



ANALYSIS OF CLAIMS

The following are the claims accepted and investigated by the Office of Compliance, Ethics & Equal Opportunity (CEEO). Each numbered criterion for each claim must be met in order for a decision maker (Hearing Officer) to establish a policy violation. When investigating claims, CEEO will collect evidence that will establish or disprove the following elements.

DISCRIMINATION AND HARASSMENT

I. HOSTILE ENVIRONMENT (PROTECTED CATEGORY)

1. The conduct was reasonably perceived to be based on a protected category (race, color, religion, national origin, ancestry, physical or mental disability, pregnancy, age, sex, sexual preference, gender identity, spousal affiliation, veteran status, genetic information, or any other characteristic protected under applicable law);
2. The frequency and/or severity of the conduct
 - a. The decision maker considers whether the conduct was physically threatening and/or humiliating in assessing the frequency and/or severity of the conduct; and
3. The conduct has the purpose or effect of unreasonably interfering with an employee's work performance and/or advancement or a student's academic performance and/or advancement, or creates an intimidating, hostile, or offensive work or academic environment.

II. DIFFERENTIAL TREATMENT DISCRIMINATION

1. The Complainant was treated differently because of their race, color, religion, national origin, ancestry, physical or mental disability, pregnancy, age, sex, sexual preference, gender identity, spousal affiliation, veteran status, genetic information, or any other characteristic protected under applicable law (collectively, "protected status");
 - a. 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 asserted nondiscriminatory reason for the difference in treatment was pretext:
 - a. Respondent's reasons have no basis in fact;
 - b. even if based in fact, Respondent was not motivated by the stated reasons;
 - c. the reasons are insufficient to motivate an adverse employment decision.

III. DISPARATE IMPACT DISCRIMINATION

1. There is an applicable policy or procedure; and

2. There is a significant disparity in outcome based on a protected status when the policy or procedure is applied; and
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.

IV. FAILURE TO ACCOMMODATE (DISABILITY)

1. The Complainant is a qualified individual with a disability; and
2. The Complainant requested an accommodation for that disability; and
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.

V. FAILURE TO ACCOMMODATE (RELIGIOUS PRACTICE)

1. The Complainant has a sincere religious belief in a bona fide religious practice that conflicts with an employment/academic requirement; and
2. The Complainant requested an accommodation for the religious practice;
3. The Respondent failed to provide a reasonable accommodation to the Complainant; and
4. The Respondent took an adverse action against the Complainant for failing to comply with the conflicting requirement.

VI. FAILURE TO ACCOMMODATE (PREGNANCY, PREGNANCY-RELATED CONDITIONS, LACTATION)

1. The Complainant has a medical need for an accommodation related to their pregnancy, pregnancy-related condition(s), or lactation;
2. The Complainant requested an accommodation for their pregnancy, pregnancy-related condition(s), or lactation;
3. The Respondent failed to provide a reasonable accommodation to the Complainant.

VII. 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 an CEEO complaint; acting as a witness in an CEEO investigation; declining to participate in an 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 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.

SEXUAL HARASSMENT, SEXUAL MISCONDUCT, AND VAWA OFFENSES

I. SEXUAL HARASSMENT (HOSTILE ENVIRONMENT) – POLICY 2720

1. The conduct was reasonably perceived to be sexual in nature; and
2. The conduct was subjectively and objectively unwelcome; and
3. A reasonable person would have known that the conduct was unwelcome; and
4. The conduct was severe or pervasive; and
 - a. The decision maker considers whether the conduct was physically threatening and/or humiliating in assessing the frequency and/or severity of the conduct; and
5. The conduct has the purpose or effect of 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.

II. SEXUAL HARASSMENT– POLICY 2740

1. The conduct was reasonably perceived to be sexual in nature; and
2. The conduct was subjectively and objectively unwelcome; and
3. A reasonable person would have known that the conduct was unwelcome; and
4. The conduct was severe and pervasive and objectively offensive; and
 - a. The decision maker considers whether the conduct was physically threatening and/or humiliating in assessing the frequency and/or severity of the conduct; and
5. The conduct effectively denies the Complainant equal access to UNM's education program or activity.

Sexual misconduct under [University Administrative Policy 2740](#) is also analyzed under the sexual harassment framework and includes the following: stalking, sexual assault, dating violence, and domestic violence (see below). Sexual harassment that is not pervasive and severe, occurs outside a UNM program or activity, or does not fall within UNM's geographical criteria will be analyzed under [University Administrative Policy 2720](#) or the Student Code of Conduct.

III. SEXUAL HARASSMENT (QUID PRO QUO)

1. Submission to sexual conduct was made either explicitly or implicitly a term or condition of an individual's employment or academic advancement; or
2. Submission to or rejection of sexual conduct by an individual was used as the basis for employment decisions or academic decisions affecting the affected party.

Quid pro quo under [University Administrative Policy 2740](#) can only be perpetrated by a UNM employee. All other types of *quid pro quo* sexual harassment will be analyzed under [University Administrative Policy 2720](#) or the Student Code of Conduct.

IV. SEXUAL MISCONDUCT AND VAWA (VIOLENCE AGAINST WOMEN ACT) OFFENSES

All subtypes of Title IX sexual misconduct must be on the basis of sex, gender, sexual orientation, gender identity, or gender expression and are considered types of sexual harassment under Title IX. Items below which do not meet either the standards or jurisdictional requirements under Title IX (i.e., are not sexual

in nature, severe and pervasive, or occurring within the University's geographical boundaries) are reviewed pursuant to other UNM policies (2720, 2745, or the Student Code of Conduct).

A. Sexual Assault¹

1. *Fondling*: the touching of the private body parts of another person for the purpose of sexual gratification and with the consent of the Complainant.
2. *Incest*: nonforcible sexual intercourse between persons who are related to each other within degrees wherein marriage is prohibited by law.
 - a. "Sexual intercourse" means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person.
3. *Rape*: the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.
4. *Sexual Assault with an Object*: the use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the Complainant.
5. *Sodomy*: oral or anal sexual intercourse with another person, without the consent of the Complainant.
 - i. "Oral sexual intercourse" means the penetration, no matter how slight, of the mouth by a sex organ.
 - ii. "Anal sexual intercourse" means the penetration, no matter how slight, of the anus with any body part or object.
6. *Statutory Rape*: nonforcible sexual intercourse with a person who is under the statutory age of consent.
 - i. "Sexual intercourse" means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person.

B. Dating Violence² is violence committed by a person:

1. Who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and
2. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - i. The length of the relationship
 - ii. The type of relationship
 - iii. The frequency of interaction between the parties involved in the relationship

¹ As defined under 34 CFR 106.30(a), which identifies "sexual harassment" under Title IX to include "sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v) of the Clery Act.

² As defined under 34 CFR 106.30(a), which identifies "dating violence" under Title IX to follow the definition laid out in 34 U.S.C. 12291(a)(10) of the Violence Against Women Act (VAWA).

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.

- C. Domestic Violence³ includes violence against the Complainant by a person who:
1. Is a current or former spouse or intimate partner of the Complainant;
 2. Is a person who shares a child in common with the Complainant;
 3. Is a person who is or has cohabitated with Complainant as a spouse or intimate partner;
 4. Is a person defined as a “household member” under the New Mexico Crimes Against Household Members Act (30-3-10 NMSA 1978) which includes:
 - i. Spouse
 - ii. Former spouse
 - iii. Parent
 - iv. Present or former stepparent
 - v. Present or former parent-in-law
 - vi. Grandparent
 - vii. Grandparent-in-law
 - viii. Child, stepchild, or grandchild
 - ix. Co-parent of a child (regardless of whether the parents have been married or have lived together at any time)
 - x. A person with whom the Complainant has had an intimate relationship (continuing personal relationship)
 - xi. A person who has sexually assaulted the Complainant
 - xii. A person who has stalked the Complainant

- D. Stalking⁴
1. Engaging in a course of conduct (more than one incident);
 2. Directed at a specific person;
 3. That would cause a reasonable person to:
 - i. Fear for their safety or the safety of others; or
 - ii. Suffer substantial emotional distress.

V. SEXUAL EXPLOITATION

1. The taking of nonconsensual or abusive sexual advantage of the Complainant;
2. For one’s own benefit or the benefit of anyone other than the Complainant; and
3. Which does not otherwise constitute sexual harassment under UNM Policies 2720 or 2740.

Examples of sexual exploitation include but are not limited to:

- Sexual voyeurism
- Invasion of sexual privacy

³ As defined under 34 CFR 106.30(a), which identifies “domestic violence” under Title IX to follow the definition laid out in 34 U.S.C. 12291(a)(8) of the Violence Against Women Act (VAWA).

⁴ As defined under 34 CFR 106.30(a), which identifies “stalking” under Title IX to follow the definition laid out in 34 U.S.C. 12291(a)(30) of the Violence Against Women Act (VAWA).

- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually related activity where 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, including the making or posting of revenge pornography
- Prostitution of another or engaging in sex trafficking
- Engaging in sexual activity with another person while knowingly infected with a sexually transmitted disease (STD) or infection (STI), without informing the other person of the infection
- Administering drugs or alcohol to another person without their knowledge or consent 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 nonconsensual sexual activity
- Exposing one's genitals in nonconsensual circumstances, including unwelcome sexting
- Misappropriation of another person's identity on apps, websites, or other electronic means designed for dating or sexual connections
- Knowingly soliciting a minor for sexual activity
- Creation, possession, or dissemination of child pornography

NON-CIVIL RIGHTS POLICY VIOLATIONS

I. FAILURE TO REPORT 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 [University Policy 2740](#) or [2720](#);
2. The Respondent knew of a potential violation under [Policy 2740](#) or [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.

II. FAILURE TO REPORT A CRIME UNDER THE CLERY ACT

1. The Respondent is a Campus Security Authority (CSA) under University Policy 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 Clery geography; and
4. The Respondent failed to report the crime to CEEO, UNMPD, or the Clery Coordinator in a timely and accurate manner.

III. FAILURE TO REPORT UNDER UNM POLICY 2720

1. The Respondent is a responsible employee (faculty, administrator, and/or supervisor) under University Policy 2720;
2. The Respondent knew of potential discrimination or harassment under Policy 2720;
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.