

SECTION 13: GENDER DISCRIMINATION AND SEXUAL MISCONDUCT POLICY

13.1 Gender Discrimination, Harassment and Title IX

NUNM is committed to providing a healthy learning and work environment for its students, staff and faculty. Discrimination, harassment and retaliation are forms of misconduct that fundamentally compromise the integrity of human relationships, affect morale and performance, and threaten an individual's sense of security and well-being. They may also violate the law. NUNM works to prevent such occurrences and to remediate situations that are found to constitute discrimination, harassment and sexual misconduct.

All persons who are employed by, or enrolled at NUNM, should be able to work in an environment free from all prohibited forms of harassment and discrimination including (but not necessarily limited to) harassment or discrimination based on gender, race, color, religion, national origin, political ideology, age, marital status, disability, sexual orientation, gender identity, veteran or military status, or any other applicable legally protected category. NUNM is committed to the prohibition of discrimination in the work place, as covered under Title VII of the Civil Rights Act of 1964. No NUNM student, faculty, staff, administrator, or board member is exempt from this policy.

In addition, NUNM prohibits gender discrimination and harassment as delineated in the Title IX regulations. Title IX law states that "no person in the United States shall on the basis of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance."

NUNM has identified the dean of students as the Title IX coordinator. NUNM also has identified three deputy coordinators: the director of human resources, director of institutional research and compliance, and director of security. All deputy coordinators are authorized to take reports of harassment and discrimination. All reports taken are forwarded to the Title IX coordinator who oversees the Title IX investigative process. A full description of the responsibilities of the Title IX coordinator can be found in Section 1.4 of the NUNM student handbook. NUNM assures it will take steps to prevent reoccurrence of sexual misconduct.

The Title IX coordinator is responsible for ensuring that the reporting party (complainant) is aware of resources such as counseling, advocacy, academic accommodations, and safety planning, if needed.

Any reports of sexual misconduct toward, or of, a minor MUST be reported directly to campus safety and security and/or the Portland Police Bureau immediately. There are no exceptions to this policy.

Harassment or discrimination in violation of this policy by students, faculty, staff, administrators, board members and other employees or non-employees, including vendors and visitors, is specifically prohibited. Any reports of potential violation of this policy will be reviewed, regardless of the status of the reporter (heretofore: "complainant") or the alleged harasser (heretofore: "respondent"). Retaliation against any individual who in good faith brings a complaint to the attention of the university and/or who participates in investigations regarding such complaints is also expressly prohibited.

If a student has been found in violation of sexual misconduct and wishes to appeal the sanctions, all sanctions will remain in effect during the appeal process, including removal from campus and classes.

If an order of protection or a restraining order is filed with a local law office, the university encourages the defendant to notify the Office of Safety and Security, Office of Student Life
National University of Natural Medicine – University Student Handbook – Revised 10/26/2016

and/or Human Resources, regardless if it is against an NUNM community member or not. This allows the university to assist in the enforcement of the order within the university property.

13.2 Discrimination

Discrimination is defined as any act, or failure to act, that is based upon an individual or group's actual or perceived status (gender, race, color, religion, national origin, political ideology, age, marital status, disability, sexual orientation, gender identity, veteran or military status, pregnancy status, or other protected status) that is sufficiently severe, persistent and pervasive that it limits or denies the ability to participate in, or benefit from, NUNM educational programs or activities.

13.3 Sexual Misconduct

Sexual misconduct is defined as any non-consensual sexual contact or act that violates the rights of another. Sexual misconduct typically involves acts that are severe, persistent and pervasive, but also may be a one-time occurrence. Examples of sexual misconduct include non-consensual sexual contact, rape, sexual assault, domestic violence, dating violence, intimate partner or relationship violence, sexual exploitation, bullying, stalking, cyberbullying and sexual harassment.

Consent (pure consent) is defined as when a person voluntarily, knowingly, intellectually and clearly gives verbal permission for a sexual transaction on the part of the person who is offering and the person who is taking/receiving in the sexual interaction. Consent may be given and withdrawn at any point during a sexual encounter, but not after these exchanges have already occurred, in cases such as regrettable sex. If consent is granted with terms of agreement, and the terms of agreement are not met during the sexual transgression, a violation of consent is warranted. Silence or absence of resistance does not imply consent. Consent cannot be given in circumstances when there is coercion, force, threat, intimidation, or incapacitation during a sexual activity.

13.4 Sexual Exploitation

Sexual exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for the individual's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited (and that behavior does not otherwise constitute another sexual misconduct offense). Examples of sexual exploitation include, but are not limited to, invasion of sexual privacy; prostitution of another person; non-consensual recording or broadcast of sexual activity; going beyond the boundaries of consent (such as letting someone hide in the closet to watch you having consensual sex); engaging in voyeurism; knowingly exposing another to an STI or HIV; exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals; and sexually based stalking. Bullying and cyber-bullying may also be forms of sexual exploitation.

13.5 Sexual Harassment and Hostile Environment

Sexual harassment is defined as unwanted sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that unreasonably interferes with, limits or deprives a person of the ability to benefit from opportunities to learn or to participate in activities. Forms of sexual harassment may include *quid pro quo* (typically based on power differentials; e.g., sexual favors for improved grades), hostile work environments and retaliation. Sexual harassment also includes severe and pervasive sexual verbal or visual overtures, including vulgar or crude jokes, comments, innuendo, gestures, pictures, cartoons, articles or pornography.

All NUNM students, faculty and staff are responsible for respecting the rights of one another. No NUNM student, faculty, staff, administrator or board member is exempt from this policy. Any student who believes that they are being or may be subjected to sexual harassment, discrimination or misconduct in violation of this policy should immediately report it to any one of the following: dean of students, director of human resources, director of institutional research and compliance, chief of campus safety and security, or a program dean. Reports can also be filed online at

https://nunm-advocate.symplicity.com/public_report/. This report can be found on the NUNM website on the page footer and on the Student page.

In situations where an NUNM community member suspects that discrimination or harassment may be occurring, even when no one has made an individual complaint, NUNM will investigate the matter, and any findings of discrimination or harassment could result in disciplinary sanctions.

To ensure a prompt and effective response to allegations of sexual harassment and sexual violence, complaints will be investigated and conducted in a fair and equitable manner. Although confidentiality cannot be guaranteed, complaints will be handled as discreetly and privately as practicable. If the university determines that there has been a violation of this policy, appropriate corrective or disciplinary action will be taken for all parties involved, up to and including expulsion.

Hostile Environment

A hostile environment caused by sexual harassment is assessed using the perspective of a “reasonable person”—defined as a person who would act or feel the same as the person claiming the hostile environment, considering all the circumstances. The more severe the conduct that interferes with, or limits, the complainant’s ability to participate or benefit from educational programming, the less need is required to show a repetitive series of events to prove a hostile environment caused by sexual harassment. This is particularly true if there is conduct of a physical nature. Therefore, a single or isolated incident of sexual violence may create a hostile environment.

Stalking

Stalking is a form of sexual harassment when there is behavior directed toward a specific person over time (repetitively and menacing) by a specific individual, which is both unwelcome and would cause a reasonable person to feel fear.

13.6 Reporting and Resources

Reporting to the Portland Police is NOT required for any victim of sexual assault, domestic violence or interpersonal violence, with the exception of child or elder abuse. However, reporting to the Portland Police is always an option.

Any reports of sexual misconduct toward, or of, a MINOR MUST be reported directly to campus safety and security and/or the Portland Police Bureau immediately. There are no exceptions to this policy. The Portland Police Bureau’s non-emergency phone number is: 503.823.0000.

Any student who believes that they are being or may be subjected to sexual harassment, discrimination, or misconduct in violation of this policy should immediately report it to any one of the following: dean of students, director of human resources, director of institutional research and compliance, chief of campus safety and security, or a program dean. Reports can also be filed online at https://nunm-advocate.symplicity.com/public_report/. This report can be found at the bottom of the NUNM website page – “Incident Reporting Form.”

On-Campus Reporting Options:

- Campus Safety (incl. evenings/weekends): 503.830.3613
- NUNM Counseling Center (for confidential advisor services): 503.552.1780
- NUNM Health Centers (for confidential advisor services with a doctor): 503.552.1555
- Dean of Students (Title IX Coordinator): 503.552.1510

Any report submitted online (at https://nunm-advocate.symplicity.com/public_report/) should include a summary of the incident (***anonymous reports are accepted***) and resources/referrals provided to the reporter within 24 hours of interaction to the Title IX coordinator, a deputy coordinator or program dean. Information should not be shared with ANY department, faculty or administrator, unless requested by the student or determined by the Title IX coordinator. Upon receipt of the report, the Title IX coordinator will determine if there is a campus safety issue and act accordingly, as well as determine next steps of action.

Confidentiality

Reports are kept private unless risk of safety to student and/or campus community is determined by the Title IX coordinator. Confidential reporting is only available during client/therapist meetings at the Counseling Center and during a patient visit at the NUNM Health Centers. NUNM will take into account the complainant's individual wishes regarding inquiries/investigations to the greatest extent possible.

Informed Consent

NUNM's responsibility is to care for and protect NUNM community members from sexual assault and misconduct. Received reports will be summarized and submitted to the Title IX coordinator. The reporting individual will be invited to consider whether or not they would like names to be included in the summary, allowing them to determine the level of anonymity within the report summary.

Off-Campus Resources

- Portland Police Bureau: 911 or 503.823.3333
- Call to Safety (former Portland Women's Crisis Line): 888.235.5333
- Sexual Assault Resource Center: 503.640.5311
- Multnomah County Crisis Line: 503.988.4888
- Oregon Health & Science University (OHSU) Emergency Room: 503.494.7551
- Multnomah County Victim Assistance: 503.988.3222

13.7 Investigative Process

In situations where an NUNM community member suspects that an incident of discrimination, harassment, domestic violence, dating violence, sexual assault, or stalking may be occurring, even when no one has made an individual complaint, NUNM is obligated to do a primary fact finding inquiry. The purpose of the inquiry into the incident is to assess if there is enough information to warrant a further, more comprehensive investigation and to provide immediate remedies and support. Any findings could result in disciplinary sanctions.

NUNM will take remedial actions during the inquiry and investigation, which may include interim suspension, changing student course/lab sections, no-contact orders, etc., pending the results of the investigation.

NUNM uses a preponderance of evidence or a "more likely than not" standard in determining if sexual misconduct has occurred.

Complaints will be promptly investigated and conducted in a fair and equitable manner by trained Title IX investigators. Although confidentiality cannot be guaranteed, reports will be handled as discreetly as practicable. The complainant and respondent(s) participating in an inquiry or investigation may have an advisor or advocate of their choice during the interview process. Advisors' sole purpose during the investigation process is supportive in nature. Advisors are not allowed to speak or otherwise participate in the proceeding or participate in the investigation.

Title IX Investigators

NUNM has selected and specifically trained staff to serve as impartial investigators when a report requires a more comprehensive investigation. The investigators are charged with meeting with the involved parties (including any witnesses) to gather information, testimony and evidence; assessing the information and evidence gathered for merit and credibility; render a decision regarding any policy violation; and determine, in conjunction with the director of student life and conduct, if any sanctions are applied.

Investigators will provide both parties with detailed and written notice of allegations, and each policy that has been alleged to be violated. The investigators will use the following determination thresholds for making any determinations of sexual misconduct.

Students are allowed advocates of their choice to be present during the investigative process.

In addition, the university will provide a Title IX campus process advisor so that both parties have equal access to someone who can aid in understanding the university's processes in investigating complaints.

Determination Thresholds

When assessing if sexual misconduct has occurred, NUNM will use the following three thresholds in its determinations. Sexual misconduct will be considered as occurring if one or more of the following thresholds have been met. The three thresholds are: consent, incapacitation and force.

1. Consent has not been given as defined in Section 13.3
2. Incapacitation:
 - a. Incapacitation is defined as the state of a person who is in a diminished capacity and receiving harm. Examples include:
 - i. Too drunk or drugged (examples: Blackout or completely out of it, vomiting, inability to walk)
 - ii. Lacking the capacity to give reasonable consent due to mental or physical disability
 - iii. Under the age of 18 (state of Oregon statute)
3. Force:

- a. Force, in terms of sexual misconduct, is defined as unlawful affect or control over someone involving violence or threat. Examples of force include:
 - i. Threat: Overtly doing or saying whatever is needed in order to get a person to do what you want them to do when they have stated otherwise. Feeling as if harm will be done if the person doesn't go along with the request.
 - ii. Intimidation: An implied threat
 - iii. Coercion: The pressure to have sex with someone; an unreasonable application of pressure. Coercion is measured in terms of:
 1. Intensity: HOW was the pressure used
 2. Frequency: How OFTEN was the person asked
 3. Duration: How LONG had the person been asking
 4. Isolation: Attempting or completely separating a person from others.

Credibility

Investigators are charged with weighing the accuracy and integrity of evidence in determining credibility of evidence gathered, including testimonies of witnesses interviewed. They will evaluate sources, the content of the information presented, and the plausibility of the evidence in light of all the information gathered during their investigation. The investigators will assess for consistency, plausibility, reliability, cooperation, reticence, and motivation to lie in determining why someone or something is or is not credible. When the source, plausibility of the evidence, and the content are all strong, then credibility is strong. In using a preponderance of evidence standard of more likely than not, the credibility of the information and evidence must meet a "50.1% threshold." Information is not considered credible when it does not meet the more likely than not standard, and will be disregarded as irrelevant to the investigation.

The following things do not add to, nor take away from, the credibility standard of the respondent:

- Character witnesses
- Student or employee popularity on campus
- Lack of past determinations of misconduct
- Academic performance

The following things do not add to, nor take away from, the credibility standard of the complainant:

- Clothing choices
- Appearance
- Flirting behavior
- Gender identity
- Sexual orientation

Outcome of Investigation

If the university determines that there has been a violation of this policy, it will take reasonable, timely and effective corrective action, including steps tailored to the specific situation for all parties involved, up to and including expulsion. Both the accused student(s) and the reporting student will have the opportunity to review all evidence and information in the form of a draft investigation report, used to render a finding (either in writing or orally) prior to final determinations being made. At this time, either party will have an opportunity to address the allegations, evidence and information that will be used to make a final determination.

After both the accused student(s) and the reporting student have had an opportunity to review the draft report, the investigators will notify them simultaneously in writing regarding the final

investigation outcome(s) via a Findings and Determination Report.

The report will be issued at the conclusion of the investigation and will include the following:

- The fact finding investigation;
- The investigation outcome and determinations, including the reasons and rationale in making the determinations based on the evidence presented on each alleged violation;
- The plan to eliminate, remediate and prevent reoccurrence, including sanctioning.

The aforementioned plan normally concludes within a 60-calendar-day period. If an investigation process is anticipated to exceed the normal 60-calendar-day period, both parties will be notified of the delay, the reasoning, and an anticipated completion date.

The accused student(s) and the reporting student have the right to appeal the sanctions of the Findings and Determination Report as described below.

13.8 Appeal Procedure for Sexual Misconduct

When the outcome of an investigation results in a violation of the sexual misconduct policy, the sanctions (only) may be eligible for an appeal by the accused student(s) if there is merit to the appeal request. In addition, the complainant has the same right to appeal as the respondent. Based on the Findings and Determination Report, student(s) found to be in violation, of the sexual misconduct policy or the complainant, have three options:

1. If the student accepts the findings and determination, then an appeal is unnecessary. All sanctions outlined in the final determination letter will be in place with outlined completion dates.
2. If the student accepts the findings and determinations in part, but disagrees with other parts, the student is entitled to request a formal appeal hearing process to address the contested pieces. Only the contested sanctions of the agreed upon findings and determinations are appealable.
3. If the student rejects the findings and determinations in its entirety, the student is entitled to request a formal appeal hearing process with access to any information that will be sent to the hearing board.

Request for Formal Appeal Hearing

An accused student who has been found in violation of sexual misconduct, who rejects part or all of the final Findings and Determination Report sanctions, has a right to request a formal appeal hearing process. In addition, the complainant has the right to request a formal appeal hearing process. Appeals are not intended to be full re-hearings of the grievance. In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal.

The hearing board is composed of the chair of the Honor Council and two other trained Title IX investigators. Only sanctions are appealable. The chair of the Honor Council serves as the chair of the appeal hearing board and is gatekeeper of the appeal hearing process. Appeals granted based on new evidence should be remanded to the original investigators for reconsideration.

The request for an appeal will be sent to the appeal hearing chair, who will then notify the complainant and investigator(s) who submitted the Findings and Determination Report.

Within **three (3) business days** from the date of the Findings and Determination Report delivery, the appealing party(s) must notify the appeal hearing chair of intention to appeal. The request for an appeal will be sent to the appeal hearing chair, who will then notify the complainant and investigator(s) who submitted the Findings and Determination Report.

The student will then have **seven (7) calendar days** to complete and submit to the appeal hearing

chair a written request for review, including any corroborating evidence to be considered. The request must include the following:

1. Name, address and phone number;
2. Description, date(s) and place(s) of alleged act(s);
3. Date, and by whom, discipline was levied as found in the Findings and Determination Report;
4. Disciplinary sanctions assigned, and circumstances under which that the appeal merits review is based on one or more of the following:
 - A procedural error or omission occurred that significantly impacted the outcome of the investigation (e.g., substantial bias, material deviation from established procedures, etc.).
 - The sanctions imposed are grossly out of proportion/alignment with the severity of the offense.
 - Information relevant to the decision that was not available to the investigators for consideration during the investigation, including unknown or unavailable information that could substantially impact the original findings or sanctions. **A summary of this new evidence and its potential impact should be included in the appeal request.** Intentional failure to provide information during the investigation is not grounds for an appeal.
5. Objective of the appeal, i.e., reduction of the sanction, severity, or change in the case decision;
6. Signature and date.

As part of the review of the appeal request, the appeal hearing chair will request a Response Memorandum from the investigators for the appeal request and share it with both parties. The Request Memorandum should address the points brought forth in the appeal request. After receiving the Response Memorandum, the appeal hearing chair has **seven (7) calendar days** to determine if the appeal request has merit. The student will receive the appeal hearing chair's decision in writing.

If it is deemed that the appeal has merit, the appeal hearing chair will convene a formal appeal hearing. The appeal hearing board will convene and review the information regarding the appeal, including the Findings and Determination Report, the Response Memorandum, and the evidence provided as a part of the appeal for error. The appeal hearing board will use the "Preponderance of Evidence" standard and make a final findings and determinations. The hearing board's decisions are final and not subject to appeal. Both the respondent and complainant will receive a simultaneous written notification of the decision within **five (5) business days** of the appeal hearing.

All outcomes of the formal appeal hearing process are final and may not be appealed.

13.9 No-Contact Orders

During the incident review and/or investigation, it may be determined that a no-contact order may be put in place as an immediate remedy for an on-going review. A no-contact order prohibits the involved and named parties from having any contact with one another until the no-contact order has been lifted. Contact includes, but is not limited to:

- Intentional visual or physical presence of the other person;
- Communication with the other person in any written form, including hand-written notes, electronic mail or text messages;
- Communication with university*, business or government entities with the intent of affecting some right or interest of the other person;
- Communication with the other person through a third person; and/or
- Committing a crime against the other person or their property

*Exception: Both students may communicate with university staff who “have a need to know” about the university no-contact order and other legal documents, such as a restraining/stalking protective order.

13.10 Amnesty Provision

In order to encourage proper and timely reporting of sexual assaults, NUNM will not adjudicate or sanction the victim of the alleged assault/harassment for the admitted use of alcohol or drugs in the course of events of the alleged interaction, which otherwise may have been found in violation of campus policies, if the person reports being a victim of sexual assault/harassment and reports the incident to one or more of the following administrative staff members: the dean of students; director of human resources; director of institutional research and compliance; chief of campus safety and security; or a program dean.

13.11 Retaliation

The university expressly prohibits retaliation, defined as any intentional or adverse action taken against any individual who in good faith brings a complaint to the attention of the university or who participates in any resulting investigation. Any act of retaliation that is directed against a complainant, respondent, witness or participant in the process, by any party, will be treated as a separate and distinct charge. If the university determines that a student has engaged in retaliation, appropriate corrective or disciplinary action will be taken, up to and including expulsion.

In addition, the university will not retaliate against anyone who brings forth a Title IX complaint with the school, or any state or federal agency, or for participating in an investigation or proceeding.

If any person feels that their rights under the non-discrimination statement may have been potentially violated, they may contact the Office for Civil Rights (OCR) with or without working with NUNM to correct the issue. Information regarding OCR complaints can be found at: www2.ed.gov/ocr/complaintintro.html.

13.12 Prevention Education

The university, in cooperation with the Office of Student Life, the Counseling Center and the Office of Safety and Security, conducts campus safety programming. This programming is designed to inform and educate the campus of various ways to avoid, interrupt and address safety issues on campus, including bystander intervention, reporting of violent crimes, and a description of personal safety measures. The campus safety programming addresses issues, prevention of, and training related to domestic violence, sexual assault dating violence and stalking, as required by Title IX laws and the Campus SaVE (Sexual Violence Elimination) Act. The educational outcome of the events is an understanding of how to prevent these issues from occurring, how to intervene if you witness an event occurring, and information as to how to reduce and recognize signs of violence. These presentations occur annually and are open to all community members.