

## **70.6 Student Sexual Misconduct Policy**

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**1. Purpose.** The purposes of these policies and procedures are to prohibit sexual misconduct at Eastern New Mexico University-Roswell (ENMU-Roswell) and provide for dealing with such misconduct.

**2. Policy.** Students and those who interact with students on the ENMU-Roswell campus or at ENMU-Roswell sponsored events are expressly prohibited from sexual misconduct of any kind.

The foregoing purposes and policies are implemented by the following:

### **PROCEDURES**

**3. Administration.** These policies and procedures shall be administered by the Vice President for Student Affairs.

**4. Kinds of Misconduct.** Definitions of some of the misconduct prohibited are as follows:

A. Forced Sexual Conduct: Any unwelcome contact of a sexual nature with another person, (including exposure, disrobing, telephone calls, etc.) that is accomplished toward another without his/her consent including any such act accomplished by means of actual or implied force, threat, coercion, or by taking advantage of a victim's helplessness.

B. Forced Physical Sexual Contact: Any unwelcome contact of a sexual nature with another person (including touching, fondling, etc.) that is accomplished toward another without her/his consent and by means of actual or implied force, threat, coercion, or by taking advantage of a victim's helplessness. Using force or intimidation to make a person touch another's intimate parts shall also constitute sexual contact.

C. Forced Sexual Penetration: Intercourse (vaginal penetration), sodomy (anal penetration), oral copulation (oral-genital contact), or penetration with any object or body part, by the use of force, threats, coercion, or by taking advantage of a victim's helplessness.

**5. ENMU-Roswell and Criminal Code Action.** A student charged with sexual misconduct, including acquaintance or date rape, can be prosecuted under both New Mexico criminal statutes and disciplined under the ENMU-Roswell judicial processes. Even if the criminal justice authorities choose not to prosecute, ENMU-Roswell may pursue disciplinary action.

**6. Clarification of Circumstances of a Violation.** A violation occurs when there is participation in any kind of sexual misconduct by a student individually or in concert with others. As ENMU-Roswell hopes to educate students in order to prevent violations, students should understand that:

A. Sexual misconduct as defined above is sexual misconduct whether the assailant is a stranger or an acquaintance of the victim.

B. Alcohol and/or drug use, intoxication, or any impairment of the accused, does not absolve responsibility for sexual misconduct.

C. In situations where the victim is incapable of giving consent, or is unable to resist sexual advances due to alcohol/drug use or other impairments, the accused may be held responsible for sexual misconduct.

D. Force and/or coercion are defined as:

1. The use of physical force or physical violence; or
2. The use of threats, including but not limited to physical threats, abduction, extortion or retaliation directed against the victim or another when the victim believes that there is an ability to execute such threats; or
3. The use of verbal comments or non-verbal behaviors and/or gestures to intimidate the victim or another when the victim believes that there is a present ability to execute such threats.

E. Threat is defined as an expression of intention to hurt, destroy, or punish the victim or another.

**7. Reporting Misconduct/ENMU-Roswell Reaction.** Where there is cause to believe that the ENMU-Roswell policy prohibiting sexual misconduct has been violated, ENMU-Roswell will initiate disciplinary review. ENMU-Roswell is obligated to protect the rights of the accused as well as of the victim.

A. The student should report the misconduct or alleged misconduct to an appropriate administrator, or an advisor, or the Director of Human Resources, or Campus Security. Individuals receiving such reports shall keep them confidential and transmit them to the Vice President for Student Affairs in an expedient and timely manner after ensuring that the affected student has apparent health and counseling needs met.

B. For ENMU-Roswell to take disciplinary action beyond warning, reports of misconduct must be in writing and signed by the complainant. ENMU-Roswell shall advise a complainant that it can keep the identity of a complainant confidential unless ENMU-Roswell is compelled to go into a due process proceeding with the accused.

C. Accusations of sexual misconduct shall be investigated by the Vice President for Student Affairs according to student discipline conduct procedures.

D. If information is available to indicate that the charge of sexual misconduct is proven, or if guilt is admitted, the penalty for such misconduct may include any disciplinary action, including probation, suspension, dismissal or expulsion.