

STUDENT SOCIAL CODE OF CONDUCT

PART I: Introduction and Overview

This Student Social Code of Conduct, here after referred to as code, is adopted by the authority outlined in New Mexico State University Policy 3.101. It sets forth the rights and responsibilities of NMSU students; outlines the standards for social conduct; provides the types of interim measure and sanctions which may be imposed for violation of the code; provides a prompt and fair fact finding hearing, as well as an objective review process if students elect to appeal the outcome of the fact finding hearing.

The code consists of the following Parts:

Part I:	Introduction and Overview to the Student Social Code of Conduct
Part II:	Jurisdiction
Part III:	Standards for Student Social Conduct
Part IV:	Interim Measures Pending Fact Finding/Sanction Hearing; Range of Potential Sanctions for Substantiated Misconduct
Part V:	Students' Rights and Responsibilities; Student Discipline and Appeal Hearing Processes
Part VI:	Definitions

PART II: Jurisdiction

1. **On-campus:** The code applies to conduct which takes place on university premises.
2. **Off-Campus Conduct:** The code generally is not applied to conduct which occurs off campus, but the university retains the right to act in cases where there is a sufficient connection between the off campus conduct and the university. Disciplinary action imposed by NMSU may proceed, and be in addition to, any penalty that might be imposed by an off-campus authority. Examples of when off campus conduct will result in action under the code include but are not limited to the following:
 - a. Conduct at university sponsored events;
 - b. Conduct which reasonably may present a danger or threat to the health or safety of the student or others;
 - c. Conduct which significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace or causes social disorder, or
 - d. Conduct detrimental to the educational mission or interests of the university.
3. **Social Media:** As a general rule, personal use of non-NMSU social media is not governed by this code. Students should be aware, however, that online postings such as blogs, web postings, chats and social networking sites are in the public sphere and are not private unless password protected, and even then may be shared in unpredictable ways and with unintended audiences. In cases where personal and academic or professional boundaries are blurred, students should exercise discretion. Exceptions to the general rule may be made when actions or statements over social media have a sufficient connection to the university. These exceptions apply when:
 - a. the use of an electronic medium involves the use of NMSU resources (e.g. email account, NMSU electronic media, use of NMSU work time) inconsistent with the policies and procedures applicable to such use;
 - b. the use of an electronic medium involves a true threat, defined as a threat whereas a reasonable person would interpret as a serious expression of intent to inflict harm upon specific individuals;

- c. the use of an electronic medium posts material considered to be forms of illegal bullying, discriminatory or other severe and pervasive harassment, or stalking, in violation of the code or the law;
 - d. the use of an electronic medium is used to defame someone, post unlawful materials, or otherwise causes a material and unreasonable interference with the education, research public service and outreach missions of the university; or
 - e. the use of the electronic medium provides evidence of a potential violation of the code warranting investigation and potential disciplinary action.
4. **Court or Administrative Proceedings Outside of the University:** If a charged student/student organization wishes to have the hearing postponed because there is pending or possible civil or criminal litigation which the student(s) feels might be prejudice by the findings of the hearing, such postponement may be granted at the discretion of the appropriate administrator, provided that the student/student organization agrees to accept conduct probation or suspension as an interim sanction. Such probation, suspension or ban from campus will be determined and activated by the appropriate administrator and will remain in effect until a hearing is held, either at the request of the student, or upon notice to the student/student organization, at the request of the appropriate administrator, should it be decided that the postponement of the hearing is no longer appropriate.
5. **Determination of Hearing Officer:** Location of the incident shall determine who will serve as the Hearing Officer for cases which may involve the violation of the code, unless there is a challenge to impartiality or as provided in the following section (Students Holding Multiple Roles).
6. **Students Holding Multiple Roles:** Students often serve in various capacities on campus. This code applies in all instances. Depending upon the circumstances, a student may be held to higher or additional standards by other authorities on campus (e.g. Housing, Intercollegiate Athletics), which means that a student may be subject to more than one set of rules and consequences for the same action.
 - a. **Community Colleges:** Violations of the code occurring on property overseen by a specific Community College within the NMSU system will be heard by a Hearing Officer designated by that community college. The provisions of this code will be applied at the community colleges.
 - b. **On-Campus Housing Students:** Violations of the code or campus housing rules occurring within campus housing properties or parking lot assigned to on-campus housing units shall be heard by a designated Hearing Officer within the Department of Housing and Residential Life. The fact finding hearing and appeal processes described herein apply to these cases. If the alleged violation involves conduct for which deferred suspension, suspension, dismissal, or expulsion would be the appropriate sanction, then the hearing process will be managed by the Office of the Dean of Students. The Department of Housing and Residential Life may also request the Office of the Dean of Students to hear a case which may not result in deferred suspension, suspension, dismissal, or expulsion if the appropriate administrator determines there is a conflict of interest or other concern if it were to be heard within Housing and Residential Life.
 - c. **Title IX:** Students, faculty, staff who suspect or observe stalking, dating violence, domestic violence, or other conduct involving sexual discrimination, including sexual misconduct or

harassment shall be reported immediately to the university's Title IX Coordinator, the Director of the Office of Institutional Equity at: Office: (575) 646-3635; TTY : 575-646-7802; email: equity@nmsu.edu. Professional staff subject to confidential reporting laws (e.g. licensed mental health counselors and physicians) are not subject to this reporting requirement. The Title IX Coordinator ensures all reported incidents are promptly assessed and investigated in accordance with the protocols outlined in Policy 3.25 of the NMSU Policy Manual. If the investigation substantiates a violation of the code, the Office of Institutional Equity will provide a copy of the investigative report to the appropriate administrator. The appropriate administrator will review and initiate the sanction and hearing process, as well take any additional remedial action, as may be appropriate under the circumstances, consistent with the code and with Title IX.

- d. **Academic Related Conduct:** When a behavior results in the possibility of a violation of the Academic and Social Code of Conduct, the Dean of the college or designee shall work with the appropriate administrator and decide if one or both processes will be used to investigate and determine level of responsibility.
- e. **Employment:** When a student is also a student employee and violates the code while acting in the capacity of employee, then the appropriate administrator shall coordinate with the Office of Employee and Labor Relations regarding student and/or employee discipline issues.
- f. **Athletes:** When a student is also a student athlete and violates the code, the student may go through the process used by the Department of Athletics as well as the code. These two process may take place concurrently and one outcome may or may not affect the outcome of the other process.
- g. **Cadets in ROTC:** When a student is also a cadet in an NMSU ROTC program and violates the code, the student may go through the process used by the appropriate ROTC program, as well as, the code. These two processes may take place concurrently and one outcome may or may not affect the outcome of the other process.
- h. **Dual Credit/Early College High School:** If a dual credit or early college high school student is involved in an incident where a violation of the code may have occurred, NMSU has the right to charge the student for the possible violation and follow the process for investigation, hearing, and determination. The student has the same rights given to all students during this process. The NMSU Hearing Officer shall be determined by the location of the incident.

PART III: Standards for Student Social Conduct

Core Values and Behavioral Expectations

The university considers the examples described under each of the core values listed below to be inappropriate for members of the university community. The expectations for conduct are consistent with the core values applied to all students. The university encourages students, employees, and community members to report to an appropriate administrator or university police all suspected and observed misconduct. Students found responsible for violations of the Code will be subject to disciplinary sanction(s). *See Part IV* for interim measures and the range of potential sanctions.

1. **Integrity: University students exemplify honesty, honor and a respect for the truth in all of their dealings.** Behavior that violates this value includes, but is not limited to:

- a. **Falsification:** Knowingly furnishing or possessing false, falsified or forged materials, documents, accounts, records, identification, or financial instruments.
 - b. **Unauthorized Access:** Unauthorized access to any university building or unauthorized possession, duplication or use of means of access to any university building or failing to report in a timely manner a lost university identification card or key.
 - c. **Collusion:** Action or inaction with another or others to violate the code.
 - d. **Election Tampering:** Tampering with the election of any university recognized student organization.
 - e. **Taking of Property:** Intentional and unauthorized taking of university property or the personal property of another, including goods, services and other valuables.
 - f. **Stolen Property:** Knowingly taking or maintaining possession of stolen property.
2. **Community: University students build and enhance their community.** Behavior that violates this value includes, but is not limited to:
- a. **Disruptive Behavior:** Substantial disruption of university operations including obstruction of teaching, research, administration, other university activities, or authorized non-university activities which occur on campus.
 - b. **Rioting:** Causing, inciting, or participating in any disturbance that presents a clear and present danger to self or others, causes physical harm to others, or damage or destruction of property.
 - c. **Unauthorized Entry:** Misuse of access privileges to university premises or unauthorized entry to or use of buildings, including trespassing, propping or unauthorized use of alarmed doors for entry into or exit from university buildings.
 - d. **Trademark:** Unauthorized use, including misuse, of university or organizational names and images.
 - e. **Damage and Destruction:** Intentional, reckless or unauthorized damage to or destruction of university property or the personal property of another.
 - f. **ICT and Acceptable Use:** Violating the university Acceptable Use and Computing Policy (policy 2.35.1.1.1), found online at: manual.nmsu.edu.
 - g. **Gambling:** Gambling as prohibited by the laws of the State of New Mexico.
 - h. **Weapons and Other Explosive Materials/Devices:** Possession, use, or distribution of explosives (including fireworks and ammunition), guns (including air, BB, paintball, facsimile weapons, and pellet guns), or other weapons or dangerous objects such as arrows, axes, machetes, nun chucks, throwing stars, or knives with a blade longer than three (3) inches. Any object intended to be used as a weapon.
 - i. **Tobacco:** Smoking or tobacco use in any area of campus where smoking or tobacco use is prohibited.
 - j. **Fire Safety:** Violation of local, state, federal or campus fire policies including, but not limited to:

- i. Intentionally or recklessly causing a fire which damages university or personal property or which causes injury;
 - ii. Failure to evacuate a university controlled building during a fire alarm;
 - iii. Improper use of university fire safety equipment; or
 - iv. Tampering with or improperly engaging a fire alarm or fire detection/control equipment while on university property.
 - k. Ineligible Pledging or Association: Pledging or associating with a student organization without having met eligibility requirements established by the university.
 - l. Animal: Animals, with the exception of service and emotional support animals, are not allowed on campus except as may be permitted by university policy; animal owners and handlers shall abide by applicable local laws relating to the care and control of animals. See Assistive, Service, and Companion Animals on University Premises (policy 3.06).
 - m. Wheeled Devices: Skateboards, roller blades, roller skates, bicycles and similar wheeled devices are not permitted to be ridden inside university buildings, residence halls or on athletic fields or courts. Additionally, skateboards and other wheeled items may not be ridden on rails, curbs, benches, or any such fixtures that may be damaged by these activities, and individuals may be liable for damage to university property caused by these activities.
3. **Social Justice: Student recognizes that respecting the dignity of every person is essential for creating and sustaining a flourishing university community. They understand and appreciate how their decisions and actions impact others and are just and equitable in their treatment of all members of the community. They act to discourage and challenge those whose actions may be harmful to or diminish the worth of others.** Conduct that violates this value includes, but is not limited to:
- a. Discrimination: Any act or failure to act that is based upon an individual or group's actual or perceived status related to age, ancestry, color, disability, gender identity, genetic information, national origin, race, religion, serious medical condition, sex, sexual orientation, spousal affiliation, or protected veteran status that is sufficiently severe that it limits or denies the ability to participate in or benefit from the university's educational program or activities.
 - b. Harassment: Any unwelcome conduct based on actual or perceived status including: age, ancestry, color, disability, gender identity, genetic information, national origin, race, religion, serious medical condition, sex, sexual orientation, spousal affiliation, or protected veteran status. Any unwelcome conduct should be reported to campus officials, who will act to remedy and resolve reported incidents on behalf of the victim/complainant and community.
 - i. Hostile Environment: Sanctions can and will be imposed for the creation of a hostile environment when harassment is sufficiently severe, pervasive or persistent and objectively offensive that it unreasonably interferes with, limits, or denies the ability to participate in or benefit from NMSU's educational or employment program or activities.
 - ii. Bullying: Sanctions can and will be imposed for bullying when harassment is sufficiently severe, pervasive or persistent and objectively abusive that it unreasonably interferes with, limits, or denies the ability to participate in or benefit from NMSU's educational or employment program or activities.
 - c. Retaliatory Discrimination or Harassment: Any intentional, adverse action taken by any responding individual or allied third party, absent legitimate nondiscriminatory purposes, against a participant (or supporter of a participant) in a civil rights grievance proceeding or other protected activity.
 - d. Unacceptable Bystander Behavior:

- i. Complicity with or failure of any student to appropriately address known or obvious violations of the code.
 - ii. Complicity with or failure of any organized group to appropriately address known or obvious violations of the code or law by its members.
 - e. Abuse of Conduct Process: Abuse or interference with, or failure to comply in, university processes including conduct and academic integrity hearings including, but not limited to:
 - i. Falsification, distortion, or misrepresentation of information;
 - ii. Failure to provide, destroying or concealing information during an investigation or an alleged policy violation;
 - iii. Attempting to discourage an individual's proper participation in, or use of, the campus conduct system;
 - iv. Harassment (verbal or physical) or intimidation of a member of a campus conduct body prior to, during, or following a campus conduct proceeding;
 - v. Failure to comply with the sanction(s) imposed by the campus conduct system; or
 - vi. Influencing, or attempting to influence, another person to commit an abuse of the campus conduct system.
4. **Respect: University students show positive regard for each other and for the community.** Behavior that violates this value includes, but is not limited to:
 - a. Harm to Persons: Intentionally or recklessly causing physical harm or endangering the health or safety of any person.
 - b. Threatening Behavior:
 - i. Threat: Written or verbal conduct that causes a reasonable expectation of injury to the health or safety of any person or damage to any property.
 - ii. Intimidation: Intimidation defined as implied threats or acts that cause a reasonable fear of harm in another.
 - c. Bullying or Cyberbullying: Bullying or cyberbullying are repeated or severe aggressive behaviors that intimidate or intentionally harm or control another person physically or emotionally, and are not protected by freedom of expression.
 - d. Hazing: Defined as an act that endangers the mental or physical health or safety of a student, or that destroys or removes public or private property, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in a group or organization. Participation or cooperation by the person(s) being hazed does not excuse the violation. Failing to intervene may also violate this policy.
 - e. Intimate Partner/Relationship Violence: Violence or abuse by a person in an intimate relationship with another.
 - f. Stalking: Stalking is a course of unwelcome conduct directed at a specific person that would cause the person to reasonably fear for their own safety.
 - g. Sexual Misconduct: Includes, but is not limited to, sexual harassment, non-consensual sexual conduct, non-consensual sexual intercourse, or sexual exploitation.
 - h. Public Exposure: Includes deliberately and publicly exposing one's intimate body parts, public urination, defecation, and public sex acts.

5. **Responsibility: University students are given and accept a high level of responsibility to self, to others and to the community.** Behavior that violates this value includes, but not limited to:
- a. Alcohol: Use, possession, misuse or distribution of alcoholic beverages except as expressly permitted by law and university policy.
 - b. Drugs: Use, possession, sale or distribution of illegal drugs and other controlled substances or drug paraphernalia except as expressly permitted by law and university policy.
 - c. Prescription Medications: Abuse, misuse, sale, or distribution of prescription or over-the-counter medication.
 - d. Failure to Comply: Failure to comply with the reasonable directives of university officials or law enforcement officers during the performance of their duties or failure to properly identify oneself to those persons when requested to do so.
 - e. Financial Responsibilities: Failure to promptly meet financial responsibilities to the institution, including, but not limited to: knowingly passing a worthless check or money order in payment to the institution or to an official of the institution acting in an official capacity.
 - f. Health and Safety: Creation of health or safety hazards including, but limited to: dangerous pranks, hanging out of or climbing from/on/in windows, balconies, roofs.
 - g. Other Policies: Violating University, college, departmental, programmatic policies or rules, including all Residence Hall rules and regulations.
 - h. Violations of Law: Evidence of violation of local, state, or federal laws, when substantiated through the university's conduct process.

PART IV: Interim Measures Pending Fact Finding/Sanction Hearing; Range of Potential Sanctions for Substantiated Misconduct

1. Interim Administrative Action Pending Investigation or Disciplinary Hearing

- a. Interim measures may be imposed on a student or student organization, at the discretion of the Dean of Students or appropriate community college vice president, if the student is a community college student. Notice of imposition of an interim measure shall be provided to the student or student organization in writing.
- b. The student or student organization may appeal the imposition of an interim measure by submitting a written request for a meeting to review the matter to the Vice President of Student Affairs and Enrollment Management if the decision was made by the Dean of Students or the Community College President if the decision is made by a Vice President for Student Services/Success. If requested, the review meeting will be conducted within five (5) days of the receipt of the written request. The scope of the review meeting will be limited solely to the issue of the imposition of the interim measures, including requests for special arrangements during the period of interim measures.
- c. If a student's enrollment status is changed as a result of an interim measure, and the student is subsequently found not responsible for the violation, the university may:
 - i. Correct any record of the change in enrollment status in the student's permanent records and other reports in a manner compliant with State and Federal laws.

- ii. Refund to the student, at a minimum, a pro rate of any tuition/fees and other university specific fees and charges as appropriate due to the temporary change in enrollment status and in a manner consistent with the university policy and procedures.

2. Range of Interim Measures

- a. **Cease and Desist:** University officials and faculty may, under appropriate circumstances, order a student to stop an activity considered disruptive to the University.
- b. **Interim Suspension:** The Dean of Students or Vice-President of Services/Success may temporarily suspend a student or student organization when it is determined that a student's/student organization's presence adversely affects the health, safety, or welfare of the university community or a member of the university community.
- c. **Restrictions on Activities:** The Dean of Students or Vice-President of Services/Success may restrict a student's/student organization's activities when it is determined that the health, safety, or welfare of a student or members of the university community is at risk. Restrictions on activities may include, but are not limited to: registering for or attending class; accessing or contacting certain individuals (no contact order); accessing university property, facilities, resources or equipment; participating in university activities, organizations or student activities.
- d. **Restrictions by Other Authorities:** Interim measures may also be taken by other authorities based on the specific rules or requirements relating to such other authorities (e.g. academic and co-curricular programs, campus housing and intercollegiate athletics etc.)

3. Range of Potential Sanctions for Substantiated Misconduct

When an investigation substantiates, by a preponderance of the evidence, that a student/student organization, the student/student organization will be sanctioned appropriately. The sanction is intended to educate the student/student organization and to deter future misconduct. Progressive discipline is appropriate for lesser violations, however, for serious misconduct, progressive discipline is not required; the sanction should be commensurate with the seriousness of the violation. The following will be considered when determining the level of discipline (sanction): prior warnings or discipline for similar misconduct, if any; the risk of potential harm created; actual personal injury or property damage which resulted; damage to the university community, reputation or interests. One or more of the sanctions listed below may be imposed by the appropriate administrator:

- a. **Documented Verbal Warning:** This sanction is the lowest level of sanction, designed to "warn" a student that if the behavior is not changed, more serious discipline or sanctions will result.
- b. **Written Warning:** This type of sanction is designed for less serious violations of the code, for which progressive warnings are likely to be effective. The student/student organization is issued a written warning notifying the student/student organization that the behavior did not meet university standards.
- c. **Disciplinary Probation:** The placement of a student/student organization on disciplinary probation, for a certain term or indefinitely, indicates that the misconduct was a serious violation of university standards. Additional substantiated violations of the Code, whether similar in nature or not, which occurs during a probationary period will result in more serious sanctions. Probationary status also may result in restrictions being placed on a student's/student organization's activities. Examples of such restrictions include, but are not limited to: restriction of privilege to: (a.) participate in student activities or in student organizations, (b.) represent university on athletic teams, or in other leadership positions; (c.) have access to university

housing facilities or other areas on campus; (d.) have use of university resources and/or equipment; or (e.) have contact with specified person(s). A student who has been placed on indefinite disciplinary probation, or whose probation has been indefinitely noted on the transcript, may petition to have the probation lifted or the notation removed from the transcript. This petition will not be accepted if submitted prior to one calendar year from the date the probation began. Students must petition to the Dean of Students or Vice-President of Student Services/Success to have the removal of probationary status removed. The decision of the administrator is final.

- d. **Loss of University Privileges:** This sanction involves the temporary or permanent withdrawal of university privileges, including but not limited to: use of university facilities, resources, equipment, attendances at athletic functions, student union, library use, parking privilege, university computer usage, and/or residence hall or other visitation.
- e. **Restitution:** This type of sanction requires the student/student organization to pay for all or part of damages (personal injury or property) they caused or contributed to.
- f. **Community/University Service:** A student/student organization is required to complete a specified number of hours of service at one of the University's campuses, or in furtherance of the University's interests.
- g. **Educational Requirements:** This sanction may be used for lesser violations or in conjunction with other sanctions. A student/student organization may be required to complete a specified educational sanction related to the violation committed. Such educational requirements may include, but are not limited to, completion of a seminar, report, alcohol or drug assessment, presentations, and/or counseling.
- h. **Change or Revocation of Housing Assignment:** This sanction may be used when a violation of the code also constitutes a breach of the license agreement entered into by the student, or as a remedy to address claims of discrimination, harassment, bullying, stalking or other inability to get along with neighbors. The student/student organization may be required to (a.) relocate to a new university housing assignment; (b.) leave university owned housing for a specified period of time; or (c.) leave university owned housing permanently.
- i. **No Contact Order:** A directive informing the student/student organization that they are not permitted to have any contact, direct or indirect, with one or more designated persons or group(s) through any means, including personal contact, email, telephonic, electronic or third parties. No contact order directives may be issued as a sanction or may also be issued by the appropriate administrator under circumstances which do not involve student/student organization discipline.
- j. **Deferred Suspension:** A status given to a student for a defined period of time, not to exceed one year, in which the student may stay enrolled in classes but may not formally represent NMSU in any manner such as on athletic teams, intramural teams, student leadership roles, or participate in student organizations.
- k. **Suspension:** A student who is suspended shall not be enrolled and is required to leave the University for a specified period of time. The specified period of time cannot be longer than one calendar year. The student must comply with all sanctions and complete all requirements prior to re-admission. During the suspension period the student may not visit or come onto any NMSU premises without specified written permission of the Dean of Students or appropriate Vice President for Student Services/Success. Credits taken at another institution of higher education may not be accepted as transfer credits when or if the student returns to NMSU.

A student organization who is placed on suspension shall not be recognized as a chartered student organization and therefore, may not receive the recognition, rights and privileges of a chartered

student organization for a specified period of time. The specified period of time cannot be longer than one calendar year. The student organization must comply with all sanctions and complete all requirements prior to re-chartering.

1. **Dismissal:** A student who is dismissed is required to leave the university for an indefinite period of time. Students may not reenroll nor reenter university premises for a minimum of one calendar year, and then, only by petitioning and obtaining consent from the Dean of Students or appropriate Vice President for Student Services/Success. A permanent notation of dismissal is placed on the student's transcript. During the dismissal period, the student may not visit or come onto NMSU premises without specific written permission from the Dean of Students or appropriate Vice President for Student Services/Success. Credits taken at another institution of higher education may not be accepted as transfer credits when or if the student returns to NMSU.

A student organization placed on dismissal shall not be recognized as a chartered student organization and therefore, may not receive the recognition, rights and privileges of a chartered student organization for an unspecified period of time. Student organizations may not re-charter for a minimum of one calendar year, and only then, by petitioning and obtaining the consent of the Dean of Students or appropriate Vice President for Student Services/Success. The student organization must comply with all sanctions and complete all requirements prior to re-chartering.

- m. **Expulsion:** Expulsion is used as a sanction only in the most serious cases of misconduct. A student who is expelled is permanently deprived of the privilege to continue at the university in any capacity. The student may not visit or come onto any NMSU premises or NMSU sponsored events without specific written permission of the Dean of Students or appropriate Vice President for Student Services/Success.

A student organization who is given the sanction of expulsion is permanently deprived of the privileges to continue as a chartered student organization at NMSU. Therefore, the student organization loses all recognition, rights and privileges given to chartered student organizations.

- n. **Denial of Further Registration and/or Credits:** Denial of the privilege to reenroll or invalidation of credits earned is a sanction available when a student has been found to have made false, fraudulent or materially incomplete statements on official university records. Examples of such records include but are not limited to: application for admission, residence affidavit, and application for graduation.
- o. **Withholding Degrees:** Withholding issuance of a degree, diploma, certificate or official transcript pending compliance with university policies or pending completion of the processes set forth in this code, including but not limited to completion of all elements of a sanction.

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

1. Student Rights

- a. To be accompanied by an advocate at meetings or hearings related to charges.
- b. To be notified of alleged facts and evidence supporting the charge(s) at least five (5) days prior to any scheduled disciplinary hearing.
- c. To examine evidence the university has concerning the incident.
- d. To receive notice of any witnesses the university plans to call to testify at the hearing.
- e. To participate in a fact finding hearing with an impartial hearing officer: A student party to the proceedings may challenge the impartiality of a designated hearing or appeal officer. The

challenged hearing or appeal officer may elect voluntary recusal. If the challenged official does not voluntarily recuse, the Chief Judicial Officer shall determine the validity of the challenge and if applicable, appoint an alternate hearing officer.

- f. To call witnesses to present relevant testimony on behalf of the student, as determined by Hearing Officer.
- g. To question witnesses who are called to present testimony in support of the charge(s).
- h. To choose not to answer questions during the investigative process and to not testify at the disciplinary hearing, without the student's silence being treated as evidence of being responsible for violating the Code.
- i. The right to appeal the decision of the disciplinary Hearing Officer to a higher authority.

2. Student Responsibilities:

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

3. Students' Rights when Title IX is Implicated: Victims/complainants, as defined in this policy, especially with regard to alleged violations of Title IX (sexual discrimination, including sexual misconduct and harassment, sexual assault/violence, domestic violence, dating violence, stalking and other crimes of violence), have the right to special consideration and assistance during the investigation, hearing and resolution phases of the student disciplinary process. In order to ensure fairness to all parties in the proceedings, the student charged is entitled to request the same consideration:

- a. **Questioning During Investigation and Hearing:** A victim/complainant or student charged may provide a list of questions and request that they be asked during the investigative or hearing stages of the student discipline processes. In order to be considered, the questions must be submitted in writing to the Hearing Officer, as appropriate, and at least three (3) days in advance of any scheduled disciplinary hearing.
- b. **Hearing Modifications:** A victim/complainant or student charged may request reasonable alternate arrangements relating to participation in the disciplinary hearing, such as submission of questions in written form rather than verbal direct questioning, or to be allowed to provide information from a separate location. As long as the integrity of the hearing is not compromised,

and the parties and the hearing official are able to see and communicate with each witness (including the victim/complainant and the accused), reasonable requests will be granted.

- c. **Past Behavior:** A victim/complainant or student charged has a right to have past unrelated behavior excluded from the disciplinary hearing. The issue of whether past behavior is related or relevant will be determined by the Hearing Officer.
- d. **Victim Impact Statement:** If the charged student(s) is found responsible, the victim/complainant has a right to submit a victim impact statement to the Hearing Officer for consideration at the sanctioning phase only. The statement may include a description of how the victim was impacted by the conduct violation and may include recommendations for sanctions, penalties, or restitution. However, the Hearing Officer is not bound by these recommendations.
- e. **Notification:** In cases involving arson, assault, burglary, criminal homicide, destruction/damage/vandalism of property, dating violence, domestic violence, kidnapping, robbery, forcible sex offenses, non-forcible sex offense, stalking or any other crime or attempted crime of violence, the victim/complainant has a right to be notified by the Office of the Dean of Students of the final results of the investigation and disciplinary proceedings conducted with respect to the alleged offense. The notification of final results will include (1) the name of the charged student(s); (2) the violation with which the student was charged; (3) whether the student was found “responsible” or “not responsible”; and (4) any sanction(s) imposed, to the extent that the sanction may affect the victim/complainant.
- f. **Appeal:** As is the case for all violations of the code, in incidents involving violations of Title IX (sexual discrimination, including sexual misconduct and harassment, sexual assault/violence, domestic violence, dating violence, stalking and other crimes of violence); the victim/complainant and the charged student each have the right to appeal the outcome of the fact finding/sanction hearing, as outlined below in this Part V, Section 5.

4. Investigation and Educational Conference

- a. **Determination of Charges**
 - i. Alleged violations of the code may be reported to the appropriate administrator by any member of the community including but not limited to: (a.) university departments, (b.) university police, (c.) faculty, staff, or students or (d.) third parties.
 - ii. The appropriate administrator, or designee, will review the information to determine if a student/student organization will be charged with violating the code.
 - iii. The appropriate administrator, or designee, may not charge a student/student organization with a violation of the Code more than one year after the date the conduct occurred or was discovered, whichever is later.
- b. **Notification of Charges and Date/Time of Educational Conference**
 - i. The appropriate administrator or designee will notify the student/student organization in writing of the allegations and charge(s).
 - ii. The notice will include the date and time of an Educational Conference. The conference will be scheduled no earlier than five (5) days and no later than ten (10) days from the date of the notice unless requested by the student/student organization representative(s). If the time or

date of the conference is not feasible to the student/student organization representative(s), the student/student organization representative(s) must notify the appropriate office based on the information provided in the notification within two (2) business days of the scheduled Educational Conference to reschedule.

- iii. If at any time during the course of the judicial process, the appropriate administrator determines that either charges are not warranted or that insufficient evidence exist to continue, then the charges may be withdrawn, and the student/student organization representative(s) will be so notified in writing.

c. Educational Conference

- i. Educational Conferences are facilitated by individuals identified by the Chief Judicial Officer. Individual Educational Conference for cases will be delegated by the appropriate administrator.
- ii. The purpose of the Educational Conference is to review with the student/student organization representative(s) the allegations and charges, the code, the judicial process, the hearing forum, possible sanctions, and to answer questions the student/student organization representative(s) may have.
- iii. During the conference the charged student/student organization:
 1. Will be presented with a list of rights and responsibilities as a charged student/student organization. The charged student/student organization will be requested to sign the document indicating that the rights have been explained and that the student/student organization's representative understands them.
 2. Have the opportunity to accept or deny responsibility for the alleged violations. An acceptance of responsibility for the violations will constitute a waiver of the student/student organization's right to a hearing and appeal.
- iv. If the student/student organization's representative fails to attend the Educational Conference without notice of reasonable cause, the case may be forwarded to the next step in the process.

d. Hearing

- i. A student has the right to a fact finding hearing before a Hearing Officer.
- ii. The purpose of the hearing is for the university to present the evidence related to the alleged violation, provide a time to allow the accused student/student organization to give a statement or present evidence, and to hear from witnesses.
- iii. Absent a time extension, a hearing shall be scheduled no less than five (5) days from notice and no more than ten (10) days from the Educational Conference. Extensions may be granted to either the Hearing Officer (requests will be considered by the Chief Judicial Officer) or to a student, (requests will be considered by the Hearing Officer) provided all parties are notified about the request for time extension and the reason for the need for an extension.

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

- a. **Hold on Student's Record:** The University may place a hold on the records or registration of any student who fails to respond to a university disciplinary notice or fulfill any sanctions previously issued by the university. All pending disciplinary matters must be resolved prior to a student's graduation, transfer from or continued education at the university.
- b. **Standard of Proof:** The duty to prove a disciplinary case rests with the university and the standard of proof shall be preponderance of the evidence. "Preponderance of the evidence" means

that the information presented supports the findings that it was more likely than not that the violation occurred.

- c. **Advocate:** A charged student/student organization is entitled to have any one (1) person at the hearing to serve in the capacity as the Advocate. Student/student organization may consult with their advocate during the hearing process. However, this consultation must take place in a manner that does not disrupt the proceedings. The advocate shall not speak on behalf of the student, question witnesses, present information or argue before the panel. The advocate shall not serve as a witness. The student must notify the appropriate administrator no later than three (3) days prior to the hearing if the student will have an advocate present during the hearing
- d. **Confidentiality:** All hearings shall be closed and confidential.
- e. **Accommodations for Students with Disabilities:** Any student with a disability may request reasonable accommodations during the disciplinary process. This request must be made to the appropriate office which handles accommodations for students with disabilities at least three (3) days in advance of the hearing. If necessary, the Hearing Officer may postpone the hearing to provide reasonable accommodations.
- f. **Safety Procedures:** The Hearing Officer may accommodate concerns for the safety of the individuals involved by providing separate facilities or other alternatives.
- g. **Pre-hearing Information Notice:** The University will make available pre-hearing information including a copy of the hearing procedures and copies of records that will be presented by the university at the hearing. The pre-hearing information will be available at least three (3) days in advance of the hearing.
- h. **Failure to Appear:** If a charged student fails to appear, without giving notice of extenuating circumstances, the hearing may proceed in the student's absence.
- i. **Role of the Hearing Officer:**
 - i. Accept information for consideration as deemed to be relevant. Repetitive testimony offered for the same purpose is an example of evidence the Hearing Officer might deem to not be necessary.
 - ii. Make procedural decisions relating to the hearing. Examples include requests for time extensions, assertions of conflict of interest affecting impartiality of hearing officer.
 - iii. Make procedural modifications in the interest of fairness or safety.
 - iv. Take action deemed necessary to maintain order in the hearing process.
- j. **Right Not to Testify:** No student will be compelled to make self-incriminating statements.
- k. **Information:** The Hearing Officer and the charged student/student organization will be given an opportunity to provide information. This may include, but is not limited to, pertinent records, documents, written or oral statements. The student/student organization will also be given an opportunity to inspect records held by the appropriate office.
- l. **Witnesses:** The Hearing Officer and the charged student/student organization may call witnesses. In order to preserve the educational atmosphere of the hearing and to avoid creation of an adversarial environment, all questions for witnesses will be directed through the Hearing Officer. If a witness cannot appear, their written or recorded statement may be considered. Witnesses will be required to wait outside until their point of participation and will be asked to leave the hearing after being questioned.

- m. **Multiple Students Charged:** In cases involving multiple students charged from the same incident, information obtained in one hearing may be used at another hearing subject to FERPA, HIPAA and other individual privacy considerations, and provided that each charged student involved has the opportunity to review and respond to the information at their hearing.
- n. **Effective Date of Sanctions:** When the Hearing Officer's decision affects a student's academic status, the change will be effective immediately, and may only be changed based on the terms contained in the Hearing Officer's decision (e.g. a one year suspension) or based on the terms of a decision on appeal.
- o. **Decisions of "responsible" or "not responsible" on the charge(s):** The Hearing Officer's decision letter shall be based on the information presented at the hearing. The Hearing Officer shall determine whether or not the student is responsible for violating the code as charged.
- p. **Record:** There shall be a single record of all student/student organization conduct hearing and shall be maintained in the Office of the Dean of Students. This record is the official record and is the property of the university. For hearings before a Hearing Officer, the Officer's notes will become part of the record. The student/student organization may request a copy in writing which will be provided.
- q. **Notice of Hearing Officer's Decision:** The Hearing Officer shall issue a written decision letter to the student/student organization within five (5) days following the conclusion of the hearing. This time may be extended, provided the student/student organization shall be notified of any such extensions. The decision letter shall explain the basis for the Hearing Officer's finding(s) on each charge and sanction for each charge if found responsible for the charge.
- r. **Notice of Right to Appeal/Final Review:** The decision letter shall also inform the student/student organization of their right to appeal to an Appeal Officer, in writing, within five (5) days from the date of receipt of the Hearing Officer's decision letter.

6. Appeal from Decision of Hearing Officer

- a. The Appeal Officer will review the notice of intent to appeal and determine:
 - i. Whether the appeal was submitted timely; if not submitted timely, the Appeal Officer may decide to accept the appeal, if the appealing student requests a waiver of the time limit and provides the reason for the late submission which indicates an extenuating circumstance outside the student's control prevented a timely appeal; and
 - ii. Whether or not the notice of appeal states a permissible ground for appeal. If grounds for appeal have not been identified in the written notice of appeal, the appeal shall not be considered further, and the decision of the Hearing Officer will be upheld.
 - iii. Grounds for appeals are:
 - 1. procedural or prejudicial error was committed, or
 - 2. evidence not available at the time of the hearing is now available.
- b. If proper grounds for appeal have been identified, and the appeal has been deemed timely, the Appeal Officer will proceed to review the matter.
- c. Each party may submit a statement in writing explaining why they think the determination of the Hearing Officer should be upheld, reversed, or modified.

- i. The statement from the student/student organization must be included with the request for appeal.
 - ii. The statement from the Hearing Officer will be submitted to the Appeal Officer, along with the hearing record, at the time the request for appeal is received. Absent a time extension, the Hearing Officer must submit the statement and the hearing record within two (2) days of receipt of appeal. The Appeal Officer may grant a time extension, upon notice to all parties.
- d. The Appeal Officer will review the evidence presented at the hearing, any relevant policies or law, the decision of the Hearing Officer and the submittals from the parties in order to issue a decision of the appeal in writing.
 - e. The student/student organization will be notified of the decision by the Appeal Officer within five (5) days from receipt of the Request for Appeal, absent notification to all parties that additional time is needed in which to review. Delivery of the decision may be accomplished electronically to the student's official NMSU email address via the conduct database used by the university.
 - f. The decision by the Appeal Officer will be final.

7. **Records**

- a. Records of all disciplinary actions imposed within the NMSU system shall be forwarded to the Office of the Dean of Students to maintain as the official student conduct record.
- b. Students found "not responsible" or cases in which charges are dropped are considered not to have a judicial record. However, the records will be maintained by the university in accordance with applicable State record retention laws or university policy whichever is longer.

8. **Transcript Notations**

- a. A notation will be placed on the student's transcript during any period of permanent probation, suspension, dismissal or expulsion. In the case of permanent probation, suspension, or dismissal the student, after a period of one year or term of sanction whichever is longer, may request to have the notation removed from the transcript by submitting a letter to the Dean of Students or Vice President of Student Services/Success with the reason the notation should be removed. The Dean of Students or appropriate Vice President for Student Services/Success will make the determination if the notation should be removed. The Dean of Students or appropriate Vice President of Student Services/Success's decision is final.
- b. If a student is expelled, a permanent notation will be placed on the student's transcript.

PART VI: Definitions

- 1. **Advocate:** The advocate is an individual, of the student's choosing, who serves a supporting role to either the victim/complainant or to the charged student during the fact finding hearing or appeal processes. The advocate shall not actively advocate on behalf of the student, including the questioning of witnesses or the direct presentation of information to the hearing or appeal officer.
- 2. **Appeal:** The hearing review process by which a student may seek a final review of the decision made by the disciplinary Hearing Officer.

3. **Appeal Officer:** The individual who is designated, by position, to review and make a decision on appeals on each campus. The appropriate Appeal Officer shall be named in any decision letter.
 - a. Vice-President of Student Affairs and Enrollment Management – The Vice-President for Student Affairs and Enrollment Management, or designee, will serve as the appeal officer for appeals resulting from hearings held by the Office of the Dean of Students and in cases involving property owned by NMSU’s Board of Regents other than community campuses.
 - b. Community College President – The appropriate community college president will serve as the appeal officer for students appealing the outcome of fact finding/sanction hearings conducted by a community college vice president of student services/success. If the community college president is not available to review and render a decision for an appeal due to time constraints, conflict of interest or other reason, the Vice-President of Student Affairs and Enrollment Management will serve as the Appeal Officer.
 - c. Associate Director of Housing and Residential Life – The Associate Director for Housing and Residential Life will serve as the appeal officer for appeals resulting from hearings held by Hall Directors.

4. **Appropriate Administrator:** One of several key administrators involved in the investigation of alleged student social misconduct and corresponding administrative action, and to whose office suspected or observed student social misconduct should be reported:
 - a. Assistant Dean of Students - Student Judicial Services – For misconduct alleged to have occurred on the NMSU-Las Cruces campus, other university property, off campus during a university sponsored event or involving students off campus but having an impact on campus.
 - b. Associate Director for Housing and Campus Life – For misconduct alleged to have occurred within on-campus housing and on-campus housing parking lots.
 - c. Community College Vice President of Student Services/Success – For misconduct alleged to have occurred at a community college or at an event sponsored by a community college or involving a community college student off campus but having an impact on campus.
 - d. Office of Institutional Equity Director/Title IX Coordinator - For misconduct on university premises or at any university sponsored event involving discrimination on the basis of age, ancestry, color, disability, gender identity, genetic information, national origin, race, religion, serious medical condition, sex, sexual orientation, spousal affiliation, and protected veteran status, the Office of Institutional Equity Director/Title IX Coordinator will work with the Office of the Dean of Students or appropriate Community College Vice President for Student Services/Success.

5. **Charged Student:** Any student accused of violating the code, which incorporates applicable university policies and procedures. A breach of academic integrity is a violation of university policy and therefore, this code, and is subject to distinct investigative, sanction and disciplinary hearing and appeal process applies.

6. **Chief Judicial Officer:** The Dean of Students serves as the Chief Judicial Officer for NMSU. This position is responsible to ensure the Student Code of Conduct meets all legal requirements and available for students to locate and review. The Chief Judicial Officer is also responsible for ensuring the code is followed by the NMSU system.

7. **Complainant:** Also referred to as a “reporter”, is any person who reports suspected or observed misconduct by a student; a complaint or report need not be in writing and may be submitted anonymously.

8. **Continuing Relationship:** A continuing relationship is one in which there remains a relationship between student and the university. For example, a student who is not enrolled during the summer months, but is expected to return in the fall is deemed to have a “continuing relationship” with the university.
9. **Day:** When used in this policy, “day” refers to an NMSU official business day, Monday through Friday, and excludes days which are official NMSU holidays and unplanned closures of the university.
10. **Educational Conference:** The educational conference is a step in the student conduct process which explains to the charged student the nature of the charges, the evidence in support of those charges, and options for possible resolution, including an overview of the disciplinary hearing and appeal processes.
11. **Enrolled Student:** An individual who is registered for class regardless of when the class begins.
12. **Faculty Member:** Any person hired by NMSU to conduct classroom or teaching activities or who is otherwise considered by NMSU to be a member of its faculty.
13. **Good Standing:** A student in good standing is one who is not on conduct- related probation, deferred suspension, suspension, dismissal, or expulsion and has completed all misconduct related sanctions.
14. **Hearing:** A step in the student conduct process where the university presents the facts in support of the charge(s) against the student and the proposed sanction, and the student is allowed to provide the facts in support of the student’s position to the Hearing Officer.
15. **Hearing Officer:** A university official authorized by the Chief Judicial Officer to conduct hearings in the matters of alleged violations of the code.
16. **In Writing:** Any form of written communication such as a hard copy letter or an email from the student’s official NMSU email account.
17. **Mitigating or Aggravating Circumstances:** Circumstances which may be considered, at the discretion of the Hearing Officer, when deciding the level of responsibility or type of sanction to be imposed. These circumstances include the student’s motive for engaging in the alleged misconduct; disciplinary history; and effect of the behavior on safety and security of the university community.
18. **Social Conduct:** Any conduct that is not addressed by the academic code of conduct and subject to those distinct policies and investigative/disciplinary procedures.
19. **Student:** A student includes all persons enrolled at NMSU or community colleges and persons who are not officially enrolled for a particular term but who have continuing academic relationships with the university. This includes the following:
 - a. Individuals enrolled in one or more credit hours;
 - b. Individuals who are degree seeking or non-degree seeking;
 - c. Individual who is in an academic related certificate program;
 - d. Individual who is registered for non-credit courses;
 - e. Individuals seeking dual credit;
 - f. Individuals attending Early College High School;

- g. Individuals participating in credit bearing internships;
 - h. Individuals participating in national student exchange, study abroad, or international related programs connected to NMSU; and
 - i. Individuals able to access student services such as, but not limited to, student fee funded activities, counseling, social work services, student diversity and outreach, career services, and student success center.
20. **Student Organization:** Any group of students who are recognized by NMSU as a chartered student organization.
21. **University Community:** Includes any person who is a student, faculty member, staff member, or any other person employed by NMSU.
22. **University Official:** Includes any person employed by NMSU performing assigned administrative or professional responsibilities.
23. **University Premises:** University premises means all lands, facilities and other property owned, operated or controlled by the Board or Regents of NMSU.
24. **University Sponsored Activities:** University sponsored activities are those events and activities involving students, student organizations, or university departments, faculty members, or employees that are:
- a. Expressly authorized, aided, conducted or supervised by the university;
 - b. Funded in whole or in part by the university;
 - c. Initiated by an officially chartered student organization and conducted or promoted in the name of that student organization or the university; or
 - d. Take place on university premises.
25. **Victim, also referred to as a “Complainant”:** A person alleged to have been harmed by a student in violation of the Code.