or procedure,
2. There is a significant disparity in outcome based on a protected status when the policy or procedure is applied,
3. There is a substantial, legitimate need for the policy or practice, and
4. There is an alternative policy or practice that is equally effective in meeting the institution's goals and results in lower disparity.

UAP 2720    UAP 2740    Code of Conduct

### C. HOSTILE ENVIRONMENT

1. The conduct was unwanted,
2. The conduct was reasonably perceived to be based on a protected category,
3. The conduct was sufficiently serious (i.e., severe or pervasive),
  - The decision maker considers whether the conduct was physically threatening and/or humiliating in assessing the frequency and/or severity of the conduct.
4. The conduct was objectively offensive, and
5. The conduct has the purpose or effect of
  - Denying or limiting a person's ability to participate in or benefit from the University's programs, services, opportunities, or activities,
  - Unreasonably interfering with an employee's work performance and/or advancement or a student's academic performance and/or advancement, or
  - Creating an intimidating, hostile, or offensive work or academic environment.

UAP 2720    UAP 2740    Code of Conduct

## II. SEXUAL HARASSMENT

### A. QUID PRO QUO

1. An employee agent, or other person authorized by UNM,
2. Conditioned the provision of an aid, benefit, or service under UNM's education program or activity in the United States on an individual's participation in unwelcome sexual conduct,
3. The conduct was so severe and pervasive that it effectively denies a person equal access to the recipient's education program or activity,
4. The conduct occurred within a UNM program or activity, and
5. Was against a person in the United States.

UAP 2720    UAP 2740    Code of Conduct

### B. HOSTILE ENVIRONMENT (**non-Title IX**)

1. The conduct was unwanted,
2. The conduct was reasonably perceived to be of a sexual nature,
3. The conduct was sufficiently serious (i.e., severe or pervasive),
  - The decision maker considers whether the conduct was physically threatening and/or humiliating in assessing the frequency and/or severity of the conduct.
4. The conduct was objectively offensive, and
5. The conduct has the purpose or effect of
  - Denying or limiting a person's ability to participate in or benefit from the University's programs, services, opportunities, or activities,
  - Unreasonably interfering with an employee's work performance and/or advancement or a student's academic performance and/or advancement, or
  - Creating an intimidating, hostile, or offensive work or academic environment.

UAP 2720    UAP 2740    Code of Conduct

### C. HOSTILE ENVIRONMENT (**Title IX**)

1. The conduct was unwanted,
2. The conduct was reasonably perceived to be of a sexual nature,
3. The conduct was so severe and pervasive that it effectively denies a person equal access to the recipient's education program or activity,
4. The conduct occurred within a UNM program or activity, and
5. Was against a person in the United States.

UAP 2720    UAP 2740    Code of Conduct

**III. VIOLENCE AGAINST WOMEN ACT (VAWA) OFFENSES:  
Sexual Assault, Dating Violence, Domestic Violence & Stalking**

**A. SEXUAL ASSAULT**

An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's UCR program and falls within the regulatory scope of the [Violence Against Women Act \(VAWA\)](#). Generally, sexual assault is any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent. See Appendix III for UNM's consent policy and definitions.

***Rape***

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1. The penetration, no matter how slight, of the vagina or anus with any body part or object, or the oral penetration by a sex organ of another person,
2. Without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her temporary or permanent mental incapacity; or
3. The attempted penetration or oral penetration, as outlined above, where the Respondent:
  - Demonstrated the intent to commit rape,
  - Took substantive steps towards committing the rape, and
  - Were it not for some type of defense, interruption, or intervention, the completed act would have met the definition of rape as described above.

↳ ***Non-Title IX***

4. The conduct took place
  - Within a UNM education program or activity,
  - On property owned or controlled by UNM or one of its officially recognized student organizations, or
  - At a UNM-sponsored event, or
5. Was so severe or pervasive and objectively offensive, that it has the purpose or effect of:
  - Denying or limiting a person's ability to participate in or benefit from the University's programs, services, opportunities, or activities,
  - Unreasonably interfering with an employee's work performance and/or advancement or a student's academic performance and/or advancement, or
  - Creating an intimidating, hostile, or offensive work or academic environment.

UAP 2720    UAP 2740    Code of Conduct

↳ ***Title IX***

4. The conduct took place within a UNM education program or activity, which includes locations, events, or circumstances over which UNM exercised substantial control over both the Respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the University,
5. The conduct occurred in the United States, and
6. At the time of filing a formal complaint, the Complainant was participating in or attempting to participate in a UNM program or activity.

UAP 2720    UAP 2740    Code of Conduct

## Fondling

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1. The touching of the private body parts (i.e., buttocks, breast, or groin),
2. Of another person,
3. For the purpose of sexual gratification,
4. Without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity; or
5. The attempted touching, as outlined above, where the Respondent:
  - Demonstrated the intent to commit fondling,
  - Took substantive steps towards committing the fondling, and
  - Were it not for some type of defense, interruption, or intervention, the completed act would have met the definition of fondling as outlined above.

### ↳ **Non-Title IX**

6. The conduct took place
  - Within a UNM education program or activity,
  - On property owned or controlled by UNM or one of its officially recognized student organizations, or
  - At a UNM-sponsored event, or
7. Was so severe or pervasive and objectively offensive, that it has the purpose or effect of:
  - Denying or limiting a person's ability to participate in or benefit from the University's programs, services, opportunities, or activities,
  - Unreasonably interfering with an employee's work performance and/or advancement or a student's academic performance and/or advancement, or
  - Creating an intimidating, hostile, or offensive work or academic environment.

UAP 2720    UAP 2740    Code of Conduct

### ↳ **Title IX**

6. The conduct took place within a UNM education program or activity, which includes locations, events, or circumstances over which UNM exercised substantial control over both the Respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the University,
7. The conduct occurred in the United States, and
8. At the time of filing a formal complaint, the Complainant was participating in or attempting to participate in a UNM program or activity.

UAP 2720    UAP 2740    Code of Conduct

## Incest

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1. Sexual intercourse,
2. Between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
3. The attempt to engage in sexual intercourse, as outlined above, where the Respondent:
  - Demonstrated the intent to commit incest,

- Took substantive steps towards committing the incest, and
- Were it not for some type of defense, interruption, or intervention, the completed act would have met the definition of incest as outlined above.

↳ **Non-Title IX**

4. The conduct took place
  - Within a UNM education program or activity,
  - On property owned or controlled by UNM or one of its officially recognized student organizations, or
  - At a UNM-sponsored event, or
5. Was so severe or pervasive and objectively offensive, that it has the purpose or effect of:
  - Denying or limiting a person's ability to participate in or benefit from the University's programs, services, opportunities, or activities,
  - Unreasonably interfering with an employee's work performance and/or advancement or a student's academic performance and/or advancement, or
  - Creating an intimidating, hostile, or offensive work or academic environment.

UAP 2720    UAP 2740    Code of Conduct

↳ **Title IX**

4. The conduct took place within a UNM education program or activity, which includes locations, events, or circumstances over which UNM exercised substantial control over both the Respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the University,
5. The conduct occurred in the United States, and
6. At the time of filing a formal complaint, the Complainant was participating in or attempting to participate in a UNM program or activity.

UAP 2720    UAP 2740    Code of Conduct

**Statutory Rape**

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1. Sexual intercourse,
2. With a person who is under the statutory age of consent; or
3. The attempt to engage in sexual intercourse, as outlined above, where the Respondent:
  - Demonstrated the intent to commit statutory rape,
  - Took substantive steps towards committing the statutory rape, and
  - Were it not for some type of defense, interruption, or intervention, the completed act would have met the definition of statutory rape as outlined above.

*In New Mexico, the legal age of consent is 16. ([NM Stat § 30-9-11 \(2023\)](#): Criminal Sexual Penetration).*

↳ **Non-Title IX**

4. The conduct took place
  - Within a UNM education program or activity,

- On property owned or controlled by UNM or one of its officially recognized student organizations, or
  - At a UNM-sponsored event, or
5. Was so severe or pervasive and objectively offensive, that it has the purpose or effect of:
- Denying or limiting a person’s ability to participate in or benefit from the University’s programs, services, opportunities, or activities,
  - Unreasonably interfering with an employee's work performance and/or advancement or a student's academic performance and/or advancement, or
  - Creating an intimidating, hostile, or offensive work or academic environment.

UAP 2720    UAP 2740    Code of Conduct

↳ **Title IX**

4. The conduct took place within a UNM education program or activity, which includes locations, events, or circumstances over which UNM exercised substantial control over both the Respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the University,
5. The conduct occurred in the United States, and
6. At the time of filing a formal complaint, the Complainant was participating in or attempting to participate in a UNM program or activity.

UAP 2720    UAP 2740    Code of Conduct

**B. DATING VIOLENCE**

1. Violence committed against the Complainant,
2. By a person who is in or has been in a social relationship of a romantic or intimate nature with the Complainant; or
3. The attempt to commit violence, as outlined above, where the Respondent:
- Demonstrated the intent to commit dating violence,
  - Took substantive steps towards committing the dating violence, and
  - Were it not for some type of defense, interruption, or intervention, the completed act would have met the definition of dating violence as outlined above.

The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition—

- 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.

↳ **Non-Title IX**

4. The conduct took place
- Within a UNM education program or activity,



- On property owned or controlled by UNM or one of its officially recognized student organizations, or
  - At a UNM-sponsored event, or
5. Was so severe or pervasive and objectively offensive, that it has the purpose or effect of:
- Denying or limiting a person’s ability to participate in or benefit from the University’s programs, services, opportunities, or activities,
  - Unreasonably interfering with an employee's work performance and/or advancement or a student's academic performance and/or advancement, or
  - Creating an intimidating, hostile, or offensive work or academic environment.

UAP 2720    UAP 2740    Code of Conduct

↳ **Title IX**

4. The conduct took place within a UNM education program or activity, which includes locations, events, or circumstances over which UNM exercised substantial control over both the Respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the University,
5. The conduct occurred in the United States, and
6. At the time of filing a formal complaint, the Complainant was participating in or attempting to participate in a UNM program or activity.

UAP 2720    UAP 2740    Code of Conduct

**C. DOMESTIC VIOLENCE**

1. A felony or misdemeanor crime of violence,<sup>1</sup>
2. Committed against the Complainant,
3. By:
  - A current or former spouse of intimate partner of the victim,
  - A person with whom the victim shares a child in common,
  - A person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner, or
  - 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;<sup>2</sup> or
4. The attempt to commit violence, as outlined above, where the Respondent
  - Demonstrated the intent to commit domestic violence,
  - Took substantive steps towards committing the domestic violence, and

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<sup>1</sup> See

APPENDIX 1

A

Quick Guide to New Mexico Laws Pertaining to Domestic Violence for a list of “crime of violence” and who meets the definition of a “household member” in New Mexico.

<sup>2</sup> If the conduct occurred in a state other than New Mexico, consult with the Clery Coordinator and the Title IX Coordinator.

- Were it not for some type of defense, interruption, or intervention, the completed act would have met the definition of a felony or misdemeanor act of domestic violence as outlined above.

↳ **Non-Title IX**

5. The conduct took place
  - Within a UNM education program or activity,
  - On property owned or controlled by UNM or one of its officially recognized student organizations, or
  - At a UNM-sponsored event, or
6. Was so severe or pervasive and objectively offensive, that it has the purpose or effect of
  - Denying or limiting a person's ability to participate in or benefit from the University's programs, services, opportunities, or activities,
  - Unreasonably interfering with an employee's work performance and/or advancement or a student's academic performance and/or advancement, or
  - Creating an intimidating, hostile, or offensive work or academic environment.

UAP 2720    UAP 2740    UAP 2745<sup>3</sup>    Code of Conduct

↳ **Title IX**

5. The conduct was on the basis of sex,
6. The conduct took place within a UNM education program or activity, which includes locations, events, or circumstances over which UNM exercised substantial control over both the Respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the University,
7. The conduct occurred in the United States, and
8. At the time of filing a formal complaint, the Complainant was participating in or attempting to participate in a UNM program or activity.

UAP 2720    UAP 2740    Code of Conduct

**D. STALKING**

1. Engaging in a course of conduct (i.e., more than one incident),
2. That is directed at the Complainant, and
3. Would cause a reasonable person to
  - Fear for the Complainant's own safety or the safety of others, or
  - Suffer substantial emotional distress; or
4. The attempt to engage in a course of conduct, as outlined above, where the Respondent:
  - Demonstrated the intent to commit stalking,
  - Took substantive steps towards committing the stalking, and
  - Were it not for some type of defense, interruption, or intervention, the completed act would have met the definition of stalking as outlined above.

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<sup>3</sup> UAP 2745 is not a policy for which a violation can be found. However, UAP 2745 grants UAP 2720 and/or the Student Code of Conduct the authority to charge a Respondent with domestic violence or stalking that is not based on a protected status.

For the purposes of this definition—

- “Course of conduct” means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
- “Reasonable person” means a reasonable person under similar circumstances and with similar identities to the Complainant.
- “Substantial emotional distress” means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

↳ **Non-Title IX**

5. The conduct took place
  - Within a UNM education program or activity,
  - On property owned or controlled by UNM or one of its officially recognized student organizations, or
  - At a UNM-sponsored event, or
6. Was so severe or pervasive and objectively offensive, that it has the purpose or effect of:
  - Denying or limiting a person’s ability to participate in or benefit from the University’s programs, services, opportunities, or activities,
  - Unreasonably interfering with an employee’s work performance and/or advancement or a student’s academic performance and/or advancement, or
  - Creating an intimidating, hostile, or offensive work or academic environment.

UAP 2720    UAP 2740    UAP 2745<sup>4</sup>    Code of Conduct

↳ **Title IX**

6. The conduct was on the basis of sex,
7. The conduct took place within a UNM education program or activity, which includes locations, events, or circumstances over which UNM exercised substantial control over both the Respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the University,
8. The conduct occurred in the United States, and
9. At the time of filing a formal complaint, the Complainant was participating in or attempting to participate in a UNM program or activity.

UAP 2720    UAP 2740    Code of Conduct

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<sup>4</sup> UAP 2745 is not a policy for which a violation can be found. However, UAP 2745 grants UAP 2720 and/or the Student Code to Conduct the authority to charge a Respondent with domestic violence or stalking that is not based on a protected status.

#### **IV. SEXUAL EXPLOITATION<sup>5</sup>**

1. A person taking non-consensual or abusive sexual advantage of another person,
2. In a way that does not constitute Sexual Harassment,
3. For their own benefit or for the benefit of anyone other than the person being exploited; or
4. The attempt to take non-consensual or abusive sexual advantage of another person, as outlined above, where the Respondent:
  - Demonstrated the intent to commit sexual exploitation,
  - Took substantive steps towards committing the sexual exploitation, and
  - Were it not for some type of defense, interruption, or intervention, the completed act would have met the definition of sexual exploitation as outlined above.

UAP 2720    UAP 2740    Code of Conduct

#### **V. RETALIATION**

1. The Complainant engaged in a good-faith, civil rights protected activity, including but not limited to: opposing an individual or University's discriminatory conduct or practice; initiating a complaint with CEEO; responding to a CEEO complaint; acting as a witness in a CEEO investigation; declining to participate in a CEEO investigation; requesting an accommodation for a religious practice, disability, or pregnancy-related condition,
2. The Respondent had knowledge of the Complainant's participation in the protected activity,
3. The Complainant suffered an adverse employment or academic action after Respondent gained knowledge of the Complainant's participation in protected activity, and
4. But for the Complainant's protected activity, the adverse action would not have occurred.

The decision maker will also consider whether the Respondent treated similarly situated individuals (who did not participate in protected activity) in a different manner, given the same or similar circumstances. The decision maker will further consider whether there is a legitimate, non-retaliatory reason for the conduct.

UAP 2720    UAP 2740    Code of Conduct

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<sup>5</sup> See

## **VI. FAILURE TO ACCOMMODATE**

### **A. RELIGIOUS PRACTICE OR BELIEF**

1. The Complainant has a sincerely held religious belief that conflicts with an employment/academic requirement,
2. The Complainant requested an accommodation for the religious practice, and
3. The Respondent failed to provide a reasonable accommodation to the Complainant.

UAP 2720    UAP 2740    Code of Conduct

### **B. DISABILITY**

1. The Complainant is a qualified individual with a disability,
2. The Complainant requested an accommodation for that disability,
3. The Complainant is able to perform the essential functions of the job, or meet the essential requirements of the academic course at issue with or without a reasonable accommodation, and
4. The Respondent failed to provide a reasonable accommodation to the Complainant.

UAP 2720    UAP 2740    Code of Conduct

### **C. PREGNANCY OR PREGNANCY-RELATED CONDITION**

1. The Complainant is pregnant, lactating, or has a pregnancy-related condition,
2. The Complainant requested a modification/accommodation for their pregnancy, pregnancy-related condition(s), or lactation, and
3. The Respondent failed to provide a reasonable modification/accommodation to the Complainant.

UAP 2720    UAP 2740    Code of Conduct

**VII. FAILURE TO REPORT**

**A. HARASSMENT OR DISCRIMINATION**

1. The Respondent is a responsible employee (faculty, administrator, and/or supervisor) under UAP 2720,
2. The Respondent knew of potential discrimination or harassment under Policy 2720, and
3. The Respondent failed to report the potential policy violation to CEEO or the Director of Equal Opportunity as soon as practical after having received the information.

UAP 2720    UAP 2740    UAP 2745    Code of Conduct

**B. SEX DISCRIMINATION, SEXUAL HARASSMENT, OR SEXUAL MISCONDUCT**

1. The Respondent (the UNM employee alleged to have not reported a potential Title IX violation) is a responsible employee under UAP 2740 or UAP 2720,
2. The Respondent knew of a potential violation under UAP 2740 or UAP 2720, whether it involved a UNM student, faculty, or staff member, and
3. The Respondent failed to report the potential policy violation to CEEO or the Title IX Coordinator within 24 hours or as soon as practical after having received the information.

UAP 2720    UAP 2740    UAP 2745    Code of Conduct

**C. CRIME**

1. The Respondent is a Campus Security Authority (CSA) under UAP 2745,
2. The Respondent was notified by CEEO of their CSA status,
3. The Respondent received a report of or personally witnessed an alleged crime or attempted crime within UNM's Clery Act geography, and
4. The Respondent failed to report the crime to CEEO, UNMPD, or the Clery Coordinator as soon as practical after having received the information.

UAP 2720    UAP 2740    UAP 2745    Code of Conduct

## **APPENDIX 1**

### **A Quick Guide to New Mexico Laws Pertaining to Domestic Violence**

#### ***“Crimes of Violence” in NM***

Under New Mexico’s [Family Violence Protection Act](#) and the [Crimes Against Household Members Act](#), felony or misdemeanor crimes of violence include:

- Assault (physical or sexual),
- Battery (physical or sexual), and
- Damage to or deprivation of property.

Examples include physical harm, severe emotional distress, bodily injury or assault, a threat causing imminent fear of bodily injury by any household member, criminal trespass, criminal damage to property, repeatedly driving by a residence or workplace, telephone harassment, harassment; or harm or threatened harm to children.

Domestic abuse does not include use of force in self-defense or the defense of another.

#### ***“Household Members” in NM***

As used in the New Mexico [Family Violence Protection Act](#) and the [Crimes Against Household Members Act](#), household members include a:

- Current or former spouse,
- Parent,
- Current or former stepparent,
- Current or former parent-in-law,
- Grandparent,
- Current or former grandparent-in-law,
- Child, stepchild, or grandchild,
- Co-parent of a child, or
- A person with whom a person has had an intimate (i.e., continuing personal) relationship.

Examples of relationships that do not fit the legal definition of a household member:

- ≠ Brother/Sister
- ≠ Aunt/Uncle
- ≠ Cousins
- ≠ Relatives of your boyfriend/girlfriend
- ≠ Relatives of your child’s family, if you’ve never been married
- ≠ Niece/Nephew
- ≠ Other in-laws, such as brother-in-law or sister-in-law
- ≠ Roommates who do not and have not had an intimate/ongoing personal relationship

*Cohabitation is not necessary to be deemed a household member.*

**APPENDIX 2**  
**Sexual Exploitation Examples**

Examples of sexual exploitation include but are not limited to:

1. Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed),
2. Invasion of sexual privacy (e.g., doxxing),
3. Knowingly making an unwelcome disclosure of (or threatening to disclose) an individual's sexual orientation, gender identity, or gender expression,
4. Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of non-consensual pornography,
5. Prostituting another person,
6. Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection,
7. Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity,
8. Misappropriating another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing),
9. Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity,
10. Knowingly soliciting a minor for sexual activity,
11. Engaging in sex trafficking,
12. Knowingly creating, possessing, or disseminating child sexual abuse images or recordings,
13. Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (i.e., Deepfakes), or
14. Creating or disseminating images or videos of child sexual abuse material.



### **APPENDIX 3**

#### **UNM Consent Policy and New Mexico Affirmative Consent Requirements**

The below derives from [University Administrative Policy 2740](#) and is consistent with [§21-1-51 NMSA](#): Policies and procedures addressing affirmative consent.

Consent is an affirmative, informed, and conscious decision to willingly engage in mutually acceptable sexual activity. Consent requires a clear affirmative act or statement by each participant to each sexual act in a sexual interaction. Consent demonstrates that the conduct in question is welcome or wanted. Relying solely on non-verbal communication can lead to miscommunication about one's intent. Confusion or ambiguity may arise at any time during a sexual interaction. Therefore, it is essential that each participant makes clear their willingness to continue at each progression of the sexual interaction. Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on UNM to determine if its policy has been violated.

Sexual activity will be considered to have occurred "without consent" if no clear act or statement is given. Consent may not be inferred from silence, passivity, or lack of active response alone. A person who is asleep, unconscious, or otherwise unaware of what is happening is unable to give consent. Furthermore, a current or past dating or sexual relationship is not sufficient to constitute consent in every instance, and consent to one form of sexual activity does not imply consent to other forms of sexual activity. It is the responsibility of the person initiating the sexual activity to obtain consent from their partner. Being intoxicated or under the influence of other drugs does not diminish one's responsibility to obtain consent.

#### ***Incapacitation***

The use of alcohol or drugs can limit or prevent a person's ability to freely and clearly give consent. If a person is under the influence of alcohol or drugs such that they are unable to give meaningful consent or understand the fact, nature or extent of the sexual situation, there is no consent. Intoxication alone, however, does not mean a person is incapable of consenting to sexual activity. CEEO examines the record for other behavior like stumbling or otherwise exhibiting loss of equilibrium; slurred speech or word confusion; bloodshot, glassy or unfocused eyes; vomiting, especially repeatedly; being disoriented or confused as to time or place; or loss of consciousness, when determining whether meaningful consent to sexual activity was or could have been given. Should the preponderance of the evidence in the record demonstrate that one or more such behaviors were objectively apparent at the time the alleged unconsented-to or unwelcomed sexual activity occurred, that evidence may demonstrate that the Respondent knew or should have known that the Complainant was incapable of giving meaningful consent to sexual activity due to intoxication. If the person initiating the sexual activity is also under the influence of alcohol or drugs, that does not diminish their responsibility to obtain consent, and is not a defense to charges of violation of this policy. Because it may be difficult to discern whether a sexual partner is incapacitated, it is better to err on the side of caution and assume that your partner is incapacitated and unable to give consent to the sexual activity.

In addition to alcohol or drugs, if a person's mental, physical, or psychological disability (temporary or permanent) or age impairs their ability to make an informed decision to willingly engage in sexual

activity, there is no consent. Examples include, but are not limited to instances where an individual is incapacitated, scared, physically forced, intimidated, coerced, mentally or physically impaired, passed out, threatened, isolated, or confined.

It is a defense to violation of this policy if the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment. Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent.