
Title IX: Sexual Harassment, Sex and Gender Discrimination, Domestic and Dating Violence, Sexual Assault, and Stalking

University of the Southwest strives to provide the education and resources necessary for members of the campus community to make informed decisions regarding personal and professional relationships and the possibility of sexual harassment, gender discrimination, domestic and dating violence, sexual assault, and stalking behaviors. This may include educational programming, distribution of printed material, and referrals to outside agencies for support and assistance.

Policy Statement

University of the Southwest is an institution built upon integrity, trust, respect, support, and acts of service. In line with these values, USW is committed to providing a safe and non-discriminatory academic, athletic, and work environment for all members of its campus community. USW does not discriminate on the basis of sex or gender in any of its programs or activities.

To that end, this policy strictly prohibits gender discrimination, sexual harassment, bullying and intimidation, and the crimes of domestic violence, sexual assault, and stalking as defined under New Mexico state law (N.M. Code Ann. § 30) and Title IX of the Education Amendments of 1972.

Such prohibited behavior also requires the University to fulfill certain obligations under the Violence Against Women Reauthorization Act of 2013 and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act).

The University prohibits sexual assault, sexual exploitation, intimate partner violence, stalking, sexual or gender-based harassment, complicity in the commission of any act prohibited by this policy, and/or retaliation against a person for the good faith reporting of any of these behaviors or participation in any investigation or proceeding under this policy. These behaviors undermine the character and mission of USW and will not be tolerated.

USW adopts this policy with a commitment to:

- (1) eliminating, preventing, and addressing the effects of sexual misconduct;
- (2) fostering a community of trust, in which sexual misconduct is not tolerated;
- (3) cultivating a climate where all individuals are well-informed and supported in reporting sexual misconduct;
- (4) providing a fair, impartial, and informed process for all parties; and
- (5) identifying the standards by which violations of this policy will be evaluated, and disciplinary action may be imposed.

Employees or students who violate this policy may face disciplinary action up to and including termination or expulsion. The University will take prompt and equitable action to eliminate sexual misconduct, prevent its recurrence, and remedy its effects.

Definitions

“**Prohibited Conduct**” is an umbrella term used when talking about all prohibited behavior under Title IX, including gender discrimination, sexual harassment, bullying and intimidation, retaliation for the assertion of rights, dating violence, domestic violence, sexual assault, and stalking.

“**Victim**” or “**Complainant**” means a person alleging to have been subjected to conduct prohibited by this policy and does not imply prejudice.

“**Accused**” or “**Respondent**” means a person accused of conduct prohibited by this policy and does not imply prejudice.

“**Force or threat of force**” means the use of force or violence, or the threat of force or violence, including but not limited to when the accused:

1. threatens to use force or violence on the victim or any other person, and the victim under the circumstances reasonably believes that the accused is able to execute that threat; or
2. has overcome the victim by use of superior strength or size, physical restraint, or physical confinement.

Consent is effective when it is

- informed;
- freely and actively given;
- mutually understandable words or actions; and
- indicates a willingness to participate in mutually agreed-upon sexual activity.

Dating violence is not defined in New Mexico laws; however, violence against a person with whom the perpetrator is in a dating relationship is considered *domestic violence*, as defined below.

A dating relationship is defined as a courtship or engagement relationship. For purposes of this Act, a casual acquaintance or ordinary fraternization between persons in a business or social context shall not constitute a dating relationship.

Domestic violence, or intimate partner violence, occurs between two people in an intimate relationship. Domestic violence exists on a continuum from a single episode of violence to ongoing battering and control of one partner over another.

Some examples of domestic violence include:

- Physical violence: physical harm caused by kicking, hitting, punching, biting, strangling, slapping, or other physical attacks. A threat causing immediate fear of bodily injury is also domestic violence.
- Criminal trespass
- Damage to property
- Repeatedly driving by a residence or workplace
- Harassment or telephone harassment
- Severe emotional distress (i.e., emotional abuse causing a high level of distress in one person to the degree that the person needs protection from the abuser)

Criminal sexual penetration (sometimes also called “sexual battery,” “sexual assault,” or rape) includes:

- the unlawful and intentional touching of or application of force, without consent, to the unclothed intimate parts of a victim above the age of 18

- intentionally causing another who is over the age of 18 to touch one's intimate parts when perpetrated with the use of force or coercion
- compelling a victim to engage in sexual intercourse against the victim's will.

(N.M. Code Ann. § 30-9-11.)

Stalking consists of knowingly pursuing a pattern of conduct, without lawful authority, directed at a specific individual when the person intends that the pattern of conduct would place the individual in reasonable apprehension of death, bodily harm, sexual assault, confinement, or restraint of the individual or another individual.

As used in this section:

1. "lawful authority" means within the scope of lawful employment or constitutionally protected activity; and
2. "pattern of conduct" means two or more acts, on more than one occasion, in which the alleged stalker by any action, method, device, or means, directly, indirectly or through third parties, follows, monitors, surveils, threatens, or communicates to or about a person.

(N.M. Stat. Ann. § 30-3A-3)

Aggravated stalking consists of stalking perpetrated by a person (a) who knowingly violates a permanent or temporary order of protection issued by a court, except that mutual violations of such orders may constitute a defense to aggravated stalking; (b) in violation of a court order setting conditions of release and bond; (c) when the person is in possession of a deadly weapon, or (d) when the victim is less than 16 years of age.

(N.M. Stat. Ann. § 30-3A-3.1)

Reporting Procedures

All forms of prohibited conduct should be reported *regardless of severity*. USW's primary concern is safety; therefore, individuals should not be deterred in reporting even if the use of alcohol and/or drugs were involved.

University of the Southwest encourages victims of sexual violence to talk to someone about what happened so they can receive support and so that the institution can respond

appropriately. USW offers both *confidential* and *non-confidential* reporting options. It is important to be aware that different individuals who victims contact for assistance following an incident may have other responsibilities regarding confidentiality depending on their position.

Under New Mexico state law, some individuals (e.g., licensed counselors, psychologists, or physicians) can assure a victim of confidentiality; however, any other USW employee cannot guarantee complete confidentiality unless specifically provided by law. As is the case with all colleges and universities, USW must balance the needs of the individual victim with an obligation to protect the safety and well-being of the community at large.

****Note:** For ALL incidents/claims of **sexual assault**, the following persons will be informed **IN ORDER**:

If an incident occurs *on campus outside of dorms*:

1. **Security**
2. Amanda Guzman, Title IX Coordinator
3. Dr. Ryan Tipton, President
4. Brian Arnold, University Counselor

If an incident occurs *inside the dorms*:

1. **Security**
2. Dr. Ryan Tipton, President
3. Amanda Guzman, Title IX Coordinator
4. Brian Arnold, University Counselor

If the incident occurs *after hours on campus*, persons #4 and 5 above need only be informed via email with a copy of the incident report attached for Title IX and Counseling follow-up.

Any other staff or faculty in positions of authority will be informed of the incident on a NEED-TO-KNOW basis by the Title IX office in consultation with the President.

If any staff or faculty become aware of sexual misconduct, they will follow the above chain for informing personnel. The persons above understand the chain to follow in

informing one another of incidents of sexual assault. *This means that other faculty or staff members need only inform person #1 (or #2 if the first contact person cannot be reached).*

For **EVERY** alleged on-campus incident of sexual assault, a police report will be made. Should the victim make a report immediately following the alleged incident (up to 120 hours post-assault [Carr, 2011]), first responders will organize transport of the victim to the hospital for a sexual assault evaluation. If the student does not wish to go to the hospital, an ambulance will be called for an assessment. The student then has the right to refuse transport, which will be documented by USW staff.

**This will be the protocol regardless of preference, mental state, behavioral indicators, or physical appearance.*

A referral will always be made to the University Counselor as soon after the incident as possible. If a report of sexual assault is first made to the University Counselor, they will encourage reporting to the Title IX office but cannot break confidentiality to do so themselves.

Confidential Reporting Options

Confidential reporting options allow students to confidentially report and discuss an instance of sexual violence without their information being shared with others. Please note confidential reporting limits the institution's ability to respond to incidents.

Non-Confidential Reporting Options

University of the Southwest and the Clery Act require all employees - excluding counselors, healthcare providers, and, in some cases, campus pastors - who become aware of sexual violence to report the incident to the USW Security Department (SD) and the Title IX Coordinator. The victim's name should **not** be reported without the victim's permission.

The report should include the nature, date, time, and general location of an incident. This is a limited report which contains no information that would directly or indirectly identify the victim. This report allows USW personnel to track patterns, evaluate the program, and develop appropriate responses. Copies of reporting forms can be found below:

- [Complaint Record](#)
- [Witness Statement](#)

When an incident of sexual violence is reported to a “*responsible employee*,” the reporter can expect the incident will be reported to the Title IX Coordinator and the Provost. A responsible employee must report all relevant details about the alleged sexual harassment, sexual violence, or stalking behaviors shared by the complainant, including name(s), date(s), time(s), and specific location(s) of the alleged incident.

To the greatest extent possible, information reported to a responsible employee will be shared on a **need-to-know basis**. A responsible employee should not share information about the victim with law enforcement.

A “responsible employee” is an employee who has the authority to redress sexual violence, who must report incidents of sexual violence or other student misconduct, or who a student could reasonably believe has this authority or duty. Examples include, but are not limited to, faculty members, advisors, coaches, staff, and anyone in a supervisory role. The University Counselor is exempt from this duty to report if the claim is disclosed in the *context of a counseling session*. However, the counselor may encourage the victim to report the claim but cannot break confidentiality as a part of his professional obligations without the victim’s consent or legal subpoena.

When a victim tells a responsible employee about an incident of sexual violence, the victim has the right to expect the institution will investigate the alleged sexual violence, end any sexual violence, prevent the sexual violence from reoccurring, and educate the campus community on sexual violence.

Before a victim reveals any information to a responsible employee, the employee should ensure that the victim understands the employee’s reporting obligations and inform the victim that they **cannot maintain confidentiality**. Instead, the victim should be directed to the Title IX Coordinator.

If it is determined that the institution cannot maintain a victim’s confidentiality, the institution will inform the victim before starting an investigation. USW will remain mindful of the

victim's well-being and take appropriate steps to protect the victim from retaliation or harm. The institution may not require a victim to participate in any investigation or conduct process should they express discomfort in doing so. Retaliation against the victim, whether by students or institution employees, will not be tolerated and is reportable to the Department of Education under Title IX.

Reporting to the Police

USW strongly encourages individuals to report sexual violence and any other criminal offense to the Hobbs Police Department. This does not commit you to prosecute but will allow the gathering of information and evidence. The information and evidence preserve future options regarding criminal prosecution, institution conduct actions, and/or civil actions against the perpetrator.

If the incident happens on campus, it can be reported to the USW SD Department at 575.942.5902 (non-emergency) or 9-1-1 (emergency). If the incident occurs elsewhere in Hobbs, it can be reported to the Hobbs Police Department at 575.397.9265. If the incident takes place anywhere else, it can be reported to the local law enforcement with jurisdiction in the location where the sexual violence occurs.

Please know that the information you report can help support other reports and prevent further incidents.

What to do if you are a Victim of Sexual Violence

If you are not safe and need immediate help, call 9-1-1. If an incident happens on campus, call USW SD at **575.942.5902**. If the incident occurred elsewhere in the city of Hobbs, call the Hobbs Police Department at 575.397.9265.

Do what you need to do to feel safe. Go to a safe place or contact someone with whom you are comfortable. Call the New Mexico Coalition of Sexual Assault Programs at 1.888.883.8020 for advice, and discuss options for how to proceed.

Do not shower, bathe, douche, change or destroy clothes, eat, drink, smoke, chew gum, take any medications or straighten the room or place of the incident. Preserving evidence is critical

for criminal prosecution. Although you may not want to prosecute immediately after the incident, that choice will not be available without credible evidence. The evidence collected can also be useful in the campus conduct process.

It is vital to have a thorough medical examination after a sexual assault, even if you do not have any apparent physical injuries. Medical providers can treat any injuries and provide tests for sexually transmitted diseases.

You may seek medical care at any health care facility. While in the emergency room, treatment will be provided for sexually transmitted diseases and to prevent pregnancy.

Other Local Services Available

City of Hobbs Police Department

Emergency: 9-1-1

Non-emergency: 575.397.9265

Option, Inc.

Emergency Shelter for Domestic Violence

575.397.1576 (24/7)

200 N Dalmont St, Hobbs NM 88240

Arise Sexual Assault Services

575.226.7263 (24/7)

1412 S. Avenue O, Suite B

Portales, New Mexico 88130

info@arisenm.org

University of the Southwest Counselor

Mr. Brian Arnold

575.492.2104

Scarborough Memorial Library Building, Room 110

barnold@usw.edu

University of the Southwest Title IX Coordinator

Amanda Guzman

575.492.2176

J.L. Burke Administration Building, Financial Aid Suite

aguzman@usw.edu

Interim Measures

The Provost and the Title IX Coordinator can establish interim measures for student victims of prohibited conduct as needed. A formal complaint does *not* need to be submitted to have interim measures put in place. USW will maintain confidentiality for any interim measures listed below as long as it does not hinder the ability to provide the interim measures.

1. **Assistance in Reporting:** The Title IX Coordinator can assist victims in filing a complaint against the person(s) who caused them harm, according to USW's Code of Conduct process and/or the appropriate law enforcement agencies.
2. **No Contact Order:** The Director of Security can arrange for a No Contact Order between the victim and the accused, which would prohibit contact between both parties through any means of communication. It would also prevent others from making contact on their behalf.
3. **Emergency Protective Order:** The Title IX Coordinator can assist victims in filing for an Emergency Protective Order in court with the Hobbs Magistrate Court Clerk. This is a court-ordered petition that prohibits contact between the victim and the accused.
4. **Safety Measures:** The Title IX Coordinator can coordinate any reasonable arrangements that are necessary for your ongoing safety. These include transportation arrangements or providing an escort.
5. **Living Arrangements:** The Associate Vice President of Campus Life and Student Affairs can assist in changing on-campus living arrangements to ensure safety and a comfortable living situation.

6. **Academic Arrangements:** The Chief Academic Officer can assist in adjusting academic schedules and provide access to academic support services.

When the Title IX Coordinator becomes aware of a student who could have been a victim of sexual violence, they will contact the victim to gather information, discuss the next steps, and discuss interim measures for safety and comfort.

The Title IX Coordinator will provide the victim with written documentation of the interim measures and give copies to all relevant parties on campus. Reporting options and other resources will also be made available to the victim. This will be done no matter the location of the incident (on or off campus).

Handling Complaints

A complaint of sexual harassment, gender discrimination, sexual assault, domestic or dating violence, or stalking should be filed as soon as possible, preferably within **180 calendar days of the incident**.

Informal Procedures

The informal procedures (mediation) are designed to resolve complaints quickly, efficiently, and to the mutual satisfaction of all parties involved. Where circumstances allow, and both parties agree to participate, informal procedures will be initiated as soon as possible and *within five school days*, absent any unusual circumstances.

- A complainant may elect to *terminate a formal complaint process and enter into mediation at any point*, including after the commencement of the formal process.
- Mediation is a voluntary process intended to allow the parties involved in an alleged complaint of discrimination or harassment to discuss their respective understandings of the incident with each other through the assistance of trained personnel.

- Mediation is designed to encourage each person to be honest and direct with the other and accept personal responsibility where appropriate. Mediation is offered only if both the complainant and the respondent are members of the University of the Southwest community and agree to participate.
- Upon the consent of all parties to the complaint, the Title IX Coordinator or other appropriate individuals will seek an outcome through mediation conducted by a qualified USW staff member or an external professional engaged by USW.
- *Any resolution through mediation also must be mutually agreed upon by all parties to the complaint.*
- Both the complainant and the respondent have the right to bypass or end the informal complaint process at any time and *begin the formal stage of the complaint process.*

Formal Procedures

If the allegation of harassment is not resolved by the informal procedures or is inappropriate for mediation (e.g., in the case of sexual assault), a formal investigation will be initiated. The party making the allegations should provide a formal written complaint to the Title IX Coordinator.

- The respondent will then be afforded fourteen (14) calendar days to provide a written response to the allegations. A copy of any response will be provided to the complainant.
- The Title IX coordinator will then conduct an investigation. The investigation of all formal complaints shall include interviews of (i) the complainant, (ii) the respondent, and (iii) any witnesses and other persons identified as having relevant information related to the alleged incidents, so long as they agree to be interviewed.
- The parties will have the opportunity to present witnesses and other evidence for consideration by the Title IX Coordinator.

- The Title IX Coordinator shall have the authority to take all reasonable and prudent interim measures to protect both parties pending completion of the investigation and during the informal or formal procedures to resolve the complaint.

Allegations of Conduct by another Student. A complaint that a student has engaged in unlawful prohibited conduct in which a formal hearing is sought must be made in writing to the Provost by filing a disciplinary grievance form. They will then contact the Title IX Coordinator to enact an investigation. This investigation shall be conducted as expeditiously as possible. University of the Southwest will strive to complete them within (30) school days after receipt of the complaint, except where the complainant agrees that an extended period of time would be appropriate or circumstances require it (e.g., during statutory holidays).

A report of the findings of the investigation shall be provided to the complainant, the respondent, and the **decision-maker** if a formal hearing is held. Complainants and respondents have the right to be present during any formal hearing. For complaints made near the end of the semester or in other circumstances where the Provost determines that the complaint cannot be resolved promptly, other procedural options may be considered in consultation with the student who raised the issue. A hearing under these circumstances may take the form of an administrative hearing by a designee of the President.

All students who file a complaint will be informed of a timeline for resolution at the beginning of the adjudicative process, notified in writing of the outcome, and allowed to appeal the decision. All decisions will be made using a preponderance of the evidence standard.

Allegations of Misconduct by a University Employee. If a student alleges misconduct by an employee, they will be entitled to the same fundamental rights, protections, and procedures explained above (i.e., prompt resolution, the right to present witnesses and evidence, and appeal). Any hearing, however, will be held in front of the **Director of Human Resources**. All students can be assured that USW staff will work with them to promptly and equitably resolve their issues. In no instance will any student be retaliated against for bringing an issue to either a Title IX Coordinator or another USW employee.



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