



# **Title IX and Hazing on Campus: Lessons Learned from New Mexico State University**

## **Final Report**

December 18, 2024



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## EXECUTIVE SUMMARY

During the 2022-23 men's basketball season, New Mexico State University (NMSU) fell short in protecting student-athletes from hazing and sexual assault. NMSU's student safety programs, plagued with lax oversight and discipline, failed to deter Deshawndre Washington, Kim Aiken Jr., and Doctor Bradley from engaging in a months-long scheme of sexualized hazing incidents, which targeted at least four teammates and two student-managers. In the aftermath of these events, the New Mexico Department of Justice undertook a comprehensive review of NMSU's hazing and sexual assault prevention programs and protocols to identify shortcomings, to explain how the hazing scheme within the basketball program persisted without corrective action, and ultimately to help NMSU provide a safer environment for students. Campus safety for students-athletes in particular and for the student body as a whole is not only a fundamental responsibility of universities and colleges but also necessary for students to attain academic achievement, athletic success, and personal development. Since the disturbing events in 2022-23, NMSU has made significant progress in improving its safety program and protocols. This report is designed to aid in the continuing efforts to protect students from hazing and sexual assaults.

NMDOJ's review shows that the sexual assaults perpetrated by three NMSU men's basketball players did not occur in a vacuum but were reflective of a more pervasive toxic culture throughout the program. There were ample opportunities for those around the team to observe this toxic culture as it was developing, but they failed to effectively intervene and prevent it. This inaction was compounded by inadequate institutional preventative safeguards.

In its investigation, NMDOJ identified seven focal points: (1) institutional governance and student engagement; (2) policies; (3) reporting; (4) training; (5) Athletics Department culture and recruiting practices; (6) resources for sexual assault victims; and (7) coordination between University components. Concerns arising in these focal points led to thirty-five recommendations to improve the safety of student-athletes and the entire campus community moving forward.

The highest priority recommendations for NMSU include:

1. Developing written guidelines to govern the coordination between the Athletic Department, Office of Institutional Equity, and Dean of Students personnel, specifically related to reports of student-athlete hazing and sexual violence;

2. Instituting recurring Title IX and anti-hazing training for all University students and staff, regardless of athletic or student organization affiliation;
3. Employing consistent disciplinary measures for student-athletes proportional to the severity of the misconduct;
4. Requiring additional and consistent scrutiny of recruiting practices and standards for both athletic coaches and players;
5. Securing a commitment from senior leadership to prioritize and communicate awareness efforts, policies, reporting options and programming designed to prevent sexual assault and hazing, and to provide adequate personnel and funding to the Office of Institutional Equity and other University safety programs;
6. Creating a resource center for sexual violence education and prevention, and enhancing confidential victim advocate services.

The lessons learned at NMSU demonstrate that statewide action is necessary and that now is the time for the New Mexico Legislature to act. New Mexico remains one of six states in the United States without a law establishing anti-hazing safeguards. NMSU's implementation of the recommendations in this report and the Legislature's passage of anti-hazing legislation will greatly improve student safety across New Mexico.

## I. INTRODUCTION

Over the Thanksgiving holiday in November 2022, the NMSU men's basketball team traveled to Las Vegas, Nevada to play in the Holiday Classic basketball tournament. While in a hotel room during this road trip, without any coaches or other staff present, multiple NMSU players surrounded a student-manager and pressured him to pull down his pants. As captured by a cell phone video taken by one of the players, the following exchange took place while the student-manager was forced to do jumping jacks with his buttocks exposed:

Student-Manager: *"This is some Title IX shit."*

Basketball Player: *"We don't believe in Title IX. Don't f\*\*\* with me. Let's go."*

Title IX refers to the federal civil rights law that serves as a critical safeguard against sexual assault, sexual harassment, and other forms of sex-based discrimination and shields those who report such misconduct from retaliation. Compliance with Title IX is among a university's most essential responsibilities in creating a safe and supportive environment on campus.

The players' dismissive attitude toward Title IX in the midst of committing Title IX violations was not isolated to this single event in a Las Vegas hotel room. Rather, this incident was but one of countless episodes during which players and student-managers were subjected to similarly reprehensible harm and humiliation. These incidents took place in locker rooms, on team buses and at other locations where the coaching staff would have been positioned to observe, address and report such behavior had they been engaged and attentive. Instead, between July 2022 through February 2023, sexual assaults became a common occurrence within the men's basketball team, ultimately resulting in the cancellation of their 2022-23 season and criminal charges against three men's basketball players.

NMDOJ's investigation and review focused on both past events and ways to improve the system and better protect students in the future. The backward-looking part of the investigation analyzed the circumstances that allowed the toxic environment within the men's basketball team to take root, and the adequacy of the protocols the Athletics Department and University had in place to prevent or address such behavior.

In its review, the NMDOJ's examined policies and procedures, reporting mechanisms, training regimens, victim services and other relevant systems and protocols at higher educational institutions nationwide. The NMDOJ incorporated into its analysis the lessons learned from investigations into athletic departments or Title IX investigations conducted or commissioned by NMSU peer institutions, including Pennsylvania State University, the University of Michigan, Baylor University, San Jose State University, Randolph College, the University of Maryland at Baltimore, the California State University system, the University of California Davis, Northwestern University, and the University of New Mexico. The NMDOJ further applied principles developed by StopHazing.org's Hazing Prevention Framework and Toolkit, the NCAA's Sexual Violence Prevention Toolkit and Hazing Prevention Handbook, and engaged the assistance of nationally recognized hazing expert Dr. Susan Lipkins.<sup>1</sup>

As a result of the evaluation of these resources and consultation with Dr. Lipkins, seven focal points surfaced as warranting investigation relating to effective prevention of sexual assault and hazing. The NMDOJ analyzed NMSU's practices through the lens of these focal points and formulated concrete recommendations for securing a safe environment for student-athletes and the larger campus community.

NMDOJ examined over 12,000 pages of pertinent documents and interviewed twenty-three employees and students with first-hand knowledge of NMSUs' practices, including the following individuals: Chair of the Board of Regents, a former President/Chancellor of the University, current and former Vice Presidents/Chancellors, administrators in the Athletics Department, the Dean of Students, Executive Director of the Office of Institutional Equity, head and assistant coaches, athletic staff, current student-athletes and parents. NMSU cooperated fully with the NMDOJ's review and, subject to privacy requirements, readily facilitated access to all requested documents and personnel currently affiliated with the University.

## **II. LEGAL AND FACTUAL BACKGROUND**

### ***A. Title IX and Hazing***

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<sup>1</sup> Dr. Lipkins is a psychologist and author of *Preventing Hazing: How Parents, Teachers and Coaches Can Stop the Violence, Harassment and Humiliation*.

Title IX of the Education Amendments of 1972, codified at 20 U.S.C. § 1681 and implemented through 34 C.F.R. Part 106, is a comprehensive civil rights law prohibiting discrimination on the basis of sex in any federally funded educational program or extracurricular activity. Title IX is designed to prevent the use of federal money to support sex discrimination, sexual harassment and sexual assault, and to provide individuals effective protection against those practices.

Title IX protects all students from sex-based harassment, including harassment inflicted on members of the same sex. The August 2020 regulations implementing Title IX define “sexual harassment” as conduct on the basis of sex that satisfies one or more of the following criteria:

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity;
- or
- (3) Sexual assault, as defined in the Clery Act<sup>2</sup>, or dating violence, domestic violence or stalking as defined in the Violence Against Women Act.<sup>3</sup>

When an institution has actual knowledge of sexual harassment in an education program or activity, they must “respond promptly in a manner that is not deliberately indifferent.”<sup>4</sup> When institutions become aware of actions that may run afoul of Title IX’s guarantees, they are tasked with pursuing investigations and implementing measures to stop the harassing behavior, prevent its recurrence, and remedy its effects. Supportive measures designed to protect the safety of parties to an investigation include counseling, modification of work and class schedules, campus escort services, no-contact orders, and increased security and monitoring of certain areas.<sup>5</sup> These investigative processes and remedial

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<sup>2</sup> Sexual assault is defined in the Clery Act, 20 U.S.C. 1092(f)(6)(A)(v).

<sup>3</sup> Dating violence, domestic violence and stalking are defined in the Violence Against Women Act, at 34 U.S.C. 12291(a)(11), 34 U.S.C. 12291(a)(12) and 34 U.S.C. 12291(a)(36) respectively.

<sup>4</sup> Required under 34 CFR Section 106.44(a) of the 2020 Title IX regulations. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of known circumstances.

<sup>5</sup> Supportive measures are defined and examples provided in 34 CFR Section 106.30(a) of the 2020 Title IX regulations.

measures are overseen by a designated university employee called a Title IX Coordinator.<sup>6</sup>

At NMSU, compliance with Title IX is within the purview of the Office of Institutional Equity (OIE) and Executive Director William Nutt. Mr. Nutt serves as the Title IX Coordinator and oversees OIE's intake, investigation and resolution of sexual misconduct complaints. Due to ongoing litigation over the enactment of new Title IX regulations in August 2024, NMSU continues to operate under 2020 Title IX requirements.<sup>7</sup>

Hazing is not expressly prohibited by Title IX but, depending on the behavior, may satisfy one or more of the forms of sexual harassment prohibited by Title IX. Some states expressly prohibit "hazing," but contrary to the well-established mandates relating to sexual harassment under Title IX, hazing is not uniformly defined by these states. New Mexico has no hazing law and does not prohibit hazing on a statewide basis. Individual educational institutions, however, may prohibit hazing independently of Title IX restrictions. Most definitions of hazing are similar to that of the National Collegiate Athletic Association (NCAA), which defines the conduct as "any act committed against someone joining, or becoming a member, or maintaining membership in any organization that is humiliating, intimidating or demeaning, or endangers the health and safety of the person."

As discussed below, the NMSU men's basketball team incidents in 2022-23 implicated definitions of both hazing and sexual harassment. As a result, this conduct resulted in the University conducting a Title IX investigation.

### ***B. Events During the 2022-23 Men's Basketball Season***

NMSU Athletics consists of 16 NCAA Division I teams, over 400 student-

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<sup>6</sup> Designation of a Title IX Coordinator is required under 34 CFR Section 106.8(a) of the 2020 Title IX regulations.

<sup>7</sup> In *Kansas v. United States Department of Education*, No. 5:24-cv-04041 (D. Kansas. July 2, 2024), four states and three plaintiff organizations (Young America's Foundation, Female Athletes United and Moms for Liberty) sought an injunction preventing the Department of Education from implementing Biden Administration Title IX regulations set to take effect in August 2024. On July 2, 2024, the District Court of Kansas granted a preliminary injunction preventing enforcement of the 2024 Title IX regulations in the four plaintiff states and at *any school attended by current* members of the three plaintiff organizations. New Mexico State University is subject to this injunction, and accordingly continues to abide by the 2020 Title IX regulations.

Athletes and approximately 100 full-time employees. Since 2015, the Department has been led by Athletic Director Mario Moccia, who is tasked with the oversight of all sports programs, including coaches, staff and student-athletes. The leadership team within the Department includes six deputy or senior associate athletic directors.

During the 2022-23 season, NMSU was preparing to join Conference USA, which was expected to bring increased national exposure and significant monetary benefits to the University. Conference USA's decision to add NMSU was undoubtedly due in part to the success of the men's basketball team, which during the preceding five years under Head Coach Chris Jans had compiled a 122-32 record and three NCAA tournament appearances. Upon Jan's departure in March 2022, NMSU hired his replacement eight days later, Coach Greg Heiar.

Although Heiar's previous tenure at Northwest Florida State College culminated in a junior college national championship, he had not served in a head coaching capacity at the Division I level. Outside Associate Head Coach Dominique Taylor, a holdover from Jan's staff, Heiar brought in seven new assistants. The 2022-23 men's basketball roster returned three players from the 2021-22 season, and the remaining roster was comprised of new Division I and junior college transfers, incoming freshmen and walk-on players.

Despite the promise of the roster, the 2022-23 season quickly became fraught with a toxic locker room culture, marked by player misconduct and a lack of oversight by coaches. The physical force and aggression that characterized the sexualized hazing incidents were not without precedent or warning. Instead, by the third game of the regular season, the negative culture developing within the men's basketball program had precipitated two violent incidents.

On October 15, 2022, NMSU basketball players Mike Peake and Marchelus Avery were involved in a brawl with University of New Mexico (UNM) students at a UNM-NMSU football game in Las Cruces, in which Peake can be seen on video throwing punches. Despite the presence of NMSU law enforcement officers, no police report was filed. If any discipline was meted out, it did not include Peake or Avery's suspension or prohibition from traveling to play UNM on November 19, 2022. During that trip, Peake left the team hotel past curfew and got into an altercation with UNM student Brandon Travis in which gunfire was exchanged by both men. Peake was shot and hospitalized with a leg wound, and Travis died on scene from his injuries.

Following the shooting, three of Peake's teammates – Issa Muhammad, Avery, and Anthony Roy – broke curfew to assist Peake in removing items of evidence from the scene. During the subsequent investigation, New Mexico State Police faced obstacles in securing these items from University personnel, eventually collecting Peake's firearm, tablet, and cellphone from the associate head coach, special assistant to the coach, and associate athletic director, respectively. Peake, whose actions were later deemed to be self-defense by prosecutors, was indefinitely suspended from the team 16 days after the incident, on December 5, 2022.

While the October fight and November shooting resulted in public reputational harm to the program, the group dynamics evolving among the players in private were even more damaging. Ultimately, on February 10, 2023, Deuce Benjamin, a freshman and Las Cruces native, and his father, a former NMSU basketball player, walked into the NMSU Police Department office to report hazing behavior within the men's basketball team. This report was not a response to a single event but rather an attempt by Benjamin to stop what had been months of sexual assaults taking place in locker rooms, team buses, and hotel rooms, beginning as early as July or August 2022. Subsequent investigations determined that there were three primary offenders of the sexual violence – Deshawndre Washington, Kim Aiken, Jr., and Doctor Bradley. Victims and witnesses described a “humbling” process, in which Washington, acting as the ringleader, would require a victim to confirm they were “humble.” If there was resistance to such a request, Aiken or Bradley, or both, would intimidate the individual into compliance. In many instances, victims were required to perform calisthenics with their private parts exposed, and often tackled to the ground where their genitalia were forcibly squeezed.

Teammates were the most frequent victims of this degrading “humbling” process. Shak Odunewu recalled being hazed multiple times. The first time it happened he was showering, the curtain was ripped aside, and he was forced to spin and do squats while his buttocks were slapped. During a bus ride back from NMSU's game with UTEP in mid-November 2022, he was pinned down, his buttocks slapped, and his penis grabbed. Benjamin faced similar abuse on multiple occasions. He was forced to pull down his shorts and perform some type of physical activity until Washington was satisfied. His abusers frequently ordered him to expose his genitals, and they would grab and twist his scrotum. Kyle Feit and another player recounted similar sexual violence by the same three culprits, occurring at least two times a week beginning in the fall and continuing after winter break into the second semester.

Team student-managers were also subjected to sexualized hazing. One manager recalled an incident in November 2022 where his pants were pulled down, testicles grabbed and twisted, and his bare buttocks repeatedly slapped as he was held down. Another manager described at least three separate occasions in which he was sexually assaulted, including one time in a Las Vegas hotel room in which he was forced to do jumping jacks with his shorts pulled down.

According to at least two players in legal pleadings, the victims of these assaults informed the coaches, but they failed to act. When Odunewu and Feit described the abuse to Associate Head Coach Taylor, he laughed and asked, “What do you want me to do about it?” Odunewu told his former coach about the abuse, and former Coach Jans confronted Coach Heiar about it on a phone call. Although Coach Heiar agreed to look into the matter and issue suspensions, there is no indication that he did so. In fact, he made no reports to the OIE as required by University policy.

Benjamin’s report on February 10<sup>th</sup> was not the first instance of hazing behavior conveyed to NMSU authorities through formal channels. On December 31, 2022, during a basketball game against Sam Houston State, a NMSU booster and father of one of the victimized student-managers alerted Deputy Athletic Director Chet Savage to the sexual assaults being perpetrated against his son. That information was timely conveyed to Director Moccia and other Athletic Department leadership and reported to OIE on January 3, 2023. Thereafter, OIE sent the student-manager an email, but the email made the student-manager feel like he had done something wrong. The student-manager was confused about why OIE would blame him and did not respond to the email. It’s unclear what the OIE did next, if anything, but what is clear is that hazing behavior continued unabated until the abuse inflicted on Benjamin on February 6, 2023, prompting his formal report to NMSU police four days later.

### ***C. The Aftermath***

Benjamin’s report to law enforcement coincided with the men’s basketball team traveling to California to play Cal Baptist on February 11, 2023. The police alerted the OIE, the Dean of Students, and other University and athletic leaders to the report of widespread sexualized hazing. The University summoned the team back to Las Cruces to participate in an investigation. The remainder of the basketball season was officially cancelled on February 12, 2023, and NMSU terminated Coach Heiar for cause on February 14, 2023. Heiar’s entire coaching

staff did not have their contracts renewed, and every player on the 2022-23 team subsequently transferred out of the program. NMSU later hired Jason Hooten as the men's head basketball coach on March 24, 2023.

Dan Arvizu, NMSU's Chancellor in 2022-23, had been with the University in a leadership role since 2018. In December 2022, the Board of Regents announced that Arvizu would not continue as Chancellor beyond the expiration of his contract in June 2023. Arvizu officially stepped down over two months early, on April 7, 2023. On that same date, Arvizu signed Director Moccia to a five-year contract extension, with an increase of his annual salary from \$280,000 per year to \$425,000 per year by 2027-2028. While records demonstrate that contract negotiations had been broached prior to April 7th, both the NMSU Faculty Senate and many in the community were troubled over the move, due in part to the timing of the decision, and given the tumultuous men's basketball season which had ended prematurely roughly two months earlier. In response to concerns raised by the Higher Education Department that state funds would be applied to Moccia's compensation during pending investigations into the men's basketball incidents, starting in June 2023 NMSU chose to pay Moccia's salary through Aggie Athletic Club (AAC) booster funds. As of October 14, 2024, the AAC remains the funding source of Moccia's contract.

On April 19, 2023, Benjamin and Odunewu filed a lawsuit against the NMSU Board of Regents, former Coaches Heiar and Taylor, and the three primary culprits of the sexualized hazing incidents, alleging negligence on the part of NMSU and the coaches, and sexual assault, battery and false imprisonment against Washington, Aiken Jr., and Bradley. That suit was settled by the parties for a combined \$8 million on June 22, 2023. On November 6, 2023, August 25, 2024, and August 26, 2024, three more lawsuits were filed against NMSU, current and former employees, and the offenders of the abuse, claiming various harms stemming from incidents occurring on the 2022-23 men's basketball team. Washington, Aiken Jr. and Bradley have been charged criminally with multiple counts of criminal sexual contact, false imprisonment and conspiracy. Bradley and Aiken Jr. have pled guilty to multiple crimes stemming from these incidents, and have agreed to testify against Washington.

### **III. FOCAL POINTS: FINDINGS AND OBSERVATIONS**

Through the course of its investigation, NMDOJ identified seven areas that deserve continued attention by NMSU. These include: (1) institutional governance

and student engagement; (2) policies; (3) reporting; (4) training; (5) Athletic Department culture and recruiting practices; (6) resources for sexual assault victims; and (7) coordination among and between University components. In many instances, the University has made noteworthy strides since 2022-23. In others, further consideration and action is warranted to safeguard students from sexual assault and hazing. Observations and findings are offered below within each area.

### ***A. Institutional Governance and Student Engagement***

Hazing prevention guidance published by StopHazing.org and the NCAA, and Title IX investigations at peer institutions nationwide, universally illustrate the importance of sustained commitment by university leadership to reduce hazing and sexual assault incidents. This commitment is demonstrated through frequent communication and transparency with stakeholders, and recurring efforts to educate and engage students in prevention measures. Although critical, communication and student engagement are inadequate alone to prevent hazing and sexual assault and must be paired with effective governance of a university's Title IX and hazing prevention budget, personnel and operations. Tools to evaluate the effectiveness or deficiency of prevention programs should be frequently employed.

#### ***1. Consistent Communication from Senior Leadership to Students and Board of Regents***

StopHazing.org's Hazing Prevention Framework and Toolkit underscores the importance of senior university leaders and athletic administrators playing active and public roles in messaging and endorsing campus-wide hazing prevention efforts to students. The Hazing Prevention Toolkit further emphasizes that comprehensive hazing prevention is a culture change process that progresses and builds credibility through consistent and substantive communication. While communication from University leadership to the student body is essential, communication from campus leaders to the Board of Regents is equally critical. For example, in examining sexual abuse incidents within the Pennsylvania State University football program, investigators found that the university's Board of Trustees failed to exercise oversight functions by not having regular reporting procedures or committee structures in place to ensure disclosure of sexual misconduct. According to a former NMSU administrator interviewed by the NMDOJ, the Board of Regents Audit and Risk Committee should similarly receive recurring reports from the Executive Director of the OIE related to the status of

pending Title IX cases, training and outreach events, and internal and systemic barriers to OIE's operations.

NMSU Vice President of Student Success Dr. Renay Scott stated that the President's office periodically highlights certain important events or topics such as Indigenous People's Day or free speech issues, but there has not been any similar campus-wide communication sent by senior leadership regarding hazing prevention. A supervisor within the Aggie Health and Wellness Center that spoke to the NMDOJ recalled that such emails from the administration only seem to be "event based" and come out in a "reactive state," as opposed to systematic reminders. Furthermore, in an institutional report generated by the Dean of Students, NMSU was candid that while basic information about hazing could be found in policy and there were education efforts specific to fraternities and sororities, hazing was "never a topic of campus conversation until an incident occurred with the men's basketball program." Since those events, NMSU has taken significant steps, including virtual attendance of the Interdisciplinary Hazing Prevention Institute, participation in StopHazing's Hazing Prevention Consortium (HPC), creation of a hazing prevention and education work group, retention of hazing expert Kim Novak to speak with student-athletes and development of an external athletics advisory committee.

In the months following the cancellation of the men's basketball season, NMSU Board of Regents Chair Ammu Devasthali confirmed that the Board was briefed on the multiple investigative findings into the Athletic Departments' operations. Chair Devasthali noted that the Board would occasionally get updates from Athletic Director Moccia regarding various anti-hazing action items, but the Board had not been briefed on the status of hazing prevention measures recently. Similarly, while documents provided to the NMDOJ show that the Board of Regent's Audit and Risk Committee received a presentation from the OIE in February 2024, prior to that the Board had not received a formal report since August 2021. Chair Devasthali confirmed that another full briefing was not sought in 2022 or 2023 due to the absence of a full-time OIE Executive Director.

Despite clear action by NMSU personnel, such information must extend beyond the administrators themselves, and reach both the students and ultimate decision-makers. Knowledge of the University's engagement in this space serves to reaffirm NMSU's priorities and values. Moving forward, NMSU senior leadership should publicly espouse to students the importance of new trainings, awareness efforts, policies, reporting options, resources and programs designed to address sexual assault and hazing. Particular focus should be placed on reaching those in

athletics, Greek life and student organizations that are most susceptible to experiencing such behavior. Administrators should consider the benefits of structured messaging at various points in a student's academic career, including during new student orientation, periodically throughout the semester and upon returning to campus after a break. Chancellor Arvizu's efforts to remind students of the University's policies and available resources in the wake of the men's basketball incidents were appropriate and important, but regular correspondence from University or athletic leadership should not be limited to fallout or damage control from bad outcomes; it has a valuable preventative purpose that should be fully realized.

Additionally, given the Board's primary responsibility in developing NMSU's mission and fiscal priorities, the Board must be fully aware of the University's efforts and obstacles to make informed decisions about personnel, policies and other issues of governance. As the body that can statutorily sue and be sued, the Board should receive regular updates from the University General Counsel on pending or threatened litigation related to Title IX matters so that recurring trends can be identified and appropriately addressed. Furthermore, there should be periodic opportunities for senior University, OIE and athletic leadership to update the Board's Audit and Risk and Student Success Committee regarding progress on sexual assault and hazing initiatives. The incoming President should be thoroughly briefed on the extent and progress of prevention efforts.

## 2. Student Engagement in Sexual Assault and Hazing Prevention Measures

Successful hazing and sexual assault prevention measures require student buy-in and participation. Both the Hazing Prevention Toolkit and the NCAA's Sexual Violence Prevention Toolkit stress the importance of student engagement, and suggest development and dissemination of web content, newsletters, poster campaigns and student-designed programs and tabling events that create healthy social norms for individuals, student organizations and athletic teams. The NCAA's guidance directs schools to encourage student-athletes to be active, visible participants in the broader campus and societal efforts to prevent sexual violence.

Title IX investigations at peer institutions demonstrate the importance of student education of and engagement in sexual assault prevention measures. For example, investigators found Baylor University and the California State University system fell short in their prevention efforts due to ad hoc and diffuse approaches to seeking student involvement. Best practices suggest intentional, holistic and strategic engagement that integrates concepts of wellness, violence prevention,

mental health and campus safety. In addition to a university's pursuit of voluntary student education and engagement, Title IX mandates that each institution advertise information about the Title IX Coordinator, a position that plays a critical role in coordinating supportive measures for students. Title IX regulations require that an institution "prominently display the contact information required to be listed for the Title IX coordinator . . . on its website and in each handbook or catalog that it makes available to persons entitled to notification, including students and employees." The NCAA's Policy on Campus Sexual Violence similarly requires the name and contact information for the Title IX Coordinator be provided to student-athletes.

NMSU utilizes various methods to engage the campus community in sexual assault and hazing education and prevention programming. Initially, NMSU students are made aware of university resources available to those impacted by sexual assault and hazing at new student orientation by the Aggie Health and Wellness Center. Thereafter, educational efforts continue during forty-five days of informational events at the beginning of each school year known as "Crimson Kickoff." Throughout the year, the "Crimson Connection" serves as an online platform for continued student involvement and lists campus activities, including those related to sexual violence and hazing.

In interviews with the NMDOJ, the former Chief of NMSU Police, Vice President for Student Success, OIE's Executive Director and Assistant Director of Aggie Health and Wellness all identified engaging with students at campus activities dedicated to sexual assault and hazing awareness as an important preventative effort. These activities occur both sporadically and during predetermined months, such as Domestic Violence Awareness Month or Sexual Assault Awareness Month, and provide platforms to address drug and alcohol abuse, debunk common victim-blaming myths and communicate various reporting options to students.

During National Hazing Prevention Week between September 23 - 27, 2024, NMSU held three tabling events dedicated to hazing prevention. Despite both OIE personnel and fraternity and sorority members working these outreach events, there was negligible, if any, involvement or awareness by student-athletes or active encouragement to attend by coaches. The three athletes interviewed shortly after these hazing prevention events had not seen them or been told about them by University or Athletics officials, and coaches did not recall encouraging attendance. Director Moccia was unclear whether any athletics staff, coaches, or athletes attended hazing prevention events. Requiring athlete involvement is not

without precedent. According to a former university administrator knowledgeable about the Athletics Department that spoke with the NMDOJ, prior football coach Jerry Kill was known to require players to work tabling events during sexual assault awareness month, sign pledges, and pass out promotional items.

In reviewing NMSU's web content focused on sexual assault and hazing prevention, the NMDOJ found that while the Aggie Health and Wellness Center maintains a comprehensive website promoting relevant physical and mental health resources, a revision of content is needed to ensure accuracy and clarity. For example, on the Office of Health Promotion webpage dedicated to "Sexual Assault," the following information is outdated, incorrect or missing:

- a. An update of the RAINN sexual assault statistics, some of which are from 1998. More current data can be obtained through the National Sexual Violence Resource Center;
- b. A correction to the statutory citation for rape, which should be Section 30-9-11 NMSA 1978; and
- c. Inclusion of a hyperlink to the OIE's webpage or inclusion of the Title IX reporting link itself when publicizing how to report sexual assaults.

Furthermore, hazing information is currently decentralized across multiple student handbooks and assorted webpages. In an interview with the NMDOJ, Dr. Goodman confirmed that the Dean of Students is in the process of creating a hazing-specific website which follows a rubric provided through NMSU's participation in StopHazing's Hazing Prevention Consortium.

Despite NMSU's multi-faceted approach to disseminating guidance about supportive services and engagement events, the University fails to clearly advertise the name and contact information of the OIE's current Executive Director and Title IX Coordinator. The NMDOJ observed that NMSU's Title IX Coordinator's name and contact information does not appear in the 2023-24 Student Organization Handbook and is not explicitly listed in the 2024-25 Student-Athlete Handbook. In several online locations, the Title IX Coordinator's name and contact information is outdated. Administrative Rule and Procedure 5.05 Section 3(C) lists the prior OIE Executive Director, Laura Castille, who departed in August 2022. NMSU-affiliated Grants Community College's Title IX webpage similarly contains Ms. Castille's information, and the Alamogordo branch website fails to list any Title IX Coordinator information whatsoever.

In order to maintain consistent student education of and engagement in sexual assault and hazing prevention efforts, ongoing campaigns such as the OIE's

#AggiesAlwaysAsk addressing issues of consent, and the “It’s On Us” pledge to end sexual assault on campus, should remain a prominent part of NMSU’s awareness and engagement portfolio. Campus tabling events and other University sponsored activities dedicated to hazing prevention should be pursued, including at intermittent times outside of National Hazing Prevention Week.

Given the busy schedules of student-athletes, coaches and administrators should proactively convey the existence and importance of preventing sexual assault and hazing by informing and encouraging participation in awareness events. Multiple avenues of communication should be employed, including through the Athletics Department’s Teamworks scheduling platform, in text messages by coaches, and via in-person reminders at team meetings. Athletics Department participation in sexual assault and hazing prevention efforts serves to better educate athletes about issues of group dynamics and peer pressure, understand the resources and reporting options available to them and model commitment for other students to follow.

A regular evaluation of NMSU’s public-facing web content regarding sexual assault prevention and intervention is warranted. Accurate and comprehensive information, combined with existing efforts to proactively educate students, is necessary for this essential information to reach and impact its intended audience. Moreover, NMSU should seek prompt completion of a dedicated hazing website for students, parents and other interested parties. This hazing website would become the centralized location containing the University’s mission and policy statements, support for victims, trainings, and a location to publicly report hazing violations by individual students and student organizations.

Lastly, the University should proceed with a wholesale review of all promulgated handbooks and catalogs, as well as all germane webpages, to ensure current Title IX Coordinator name and contact information is prominently displayed.

### *3. Hazing Prevention Personnel and Budget*

In a study supporting the Hazing Prevention Framework, researchers assert that implementation of campus-wide prevention efforts requires sufficient and consistent funding, staffing and time dedicated to maintaining and advancing

these initiatives.<sup>8</sup> Assignment of dedicated human and budgetary resources is paramount in ensuring sustainability of prevention and intervention measures.

In an institutional report generated as part of their participation in the Hazing Prevention Consortium, NMSU noted that “an obstacle in hazing prevention work is the change in university leadership roles that has impacted the funding commitment and capacity of the working group membership.” The report further stated that “political and global issues (protests, etc.) have redirected attention of university leadership away from hazing concerns to free speech issues. This impacts resource allocation as well as staff capacity.” Dean of Students Dr. Ann Goodman recognized this risk, noting that the primary issue is with the absence of a dedicated line item in the budget to finance hazing prevention measures. Dr. Goodman has sought a designated account solely for anti-hazing initiatives with earmarked funding, to avoid the possibility that discretionary money will be directed to other projects.

NMSU should seek earmarked and recurring funding to maintain anti-hazing efforts. Without a budget line item for hazing prevention, these initiatives can take on lesser importance as the University shifts its attention to the most pressing issues of the day. A commitment to recurring funding for hazing programs should not be viewed as a zero-sum obligation. Instead, effective prevention measures represent an investment for which the returns outweigh the costs associated with litigation, investigations, reputational damage and other negative institutional consequences of hazing events.

#### *4. Title IX Personnel and Budget*

As evidenced by NMSU’s peer institutions that have been subject to Title IX investigations and compliance audits, adequate personnel and allocation of budgetary resources are necessary prerequisites for the OIE’s success in fulfilling its Title IX mission. These investigations demonstrate that the failure to adequately resource Title IX offices can lead to case backlogs and employee turnover, ultimately impacting the students they are obligated to serve.

According to Executive Director Nutt’s presentation to the Board of Regents Audit and Risk Committee in February 2024, while overall OIE staffing has

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<sup>8</sup> Transforming the Culture of Hazing – A Research Based Hazing Prevention Framework – by Dr. E. Allan, J. Payne and D. Kerschner. Journal of Student Affairs Research and Practice. (2018).

increased, the essential functions remain insufficiently staffed. This problem is exacerbated when, according to Nutt, the average career in the Title IX field is only three years. Leadership instability is particularly problematic in the Title IX realm, as the absence of a consistent Title IX Coordinator impedes the accumulation of institutional knowledge and may lead to enforcement gaps, delays in responsiveness and disparate triage and evaluation of cases. Prior to Executive Director Nutt starting in August 2023, there were two interim directors leading the OIE after the departure of the prior permanent director in August 2022. The leadership volatility in the OIE is mirrored by turnover at senior University leadership positions. With the recent selection of new President Valerio Ferme, NMSU will have had six interim or permanent Presidents or Chancellors within the last six years.

The NMDOJ's review revealed that when the sexualized hazing incidents on the men's basketball team were reported to the OIE in January and February 2023, the OIE was in an acute state of transition. When the first complaint was made by the Athletics Department to the OIE on January 3, 2023, the interim director, although having worked within the office since 2019, had been in a leadership role for less than two months. That interim director was managing a team of three investigators that had a combined experience of less than six months. Given the dearth of personnel well-versed in the Title IX intake and investigative process, it seems highly unlikely that the OIE could have brought the necessary resources to bear to fully consider and address the complaint and its ramifications for the entire men's basketball program.

In addition to the obstacles in remaining satisfactorily staffed, the number of complaints that OIE personnel are required to handle is – according to former Interim President Jay Gogue – “mind-boggling.” Executive Director Nutt raised this issue with the Board in early 2024, noting that the OIE's caseload is higher than comparable institutions. According to the University General Counsel, in addition to the OIE's active caseload of Title IX, non-Title IX discrimination matters and accommodation requests, the office received 554 reports in the first half of 2024, including 38 Title IX reports. This yields an average caseload for current investigators of between thirty to sixty cases. According to NMSU, an ideal caseload would be between twenty and thirty cases, and fewer if any sizable part of the caseload includes Title IX matters being adjudicated through the formal

grievance process. The deluge of incoming matters has been managed while OIE's operating budget remained nearly stagnant between 2017-18 and 2023-24.<sup>9</sup>

The OIE and NMSU are taking steps to address these resource constraints. Director Nutt has prioritized hiring an intake coordinator to more effectively and timely organize complaints being received by the OIE. The University has also recently shifted some duties that historically fell under the OIE to other offices, allowing OIE personnel to focus on their Title IX obligations. These steps should be augmented with a proper human capital and financial investment into the OIE commensurate with the breadth of the Office's duties, which include campus awareness events, athletics and student organization trainings, implementation and oversight of supportive measures, and sexual harassment intake, investigation and sanctioning decisions.

##### 5. OIE Organizational Structure

One of the more significant governance questions faced by NMSU is the proper placement of the OIE on the University's organization chart. Upon the departure of Laura Castille as the Executive Director of the OIE in August 2022, NMSU hired Segal Consulting to assist in locating a permanent leader for the OIE. In their report, Segal noted that "given sensitivities and risks associated with equity matters, university institutional equity officers typically report to an executive leader." A former NMSU administrator interviewed by the NMDOJ corroborated this generally accepted approach, noting that a Title IX office's organizational structure communicates to the campus community the priority placed on their mission by senior leadership.

Title IX investigations at other universities have further highlighted the downside to the OIE reporting *solely* to the General Counsel. Placement of OIE under the General Counsel's Office risks the perception that Title IX personnel are merely an extension of the university counsel, whose primary responsibility is to defend against institutional liability rather than address and prevent sexual violence and discrimination, even when the perpetrator is a university student or employee. Even the appearance that Title IX investigations are biased in favor of the institution can present a significant barrier to reporting.

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<sup>9</sup> According to a presentation given by Executive Director William Nutt to the Board of Regents in February 2024, the Office of Institutional Equity's operating budget during the 2017-2018 school year was \$33,168.00. The operating budget during the 2023-2024 school year was \$34,025.00.

The NMDOJ’s review determined that the OIE’s reporting lines have been unsettled, changing three times in the last three years. Before January 2022, OIE reported to the University General Counsel, with a “dotted-line” to the President and the Board of Regents. Between approximately January 2022 and February 2024, OIE was placed under a Chief Auditor, who reported to senior administrators, and in March of 2024, OIE was moved back under the General Counsel’s office without any reporting relationship with the President or Board. Board of Regents Chair Devasthali acknowledged that different configurations have been attempted, and additional conversations will be held on this point with the incoming President.

Segal’s report stated that the OIE’s status as an office under Internal Audit – a structure which was operative during the entire 2022-23 academic year – was problematic. This reporting structure was perceived to position OIE as merely a compliance office, rather than an office concerned with promoting inclusion and protecting the civil rights and general safety of students. Placing another office between the OIE and executive leadership added unnecessary bureaucracy and further impaired consistent and unfiltered communication.

NMSU should ensure that the OIE’s organizational placement conveys the authority and autonomy necessary to carry out its critical functions. The former University administrator that spoke with the NMDOJ suggested that a viable configuration may include the OIE reporting directly to the President, or alternatively, if reporting to the General Counsel is desired, restoring a “dotted-line” reporting relationship to the President. Given that part of the OIE’s responsibility under Title IX is not only to remedy effects of individual instances of sexual violence or harassment, but also to prevent the recurrence of such behavior, they must be closely aligned with ultimate decision-makers to implement policy and other structural strategies to address the issues at an institutional level.

## 6. Periodic Climate Assessments

The Hazing Prevention Toolkit emphasizes the need to use assessment instruments such as climate surveys, focus groups, student interviews and environmental scans to elicit feedback regarding the efficacy of hazing prevention efforts. A Title IX review commissioned by the California State University system further recommended that institutions deploy routine campus surveys to identify areas where students demonstrate resource knowledge gaps (such as the availability of resources or reporting avenues) or where there is student mistrust

(such as perceived institutional bias in Title IX or Dean of Students investigations).

NMSU is on the right track in this regard. As part of its participation in the Hazing Prevention Consortium, a climate survey is currently collecting student input on NMSU's hazing prevention efforts. Results from the survey are expected by February 2025. The University should consider building upon this effort by conducting such an assessment on an annual or biennial basis. It is advised that NMSU solicit feedback related to campus safety concerns, reporting barriers, accessing resources, university investigative practices and student experiences and attitudes towards the OIE and Dean of Students. The University should also explore expanding the target audience to include branch campus students, part-time students, faculty and staff. Input received through climate surveys should inform improvements in the University's education and engagement practices.

## 7. Transparency

Title IX and hazing resources evaluated by the NMDOJ highlight that increased transparency in two primary areas is integral to achieving an effective prevention framework. First, investigators into the hazing incidents at Northwestern University pointed out that transparency and accountability within the Athletics Department is particularly important given the problematic insularity of athletics within many universities. Second, audits conducted at other institutions recommended transparency into the practices and results of offices tasked with investigating and sanctioning sexual assault and hazing offenders. While universities may be prohibited under the Family Educational Rights and Privacy Act (FERPA)<sup>10</sup> from discussing specific details or identities of the parties in Title IX or student code of conduct cases, there is no prohibition against aggregating and publicly reporting the outcomes of cases.

In light of the events of 2022-23, transparency within the NMSU Athletics Department should be of paramount concern. One area in which more transparency is warranted relates to the current funding of Director Moccia's contract. As mentioned above, due to issues raised by the Higher Education Secretary regarding use of state funds to compensate Moccia while investigations into the University's handling of hazing incidents were pending, the Aggie Athletic Club (AAC) has been the source of Moccia's salary since June 2023. The AAC is the

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<sup>10</sup> Requirements under FERPA can be found in statute at 20 U.S.C. 1232g and are implemented through regulations in 34 CFR Part 99.

philanthropic arm of NMSU Athletics, and donations received are deposited with the NMSU Foundation. The Foundation’s gift acceptance policy states that “all solicitations on behalf of NMSU or any unit or program thereof shall comport with the standards in the Donor Bill of Rights, as developed by the Council for Advancement and Support of Education (CASE).”

This CASE Donor Bill of Rights clarifies that donors have the right to “be informed of . . . the way the organization intends to use donated resources, and of its capacity to use donations effectively for their intended purposes.” The AAC member handbook for 2023-24, which serves as the primary solicitation brochure for donations, fails to inform prospective donors that gifts may be used to pay for Director Moccia’s salary. Rather, the handbook notes that gifts to AAC are used to fund student-athlete educational expenses, and that gifts go “directly to pay for costs such as books, fees, summer school, nutrition, as well as room and board.” While the use of AAC funds for Moccia’s compensation was publicly reported in mid-2023, reliance on media outlets to inform donors of potential uses of their donations is inadequate. While there is no basis for the NMDOJ to conclude that omission of this information is intentional, full transparency demands its inclusion.

Relatedly, transparency is lacking regarding the work being performed by the OIE and Dean of Students to investigate and discipline sexual assault and hazing offenders. While NMSU’s annual security report provides limited insight into criminal offenses taking place on campus, neither this report nor any available resource further delineates the outcomes of the OIE or Dean of Students sexual assault or hazing investigations. At a minimum, and as required by statute in multiple states, NMSU should publicly report on a conspicuous website any violations of the student code of conduct or other University policies related to hazing and sexual misconduct by fraternities or sororities, athletic teams or other student groups. Within the confines of what FERPA allows, the publication of this information would allow prospective members and their families to make more informed decisions about joining these organizations. A public disclosure of investigative statistics would further demonstrate that the OIE and Dean of Students are treating complaints seriously, which in turn would encourage further reporting.

## ***B. Policies***

Policies that are overlapping, confusing or outdated have frustrated hazing prevention efforts at universities nationwide. Multiple hazing studies confirm that

current, consistent and robust policies with clearly proscribed standards and consequences for violations provide the best opportunity to modify behavior.<sup>11</sup> The NCAA’s Sexual Violence Prevention Toolkit also emphasizes clear communication of athletic department policies regarding sexual and other forms of violence and corresponding institutional expectations related to conduct to all student-athletes and staff.

At NMSU, there are numerous sources of policy with varying scopes of application. The Board of Regents Policy Manual is a collection of policy statements which govern NMSU at the highest level. The Board grants authority to administrators to adopt additional rules, which are compiled in the Administrative Rules and Procedures (ARPs). These ARPs apply “system-wide,” which includes all faculty, staff and students on all campuses. The Student Code of Conduct (SCC) addresses student misconduct and is enforced through the Student Conduct and Community Standards section of the Dean of Student’s Office. Additionally, the Student Organization Handbook and Student-Athlete Handbook serve as additional sources of policy. For NMDOJ’s purposes, the relevant policies for review include ARP 3.25 (Prohibition of All Forms of Unlawful Discrimination, which includes prohibition of sexual misconduct); ARP 3.80 (Hazing, Bullying, Harassment, and Other Hostile Misconduct); and SCC 5.20 through 5.26 (Conduct Standards).

### *1. Cyclical Policy Review*

While there is no universal recommendation on the exact frequency of reviewing hazing policies, an examination of numerous peer universities demonstrates that standard practice is to reevaluate policies for accuracy and relevancy every three to five years. In her consultation with the NMDOJ, Dr. Lipkins stated that hazing policies in particular should be reviewed and updated regularly, but typically every 1-3 years to ensure their alignment with evolving best practices.

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<sup>11</sup> See Teaching Student Leadership, Ethics and Group Responsibility for Hazing Prevention. S. Malaret, Dr. E. Allan, G. Graham, C. Esquenazi, D. Bacon and P. Whalen. *Journal of Campus Activities Practice and Scholarship*. (2021); Transforming the Culture of Hazing – A Research Based Hazing Prevention Framework. Dr. E. Allan, J. Payne and D. Kerschner. *Journal of Student Affairs Research and Practice*. (2018); Hazing in View: College Students at Risk: Initial Findings from the National Study of Student Hazing. Dr. E. Allan & Dr. M. Madden. University of Maine. (2008).

In ARP 1.10 Part 5(G), NMSU requires cyclical review of policies within three to five years from the date of policy adoption or the most recent modification. Upon review, ARP 3.80 (Hazing) has been modified twice in 2024, once in April and most recently in September. Prior to these amendments the most recent update was from January of 2019, slightly beyond the five-year mandate. Furthermore, the revision history of the Student Code of Conduct suggests the most recent updates are from August 2019, similarly beyond what NMSU's cyclical review policy requires. In former Interim President Gogue's interview with the NMDOJ, he noted that soon after arriving at NMSU in April 2023, it became clear that policies lacked consistency and clarity, necessitating a full-scale reevaluation.

According to NMSU's General Counsel, a group of individuals representing the Board of Regents, University General Counsel, Faculty Senate and other stakeholders has been assembled to review policies and make recommendations for revision. Realizing this goal will benefit employees and students by aiding their understanding and compliance with these important policies. Thereafter, NMSU should take steps to more frequently ingrain policy review and revision into their standard governance protocols.

## 2. Consistency and Effectiveness of Hazing Guidance

To ascertain commonly applied requirements and behavioral standards, the NMDOJ reviewed twelve anti-hazing policies from NMSU's peer institutions. While all slightly different, each generally defines the scope of the policy's application, clearly lays out prohibited conduct and potential consequences, clarifies reporting responsibilities and options, establishes amnesty or safe harbor protections and communicates available resources and personnel contact information.

NMSU's current version of ARP 3.80 (Hazing) is notably improved compared to the policy that was operative during the 2022-23 men's basketball season. In line with other anti-hazing policy best practices, positive additions to the hazing policy include:

- a. Expansion of the conduct that constitutes hazing, including covering individuals who encourage or direct others to engage in hazing;
- b. Clear description of the various disciplinary sanctions that could result from a violation, including probation or suspension from athletic teams;
- c. Option to report anonymously through the Ethicspoint platform; and
- d. Hyperlinks to other useful resources/websites, including the complaint reporting form and the OIE's website.

Of course, incorporation of these provisions in 2024 supports the deficiencies of the policy in 2022-23. If a student-athlete reviewed ARP 3.80 during the 2022-23 season, they would be unaware of an anonymous reporting option or an understanding of what disciplinary outcome could result. Further, an athlete who encouraged others to commit non-sexualized hazing on a teammate may not have been culpable under the previous policy.

Although ARP 3.80 itself has been enhanced, there should be a comprehensive comparison between the hazing definitions included in the ARPs, Student Code of Conduct (SCC) 5.22(P), the Student Organization Handbook and the Student-Athlete Handbook to ensure uniformity. Hazing definitions in each of these guidance documents is slightly different. There is no discernible rationale for different definitions among these various resources and unless a justification is identified, revisions should be pursued.

### 3. Updated Student-Athlete Handbooks

The NCAA's Sexual Violence Prevention Toolkit directs member institutions to post or allow "easy access" to the sexual misconduct prevention policies and protocols for student-athletes. NMSU's Student-Athlete Handbook should exist as an accurate source of University and Athletic Department policies and athlete expectations, and be regularly updated to address new requirements from the NCAA, NMSU or the Athletics Department.

Compared to prior years, the 2024-25 Student-Athlete Handbook conveys a more deliberate approach to achieving clarity and comprehensiveness. As an initial matter, the definition of hazing in the 2022-23 handbook was notably different than the definition in the ARPs or Student Code of Conduct. A student-athlete in 2022-23 who sought guidance on what behavior constituted hazing would be met with three distinct explanations. Additionally, the 2022-23 handbook stated that "individuals who participate in acts of hazing as perpetrators *or victims* are personally accountable under this policy, and the Code of Student Conduct." This fails to recognize the generally accepted concept codified in most state hazing laws that, regardless of consent, victims are not responsible for being hazed. While the 2024-25 Student-Athlete Handbook sought to more closely align with hazing guidance in ARP 3.80, the Handbook relied on the April 2024 policy and thus became outdated upon the enactment of the current ARP 3.80 in September 2024.

Prior to the 2024-25 Student-Athlete Handbook, handbooks dating back to at least 2019-20 stated that athletes should report acts of apparent hazing to the “Office of Judicial Programs.” By 2022-23 however, this office had been renamed as the Student Conduct and Community Standards Office, a change not reflected in the Student-Athlete Handbook. During the 2022-23 season, if an athlete desired to report hazing through formal channels, they would not have had clear guidance in their handbook about how to make such a report. Moreover, the 2024-25 handbook contains a hyperlink to the policy (ARP 3.80) but doesn’t contain any information about, or link to, where hazing should be reported.

There remains room for improvement with the Student-Athlete Handbook. The Handbook should explain that retaliation is prohibited in response to a report of hazing and bullying. In team settings, particularly in combination with the presence of firearms, as alleged by players during the 2022-23 season, there is a heightened potential for retaliation, and it is critical to document the University’s stance on retaliatory behavior. Of similar consequence, while the 2022-23 handbook dedicated nearly a page to explaining NMSU's position on sexual harassment (although the explanation didn’t mirror the University’s policy), the 2024-25 version provides a single paragraph reference to ARP 3.25, without any context or link. An annual refinement of the Student-Athlete Handbook will ensure that its guidance works in tandem with, not in opposition to, other sources of University policy. This revision process should incorporate feedback from representatives within the OIE, Dean of Students and University General Counsel’s Office.

### ***C. Reporting***

Despite an institution’s prevention measures, sexual assaults and hazing may occur. If they do, an effective university response is predicated on prompt reporting of the misconduct. Universities should take steps to identify potential barriers to reporting and remove those barriers. Title IX and hazing investigations analyzed by the NMDOJ suggest common obstacles that have led to underreporting in higher education settings, including a lack of awareness of campus resources, negative opinions of university offices tasked with investigating and addressing misconduct, concerns about retaliation, misunderstanding of the process due to overly legalistic policies and the belief that reporting is futile.

Through her expertise in hazing, Dr. Lipkins has found that, while creating a “culture of reporting” is already difficult within the broader student demographic, universities encounter significant headwinds when encouraging

timely reporting by student-athletes. According to Dr. Lipkins, the social cohesion common among athletic teams, along with the fear of being ostracized if one interferes with the status quo, present strong barriers to reporting. These dynamics underscore the importance of authority figures maintaining proper oversight of athletes and being overly cautious in reporting concerning behavior.

According to several players on the 2022-23 NMSU men's basketball team, instances of inappropriate behavior conveyed to coaches were not taken seriously. Shakiru Odunewu told law enforcement that, while both Coach Heiar and Associate Head Coach Taylor were made aware of ongoing misconduct, they failed to address the issues. Bol Kuir, who signed with NMSU and participated in team activities during the summer of 2022 (but was not on the regular season roster), appears to have made several reports to Coach Heiar about alarming locker room behavior but was told to stop being a "tattle-tale." This response would have clearly communicated that coaches were unconcerned with the players' physical and psychological safety, which in turn would have dissuaded the reporting of future misconduct and almost certainly guaranteed the perpetuation of the sexualized hazing.

#### *1. Reassessing Reporting Options and System Functionalities*

Title IX and sexual misconduct investigations at other universities establish that timely investigations into student complaints are thwarted by reporting systems that are not broadly advertised or easily accessible. Recommendations stemming from these investigations and the Hazing Prevention Toolkit suggest the need for confidential and nonconfidential reporting options in which students are periodically trained.

NMSU maintains a "Report" webpage that depicts various reporting options depending on the nature of the problem. The Campus Community Incident Report (CCIR) form is a general complaint form that allows individuals to detail violations of University policy or campus behavioral concerns, including hazing. The OIE provides a separate reporting link for alleged Title IX violations. While NMSU maintains a confidential reporting system through EthicsPoint, this option appears designed largely for University employees to raise workplace behavioral concerns as opposed to anonymous reporters of hazing or sexual misconduct.

These complaint systems should be assessed for their functionalities and limitations to ensure a straightforward process for reporters. The CCIR form, while easily accessible, states that "if the reporting party is unable to specifically

identify the alleged offender(s), it is likely that no action will be taken.” This provision may discourage reporting and understates options available to the University when an offender remains unidentified, including connecting a victim with supportive resources. Similarly, the OIE’s complaint platform allows a non-student or non-employee to make a complaint on behalf of another person, but requires an Aggie ID and NMSU email address available only to students and employees.

Generally, anonymous reporting systems are limited in their efficacy due to the inability of institutions to fully investigate without interviewing complainants. To address this problem, other universities have developed technological solutions to allow necessary communication between investigators and complainants in an unidentified fashion. For instance, Northwestern University issues a ‘report-key’ to anonymous submitters. That key is contained in the Title IX case management system and allows access for both reporters and investigators. Through this process, investigators can seek further information, while reporters can check the status of a report without sacrificing confidentiality. If the EthicsPoint system does not currently possess a similar functionality, such an option should be explored.

## 2. Confidential v. “Responsible” Employees

Under Title IX regulations, institutions have the discretion to designate which employees have a mandatory duty to report sexual misconduct and which employees may be considered confidential resources for students. Many institutions, including the University of Maryland, the State University of New York (SUNY) system and others, have policies or informational brochures clearly distinguishing between mandatory reporters and confidential sources.

At NMSU, any sexual or discriminatory misconduct that falls under ARP 3.25 must be reported by “responsible employees.” Responsible employees include those with the authority to remedy sex-based discrimination or harassment, those with a responsibility to report sexual misconduct under University policy, and those that a student would reasonably believe have such authority or responsibility. Conversely, there are NMSU employees, such as psychologists in a clinical setting, who are not required to report allegations of sexual misconduct on the basis of legal privilege. Responsible employees required to report and address sexual misconduct include law enforcement, OIE and Dean of Students personnel, faculty and athletic coaches and staff. Unlike other institutions, NMSU does not have a single online location or brochure where mandatory reporters and

confidential employees are plainly listed. Presently, students are alerted to this distinction at new student orientation during a short Title IX presentation or through an inquiry to the OIE. Executive Director Nutt suggested that the OIE was considering ways to more fully explain the concept and ramifications of mandatory versus confidential reporting.

NMSU should consider developing, disseminating and conspicuously posting a written policy or list identifying mandatory reporters and confidential sources. This information should be conveyed through the OIE's annual notice sent to all students and employees, as well as through the Title IX, Aggie Health and Wellness and other pertinent webpages.

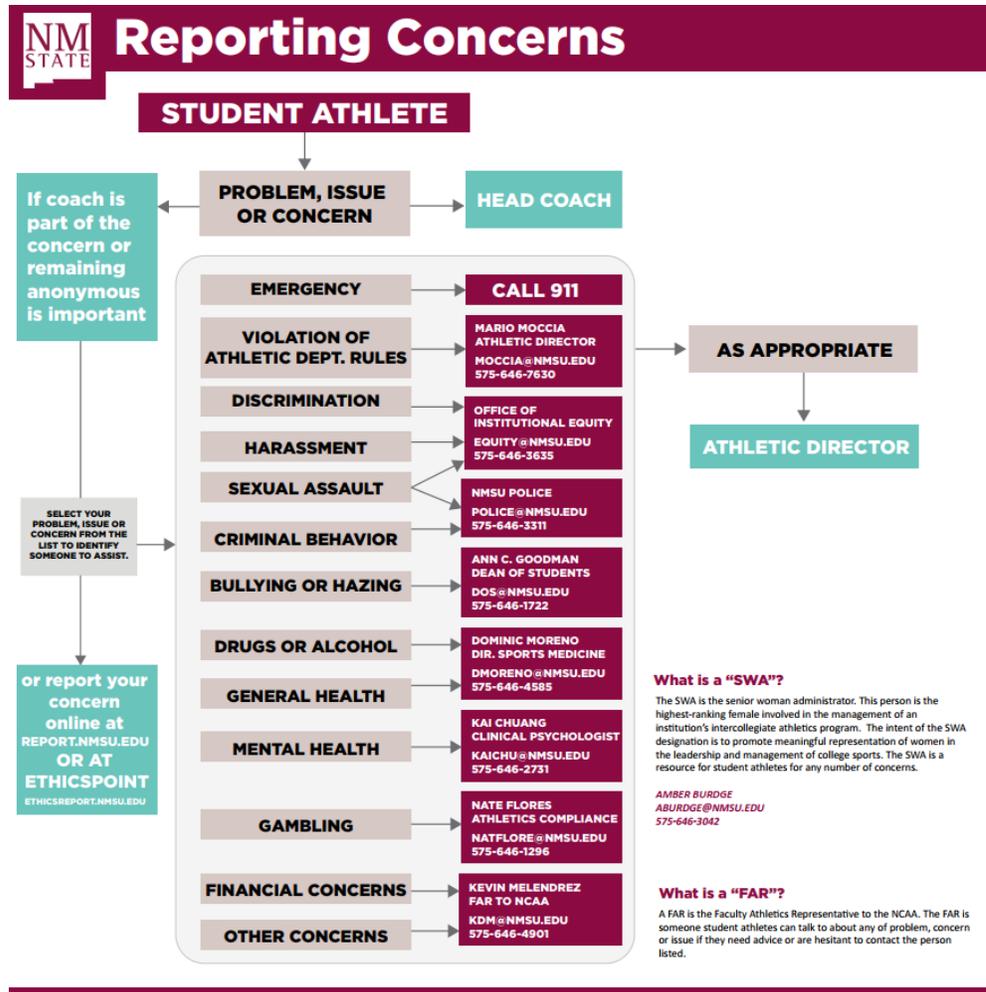
### *3. Increasing Awareness of Reporting Options in Athletics*

In April 2023, NMSU retained the law firm of Lightfoot, Franklin and White to conduct an evaluation of Athletic Department practices. One investigative takeaway was that while student-athletes overall expressed a high level of comfort with reporting misconduct to their coaches, most athletes were unaware of policy-dictated reporting lines for misconduct.

NMDOJ's anecdotal discussion with student-athletes suggests that athletes have a peripheral awareness of the OIE but lack a broader understanding of OIE's role in receiving and investigating complaints of sexual violence. As part of its review, the NMDOJ spoke with an athlete from the men's basketball team, the women's basketball team, and the baseball team. Two of the athletes could not affirmatively recall the name of the OIE but did recall its existence upon prompting. Each of the athletes was unaware of the Title IX Coordinator's name, and they had little knowledge of how the OIE addresses sexual misconduct complaints. As observed by Lightfoot, each athlete expressed confidence in reporting sexual misconduct to coaches.

To assist with student-athlete awareness of proper reporting avenues, NMSU has developed a flow-chart graphic outlining how and where to report

various types of misconduct. This graphic has been included in the 2024-25 Student-Athlete Handbook and posted in the locker rooms for each athletic team. This reporting graphic has been disseminated more broadly, including to housing and residential life personnel and new students at orientation. While each athletics employee interviewed was aware of the posters, the student-athletes interviewed could not recall their location or substance.



In contrast to the limited knowledge of the sexual assault reporting process for athletes, athletics staff expressed a higher degree of knowledge. The NMDOJ spoke with athletics administrators, two head coaches and an assistant coach, as well as athletics staff that have frequent interactions with student-athletes. Each individual understood that NMSU policy deemed them mandatory reporters and required them to report sexual assault allegations to the OIE, even if an athlete desired confidentiality. Athletic coaches and staff conveyed a more sporadic understanding of how learning of non-sexualized hazing would alter the reporting protocol. While non-sexualized hazing should be reported to the Dean of Students, roughly half of athletic staff interviewed believed that receipt of such information should be treated the same as sexual misconduct and reported to the OIE.

The NMDOJ found the student-athletes interviewed to be respectful, intelligent and well-adjusted to juggling many responsibilities. The onus, therefore, is on University and athletic administrators and coaches to fully instruct student-athletes on the purpose, personnel, location and practices of the OIE in the event of a need to report sexual misconduct. In addition, the Athletics Department should increase efforts to make the reporting posters conspicuous and actively draw attention to their presence. Last, further refinement is necessary for athletics employees in both online training modules and in-person presentations to differentiate the systems available for reporting and addressing either sexual assault or hazing complaints.

#### ***D. Training***

The Title IX and hazing guidance analyzed by the NMDOJ universally advise that effective prevention efforts require robust training regimens. Multiple NMSU units are responsible for providing training, and the volume and type largely depends on the intended audience. Distinct categories of individuals – employees, the general student body and those within student organizations and athletic teams - receive varying trainings at different times throughout the academic year. Although training is a compliance requirement of education institutions and athletics departments, the goal should be to avoid what former Interim President Gogue called “check-the-box” trainings, where the mandate has been satisfied on paper, but the trainees leave without any material enhancement in subject matter competence. Compared to 2022-23, NMSU has positively refined its training approach, specifically towards student-athletes. Improvements are still needed, however, in training approaches towards athletics staff and the general student body.

##### ***1. Student-Athlete Sexual Violence Training***

In 2014, the NCAA passed a resolution recognizing that appropriately addressing sexual violence is integral to responsible intercollegiate athletics programs. In 2016, an NCAA interdisciplinary task force produced the Sexual Violence Prevention Toolkit, which advocates for training student-athletes on healthy relationships, consent, sexual violence prevalence and attitudes, hazing and bullying, harassment, stalking and discrimination. NMSU has required student-athletes to take an NCAA-based sexual violence training since 2017-18. Additionally, Title IX training on issues of sexual harassment and assault are separately required by all athletes. Best practices training programs at peer institutions utilize recurring and scenario-based instruction.

Throughout the 2022-23 academic year, student-athletes received instruction on sexual violence issues in one of three ways. First, the OIE spoke to freshman and transfers during the new student orientation for roughly 30 minutes. Second, the OIE director provided a short presentation at the combined squad meetings when teams reported for their seasons. Last, athletes were required to take an online module or alternatively attend a mass presentation in-person related to Title IX and sexual misconduct.

The NMDOJ identified two primary flaws with the training regime in 2022-23. One of those flaws, first highlighted by Lightfoot, centers on the lack of effectiveness of a mass training during a single, annual meeting. The other flaw involves the timing of trainings through the online module. These trainings were available to complete before the University's submission of its attestation by May 15. However, under this practice, fall and winter athletes were able to take the training after their seasons were completed, thereby negating much of the benefit of the training. For example, instruction about the possibility of athlete-specific consequences, such as a loss of playing time, would only have a meaningful impact before or during the athlete's season. The University should have required that these trainings be completed before the athlete's season to realize the full benefit and implementation of the training.

Throughout the 2023-24 season and into the current year, NMSU has revised its sexual violence instruction for student-athletes. While the OIE continues to speak at new student orientation and during initial athletic squad meetings, there are three notable improvements. First, as suggested by the Lightfoot firm, the Athletic Department has moved away from large, mass trainings. Instead, Senior Associate Director Dr. Amber Burdge has coordinated meetings between the OIE and individual teams. Second, rather than discuss Title IX material purely in a lecture setting, each team participates in an interactive and competitive trivia game where issues of sexual assault, consent and reporting are examined. Last, since 2023-24, NMSU has required that all first-year athletes enroll in the First Year Experiences (FLEX) course, which serves as an extended orientation for incoming students to adapt to the rigors of college life. Instruction in the FLEX class includes supplementary training on Title IX issues.

Moving forward, NMSU should continue sexual violence trainings by teams in advance of their seasons. Smaller groups generally yield greater participation, and single-sex teams allow for gender-specific instruction and discussion. The interactive, trivia-based approach to Title IX and NCAA training by the OIE and

Dean of Students should also be maintained, wherein the competitive nature of student-athletes can be leveraged to build subject-matter knowledge. In these trainings, the University should place greater significance on bystander intervention techniques. During the 2022-23 men's basketball season, sexualized hazing incidents occurred over a four-month period, during which many individuals witnessed improper behavior. Scenario-based bystander training may yield meaningful intervention before an escalation of harmful conduct.

## 2. Hazing Prevention Curriculum

In order to reduce hazing incidents, research studies<sup>12</sup> analyzing StopHazing's Hazing Prevention Framework confirm the need for ongoing education of student-athletes. This education should focus on topics such as campus hazing policies, reporting, response processes, positive social norms, cultivation of ethical leadership and the development of non-hazing strategies for building group cohesion.

Hazing prevention training at NMSU has been provided as part of a broader outreach program in previous years, but as the Dean of Student's personnel acknowledged, NMSU only recently provided dedicated hazing instruction to athletic teams. Historically, hazing education has been targeted towards Greek organizations, with every new fraternity or sorority member required to attend "Greek 101" and "NovakTalks," both forums in which hazing, alcohol, consent and related topics are discussed. Before and during the 2022-23 season, NMSU did not take this same approach in athletics. Instead, incoming students received a five-minute presentation at orientation, and continuing students received hazing instruction through the Dean of Students' "Core Values: What It Means to be an Aggie" training. This hour-long presentation focused on numerous conduct issues, with the subject of hazing covered in only three slides. The presentation's discussion of a wide range of topics made it a poor vehicle for the type of effective hazing prevention training that can make a lasting impact on athletes.

During the last six months, NMSU has bolstered its approach to hazing training for athletes. In the summer of 2024, the University implemented a longer,

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<sup>12</sup> See Transforming the Culture of Hazing – A Research Based Hazing Prevention Framework. Dr. E. Allan, J. Payne and D. Kerschner. *Journal of Student Affairs Research and Practice*. (2018); Hazing in View: College Students at Risk: Initial Findings from the National Study of Student Hazing. Dr. E. Allan & Dr. M. Madden. University of Maine. (2008).

interactive training focused solely on hazing awareness and prevention, starting with the football team and later expanding to all athletic teams. This new strategy – mandatory for every student-athlete – includes a video from the Hazing Prevention Consortium (HPC), statistics and conversations about how to recognize hazing situations. According to the Dean of Students, this course will be supplemented in 2025-26 with HPC’s “StandUp to Hazing” curriculum, an evidence-based online course intended for all NMSU students and with a focus on differentiating between healthy and unhealthy group behaviors and hazing recognition, prevention, intervention and reporting.

It is essential that these training topics and methods become enduring aspects of NMSU’s hazing prevention curriculum. As anti-hazing training for student-athletes have been enhanced, opportunities to upgrade instruction for athletics staff should be pursued as well. The NMDOJ’s examination of peer university training modules indicates that NMSU’s hazing education efforts for coaches and athletics staff has been inadequate. The NCAA sexual violence training for athletics employees contains a single paragraph referencing hazing, and while NMSU recently permitted select athletics employees to attend online anti-hazing workshops, recurring hazing education for all athletics staff is necessary. Furthermore, Dr. Lipkins advocates for coaches to receive additional training on pertinent hazing and sexual assault topics, including group dynamics, positive team cohesion and abuse and trauma recognition. Acknowledging the budgetary constraints identified by Director Moccia, the Athletics Department can leverage existing resources within NMSU. There is no clear obstacle – financial or otherwise – preventing coaches from taking leadership development courses offered to other University managers by NMSU’s Center for Learning and Professional Development.

### 3. *Title IX Training for Non-Athletes*

Due to capacity constraints at large universities, institutional equity consultants and investigators frequently find shortcomings in Title IX training offerings available to or required of the entire student body. For example, a 2016 investigation into the University of New Mexico (UNM) by the United States Department of Justice’s Educational Opportunities Section found that, while UNM targeted sexual harassment prevention training to specific student groups, such as athletes, the training should include all undergraduate students to address gaps in knowledge of sexual harassment policies and reporting procedures. Before this investigation, the university relegated training on sexual misconduct topics for most students to first-year orientation.

NMSU has likewise struggled with providing Title IX training to the broader student population. As pointed out by Executive Director Nutt in his February 2024 presentation to the Board of Regents, there remains a significant gap in Title IX training for the vast majority of students on NMSU's campuses that are not affiliated with an athletics team or student organization. Currently, the existence of the OIE is advertised to all University students in a short lecture or video at new student orientation, in print form that housing personnel distribute to students living on campus, and in class syllabi containing the OIE's contact information.

These methods of communication are valuable but insufficient alone to convey the importance of Title IX's protections. This is particularly true for returning students that no longer need to attend orientation or live on campus. To address this void, Executive Director Nutt will begin including information on reporting options in the OIE's systemwide annual anti-discrimination notice. Furthermore, the OIE has contracted with a company to provide forty-five minutes of enhanced Title IX training for new students and a fifteen- to twenty-minute refresher course on a yearly basis for returning students. This yearly training should be required before a student is able to register for classes.

#### 4. *Complying with Training Requirements*

Even the most effective trainings are valuable only if regularly and timely completed. Title IX investigations nationwide have identified the failure to conduct adequate oversight of training and education for employees as a contributor to inadequate institutional responses to sexual violence.

As shown by web-based registration details for Title IX and NCAA Athletics trainings for NMSU athletics staff between January 1, 2021, and December 31, 2023, numerous employees who enrolled did not begin the trainings, failed to finish the trainings, or failed the mandatory quiz at the end of the trainings. This included at least one member of the men's basketball coaching staff during the 2022-23 season. Immediate supervisors had the responsibility for an employee completing the required trainings. However, NMSU's Counsel recognized that the training management system may not have required an employee to list an immediate supervisor, thereby preventing immediate supervisors from receiving any automated notice or reminders about an incomplete training.

NMSU has since committed to ensuring supervisors are assigned for all employees in their training management system. However, there are frequent changes in supervisors, and thus, NMSU should conduct a regular audit on the training management system to identify employees who have outstanding mandatory trainings and provide that information to Human Resources. NMSU's "Training Central" personnel may be best positioned to perform the audit. The failure of employees – within athletics or otherwise – to take required Title IX trainings should result in mandatory employment consequences given the trainings' critical role in building a staff that is willing and able to support student-athletes who may become victims of sexual violence or hazing.

### ***E. Athletics Department Culture and Recruiting Practices***

The NCAA's Policy on Campus Sexual Violence defines the aspirational culture for colleges and universities as modeling

[a] positive and thriving athletics team culture that revolves around respect and empathy for all[;] fostering a climate in which all feel that they are respected, valued and contributing members of their teams, athletics programs and institutions; and creating an environment in which students (athletes and nonathletes alike) feel safe and secure, both emotionally and physically, and are free of fears of retaliation or reprisal. The positive culture exuded by a member institution's NCAA teams is the catalyst for a positive culture across an entire campus.

The NMDOJ relied on these foundational principles to evaluate NMSU's Athletics Department culture and recruiting practices.

#### ***1. Promoting Positive Team Dynamics***

A supportive environment within the Athletics Department can be built and maintained through an intentional development of shared values, mutual respect and accountability. The creation and reinforcement of a positive culture should be the expectation of University and athletics administrators, coaches, staff and student-athletes alike. According to Dr. Lipkin's research, the type of culture a team develops is largely dependent on the team's leadership – what principles they espouse, priorities they set and character traits they personify. A comparative analysis of past and current athletic teams at NMSU reveals common threads that yield a supportive or harmful atmosphere.

a. Culture of Men's Basketball under Coach Greg Heiar (2022-23)

In Coach Heiar's introductory remarks to his new team in March 2022, he set the stage for the culture that would develop. Heiar told players, "I'm a big NBA guy," and "if you want to go make money, play for me." He instructed players to call him "GH" instead of "coach" in support of his message that he was "no different" than the players. While surely intended to develop rapport with young men that came to NMSU intending to play for Coach Chris Jans, Heiar sent the clear message that, more than respect or deference, he wanted to be liked and treated as an equal. He made no mention of building a program of integrity, accountability or personal development. While many of the players who heard this speech were not on the 2022-23 roster, the coach's approach and outlook pervaded his tenure at NMSU.

Former players have alleged that improper behavior in the locker room started to occur as early as summer 2022. In a pending lawsuit filed by former NMSU signee Bol Kuir and contested by Heiar, Kuir said he observed players "panting" or stripping each other, inappropriate touching and other physical misconduct. Kuir also recalled players filming teammates while showering or using the bathroom, in addition to them fighting, possessing firearms and using alcohol and marijuana. Kuir informed his guardian and Heiar about this behavior, but Heiar had no control over the locker room.

Dr. Lipkins concluded Coach Heiar took a hands-off approach that allowed the players to develop their own internal, self-governance model. Under their own power structure, Deshawndre Washington was, according to players and student-managers, the "shot-caller" or "head of the snake" in initiating the sexualized hazing. Both Washington and Issa Muhammad had played for Heiar at Northwest Florida State College before transferring to NMSU, and as a result of that preexisting relationship, at least two players believed Washington was tacitly empowered to operate without accountability. Reinforcing the coaches' apparent relinquishment of authority to players, coaches showed up late to practice and failed to supervise team behavior.

Dr. Lipkins opined that the lack of oversight and control by Heiar and his staff had the effect of blurring the line of who was truly in charge. It would have been difficult for players to have been unaware of this dynamic, and players likely took their behavioral cues from Washington or felt powerless to report harmful behavior, especially behavior instigated by Heiar's previous players that followed

him to NMSU. These interactions yielded a locker room pervaded by uncurbed misbehavior.

b. Culture of Men’s Basketball under Coach Chris Jans (2017-2022)

In contrast to the environment under Coach Heiar, player interviews contained in law enforcement reports and legal pleadings indicate that Coach Jans built a far more positive team culture. Some players characterized the successive seasons under the two coaches as “night and day.” When discussing his redshirt freshman year, Odunewu described a supportive, though “strict,” team climate. A student-manager described the atmosphere as respectful and “chill,” unblemished by “horseplay.” Another student-manager explained that Jans had far more control over the team than Heiar. These experiences indicate the ways in which coaching can shape a team’s culture.

c. Culture of Women’s Basketball under Coach Jody Adams (2022-present)

As part of its review, the NMDOJ spoke with current NMSU coaches and evaluated their practices with Dr. Lipkins. Women’s basketball Head Coach Jody Adams stood out in her focus on culture building. Women’s basketball has a “cultural retreat” each year, in which Coach Adams brings her team to an off-campus site for two days for coaches and players to engage in team-building activities and to discuss family, leadership and communication. Coach Adams hires a cultural consultant to facilitate the conversations at the retreat. Similarly, she provides players a “culture playbook,” which focuses on factors that drive positive behavior and personal growth. These efforts appear to be paying dividends; the women’s basketball player interviewed by the NMDOJ mirrored many of the same virtues embraced by Coach Adams. Coaches should have some discretion in the ways they build a supportive culture, but the NMDOJ highly recommends that Coach Adams’ practices be considered as a model for other NMSU athletics programs.

d. Looming Cultural Concerns within NMSU Athletics

The student-athletes interviewed by the NMDOJ held their current coaching staffs in high regard, but this does not appear to be a universal sentiment in NMSU athletics. The Athletic Department’s clinical resident psychologist identified three teams that with seemingly negative environments. The psychologist did not disclose specific athlete identities to protect their privacy, but he conveyed athletes’ complaints in the aggregate. Those complaints included coach

mistreatment of players and the presumed lack of responsiveness by Athletics Department leadership in addressing problems. The psychologist provided examples of verbally abusive behavior by coaches that resulted in several athletes transferring out of NMSU.

NMSU's outside counsel confirmed that two of the situations described by the resident psychologist resulted in OIE investigations. OIE determined that one of the allegations was unfounded; the other allegation involved an assistant coach, and the investigation remains active. According to the University Counsel's Office, OIE received eighteen cases involving Athletic Department employees as respondents since 2020. Of those, one remains pending, and seventeen either had no formal complaint filed or there was no finding warranting sanctions.

Despite the lack of actionable Title IX cases, the resident psychologist felt strongly that the University must hold coaches accountable for engaging in harmful practices and that there should be more concerted efforts to encourage victims of hazing to take advantage of mental health services. NMSU's General Counsel plans to share the information relayed by the resident psychologist with Athletic Department leaders for them to take any appropriate oversight measures.

e. Additional Takeaways from Student-Athletes

The NMDOJ's student-athlete interviews yielded four factors leading to positive team cultures.

- i. *Establishing High Standards* – The standards and structure established by a team's head coach determines both whether hazing can occur and whether it will be tolerated. The student-athletes recognized the importance of high standards within a program and believed that coaches must not only preach those standards but must follow and enforce them. An assistant coach from the soccer team observed that the coaches and the team should establish expectations together and that team standards should extend beyond athletics to academics and representing the program.
- ii. *Caring for the Player and the Person* – Athletes know when a coach cares about their individual well-being in addition to their abilities as an athlete. For example, the student-athlete on the men's basketball team appreciated Coach Jason Hooten wanting to see his players succeed on and off the court and noted that he "talks all the time about who he wants them to be as men after basketball." The head

baseball coach also taught his players “what it’s like to be a man and do things the right way.”

- iii. *Development of Positive Team Traditions* – According to Dr. Lipkins, hazing often occurs under the guise of team bonding. Coaches thus must monitor a team’s rituals or traditions for welcoming or initiating new team members. For example, a baseball team leader explained the importance of welcoming new players in a supportive way and passing on traditions like “Friendsgiving” to future classes joining the program.
- iv. *Equitable Treatment* – Each of the athletes voiced their opinion that preferential treatment by coaches leads to division and conflict. Coaches recognize as much; the NMDOJ interviewed coaches that stressed their equal treatment of upperclassman and underclassman and the importance of not conferring special privileges to either group.

## 2. Mandating Sufficient Oversight of Under-Supervised Areas

Upon her review of the circumstances surrounding the 2022-23 NMSU men’s basketball team, Dr. Lipkins noted the absence of appropriate player oversight by coaches and athletic staff. Dr. Lipkins identified the critical need for enhanced supervision at locations and during times that she described as traditionally under-supervised, such as locker rooms, team buses and hotel rooms. A similar lack of sufficient oversight contributed to hazing conduct within Northwestern University’s football program. A review led by former Attorney General Loretta Lynch counseled Northwestern to maintain proper monitoring of the football locker room by personnel that did not report to the football coaching staff.

Interviews with athletics personnel at NMSU suggest a difference of opinion about how frequently coaches should be present in locker rooms. Dr. Lipkins emphasized, however, that even intermittent monitoring of these areas could be beneficial and would certainly be an improvement over a complete absence of coaching staff for extended periods of time. But coaches must be deliberate in instituting a routine policing plan, particularly at the Pan American Center, where coaching offices are on the second floor while locker room and practice facilities are on the first.

Many teams have already adopted informal mechanisms to address player monitoring concerns, but approaches are inconsistent within the Department. For example, Coach Adams noted that her staff always walks back and forth on the bus, whereas another coach mentioned that there wasn't a need to have a coach be in the back of the bus. This inconsistency suggests the need for additional conversations within the Athletic Department regarding the appropriate oversight for these traditionally under-supervised areas. The Department should consider drafting an internal protocol that assures both adequate supervision and a balancing of privacy and autonomy interests for student-athletes.

### 3. Seeking Input from Student-Athletes

StopHazing's Hazing Prevention Toolkit advocates that campus professionals administer regular cycles of surveys and interviews focused on student and other stakeholder attitudes and experiences about hazing.

Since 2022-23, NMSU has sought input through a student-athlete experience survey. When an athlete leaves NMSU, whether through transfer or graduation, they receive an online survey from the Dean of Students in which they are asked to identify the reason for the status change and describe any issues that may have led to their departure. This survey seeks information about facilities, equipment and support and NMSU policies, misconduct reporting options and Athletic Department priorities. The results of these surveys are intended to be provided to Athletics leadership, but according to Dr. Goodman, a low response rate has prevented this information sharing.

**STUDENT-ATHLETE EXPERIENCE SURVEY**

Your opinions are important to ensure and create a diverse, tolerant, inclusive, and safe experience for all of our student-athletes.

**REPORTING EXPERIENCES REGARDING INCIDENTS, PERSONAL ISSUES, OR OVERALL CONCERNS**

34. **IF YOU INDICATED IN A PRIOR QUESTION THAT YOU EXPERIENCED OR WITNESSED ANY TYPE OF ABUSE BY YOUR COACH, COACHING STAFF OR TEAMMATES - DID YOU TALK WITH THE ATHLETICS DIRECTOR OR ANOTHER ATHLETIC ADMINISTRATOR ABOUT THE SITUATION?**

Yes

No

35. **WERE YOU AWARE OF OTHER AVENUES TO ADDRESS OR REPORT YOUR CONCERNS ABOUT THE ADMINISTRATION OF THE SPORT(S) IN WHICH YOU PARTICIPATED? \***

Examples of other avenues may include the Dean of Students, Student Counseling Services, Office of Institutional Equity, University Police, or other university personnel.

Yes

No

NMSU's current iteration of the student-athlete experience survey has the potential to yield positive change, and the University should explore strategies for obtaining increased participation. Moreover, while this exit survey feedback may

improve Department practices for future classes of student-athletes, departing athletes themselves won't benefit from such changes. The Dean of Students and athletics staff should explore broadening the survey audience to include *returning* student-athletes as well. To incentivize honest input, the survey should allow anonymous responses. An anonymous survey for continuing athletes could provide valuable information related to locker room environments, understanding of policy-dictated reporting options, coach oversight, discipline and similar cultural topics. Director Moccia, the Dean of Students, coaches and student-athletes interviewed were all receptive to such a suggestion.

#### 4. Ensuring Appropriate Discipline for Student-Athlete Misconduct

As Dr. Lipkins emphasized, hazing and sexual misconduct by student-athletes should be met with discipline that is swift, impartial, consistent and stringent. The investigation at Northwestern University demonstrates the importance of such discipline, and the effects of its absence. Institutional failures there could be traced in part to football coaches being hesitant to impose discipline for player misconduct.

In his interview with the NMDNJ, Director Moccia opined that discipline is the cornerstone of every successful program. Despite this stated importance, the 2022-23 men's basketball team was seemingly devoid of timely or meaningful discipline. In reference to the October 15, 2022 fight involving Mike Peake, Moccia told the media that NMSU had disciplined athletes for their roles in the fight but did not specify their punishment due to "federal privacy laws." After the Peake shooting, however, the Athletic Department did not hesitate to state that Peake had been suspended from the program. NMSU's different responses to these incidents, as well as Peake's participation in traveling to UNM soon after the fight, certainly suggests that discipline for the fight was either lenient or non-existent, a fact that would not have been lost on teammates. It also does not appear that the incident was formally investigated by law enforcement or referred to the Dean of Students for further review into student code of conduct violations.

Further, the Department waited more than two weeks after the shooting to suspend Peake. Although Director Moccia blamed the delay on not wanting to act while Peake received medical treatment, players and the public could reasonably view the untimely discipline as another example of a lack of accountability for misconduct, particularly given the lack of significant discipline for the players that helped Peake take evidence away from the scene. NMSU suspended Avery, Muhammad and Roy for only one game and did so only after eighteen days and the

players participating substantially in four games. A staff member on the men's basketball team noticed a change to the team's morale after the shooting and believed that the players developed an increased sense of entitlement due to a lack of consequences or disciplinary action.

The untimely and lax sanctions ultimately imposed for the fight and shooting incidents communicated to the players than there would be little to no consequences for any misbehavior. Coaches and administrators should be cognizant that accountability not only maintains high expectations for student-athletes but functions as a deterrent.

Furthermore, athletics administrators should clearly convey to student-athletes the range of collateral consequences that may result from sexual misconduct or hazing behavior. These consequences can include the loss of financial aid awards<sup>13</sup> and breaches of their name, image and likeness (NIL) agreements. While NIL agreements are contracts between athletes and NIL collectives that partner with universities, the NMSU Athletic Department can and should require that agreements contain conduct clauses for misbehavior and that these clauses be enforced for serious student-athlete misconduct. Leveraging the loss of financial aid or the potential loss of NIL income would increase both accountability and deterrence.

##### 5. Additional Scrutiny in Coaching Hires and Athletic Director Contracts

The NCAA's Sexual Violence Prevention Toolkit states that "initiating a successful culture change is a complex task that begins with strong leadership from the highest levels." As the primary creators and enforcers of a positive culture, the selection of head coaches and their staffs is among the most important decisions by athletic administrators. Relatedly, contracts with these leaders should reflect the need for a range consequences from a lack of sufficient player supervision or program management, including the possibility of employment contracts being terminated for cause in serious and extreme circumstances.

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<sup>13</sup> The Financial Aid Policy and Appeals section of the 2024-25 Student-Athlete Handbook states that NMSU may cancel or reduce financial aid during the award period for non-athletic reasons, and references applicable NCAA bylaws. The handbook states in subsection (c) that one grounds for reduction or cancellation of the aid award is if the student-athlete "engages in *serious* misconduct warranting *substantial* disciplinary penalty, as determined by the institution's regular student disciplinary authority." This provision misstates NCAA Bylaw 15.3.4.2.5, which allows for a reduction or cancellation of an aid award by "misconduct," without any qualifier that the misconduct be "serious" or the disciplinary penalty "substantial."

Heiar coaching history includes red flags that should have given NMSU decision-makers pause about his selection as a head coach. First, Heiar was an assistant coach at Southern Mississippi from 2009 to 2011 with head coach Larry Eustachy, who later stepped down at Colorado State after an internal investigation into player mistreatment. From 2011 to 2017, Heiar was an assistant to Gregg Marshall, who resigned from Wichita State in 2020 after an investigation into allegations of verbal and physical abuse. More recently, Heiar was an assistant from 2017 to 2020 to Coach Will Wade at LSU, who was fired after using improper recruiting tactics. NMSU cannot be blamed for failing to attribute guilt to Heiar by association, but the repeated discipline of the superiors from whom he learned to coach should have made NMSU take a closer look at Heiar's views on team culture and player misconduct. After Heiar joined NMSU, the red flags continued; Heiar hired assistant coach Edmond Pryor, who was arrested for forgery within three months of his hire. Pryor had previously been fired from City Colleges of Chicago after being accused of theft in 2019.

In addition to greater scrutiny in coaching hires, athletic administrator and coach contracts should reflect a zero-tolerance approach to hazing behavior and sexual misconduct. NMSU's coach and athletic director contracts contain a discrepancy that is not clearly explainable or justifiable. Currently, under Section 5.3(p) of NMSU's standard head coach contracts, coaches may be terminated for cause for serious or intentional violations of the rules or policies by the coach or anyone under their supervision or direction, including student athletes if they *knew or should have known* of the violation. But Director Moccia's contract under Section 5.3(o) is more lenient and allows a termination for cause only upon a finding that the director seriously or intentionally violated the rules or *actively approved, supported or joined* in any serious or intentional violation of the rules by any program staff or student-athletes.

For future coaching hires, a more discerning review of a candidate's coaching history should be paired with interviews seeking their views on discipline, culture-building and hazing prevention. NMSU should also reevaluate athletic coach and staff contracts to ensure language clearly permits termination for cause for supervision lapses leading to serious student-athlete misconduct. Similarly, the University should examine whether the current lack of parity in administrator and coach contracts is reasonably supported. Athletic directors should be held to the same standard as coaches in their responsibility for others' conduct about which they should have known.

## 6. Recruits with Criminal Convictions

The NCAA’s Hazing Prevention Handbook entitled “Building New Traditions: Hazing Prevention in College Athletics,” suggests that institutions should design and implement hazing prevention policies that cover recruiting and hosting practices. Although there is no uniform NCAA rule prohibiting recruitment of prospective student-athletes with criminal convictions, member institutions are free to adopt their own recruiting criteria. Some universities, such as Boise State University<sup>14</sup>, prohibit the knowing recruitment of a student-athlete who has been convicted of a felony or, in the case of a juvenile, who has been found to have committed an act that would constitute a felony if committed by an adult.

Criminal convictions have historically not been a disqualifying factor in recruiting at NMSU. According to an assistant coach who spoke with law enforcement, it was not unheard of for NMSU to recruit “second chance players” or “rough edged players.” In fact, in 2019, NMSU relaxed its policy toward about felony convictions. Before 2019, NMSU prevented an athlete from continuing to represent NMSU after a felony conviction. But NMSU eliminated this blanket policy in 2019, ostensibly to treat athletes the same as the general student body. This policy amendment allowed an athlete convicted of a felony to continue playing absent a suspension or loss of participation in extracurricular activities imposed as a sanction under the University’s student code of conduct.

On the 2022-23 men’s basketball team, two players had prior felony convictions. Anthony Roy – one of the players out past curfew to assist Peake after the November 2022 shooting – had been convicted of possessing a controlled substance with the intent to manufacture or deliver while at a community college in Idaho. Roy was on probation at the time of his transfer to NMSU. Washington – the described “ringleader” of the sexualized hazing – had a conviction in Illinois for aggravated unlawful use of a weapon. Washington was on probation while playing for Heiar at Northwest Florida State College.

The egregious behavior of some players on the 2022-23 men’s basketball roster underscores the need for a reassessment of NMSU’s recruiting practices. NMSU’s Athletic Department should examine recruiting priorities to ensure that the well-being of the athletes in their programs is of utmost concern. As a former administrator told the NMDOJ, NMSU should consider amending internal recruiting protocols to stop recruiting prospective athletes with felony and violent misdemeanor convictions because of the unnecessary risks these individuals present to other student-athletes and staff.

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<sup>14</sup> Boise State University Policy 2060, Section 9(a).

## 7. Student-Athlete Conduct Attestation Form

Beginning with the 2022-23 academic year, the NCAA amended its Policy on Campus Sexual Violence to mandate that member institutions inquire about certain criminal convictions and school disciplinary actions. Under this policy, member schools are required to take reasonable steps to confirm whether incoming, continuing or transfer student-athletes have been disciplined through a Title IX proceeding, or criminally convicted of sexual, interpersonal or other acts of violence. Universities must also have written procedures directing staff to gather relevant information from former institutions about whether a student left the former institution with an incomplete Title IX proceeding, adverse Title IX finding or specified criminal conviction.

Before these rule changes, a recruiting coach would alert the athletics administration at NMSU upon becoming aware of a prospective athlete's prior misconduct. Athletics administrators would inform the relevant institutional staff (the Dean of Students or the OIE) – and often the President – before a determination of the athlete's suitability for enrollment at NMSU. This procedure, however, was ad hoc; no written protocol required a coach to inquire into prior criminality or misconduct.

To comply with the NCAA's sexual violence policy amendments, NMSU has created a "Student-Athlete Conduct Attestation Form," which requires athletes to disclose criminal convictions and Title IX information. Athletic program staff provide a QR-code for the online form to all prospective student-athletes during the recruiting process. According to the University General Counsel's Office, the form has identified two incoming or transferring student-athletes with a Title IX disciplinary history. NMSU's form goes beyond the minimum requirements in NCAA policy by asking about *any negative institutional conduct history*.

NMSU's expansion of the form is a positive step, but the form still fails to ask about non-sexual and non-violent felony convictions. If NMSU decides against a zero-tolerance policy towards recruits with felony or violent misdemeanor convictions, the existing student conduct attestation form should be augmented to elicit criminal history information beyond the required sexual, interpersonal or other violence categories. The Athletic Department should also explore other best practices, including requiring recruiters to ask prospective athletes about their prior experiences with hazing and requiring the athletic director to sign off on any incoming or transferring recruit with a history of misconduct of any kind.

## *8. Institutional Checks and Balances in Recruiting*

NMSU relies on the OIE or the Dean of Students to conduct further research and provide an admission recommendation if a recruit answers affirmatively on the student conduct attestation form. According to the Associate Dean of Students for Student Conduct and Community Standards, the Dean of Students has personally met with some recruits to get a better sense of the circumstances surrounding their prior misconduct.

Moreover, the Athletics Department and Dean of Students jointly worked on a “student behavior plan” to bolster NMSU’s oversight of incoming student-athletes with a history of misconduct. Any student-athlete matriculating to NMSU with a past disciplinary record must have a behavior plan, which may include regular meetings with the Dean of Students’ staff or peer or individual counseling sessions. Any failure to comply with these conditions would result in a disciplinary proceeding.

To counteract recruitment incentives prioritizing talent over behavioral red flags, NMSU should adopt a protocol that provides the Dean of Students and the OIE with ultimate decision-making, effectively a veto, over the admission of a prospective student-athlete with a history of serious misconduct. The President, who has the broadest responsibility to maintain institutional credibility, should also have a voice in the enrollment of a recruit with a criminal or disciplinary background. If leadership decides to admit such a candidate, NMSU should implement and enforce a rigorous student behavior plan.

### ***F. Resources for Sexual Assault Victims***

It is broadly recognized, including by the Rape, Abuse and Incest National Network (RAINN), that sexual violence can cause negative psychological, emotional and physical health effects on a survivor. Accordingly, NMSU should seek to identify and fill existing gaps in its on-campus physical and mental healthcare delivery model and prioritize resource centers and victim advocacy services. Robust resources are vital to survivor recovery, and it is beyond dispute that student health and well-being directly impacts educational outcomes.

#### *1. Availability of Healthcare Services and Information*

Universities nationwide provide varying levels of healthcare services to their students. For example, Baylor University’s Title IX compliance review

highlighted the need to provide adequate services for students and to make students aware of those services. Similarly, a Title IX review within the California State University system identified a gap in trust between students and institutions, a gap that can be exacerbated by a lack of student awareness of campus resources.

At NMSU, the Aggie Health and Wellness Center is the primary source of student healthcare services, including immunizations, diagnostic lab testing, pharmacy prescriptions and reproductive and sexual health exams. According to Assistant Director of Aggie Health and Wellness Amanda Blair, the Center offers an array of mental healthcare options to students, including individual and group therapy, peer-to-peer counseling and crisis services. If resources are not available on-site, NMSU connects students to resources within the Las Cruces area.

Student awareness of campus health services is largely accomplished through an online web presence and in-person programming events on campus. Additionally, NMSU provides students with an “OIE Support and Resource Guide.” This instructional brochure contains national hotline numbers for sexual assault victims and locations and contact information for a comprehensive range of available resources on the Las Cruces main campus, branch campuses and within surrounding communities.

NMSU personnel should engage in periodic self-assessments to determine how to expand on-site student resources. Importantly, personnel should pay particular attention to making students aware of their options for physical and mental health. The OIE resource guide – or a similarly comprehensive brochure through the Health and Wellness Center – should be widely disseminated on campus and easily accessible online.

NATIONAL HOTLINES	
National Sexual Assault Hotline   1-800-673-6732	National Domestic Violence Hotline   1-800-799-7233   1-800-799-7234 (TX)   Text: "START" to 68788
National Suicide Prevention Lifeline   1-800-273-8255	Victim's Crisis Line   1-800-273-8255 (Press 4)
Options for Your Self and Your Hearing   1-800-273-8255 or 1-919-362-2527	Spelling Speech: No-Heads Forward   1-800-43-3434   Text: "SUS" to 117-4741
Domestic Violence Helpline   1-800-965-3900	Domestic Violence and Domestic Violence   1-800-59-7243
Eating Disorder Helpline   1-800-931-2237	Mental Health Helpline   1-800-950-6264
Sexual Assault Helpline   1-800-650-6073	Emotional Support   Text: SUPPORT to 741-741
The Samaritans Helpline   1-877-877-8273	Cable Text Line   Text: HOME to 741-741

**ANONYMOUS REPORTING**

EthicsPoint Confidential reporting Line NMSU has selected EthicsPoint to provide an anonymous and confidential reporting tool to communicate misconduct.

Website: [ethicsreport.nmsu.edu](http://ethicsreport.nmsu.edu) On-Line: go to [www.ethicspoint.com](http://www.ethicspoint.com) Click on "File a Report"

Toll-Free: 1-866-384-4277 A compliance specialist will assist you in entering your report into the EthicsPoint System.

Reports directly to OIE can be made online at [equity.nmsu.edu](http://equity.nmsu.edu)



**NMConnect App -NMCAL**

NMConnect smartphone app offers New Mexicans access to a counselor or peer support, self-help digital wellness tools, and information on community resources. Intended for individual use by New Mexico community members that are seeking to address an emotional, mental, behavioral, or substance use concern for themselves or someone they know.

[nmcrisisline.com](http://nmcrisisline.com)  
Toll Free Anytime 24/7  
1-855-NMCRISIS (662-7474)

**Office of Institutional Equity**

O'Loughlin House  
MSC 3515  
1130 E. University Ave  
Las Cruces, NM 88003  
575-646-3635 FAX: 575-646-2183  
Website: [equity.nmsu.edu](http://equity.nmsu.edu) Email: [equity@nmsu.edu](mailto:equity@nmsu.edu)  
#AggiesAlwaysAsk



**New Mexico State University**

**Support and Resource Guide**

**Support When and Where You Need It**



**Office of Institutional Equity/EEO**  
[equity.nmsu.edu](http://equity.nmsu.edu)  
Emergencies: Call 911 Immediately

## 2. Utilization of Counseling Services

Every university on-campus healthcare model reviewed by the NMDOJ offered some degree of routine and crisis psychological counseling. Staffing of these units varied drastically. For example, Eastern Michigan University, which is comparable in enrollment to NMSU, maintains a Counseling and Psychology Services section within their health center. This section employs a total of twenty-four providers, including six licensed psychologists, four certified mental health therapists, two post-master's degree psychology fellows, a doctoral student therapist and eleven unpaid graduate student therapists.

NMSU employs eleven total providers, including two licensed psychologists, two post-doctoral psychologists, a psychiatric nurse practitioner and six counselors, including four “practicum counselors.” This provider breakdown places NMSU far below staffing metrics for similar institutions. The NMDOJ’s review concluded that the demand for counseling services by NMSU students is considerable and far exceeds staffing capacity. According to Assistant Director Blair, the Health and Wellness Center’s last utilization report suggested that the time spent by providers on counseling services was over 200% of their threshold. Despite these limitations, the Health and Wellness Center has sought to enhance access to mental health resources, particularly in crisis situations. Currently, counselors are available at the Health and Wellness Center by appointment, and there is an on-call crisis service for much of the workday on weekdays.

The Health and Wellness Center recognizes that crisis situations do not always arise during business hours. Accordingly, beginning in April 2024, NMSU rolled out TimelyCare, a virtual health platform that provides students free, 24/7 access to healthcare services, including counseling and on-demand emotional support. This service has filled a significant gap, as shown by 50% of student counseling services through TimelyCare occurring at night and on the weekends. Despite TimelyCare’s benefits, the NMDOJ’s interviews suggest that many student-athletes are not aware of its existence.

NMSU should examine Health and Wellness staffing levels to determine whether additional mental health professionals would materially ease the strain on an already overburdened provider group. The Athletics Department also has a need for a full-time practitioner to provide certified sports psychology services, in addition to traditional clinical psychotherapy. Finally, regardless of staffing levels, NMSU should improve student-athlete awareness of TimelyCare and other

available mental health resources through notice in University handbooks and literature and through advertising.

### 3. Creation of a Resource Center

Many higher education institutions operate a resource center, which serves as a hub for ongoing education and collaboration on issues of gender-based violence with an emphasis on advocating for sexual assault and interpersonal violence prevention measures on campus. Examples include the University of Arizona's Women and Gender Resource Center and the University of Michigan's Sexual Assault Prevention and Awareness Center.

While NMSU does not currently have a resource center, Vice President of Student Success Dr. Scott stated that creating one has been an ongoing topic of discussion within University leadership. NMSU officials previously sought state appropriations for facility needs and personnel, but the project was not funded.

Until a center is established, NMSU should explore alternative avenues of providing consistent programming and support in the area of sexual assault and interpersonal and domestic violence. For example, NMSU should rely on the Health and Wellness Center's Office of Health Promotion, which employs three health education specialists. Dr. Goodman and Aggie Health and Wellness staff have expanded the subject-matter knowledge of these specialists to include sexual violence.

### 4. Expanded Victim Advocate Services

When a student experiences sexual violence, hazing or other traumatic events, they must navigate a labyrinth of medical providers, reporting considerations, available resources and law enforcement or university investigative obligations. An evaluation of peer institutions demonstrates that countless universities and colleges provide dedicated victim-advocacy services on campus through full-time employees or through contracted services with community agencies. Some institutions possess dedicated Victim Advocacy Centers, such as UNM's LoboRESPECT Advocacy Center. Regardless of the organizational structure, the availability of victim advocates is essential to bridge the gap between the victim and the institution.

NMSU needs to expand its victim advocacy resources. The University Police Department currently employs individuals that connect victims with various

services, but this advocacy is only available if the matter is reported to law enforcement, a step many victims are reluctant to take. NMSU's Vice President for Student Success and the Dean of Students both acknowledged the importance of increasing confidential victim advocate capacity, whether through dedicated resources or through a formal Victim Advocate Center. To this end, NMSU will seek to hire two case managers to fulfill two different roles. One of them would serve in a clinical setting and work within the Health and Wellness Center to oversee the delivery of physical and mental healthcare and the timely coordination of off-site medical visits. The second would serve as a victim support coordinator, who would guide students through the OIE or law enforcement investigative process, link victims with supportive measures, help secure housing and academic accommodations, and provide ongoing advocacy and support.

Despite budgetary obstacles, the University should continue to make efforts to increase victim advocacy resources, including an evaluation of potential grant funding. The United States Department of Justice's Office on Violence Against Women administers grant programs to universities for efforts to reduce domestic violence, dating violence, sexual assault and stalking. This funding can be applied to create more robust victim advocacy services.

### ***G. Coordination Between University Components***

As identified through Title IX reviews at Baylor University, the University of Maryland and the California State University system, as well as the football program hazing investigation at Northwestern University, close coordination between university departments and the integration and streamlining of institutional resources are crucial to preventing sexual assault and hazing.

At NMSU, multiple entities are responsible for sexual violence and hazing education, prevention and intervention, including the Athletics Department, the OIE, the Dean of Students, University Police Department, University General Counsel's Office, Division of Student Success, Housing and Residential Life, and the Aggie Health and Wellness Center. Consistent and purposeful collaboration among these University components fosters a holistic approach to student safety and a coordination of resources, processes, subject-matter expertise and disciplinary responses.

#### ***1. Standing Strategic Meetings***

The NCAA's Sexual Violence Prevention Toolkit promotes proactive and regular engagement between athletics department personnel and other campus stakeholders. These stakeholders include the Title IX Coordinator, health and counseling services personnel, campus law enforcement representatives, student affairs representatives and residence life staff.

The NMDOJ interviewed individuals from the Dean of Students Office, the OIE, Athletics Department, Health and Wellness and the University Police Department. These interviews reveal that NMSU relies on two primary methods of intra-campus coordination. First, personnel with each of office attend a weekly Concern Assessment and Response Team (CARE) meeting to identify and respond to staff or students at risk of harming themselves or others. Second, these offices and departments engage in ad hoc conversations for isolated incidents. The primary goal of this coordination is to address issues impacting students.

However, NMSU does not currently have any recurring meetings among leaders within these offices and departments to discuss sexual assault and hazing initiatives at a conceptual and strategic level. For better coordination, these groups should pursue expand their informal and impromptu discussions to a more formal forum to address institutional responses and campus safety efforts more broadly. Such meetings would improve communication and explore the impacts of actions taken by each individual office or department on the University's overall prevention framework.

## 2. Coordination of Anti-Hazing Initiatives

Stophazing's Hazing Prevention Toolkit recommends that universities allocate resources for hazing prevention, including staff with time for hazing prevention work included in job descriptions. Many universities employ dedicated individuals to coordinate hazing prevention initiatives and provide anti-hazing trainings to staff, student organizations, athletic teams and the broader student body. Examples include the University of Washington's Hazing Prevention and Response Specialist and the University of Southern California's Hazing Prevention and Leadership Coordinator.

In the wake of the 2022-23 men's basketball season, NMSU pursued numerous anti-hazing initiatives. These action items are contained in a spreadsheet documenting the unit or individual in charge and target dates for initiating and completing each action item. The spreadsheet contains over thirty discrete measures under the responsibility of eleven individuals from eight

departments. The diffuse distribution of duties highlights the need for coordination to maximize effectiveness and reduce unnecessary redundancy.

NMSU should consider identifying a single University employee as an anti-hazing coordinator to act as a liaison for the anti-hazing initiatives and to manage and coordinate those efforts. The anti-hazing initiative coordinator could monitor progress, enforce target dates, and lead meetings with the entire hazing prevention and education working group. The coordinator could also evaluate the efficacy of anti-hazing initiatives and help the working group pivot to more effective strategies in ongoing basis.

### 3. Investigative and Sanctioning Authority of OIE and Dean of Students

Educational institutions oversee distinct grievance procedures that separately govern Title IX sexual misconduct complaints and student disciplinary matters. Those university departments that possess intake, investigative and sanctioning authority over sexual assault and hazing reports should regularly collaborate to ensure the proper routing and timely review of reports.

The NMDOJ's interviews confirmed that conversations regularly occur between the OIE and the Dean of Student's Conduct Office at the report stage. As the central triage unit of complaints through the campus community incident system, the Conduct Office will promptly refer to the OIE any allegations that implicate harassment, sexual misconduct, discrimination or retaliation.

Communication is equally vital during the investigative and sanctioning phases because there are certain types of incidents, such as sexualized hazing, that implicate both the student code of conduct enforced by the Dean of Students and the policy prohibiting sexual misconduct under Title IX enforced by the OIE. The OIE and Dean of Students appear to seamlessly interact during the investigative process when a matter falls under the purview of both units. The offices discuss which investigation will take precedence, and they share investigative findings.

The ARP 3.25 grievance procedures used by the OIE to enforce Title IX and the student code of conduct case procedures in 5.26 discuss the obligations of the two offices with respect to imposing sanctions. Under the 3.25 procedures (Part 4(C)(1)), the OIE hearing officer imposes student sanctions following a hearing, and OIE Executive Director Nutt serves as the final decision-maker in Title IX cases decided without a hearing. Student code of conduct 5.26 Part 7 appears to establish a different decision-maker; when the OIE has issued findings in support

of a violation of 3.25, the Dean of Students inherits the matter and conducts a sanctioning conference. These provisions appear to conflict, but communication between the offices has negated any practical effect for this conflict. The Dean of Students clarified that the OIE has full authority to investigate, decide and issue sanctions in their own cases. The Dean of Students Office serves a supportive role in enforcing sanctioning decisions.

Given that communication between the OIE and the Dean of Students has not always been so seamless, however, the University should seek to resolve the apparent conflict between OIE's ARP 3.25 investigative process and the Dean of Student's SCC 5.26 code of conduct process. Indeed, a comprehensive review of the student code of conduct would be in order because it has not been updated on a wholesale basis since August 2019.

#### *4. Student-Athletes and the Conduct Process*

The Athletics Department and the Dean of Students possess independent authority to discipline student-athletes, and coordination between the two should prevail over any territorial attitudes. In Baylor University's Title IX review, for example, investigators found that the football coaches and athletic staff took affirmative steps to maintain internal control over discipline and divert cases away from the student conduct process. This approach unwisely relies on coaches' individual judgment in lieu of clear standards for discipline and yields ad hoc, subjective and potentially inequitable outcomes. To ward against these pitfalls, universities should implement defined protocols for referring matters to the student conduct process and for the coordination and joint enforcement of student-athlete discipline.

According to the Student-Athlete Handbook, violations of NMSU policies by an athlete are addressed in the same manner as the general student body. The Athletics Department and head coaches may impose additional sanctions if necessary. The NMDOJ's review revealed that, before December 2022, the Dean of Students Office only sporadically communicated with the athletics staff and those communications typically involved a need for athletics staff to enforce a disciplinary decision. Coordination improved, however, with the Athletics Department's hiring of Dr. Amber Burdge. Dr. Burdge instituted weekly meetings with Dean of Students personnel, and the Dean of Students Office now notifies Dr. Burdge of a conduct investigation for an athlete. This improved coordination has led to greater participation in the process by athletes. Dr. Burdge also developed

an online reporting form for Athletics Department staff to submit to the Dean of Students Conduct Office upon imposition of discipline.

Despite this enhanced partnership, the University can further refine its policies and processes. First, the University should clarify whether and to what extent athletics staff can discipline an athlete during a conduct investigation. Both the Dean of Students and the Athletic Director stated that there is no limitation on athletics staff discipline while a conduct investigation is pending, but one coach expressed a fear of reprisal if the coach disciplined an athlete that is later cleared of wrongdoing after a formal investigative process.

Second, the Dean of Students should ensure consistent communication of student-athlete sanctions to athletics staff, regardless of severity. Currently, the Dean of Students notifies Dr. Burdge of sanctions imposed by conduct officers, but the Athletics Department does not receive notice of relatively minor sanctions, such as written warnings issued by residence directors. Athletics staff must be fully informed about an athlete's misconduct to assess the athlete's compliance with team rules.

#### 5. Referral of Athlete Misconduct to the Dean of Students

NMSU does not currently provide athletics staff with written guidance about when to refer athlete misconduct to the Dean of Students. To ensure equity in discipline, referrals to the Dean of Students should be uniform and not depend on an individual coach's tendency toward strict or lenient discipline. Both the Athletic Director and Dean of Students acknowledged the lack of standard protocols for referrals to the Conduct Office. NMSU should endeavor to create such a policy and disseminate it to athletics staff.

#### 6. OIE and Athletics

The NCAA Policy on Campus Sexual Violence states that "intercollegiate athletic departments should be informed on and integrated in overall campus policies and processes addressing sexual and interpersonal violence prevention and acts of sexual violence, particularly those related to the adjudication and resolution of matters related to sexual/interpersonal violence."

As discussed previously, on December 31, 2022, a deputy athletic director became aware of allegations of sexual assault being perpetrated against a student-manager affiliated with the men's basketball team. The deputy director shared this

information with Director Moccia, and those allegations were transmitted to the OIE on January 3, 2023. Thereafter, according to the student-manager's statement to law enforcement, he received an email from the OIE but didn't respond because "the way it was written made him feel like he had done something wrong, which confused him." This scenario raises important issues about unresponsive complainants and confidentiality.

a. Issue #1 - Unresponsive Complainant

When faced with a complainant that is nonresponsive or uncooperative, Title IX regulations and well-established best practices inform the OIE to consider three things: follow-up protocol, filing of a complaint by the Title IX coordinator, and supportive measures.

i. Follow-Up Protocol

A former NMSU administrator with knowledge of Title IX obligations told the NMDOJ that the OIE should diligently follow-up through multiple methods of communication, including email, phone call and text message, when a complainant fails to respond to initial communications. However, for the student-manager, his confusion with the initial communication may have led to similar confusion about subsequent communications, emphasizing the need for clarity and neutrality in OIE communications. Executive Director Nutt considers an email to be merely the initial entry point into a Title IX investigation, and for more serious allegations, the OIE may rely on phone calls over emails. He instructs his staff to do more than send the minimum number of obligatory emails before closing a case. It is unknown whether the OIE staff in January 2023 made diligent efforts to contact the complainant. While persistent follow-up is common under Executive Director Nutt's leadership, practices are subject to change with shifting personnel and differing outlooks. NMSU should memorialize this protocol in writing and disseminate it to OIE staff.

Furthermore, if the OIE is unable to reach a student-athlete or athletic staff complainant, Deputy Title IX Coordinator Dr. Burdge should facilitate contact. It is unclear whether Dr. Burdge's Title IX role had been settled at the time of the December 2022 report. In any event, NMSU should endeavor to make all reasonable efforts to contact complainants and to provide clear communications that do not imply any wrongdoing in making a complaint.

ii. Filing Formal Complaint by Title IX Coordinator

Title IX regulations contemplate the ability of a Title IX Coordinator to file a formal complaint on their own initiative.<sup>15</sup> Within athletic teams in particular, the OIE should closely scrutinize whether an investigation should be initiated notwithstanding a lack of complainant cooperation. With the incidents in the men’s basketball program, the OIE staff knew of this option, and the Interim Director in fact filed a complaint to initiate the Title IX investigation into Washington, Aiken Jr. and Bradley after Deuce Benjamin’s report to police. NMSU Title IX Coordinator Nutt looks for the presence of the following factors when deciding whether to sign a formal complaint himself: (a) patterns; (b) predation; (c) threats; (d) use of violence or weapons; and (e) involvement of minors. To foster uniformity and equity, these criteria should be memorialized in a written protocol and provided to staff.

In the case of the initial sexualized hazing complaint involving men’s basketball personnel, it is unclear whether the OIE chose to close the Athletic Department’s report after being unable to reach the student-manager or whether it filed its own formal complaint and proceeded with an investigation. However, the report made by student-manager's father alleged that the student-manager had been sexually assaulted on at least three separate occasions. These allegations should have raised a concern about a pattern of violent abuse. Even if the OIE was not fully aware of the extent of the behavior toward the student-manager, the continued close proximity between the victim and the offenders inherent in any athletic context should have triggered closer scrutiny and a timely investigation.

iii. Supportive Measures

Title IX requires universities to make supportive measures available to victims of sexual assault regardless of whether formal complaints are filed.<sup>16</sup> These measures are designed to preserve or restore equal access to the school’s education program or activity and protect the safety of all parties. Examples of supportive measures for an employee include work schedule modifications, mutual restrictions on contact between parties and increased security or monitoring of certain areas on campus. Despite the student-manager's non-responsiveness, the OIE had a responsibility to prevent the recurrence of similar misconduct. Supportive measures play an essential role in achieving this end, and additional efforts should have been made to afford such measures.

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<sup>15</sup> See 34 CFR Section 106.30(a)’s definition of “Formal Complaint.”

<sup>16</sup> See 106.30(a)’s definition of “Supportive Measures.”

Indeed, training in the Athletics Department lacks sufficient focus on supportive measures. Director Moccia, for example, was uncertain whether the OIE could provide supportive measures at the complaint stage and believed that they could only be offered at the conclusion of the investigative process. NMSU should take steps to clarify the difference between supportive measures and disciplinary sanctions.

b. Issue #2 – Confidentiality Requirements after Report to OIE

NMSU’s Athletics Department has a serious knowledge gap about confidentiality following a report of sexual misconduct to the OIE. Several individuals believed that complete secrecy is required and misunderstood Athletics' role in the continued protection of athletes and Department staff.

i. 2020 Title IX Regulations on Confidentiality

The Title IX regulations expressly address confidentiality. Under 34 CFR Section 106.71(a):

*the recipient [institution] must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute or FERPA regulations or as required by law, to carry out the purposes of 34 CFR Part 106, including the conduct of any investigation, hearing or judicial proceeding arising thereunder.*

(Emphasis added.)

Athletics staff believed that an employee complainant would not be able to tell a coach about the general nature of the reported conduct due to Title IX confidentiality. This is wrong for at least two reasons. First, it is inconsistent with the purpose of Title IX confidentiality. The U.S. Department of Education, Office of

Civil Rights guidance on the 2020 regulations<sup>17</sup> clarifies that the objective of the confidentiality requirement is to prevent the school from retaliating against a complainant upon a report being made. Providing limited information about a report to members of the Athletic Department for preventative purposes does not compromise this stated objective. Second, the confidentiality requirement applies to the *identity* of a complainant or perpetrator. While Title IX does not define “identity,” FERPA contains an instructive definition of personal identifying information. Even under the most cautious reading of FERPA’s definition, there is simply no prohibition under Title IX against coaches and those capable of preventing future assaults in knowing limited, general information about the nature of a report as part of providing a safe environment for athletes and employees.

*ii. Athletics Department and Title IX Confidentiality*

Athletic Director Moccia believes that, after athletics staff report a matter to the OIE, the staff’s obligation is satisfied and they are not allowed to inform anyone else of the report to prevent tainting a subsequent investigation. This belief is shared by many in the Department, including coaches and other athletic support personnel, but the NMDOJ disagrees with this interpretation of regulations and policies. As an initial matter, it is worth noting that this belief conflicts with actual practice; Director Moccia met with and observed pertinent videos by Deshawndre Washington and Doctor Bradley after the OIE had received Deuce Benjamin’s report in February 2022.

It is certainly true that the initial reporting step is necessary and complies with the athletics staff’s duty to report sexual misconduct under NMSU policy. However, as discussed below, the purpose and plain reading of the Title IX regulations do not require complete non-involvement by a reporting entity and do not limit continued communication with the OIE about the appropriate steps to take to prevent recurrence of the alleged behavior. In fact, the NCAA’s Title IX Athletics Employee Education Module, which athletics staff receive, instructs the reporting staff member to check in on the student and contact the OIE if there are concerns or if the victim may be in need of supportive measures.

The NMDOJ’s interviews of athletic employees at different levels of the Department suggest the need for focused instruction on these topics. For example,

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<sup>17</sup> United States Department of Education, Office for Civil Rights. Part 1: Questions and Answers Regarding the Department’s Title IX Regulations. January 15, 2021. See [Part 1: Questions and Answers Regarding the Department’s Title IX Regulations \(PDF\)](#)

when asked whether an employee could inform their supervisor that a report was made to the OIE, two individuals answered in the negative and two in the affirmative, with the latter believing they could share general information about the nature of the report. Director Moccia indicated he was not certain about whether a coach could inform his chain of command but said he would like clarification on that point.

Athletics staff also seemed confused about whether information relating to a sexual misconduct report can be shared with coaches and, if so, to what extent. Acknowledging that confidentiality of the complainant/victim and respondent/offender was a concern to some athletic staff, staff members asked whether they could inform coaches about a report in a more general way, without any individual personal identifying information. With this limited dissemination of information, the coaches and other staff who are closest to the individuals involved in the incident can better maintain or improve oversight and prevent further abuse from happening.

*iii. Interpretation by Title IX Administrators*

Executive Director of OIE William Nutt provided practical guidance about handling these situations under the 2020 Title IX guidelines. Nutt clarified that the nature of a sexual misconduct report could be provided to those in a supervisory or authority role if they have a “legitimate need to know,” noting that such analysis is situational but can occur when there is risk of ongoing incidents. Nutt’s reading of Title IX does not prohibit providing general information, such as the location of an alleged assault, that would allow an employee to mitigate future sexual assaults. He stated that this is common in resident hall settings where the OIE will secure increased police or resident assistant presence. Executive Director Nutt further observed that confidentiality under Title IX relates to the names of the individuals involved, not a general description of the alleged misbehavior to prevent its recurrence. In these situations, Nutt said that conduct reporters can consult with OIE if there are any concerns about what can be shared with other employees.

A former university administrator with knowledge of Title IX matters agreed with Executive Director Nutt’s assessment. Posing the scenario of the report made by athletics administrators to the OIE on behalf of a student-manager, this former administrator noted that there should have been a collaborative conversation with the Athletics Department regarding supportive measures for the complainant and more appropriate oversight in the locker room

and other areas where the assaults were alleged to have occurred. Not only is such an approach best practices, but it is also required under Title IX regulations in taking reasonable steps to stop the conduct and maintain a safe environment during the pendency of an investigation.

iv. *Conclusion and Steps to Resolve Misunderstandings*

In the case of the 2022-23 men's basketball team, the NMDOJ concludes that both the OIE and athletics staff failed to adequately consider supportive measures and continuing safeguards for the alleged victim. The response by these units reinforces the need for improved coordination in the intake and investigative process and a better understanding of Title IX's requirements.

The NMDOJ does not suggest that these failures were intentional. The NMDOJ also has not considered the merits of any claim in pending litigation and offers no opinion about pending litigation. The NMDOJ's focus is instead to underscore best practices that may lead to better practices in the future. NMSU should provide specific guidance to the Athletics Department and the OIE -- through enhanced and targeted training, a written protocol or other resources -- about how to handle similar situations in the future. This may include, although is not limited to, utilizing Dr. Burdge as a liaison between the OIE and the complainant, to inform that individual of the investigative process, facilitate supportive measures, and coordinate a safety plan, including the requirement of increased oversight of those locations where sexual assaults or other hazing may occur.

#### IV. **SUMMARY OF RECOMMENDATIONS**

##### **A. For NMSU: A Checklist for Further Improvement**

Based on the foregoing findings and observations within the seven identified focal points, the following is a summary of recommendations that merit NMSU's consideration to prioritize sexual assault and hazing education, prevention and intervention.

→ ***Institutional Governance and Student Engagement***

- 1.1 - Prioritize consistent communication from senior leadership to students focused on awareness efforts, policies, reporting options, resources and programs designed to prevent sexual assault and hazing;

increase frequency of updates to the Board of Regents regarding OIE developments and hazing prevention initiatives.

- 1.2 - Develop and refine communication of sexual assault and hazing prevention information and engage students by pursuing recurring campus awareness campaigns and tabling events; clearly publicize the Title IX Coordinator's contact information.
- 1.3 - Earmark recurring funding to sustain anti-hazing efforts.
- 1.4 - Ensure the OIE receives sufficient financial and human resources to fulfill its mission of preventing and investigating sexual misconduct.
- 1.5 - Consider appropriate placement of OIE within larger organizational structure to best align with its Title IX mission.
- 1.6 - Elicit student feedback through periodic climate assessments related to campus safety concerns, reporting barriers, accessing resources and university investigative practices.
- 1.7 - Prioritize transparency measures, including publicizing aggregate stats of sexual assault and hazing investigation outcomes.

→ ***Policies***

- 2.1 - Perform cyclical evaluation of university policies and procedures to ensure they are not overlapping, unclear, inconsistent or irrelevant.
- 2.2 - Solidify scope of anti-hazing policies and ensure conformity of definitions across the various university authorities.
- 2.3 - Conduct an annual review of the student-athlete handbook to ensure an accurate reflection of current Athletic Department practices and University policies.

→ ***Reporting***

- 3.1 - Reassess available reporting options and the functionalities and limitations of reporting systems.

- 3.2 - Clearly communicate the distinction between responsible employees who possess a duty to report sexual misconduct and those employees who may serve as confidential resources.
- 3.3 - Increase athlete and staff understanding of appropriate reporting avenues under university policy for both sexual misconduct and non-sexualized hazing.

→ **Training**

- 4.1 - Maintain an interactive approach to providing NCAA and Title IX training to athletes with an emphasis on bystander intervention.
- 4.2 - Continue a recurring hazing prevention curriculum for students and employees, including targeted trainings for coaches.
- 4.3 - Expand Title IX training for all university students, regardless of athletic team or student organization affiliation.
- 4.4 - Hold staff accountable for failure to complete mandatory trainings.

→ **Athletics Department Culture and Recruiting Practices**

- 5.1 - Set expectation that athletic department administrators and coaches be proactive and intentional in creating a culture rooted in mutual respect, concern for athlete wellbeing and accountability.
- 5.2 - Consider development of a policy to ensure sufficient oversight of under-supervised areas, including locker rooms, buses and hotel rooms.
- 5.3 - Examine methods to obtain greater participation in exit surveys for departing athletes and initiate an anonymous survey for athletes remaining at NMSU to provide ongoing feedback on team practices.
- 5.4 - Employ consistent and stringent disciplinary measures for athlete misconduct; include an impact on financial aid awards and name, image and likeness agreements as a consequence of misconduct.
- 5.5 - Demand further scrutiny in coaching hires; reevaluate Athletic Director contracts to require that serious lapses in program management leading to sexual assault or hazing of athletes results in termination for cause.

- 5.6 - Consider ending the practice of recruiting prospective athletes with felony and certain misdemeanor criminal convictions.
- 5.7 - Augment the current attestation and disclosure form to identify the full extent of a recruit's criminal history and prior misconduct.
- 5.8 - Assign final admission decisions on prospective student-athletes with criminal or disciplinary histories to the Dean of Students, the OIE and the President; require a student behavior plan for such athletes upon admission.

→ ***Resources for Sexual Assault Victims***

- 6.1 - Prioritize comprehensive routine and crisis healthcare at Aggie Health and Wellness Center for sexual assault victims and regularly evaluate the need for expanded services.
- 6.2 - Increase staffing of mental health providers within the Aggie Health and Wellness Center and encourage utilization of virtual counseling options.
- 6.3 - Create a resource center on campus to champion causes of sexual assault and interpersonal violence prevention and response, including participation in ongoing education campaigns.
- 6.4 - Seek additional victim advocates on campus to act as liaisons between sexual assault survivors and service programs and investigative entities; pursue grant funding to supplement capacity as appropriate.

→ ***Coordination Between University Components***

- 7.1 - Evaluate the efficacy of standing meetings between leadership of OIE, Dean of Students, Police, Housing and Athletics to discuss sexual assault and hazing prevention measures requiring cross-team collaboration.
- 7.2 - Assign the coordination of anti-hazing initiatives to a single individual within Athletics and another within the Dean of Students office, who meet frequently to ensure continued focus and momentum.

- 7.3 - Scrutinize the intersection of OIE's ARP 3.25 investigative process and the Dean of Student's SCC 5.26 conduct process, including whether procedural changes related to sanctioning authority are justified.
- 7.4 - Clarify protocols governing Athletics' coordination with Dean of Students on discipline, including the authority to sanction athletes during the pendency of the conduct process and mandating that the Dean of Students provide all sanction decisions to Athletics.
- 7.5 - Adopt written guidelines requiring Athletics staff to refer athlete misconduct issues that may implicate the student code of conduct to the Dean of Students.
- 7.6 - Improve communication and information sharing between OIE and Athletics regarding confidentiality considerations and provision of supportive measures upon the report of athlete sexual misconduct.

## **B. Statewide: The Need for Anti-Hazing Legislation**

New Mexico is one of only six states in the United States without an anti-hazing law. If we are to truly prioritize the health and safety of our students, this needs to change. Without such statutory authority, perpetrators of hazing behavior are unable to be held fully accountable, and educational institutions are left without explicit guidance regarding their responsibilities in this area.

For an anti-hazing statute to have sufficient deterrent effect, perpetrators must face the prospect of criminal penalties, with elevated penalties if hazing behavior results in physical or great psychological harm. Penalties are similarly appropriate for those school administrators, faculty, coaches and other employees who know or reasonably should know of hazing occurring but fail to report such incidents to law enforcement. Because hazing behavior occurs in secondary and post-secondary schools, these penalties should reasonably extend beyond the collegiate level.

In addition to criminal penalties, those individuals who suffer physical or mental pain and suffering resulting from hazing behavior should be able to pursue civil actions against the participants in the hazing and educational institutions and their employees who fail to take reasonable

preventative steps. Collateral consequences – such as loss of scholarships or awards for individuals and forfeiture of official recognition for student organizations – are necessary to punish and deter hazing behavior.

Furthermore, while criminal and civil remedies seek to penalize hazing behavior that has already occurred, effective legislation would require educational institutions to take proactive measures to prevent its occurrence in the first instance. Institutions should be required to provide comprehensive educational programs regarding the signs and dangers of hazing, the policies prohibiting such behavior, and ongoing prevention and intervention initiatives. To ensure effective coordination of an institution's hazing prevention efforts, legislation should also require universities to have a hazing prevention committee that includes students, faculty, staff and other community stakeholders. Last, institutions should maintain and publish on their website substantiated violations of codes of conduct, anti-hazing policies and any pertinent federal or state laws by student organizations or athletic teams.

While NMSU is already taking many of these steps, students at educational institutions throughout New Mexico deserve the same protections.

## **V. CONCLUSION**

During the 2022-23 academic year, there were senior leadership departures, a search for a permanent executive director of the OIE, and an impending NCAA conference realignment. When major institutional shifts take place, large universities can lose sight of the most fundamental priority – the well-being and safety of students. The NMDOJ engaged in this review to ensure that the focus remains squarely where it belongs.

The sexualized hazing incidents on the men's basketball team are reflective of a toxic environment in which all parties involved bear responsibility. The 2022-23 season was marked by a culture that didn't emerge by chance and wasn't created overnight. Rather the environment within the program was the byproduct of many decisions and pivotal moments over the course of several months. The culture permeated an Athletic Department that avoided obvious red flags in coaching hires and recruiting targets and brought in coaches with a hands-off approach to both supervision and discipline subject to being exploited by bad actors. When reports were made, the institutional response was impeded by

personnel deficiencies in key areas and a lack of sufficient urgency in addressing the problems. During that year, there were notable instances of either inadequate protocols or a lack of awareness about systems and processes by leaders and staff. There were further deficiencies in policies, training, recruiting practices and collaboration among University departments.

Since 2022-23, NMSU has made significant improvements in many areas. The University has dedicated its attention to sexual assault and hazing education, prevention and response. But there is more work to do, and the NMDOJ believes the recommendations contained in this report and in proposed legislation will assist the University in achieving a supportive and safe campus for all of its students. Student-athletes should not be subjected to the humiliation and abuse that was rampant on the men's basketball team in 2022-23. The incidents on the basketball team should serve as the impetus for common-sense reforms and reorienting the institution back to protecting students from the dangers of hazing and sexual assault.



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