



P & A

# CLIMATE ASSESSMENT REPORT ON SEXUAL VIOLENCE

UNIVERSITY OF NEW MEXICO

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**University of New Mexico**  
**Climate Assessment on Sexual Violence**  
**In Residential Housing & Athletics Program**  
**Final Report**  
**December 4, 2014**

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## Executive Summary

The law firm of Pilgrim & Associates (P&A) was retained by the University of New Mexico (“UNM”) to investigate and determine the climate regarding sexual violence in its student housing and athletics programs (the “Climate Assessment”).

In the course of conducting the Climate Assessment, P&A determined that UNM takes very seriously its obligation to safeguard its students and staff from discrimination, specifically sexual violence. Notwithstanding this fact, there are a number of areas in which UNM can implement innovative programs, improvements in policy-making and procedural processes, and corrective measures to reduce the likelihood of the negative impacts and consequences of incidents of sexual violence in its residential housing and athletics program.

## Key Findings

The overall climate within UNM residential housing and the UNM athletics program is one of being aware of the risks associated with sexual violence while feeling safe. Most individuals interviewed and surveyed recognized that UNM was making a commitment to education and prevention programs related to sexual violence, in an effort to protect the wellbeing of students and staff.

The attitudes and perceptions of UNM staff and administrators about the atmosphere regarding sexual violence in UNM residential housing is best summarized as acknowledging the seriousness and importance of issues surrounding sexual violence, and confident in their ability to recognize and address such incidents.

The attitudes and perceptions of UNM students living in UNM residential housing about the atmosphere regarding sexual violence at UNM is best summarized as feeling safe and believing that there are only limited incidences of sexual violence.

The attitudes and perceptions of individuals not currently and officially working for UNM staff about the atmosphere regarding sexual violence in residential housing is best summarized as mixed attitudes and perceptions.

Available third party objective data analyzed by P&A indicates the attitudes and perceptions of students, administrators and staff about the atmosphere regarding sexual violence in UNM residential housing is generally accurate.

The attitudes and perceptions of UNM staff and administrators about the atmosphere within the UNM athletics program regarding sexual violence is best summarized as being that student athletes are no more likely to be involved in acts of sexual violence than other areas of the university or the general student body, contrary to public perception.

The attitudes and perceptions of UNM student athletes about the atmosphere within the UNM athletics community regarding sexual violence at UNM is best summarized as feeling safe, although

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generally aware of sexual violence and concerned that they are stigmatized as a group by the inappropriate actions of a few.

The attitudes and perceptions of individuals not currently and officially working for UNM staff about the atmosphere within the UNM athletics community regarding sexual violence is best summarized as evolving with a desire that UNM be inclusive and transparent in addressing issues of sexual violence.

Available third party objective data analyzed by P&A indicates the attitudes and perceptions of students, staff and administrators about the atmosphere within the UNM athletics program regarding sexual violence is accurate in that the athletics program or student athletes are no more likely to be involved in incidents of sexual violence on the UNM campus or affiliated campus housing than other UNM programs or non-athlete students.

On September 4, 2014, when the Climate Assessment began, UNM had 17 policies in place that a victim of sexual violence, or someone seeking to report such an incident, could access to obtain information and assistance.

While UNM must be commended for having policies in place to redress allegations of sexual violence, unfortunately several of these policies fail in significant respects to comply with the dictates of Title IX, the DC Letter, and related guidance issued thereunder.

Many of the 17 policies were accompanied by procedures to redress discrimination – sexual violence – complaints and/or referred to such procedures; however, these procedures fail in several significant respects to comply with the dictates of federal law.

The attitudes and perceptions of UNM staff and administrators about the UNM policies and procedures to address sexual violence are best summarized as unfamiliar, unclear and confused.

The attitudes and perceptions of UNM students about the UNM policies and procedures to address sexual violence are best summarized as unfamiliar, unclear and confused.

## I. Climate Assessment on Sexual Violence & Sexual Assault Mandate

In April 2014, UNM became aware of two alleged incidents of sexual assault, one of which reportedly occurred in 2013.<sup>1</sup> These reports understandably raised the concerns of UNM President Robert G. Frank and the UNM Board of Regents (“Regents”) who ultimately created the “Presidential Task Force on Sexual Violence” to identify, improve, and educate about policies and responses to reduce and eliminate sexual assault within UNM’s campus community. In addition, on or about August 28, 2014, the Regents approved the retention of a law firm with a mandate to “Investigate and Determine the Climate re Sexual Violence in the University of New Mexico Student Housing and Athletics Programs and Make Recommendations for Positive Change Where Needed” (the “Climate Assessment”). Climate assessments have been recognized as a best practice in gauging sexual assault issues on a college campus.<sup>2</sup> The law firm of P&A was engaged by the University Counsel’s Office of UNM to conduct the confidential Climate Assessment.

Specifically, the Climate Assessment required Pilgrim & Associates to:

- Determine attitudes and perceptions of students, faculty, staff and administrators about the atmosphere regarding perceived or actual sexual violence in the athletics and residential housing programs;
- Determine the prevalence or incidence of sexual violence, including to the extent possible, unreported incidents in the athletics and residential housing programs;
- Disclose any newly discovered complaints of sexual violence in the athletics and residential housing programs to UNM, in order for the University to be able to take appropriate and prompt follow-up action;
- Review the viability of relevant campus policies with regard to the athletics and residential housing programs;
- Review how athletics and residential housing respond to sexual violence;
- Determine perceptions about how much campus leadership cares about sexual violence in the athletics and residential housing programs;
- Determine how safe students feel in the athletics and residential housing programs;
- Determine how well the campus interacts and teams with community groups focused on sexual violence, in particular, with administrators in the athletics and residential housing programs;
- Report any additional areas for review identified during the project;

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<sup>1</sup> On April 13, 2014, UNM PD received a report of a sexual assault involving a female UNM student, two UNM football players and a former UNM football player. In that incident, the female accuser was allegedly raped by the two football players and a former football player in a car, with the former football player allegedly brandishing a weapon during the rape. Subsequently, on April 29, 2014, UNM PD received a call from another female who reported that she was also sexually assaulted by a UNM football player and a former UNM football player (he was cut from the football team) during the 2013 fall semester.

<sup>2</sup> “[E]xperts agree that annual climate surveys...are one of the best ways to get an accurate portrait of sexual assault issues on a campus. However, only 16% of the institutions in the Subcommittee’s national sample reported conducting climate surveys. Only 20% of the nation’s largest public schools and 12% of the largest private schools reported conducting climate surveys.” Sexual Violence on Campus, United States Senate Subcommittee on Financial & Contracting Oversight, July 9, 2014 (<http://www.mccaskill.senate.gov/imo/media/doc/SurveyReportwithAppendix.pdf>).

- Prepare a report describing the result of this investigation with recommendations for improving the climate.

This document constitutes the confidential report of P&A's Climate Assessment findings, assessments and recommendations, as requested by UNM's University Counsel's Office ("Report").

### **II. Applicable Legal & Regulatory Standards**

In order to fully understand the factors relevant to this Climate Assessment, the following is a general overview of the legal and regulatory framework applicable to sexual violence cases in a university setting, specifically the Office of Civil Rights' ("OCR") Dear Colleague Letter on student-on-student sexual harassment and sexual violence ("DC Letter"), and the relevant federal procedural due process jurisprudence applicable in New Mexico.

Under Title IX of the United States Education Amendments of 1972,<sup>3</sup> a university that receives federal funding is prohibited from discriminating on the basis of sex, which includes sexual violence, in its educational programs. The Department of Education and its Office of Civil Rights issued the DC Letter to provide guidance to universities regarding their duties under Title IX related to sexual violence. Section II (A) of this Report summarizes the relevant principles discussed in the DC Letter.

As part of the obligations mandated by OCR to combat sexual violence, schools must implement a mechanism, usually in the form of grievance procedures, for investigating incidents of sexual violence. Inherently, this investigative mechanism affects the due process rights of the parties involved. Therefore, Section II (B) below highlights the relevant due process provisions under federal law applicable in the state of New Mexico.<sup>4</sup>

#### **A. Title IX-Dear Colleague Letter**

On April 4, 2011, the OCR issued the DC Letter, which explains a school's responsibility to take immediate and effective steps to end sexual harassment and sexual violence. The DC Letter supplements the OCR's Revised Sexual Harassment Guidance<sup>5</sup> ("Guidance") issued in 2001 by providing additional guidance and practical examples of Title IX's requirements related to sexual violence. The DC Letter discusses the proactive efforts schools can take to prevent sexual harassment and sexual violence. It concludes by providing examples of remedies that schools and the OCR may use to end such conduct, prevent its recurrence, and address its effects.<sup>6</sup>

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<sup>3</sup> 20 U.S.C. §§ 1681 et seq.

<sup>4</sup> P&A's attorneys are not licensed to practice law in the state of New Mexico and, therefore, cannot provide legal advice regarding New Mexico law.

<sup>5</sup> Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties at: (<http://www.ed.gov/about/offices/list/ocr/docs/shguide.html>) (last visited Nov. 30, 2014).

<sup>6</sup> See p. 2 of the DC Letter (<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>).



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The DC Letter defines sexual violence as “physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or disability.”<sup>7</sup> An act of sexual violence creates a hostile environment if “the conduct is sufficiently serious that it interferes with or limits a student’s ability to participate in or benefit from the school’s program.”<sup>8</sup>

Under Title IX, students are protected in all educational programs and activities, including all academic, educational, extracurricular, athletic and other programs sponsored by the school.<sup>9</sup> Schools may also have an obligation to respond to student-on-student sexual violence that initially occurred off school grounds or outside a school’s educational program or activity because the student may experience the continuing effects of off-campus sexual violence in the educational setting.<sup>10</sup> If the school knows or reasonably should know about an incident of sexual violence that creates a hostile environment, it should take immediate action to eliminate harassment, prevent its recurrence and address its effects.<sup>11</sup> Once a university receives a complaint of sexual violence, it should conduct an investigation, and the investigation<sup>12</sup> must be prompt, thorough and impartial.

In order to combat sexual violence and prevent its recurrence, the DC Letter contains certain procedural requirements for addressing sexual violence, as well as specific requirements for grievance procedures to achieve a “prompt and equitable”<sup>13</sup> resolution of a sexual violence complaint (*see below* Section II(A)(1)). The DC Letter focuses on four elements within a university’s grievance procedures that are critical to guaranteeing a prompt and equitable resolution of a dispute (*see below* Section II(A)(2)).<sup>14</sup> Finally, it concludes by discussing proactive measures (*see below* Section II(A)(3)) that a university can take to prevent sexual violence, such as training, accommodations, and revisions to the university’s policies (*see below* Section II(A)(4)).<sup>15</sup> The following subsections will discuss each of these requirements and measures in turn.

### 1. Procedural Requirements of Title IX:

Universities that receive federal funding must comply with the procedural requirements of Title IX.<sup>16</sup> These requirements apply to complaints of sexual violence and are important in order to prevent and effectively respond to such complaints. These procedural requirements are: 1) disseminating a notice of

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<sup>7</sup> Examples of sexual violence include rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. School employees, other students or third parties can commit sexual violence. *See* Answer to Question A-1 of the Office of Civil Rights Questions and Answers on Title IX and Sexual Violence (<http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>).

<sup>8</sup> *See* p. 3 of the DC Letter. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment. For instance, a single incident of rape is sufficiently severe to create a hostile environment. *See, e.g., Vance v. Spencer Cnty. Pub. Sch. Dist.*, 231 F.3d 253, 259 n.4 (6th Cir. 2000) (“[w]ithin the context of Title IX, a student’s claim of hostile environment can arise from a single incident” (quoting *Doe v. Sch. Admin. Dist. No. 19*, 66 F. Supp. 2d 57, 62 (D. Me. 1999))); *Soper v. Hoben*, 195 F.3d 845, 855 (6th Cir. 1999) (explaining that rape and sexual abuse “obviously qualify[] as...severe, pervasive, and objectively offensive sexual harassment”).

<sup>9</sup> *See* p. 3 of the DC Letter.

<sup>10</sup> *See* p. 4 of the DC Letter.

<sup>11</sup> *Id.*

<sup>12</sup> A university’s investigation is separate from a law enforcement investigation. Therefore, a law enforcement investigation does not relieve the school from conducting its own investigation. *Id.*

<sup>13</sup> *See* p. 9.

<sup>14</sup> *Id.* at 9-14.

<sup>15</sup> *Id.* at 15-19.

<sup>16</sup> *See* 34 C.F.R. § 106.9, 34 C.F.R. § 106.8 (a) and 34 C.F.R. § 106.8 (b) respectively.



discrimination; 2) designating at least one employee to coordinate the university's efforts to comply with Title IX; and 3) adopting and publishing grievance procedures providing for the prompt and equitable resolution of sexual violence complaints.<sup>17</sup>

First, a university must publish a notice of discrimination stating that the university does not discriminate on the basis of sex in its education programs and activities, and that Title IX requires it to not discriminate in such a manner.<sup>18</sup> The notice must provide that Title IX inquiries may be referred to the university's Title IX Coordinator or to the OCR,<sup>19</sup> and must be widely distributed and easily accessible.<sup>20</sup> A general non-discrimination policy will not be considered effective and would violate Title IX if students are unaware of what kind of conduct constitutes sexual violence or that said conduct is prohibited sex discrimination. The DC Letter suggests that the policy should state that prohibited sex discrimination includes sexual violence and provides examples of what types of conduct are covered.<sup>21</sup>

Second, Title IX requires a university to notify all of its students and employees of the name, title and contact information of the Title IX Coordinator, the individual who is responsible for overseeing all Title IX complaints and addressing systematic problems that arise during the review of those complaints,<sup>22</sup> among other duties. If a university designates more than one Title IX coordinator, the notice should describe each coordinator's responsibilities, and one coordinator should have ultimate oversight authority.<sup>23</sup>

Finally, Title IX requires universities to adopt and publish grievance arbitration procedures for the prompt and equitable resolution of sexual discrimination complaints,<sup>24</sup> which do not have to be distinct for sexual discrimination complaints and, instead, can be the same as other student disciplinary procedures,<sup>25</sup> provided that the procedures comply with the prompt and equitable requirements of Title IX.<sup>26</sup> A brief description of those requirements is provided in the section below.

### **2. Prompt and Equitable Elements for Grievance Procedures:**

Six elements are critical to establishing prompt and equitable grievance procedures, including: a) notice to students and employees of grievance procedures, including where complaints can be filed; b) application of procedures to discrimination complaints; c) adequate, reliable, and impartial

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<sup>17</sup> See 34 C.F.R. § 106.9, 34 C.F.R. § 106.8 (a) and 34 C.F.R. § 106.8 (b) respectively.

<sup>18</sup> See 34 C.F.R. § 106.8 (a).

<sup>19</sup> The notice should also include the name, title, office address, telephone number and email address of the Title IX Coordinator.

<sup>20</sup> See p. 6-7 of the DC Letter.

<sup>21</sup> *Id.* at 7.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Title IX also requires recipients to adopt and publish grievance procedures for employee complaints of sex discrimination. See 34 C.F.R. § 106.8 (b)

<sup>25</sup> However, if the student disciplinary procedures include an option for mediation then those procedures should clarify that mediation will not be used to resolve sexual violence complaints. The DC Letter explicitly states that mediation is not appropriate in sexual violence cases even on a voluntary basis. See p. 8 of the DC Letter.

<sup>26</sup> A university may not absolve itself of its Title IX obligations to investigate and resolve complaints of sexual violence by delegating the responsibility to administer school discipline to school resource officers or "contract" law enforcement officers. See 34 C.F.R. § 106.4.

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investigation of complaints, including the opportunity for both parties to prepare witnesses and evidence; d) designated and reasonably prompt time frames for the major stages of the complaint process; e) notice of the outcome of the complaint to the parties; and f) an assurance that the university will take steps to prevent recurrence and correct discriminatory effects.<sup>27</sup> The DC Letter focuses on the first, third, fourth and fifth elements.<sup>28</sup>

Regarding the notice of the grievance procedures element, the DC Letter states that the grievance procedures should be written in language appropriate to the age of the university's students.<sup>29</sup> It should be easily understood, easily located and widely distributed.<sup>30</sup>

Regarding the adequate, reliable, impartial investigation element, OCR noted: i) that parallel criminal investigations have led to confusion; ii) the grievance procedures should be using the "preponderance of the evidence" standard of proof;<sup>31</sup> iii) a university's grievance procedures should treat both parties equally;<sup>32</sup> and iv) persons involved in the university's sexual violence grievance procedures must have adequate training in handling complaints of sexual violence and in the university's grievance procedures. Thus, a criminal investigation does not determine whether sexual violence violates Title IX, and the existence of a criminal process does not relieve a university from the obligation to resolve disputes promptly and equitably.<sup>33</sup> Both parties must have the same timely access to information; the university must allow the same access and participation to the parties' respective attorneys, if allowed under the university's grievance procedures;<sup>34</sup> and both parties must have the ability to use the university's appeals process.<sup>35</sup>

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<sup>27</sup> See p. 9 of the DC Letter.

<sup>28</sup> These elements required more clarification based on OCR's previous compliance investigations of universities with Title IX compliance issues. *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> OCR suggests that the grievance procedures be prominently posted on the university's website; sent electronically to all members of the school community; available at various locations on campus; and summarized or attached to major university publications, such as handbooks, codes of conduct and catalogs for students, faculty and staff. *Id.*

<sup>31</sup> The Supreme Court has applied the "preponderance of evidence" standard in civil litigation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., as opposed to the "beyond a reasonable doubt" standard used in criminal investigations or the "clear and convincing" evidence standard improperly used by some schools. Case law interpreting Title VII is used for guidance in Title IX complaints because both Title VII and Title IX prohibit discrimination on the basis of sex. See, e.g., *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 99 (2003) (noting that under the "conventional rule of civil litigation," the preponderance of the evidence standard generally applies in cases under Title VII); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 252-55 (1989) (approving preponderance standard in Title VII sex discrimination case) (plurality opinion); *id.* at 260 (White, J., concurring in the judgment); *id.* at 261 (O'Connor, J., concurring in the judgment). The 2001 Guidance noted (on page vi) that "the *Davis* Court also indicated, through its specific references to Title VII case law, that Title VII remains relevant in determining what constitutes hostile environment sexual harassment under Title IX." See also *Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007) ("We look to case law interpreting Title VII of the Civil Rights Act of 1964 for guidance in evaluating a claim brought under Title IX."). The use of a different standard of proof would be considered a violation of Title IX.

<sup>32</sup> See p. 11-12 of the DC Letter.

<sup>33</sup> Criminal investigations can be useful in fact-gathering, but due to the different standards of proof, sexually violent conduct could be considered a violation of Title IX even if the criminal prosecution is dropped. Thus, a university should not dissuade a student from filing a criminal complaint and should not wait to conduct its investigation until after the conclusion of the criminal investigation. See p. 10 of the Title IX Dear Colleague Letter. For more on the standard of proof applicable in Title IX cases, see above footnote 31.

<sup>34</sup> Title IX does not require universities to permit parties to have lawyers during a sexual violence investigation. However, if lawyers are allowed, they must be allowed to participate equally. Thus, if there are restrictions imposed on the lawyers' ability to speak or participate, those restrictions must apply equally. See p. 12 of the DC Letter.

<sup>35</sup> OCR strongly encourages that a university provide an appeals process. *Id.*

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Persons involved in the university's sexual violence grievance procedures must have adequate training; must have adequate knowledge of the applicable confidentiality requirements and of sexual violence in general; and must disclose any real or perceived conflicts of interest in order to maintain the impartiality of the proceedings.<sup>36</sup> Finally, the university must also provide due process to the alleged perpetrator.<sup>37</sup>

Regarding the designated and reasonably prompt time frames element, the DC Letter states that OCR will examine whether a university's grievance procedures specify the time frames for the major stages of the procedures, as well as the process for extending those timelines.<sup>38</sup> Specifically, what is the time frame for: a) the completion of the full investigation of the complaint; b) the outcome of the complaint being provided to both parties; and c) an appeal being filed.<sup>39</sup> Based on OCR's experience, it asserts that in the normal course, an investigation should take approximately 60 days from the receipt of the complaint but acknowledges that timelines can vary based on the complexity of the investigation and the severity of the incident.<sup>40</sup>

With respect to the notice of the outcome element, Title IX requires that both parties be notified of the outcome of the complaint and any appeal in writing.<sup>41</sup> The DC Letter recognizes the confusion over the intersection of Title IX and Family Educational Rights and Privacy Act ("FERPA").<sup>42</sup> However, it clarifies in its Guidance that FERPA permits a university to disclose information to a sexual violence complainant regarding the final results<sup>43</sup> of a proceeding against an alleged perpetrator, regardless of the outcome, and also allows a university to disclose to anyone the final results of a disciplinary proceeding if the university determines that a perpetrator committed a violation based on an incident of sexual violence.<sup>44</sup> Additionally, a university is subject to further disclosure rules under the Clery Act, which requires that "both the accuser and the accused must be informed of the outcome<sup>45</sup> of any institutional disciplinary proceeding brought alleging a sex offense."<sup>46</sup>

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<sup>36</sup> *Id.*

<sup>37</sup> However, the steps that it takes to ensure due process must not restrict or unnecessarily delay the Title IX protections of the victim. *Id.* For more on the due process rights under federal law applicable in New Mexico, *see below* Report Section II(B).

<sup>38</sup> *Id.*

<sup>39</sup> A university should also give periodic status updates to both parties. *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Outcome does not necessarily mean that both parties have to be informed about any disciplinary sanctions. *Id.* at 13.

<sup>42</sup> FERPA generally prohibits the nonconsensual disclosure of personally identifiable information from a student's educational record. However, in the event of a conflict between Title IX and FERPA that would prevent a university from eliminating sex-based discrimination, Title IX overrides FERPA. *Id.*

<sup>43</sup> For purposes of this provision, disclosure of the "final results" is limited to the name of the alleged perpetrator, any violation found to have been committed, and any sanction imposed against the perpetrator. Disclosure of any additional information may result in a FERPA violation. 34 C.F.R. § 99.39.

<sup>44</sup> FERPA has created this exception that applies only to postsecondary schools and involves conduct that is a crime of violence or non-forcible sex. 34 C.F.R. § 99.31(a)(13)-(14).

<sup>45</sup> For purposes of the Clery Act, "outcome" means the institution's final determination with respect to the alleged sex offense and any sanctions imposed against the accused. 34 C.F.R. § 668.46(b)(11)(vi)(B).

<sup>46</sup> 34 C.F.R. § 668.46(b)(11)(vi)(B). Compliance with the Clery Act, including re-disclosure of information required by the Clery Act, does not constitute a FERPA violation. *See* p. 14 of the DC Letter.

### 3. Proactive Measures to Prevent Sexual Violence

The DC Letter describes two types of proactive measures: 1) education and prevention and 2) remedies and enforcement.

OCR recommends that a university implement preventative education programs and provide comprehensive victim services.<sup>47</sup> These educational programs should discuss what constitutes sexual violence, the school's policies and disciplinary procedures, and the consequences of violating these policies. The programs should also encourage students to report incidents of sexual violence.<sup>48</sup> These programs should be included in a university's a) orientation programs for new students, faculty, staff, and employees; b) training for residence hall advisors; c) training for student athletes and coaches; and d) school assemblies and "back to school nights."<sup>49</sup> As part of these programs, a university should create specific sexual violence materials that include the university's policies, rules, and resources as well as where to report an incident of sexual violence. These materials should be included in all student and employee handbooks.<sup>50</sup>

### 4. Accommodations, Remedies & Sanctions

With respect to remedies and enforcement, effective proactive measures may also include accommodations for a complainant and changes to a university's services or policies in order to prevent the creation of a hostile environment. Title IX requires a university to make accommodations promptly in order to protect the complainant while an investigation is being conducted.<sup>51</sup> The university should also inform the complainant of the available counseling and mental health services, the complainant's rights under Title IX, and the complainant's right to pursue criminal charges.<sup>52</sup> A university must implement policies and procedures that protect the complainant against retaliation.<sup>53</sup> OCR has provided four checklists of various remedies that it would look for when investigating a school for violations of Title IX in sexual violence cases. These four checklists are remedies for a complainant,<sup>54</sup> remedies for the broader student population related to counseling and training,<sup>55</sup> development of materials and implementation of policies and procedures,<sup>56</sup> and school investigations and reports to OCR.<sup>57</sup>

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<sup>47</sup> *Id.* at 14.

<sup>48</sup> Universities should be aware that victims or third parties may be hesitant to report an incident if alcohol, drugs or other violations of university rules were involved due to a fear that the reporting party may get him/herself in trouble. To combat this, universities should highlight that its primary concern is student safety. *Id.* at 15.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> The Clery Act requires postsecondary institutions to develop and distribute a statement of policy that informs students of their options to notify proper law enforcement authorities, including campus and local police, and the option to be assisted by campus personnel in notifying such authorities. The policy also must notify students of existing counseling, mental health, or other student services for victims of sexual assault, both on campus and in the community. 20 U.S.C. §§ 1092(f)(8)(B)(v)-(vi).

<sup>53</sup> The university must make sure that the complainant knows how to report retaliation and should follow up with the complainant regarding retaliation. *See* p. 17 of the DC Letter.

<sup>54</sup> *See* p. 17-18 of the DC Letter.

<sup>55</sup> *Id.* at 17.

<sup>56</sup> *Id.* at 17-18.

<sup>57</sup> *Id.* at 18-19.

### B. Due Process Law in New Mexico

Any policies or procedures for investigating complaints of sexual violence implicate procedural due process rights. Because Title IX is a federal statute, any subsequent complaints made related to UNM's investigations of sexual violence would involve federal procedural due process jurisprudence. This section provides a basic examination of the relevant federal procedural due process jurisprudence related to university investigations and disciplinary action.

In *Goss v. Lopez*, the United States Supreme Court ruled that a student has a constitutionally protected interest in receiving public education.<sup>58</sup> Any action taken by a school that deprives a student of his or her education, such as a short-term suspension,<sup>59</sup> must provide certain procedural due process. At minimum, students in campus disciplinary cases are entitled to have: 1) notice of the charges against them; 2) a disclosure or explanation of the evidence behind the charges; and 3) an opportunity to contest this evidence prior to any disciplinary action by the school.<sup>60</sup> The 10th Circuit, in which New Mexico is located, follows the *Goss v. Lopez* precedent.<sup>61</sup> Thus, if a university wanted to suspend a student for an act of sexual violence, it would have to provide these due process requirements.

Additionally, the Supreme Court and the 10th Circuit have found that there are additional due process considerations for longer suspensions and expulsions.<sup>62</sup> The court in *Watson* indicated that the Supreme Court did not provide specific due process procedures for longer suspensions or expulsions but merely provided guidance to schools.<sup>63</sup> The guidance provided by the *Goss* court highlighted that “the timing and content of the notice and the nature of the hearing will depend on appropriate accommodation of the competing interests involved,” i.e., “[t]he students' interest in “unfair or mistaken exclusion from the educational process” must be balanced against the school's interest in “discipline and order.”<sup>64</sup> The *Goss* court emphasized that “the risk of error should be guarded against if that may be done without prohibitive costs or interference with the educational process.”<sup>65</sup> However, the *Goss* court also stated “[s]tudents whose presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic

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<sup>58</sup> 419 U.S. 565, 573 (1975) (applying Ohio law). For a discussion of *Goss v. Lopez* involving postsecondary public schools, see also *Board of Curators of University of Missouri v. Horowitz*, 435 U.S. 78, 85 (1978).

<sup>59</sup> In *Goss*, the longest suspension of the students involved was ten days.

<sup>60</sup> *Id.* at 581. *Goss* does not require a school to provide a formal hearing as it relates to short academic suspensions but rather allows for “an informal give-and-take between the student and the administrative body dismissing him that would, at least, give the student the opportunity to characterize his conduct and put it in what he deems the proper context.” *Id.* at 584.

<sup>61</sup> See *Watson ex rel. Watson v. Beckel*, 242 F.3d 1237, 1240 (10th Cir. 2001).

<sup>62</sup> The *Watson* decision, quoting *Goss*, stating that “[l]onger suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures.” *Id.* (citing *Goss*, 419 U.S. at 584). Supreme Court jurisprudence provides that a court must balance three factors when determining if additional process beyond the minimum requirements of *Goss* is required: (1) the private interest that will be affected by the official action, (2) the probable value, if any, of additional or substitute procedural safeguards, and (3) the government's interest, including the fiscal and administrative burden, that the additional or substitute procedural requirements would entail. *Id.* (citing *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976)).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* (citing *Goss*, 419 U.S. at 580). The *Watson* decision later notes other jurisprudence that examined specific additional due process procedures and found that they were not required under *Goss*. See *Gorman v. University of Rhode Island*, 837 F.2d 7, 16 (1st Cir.1988) (rejecting the argument that due process requires the right to counsel, to cross-examine witnesses, or to have a transcript of the hearing); *Newsome v. Batavia Local School Dist.*, 842 F.2d 920, 924 (6th Cir.1988) (holding that due process does not require the right to cross-examine witnesses or that investigating officials be excluded from the deliberation process). *Id.* at 1243.



process may be immediately removed from school. In such cases, the necessary notice and rudimentary hearing should follow as soon as practicable.”<sup>66</sup> Applied to sexual violence cases, this precedent suggests that a student could potentially be removed from campus if his or her presence is viewed as a continuing danger to members of the UNM community.<sup>67</sup> However, the minimum due process requirements as well as the additional due process considerations for longer suspensions stipulated in *Goss* must be provided by UNM before a long-term suspension or expulsion can be made permanent.

On the issue of suspensions or bans from participation in athletics, *Goss* speaks only of a general constitutional, i.e., life, liberty, or property, right regarding the “educational process.”<sup>68</sup> The educational process is a broad and comprehensive concept and includes innumerable separate components, such as participation in athletic activity and membership in school clubs and social groups in addition to classroom attendance, which combine to provide an atmosphere of intellectual and moral advancement.<sup>69</sup> However, the 10th Circuit has held that *Goss* does not establish a constitutional right for each of these individual components.<sup>70</sup> Specifically, as it relates to participation in athletics as a constitutional right, the 10th Circuit has stated: “[t]he Court is therefore constrained by the precedent in this Circuit to conclude that the plaintiff student-athletes have no constitutionally protected property or liberty interest in participation in intercollegiate athletics, postseason competition, or appearances on television.”<sup>71</sup> Thus, in the appropriate circumstance if a UNM student athlete is accused of sexual violence, it appears that UNM could suspend the player from athletic participation<sup>72</sup> and could be confident of withstanding legal challenge on the basis that the university has not deprived the student of a constitutionally protected right. Care should be taken, however, when the discipline involved includes not only exclusion from athletics, but also impacts other elements of the accused student’s educational process in order to ensure that the accused student athlete has been afforded all the required elements of due process under *Goss*.

### III. Methodology

This section will discuss P&A’s methodology for each of the major components of the Climate Assessment. We will first discuss how we reviewed and analyzed the UNM policies and procedures (*see below* Section III(A)). The next components were the one-on-one interviews (*see below* Section III(B)) and the focus groups (*see below* Section III(C)), which began with the first round of interviews and focus group sessions on the UNM campus in Albuquerque on September 22-26, 2014, and concluded with the second

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<sup>66</sup> *Goss*, 419 U.S. at 582-83.

<sup>67</sup> Presumably, evidence that a student might be a serial rapist, would rise to the level of a danger warranting immediate removal from campus, provided due process measures are followed before the removal is made permanent. *See above* footnote 65.

<sup>68</sup> 419 U.S. at 576.

<sup>69</sup> *Albach v. Odle*, 531 F.2d 983, 985 (10th Cir. 1976).

<sup>70</sup> *Id.*

<sup>71</sup> *Colorado Seminary (Univ. of Denver) v. Nat’l Collegiate Athletic Ass’n*, 417 F. Supp. 885, 896 (D. Colo. 1976) *aff’d*, 570 F.2d 320 (10th Cir. 1978); *see also Lesser v. Neosho County Community Coll.*, 741 Supp. 854, 861–62 (D.Kan.1990) (participation in intercollegiate athletics is privilege, not a right); *Hysaw v. Washburn Univ. of Topeka*, 690 F.Supp. 940 (D.Kan.1987) (no right to pursue college football career); *Richard v. Perkins*, 373 F. Supp. 2d 1211, 1219 (D. Kan. 2005) (decision to remove athlete from team was not substantive due process violation).

<sup>72</sup> Likewise, the athlete could be removed from campus immediately if he is viewed as a continuing danger without any due process. However, the minimum due process requirements found in *Goss* would have to be respected in the case of removal from campus as soon as practicable.

## CLIMATE ASSESSMENT REPORT ON SEXUAL VIOLENCE

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round of interviews and focus group sessions on October 13-17, 2014. In total, P&A spoke to 101 individuals in one-on-one interviews, focus group sessions or group meetings as part of its Climate Assessment. Thereafter, a survey was administered to the students and staff affiliated with UNM residential housing<sup>73</sup> and athletics programs (*see below* Section III(D)). P&A will also discuss which UNM and public documents it reviewed and how it processed this information (*see below* Section III(E)). Finally, P&A will highlight the limitations of its methodology (*see below* Section III(F)).

As part of its preparation for this Climate Assessment, P&A took a number of preliminary steps in order to ensure that its Climate Assessment would be sufficiently thorough. These steps included:

- Conducted telephone interview with a high level administrator prominently involved in dealing with the issue of sexual violence at UNM;
- Researched best practices, statistical approaches, and models for assessing climate and attitudes among groups;
- Planned and executed a best practices strategic approach to the appropriate scope and breadth of questions to be posed during the Climate Assessment;
- Developed relevant Climate Assessment interview questions tailored to (a) UNM staff, and administrators; (b) UNM student athletes; (c) non-athlete students living in UNM residential housing; and (d) persons unaffiliated with UNM with some knowledge of or interaction with the issue of sexual violence on the UNM campus;
- Reviewed and adapted the Montana student climate assessment survey to UNM's narrower Climate Assessment goals; and
- Identified UNM individuals for the Climate Assessment interviews based upon a review of relevant UNM website pages and staff lists in addition to those individuals suggested by UNM.

UNM's University Counsel's Office provided valuable support and assistance with all phases of the Climate Assessment planning and implementation; especially, gaining access to administrators and staff, as well as facilitating on campus meeting rooms for interview and focus group sessions. The leadership in UNM athletics provided invaluable assistance to ensure that student athletes attended Climate Assessment interviews and focus group sessions with P&A, as well as facilitating convenient locations for said in-person meetings.

### **A. UNM Policies and Procedures Review**

Before its initial visit to campus, UNM provided P&A with a list of 17 UNM websites, handbooks, policies, and procedures deemed applicable to sexual violence claims. *See* UNM Policies Impacting Sexual Violence, dated September 8, 2014, attached as Exhibit "1". P&A summarized these 17

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<sup>73</sup> As referenced in this Report, residential housing means UNM-managed and controlled student housing and excludes AAC-managed properties on UNM-owned land, which will be referred to separately as ACC-managed housing.



policies and created flow charts of the relevant procedures to further its understanding of how they operated.

### **B. One-on-One Interviews**

UNM provided a list of the names of all housing and athletics programs' students, and of those UNM staff and administrators that it deemed appropriate for P&A to interview. Utilizing a Microsoft-created random number generator program, a list containing 15 male student athletes, 15 female student athletes and 30 students from residential housing were initially selected for one-on-one interviews.<sup>74</sup>

P&A conducted 53 one-on-one Climate Assessment interviews between its pre-visit telephone interview with a high level administrator and its two visits to the UNM campus. P&A disclosed to each interview subject, as required by New Mexico law, that it was audio recording the interviews and informed each interview subject that his or her responses to questions would not be linked to his or her identity – and indicated that P&A would not share the audio recordings with UNM, but would provide “aggregate data”, “summaries” and “individual responses,” as appropriate, to fulfill the mandate of the Climate Assessment. Anonymity is being maintained for all of the interviewees who participated in the Climate Assessment.

Before and during its first visit, P&A conducted one-on-one in-person interviews with 20 administrators, staff, and non-UNM personnel as well as two student interviews. Follow-up calls with selected interview subjects from P&A's first visit and document requests were made as P&A deemed necessary. During its second visit, P&A conducted an additional six interviews with UNM administrators, staff, and non-UNM personnel who were added to the initial UNM interview list by P&A based on information obtained from the first visit interviews. The remaining one-on-one Climate Assessment interviews were conducted with students. The interviewees were divided by type: High Level Administrator, Staff, Student and Housing, Athletics, Unaffiliated and Non-UNM. Summaries of responses to question were prepared for all of the interviews conducted.

The answers to each individual question were put in an Excel spreadsheet and analyzed to obtain objective data relevant to sexual violence at UNM. In order to ensure that P&A accounted for subjective responses that were reflected in the majority of interviews (which were equally important to the Climate Assessment), P&A reviewed the summaries for recurring themes consistently expressed by interviewees. The following significant 11 themes were referenced in some form in a majority of the interviews:

- The effects of having a commuter campus versus a residential campus;
- Security concerns regarding the physical layout of the UNM campus (campus lighting, duck pond, homeless people, etc.);
- Visibility of the UNM police and security;

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<sup>74</sup> P&A randomly selected 25 male student athletes, 25 female student athletes, and 50 students in residential housing in case some students were unable to participate in the one-on-one interviews. For more detailed information regarding P&A's process for randomly generating interview participants, please *see* P&A's Second Status Report attached as Exhibit "2" to this Report.

- Knowledge of specific instances of sexual violence involving UNM students;
- Confidential versus mandatory reporting;
- Confusion as to where to report incidents of sexual violence;
- Reasons for underreporting or failing to report sexual violence;
- Sexual violence education (including training);
- Division between student athletes and non-student athletes;
- Reputation/image of the football players; and
- Suggestions to improve UNM's climate regarding sexual violence and sexual assault.

P&A extracted and focused on Climate Assessment interview responses related to these 11 recurring themes during the analysis for this Report. The document containing a compilation of interview summary responses related to these themes is attached as Exhibit "3".

### **C. Focus Groups**

From the list of all students and staff in the residential housing and athletics programs, two spreadsheets were created for the focus groups, one with students and one with staff. Each name was assigned a number. Utilizing a Microsoft-created random number generator program, P&A selected 120 students and 120 staff by random number selection.<sup>75</sup> From this list, P&A hoped to create focus groups of 4-15 people.

P&A conducted three focus groups as part of the Climate Assessment. These focus groups included between four and eleven individuals. During the first P&A visit, a mixed-gender focus group was conducted with UNM administrators and staff. During P&A's second visit, two single-gender focus groups, one for males and one for females, were conducted with students, including graduate students.

During P&A's second visit, P&A also attended a meeting of the Residential Hall Association on October 13, 2014 and obtained information from UNM students connected with residential housing that attended that meeting. These focus groups were subsequently summarized, and the data from the summaries was analyzed and incorporated into P&A's final statistics.

### **D. Survey**

The survey aspect of the Climate Assessment was administered by a computer-completed survey to staff and students involved in the residential housing and athletics programs, as well as some graduate students. The survey was developed by adapting a survey created by the University of Montana to assess student attitudes towards sexual violence, dating violence and stalking on Montana's campus (the "Montana

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<sup>75</sup> Generally, if one of the selected students or staff could not be reached or was unable to participate, a replacement was selected by proceeding to the next name on the relevant list; however, P&A skipped a couple names and proceeded further down the list maintaining rank order for the male and female student athlete focus groups, in order to obtain a diverse representation of various UNM sports.

## CLIMATE ASSESSMENT REPORT ON SEXUAL VIOLENCE

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Survey”), which is attached as Exhibit “4”. The Montana Survey was modified in order to comport with P&A’s limited mandate.

The questions in the P&A Climate Assessment survey cover four main topic areas and questions:

- “Tell us about you”- questions about student academic major/staff work focus (housing or athletics; length of affiliation with UNM; and nature of student on or off campus housing (if applicable)).
- “Tell us what you know”- questions to determine survey subject’s knowledge about UNM policies and procedures related to sexual violence; who to contact to report an incident; and level of training received on sexual violence/sexual assault (if applicable).
- “Tell us what you believe and feel”- questions related to the level of perceived sexual violence on campus; the perceived frequency of sexual violence incidents at UNM, compared to other campuses; beliefs about what victim or perpetrator behaviors are most likely to cause a sexual assault; and the perceived connection between the use of alcohol and/or drugs and sexual violence.
- “Tell us your experiences”- questions about perceptions of safety on the UNM campuses and whether a survey subject has had an experience of sexual violence on UNM’s campus or while being a student at UNM.

The survey was delayed slightly by a competing survey.<sup>76</sup> On October 27, 2014, the IRB advised the UNM University Counsel’s office that it was not necessary for IRB to conduct an in-depth review of the P&A Climate Assessment survey.<sup>77</sup>

Once, IRB approval was obtained, Campus Labs distributed and administered the survey to staff, administrators and students involved in the UNM residential housing and the UNM athletics programs from November 18, 2014 at 3:00 PM MST until November 29, 2014 at 11:59 PM MST. Campus Labs provided P&A with a username and password to view the results of the survey once it was distributed. The survey received a total of 171 responses.<sup>78</sup> The majority of people that participated in the survey were within residential housing.

After the time period for completing the survey ended, P&A received a report with the results. A copy of the Climate Assessment Survey Report is attached as Exhibit “5”. Answers to questions similar to those asked in the interviews and focus groups were integrated into the objective data obtained from the interviews and the focus groups and analyzed for Climate Assessment purposes. The objective data in

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<sup>76</sup> For more information regarding the reasons for this delay, please *see* P&A’s Second Status Report.

<sup>77</sup> *See* P&A’s Second Status Report.

<sup>78</sup> A total of 185 people responded to the survey but 14 did not participate.

Section IV and V of this Report reflects, as indicated, the combined data from the P&A survey, interviews and focus group sessions.

### **E. UNM Document Review**

Before its initial visit, P&A reviewed DOJ and OCR guidance related to Title IX and sexual violence prevention, including the DC Letter; documents regarding Title IX sexual violence policies and the DOJ investigation of the University of Montana;<sup>79</sup> documents from the White House's Task Force on Sexual Violence (which is attached as Exhibit "6"); news articles related to sexual violence incidents and DOJ investigations on college campuses and sports in general; and the UNM's Presidential Task Force on Sexual Violence Progress Report (August 20, 2014).

Furthermore, from the information obtained in the Climate Assessment interviews, P&A created a list of documents that were referenced in the interviews and sought to obtain these documents from the respective interviewees, or through the UNM University Counsel's Office.<sup>80</sup> P&A did not receive and, therefore, was unable to review all of the requested documents and information.<sup>81</sup>

Additionally, the P&A team continued to monitor news articles and other documents written about the issue of sexual violence on campus. A list of all of the documents reviewed as part of its Climate Assessment is attached as Exhibit "7".

### **F. Limitations**

Per UNM's mandate to P&A, the Climate Assessment was not university-wide but was limited to the review of the climate of sexual violence in the residential housing and the athletics programs. Regarding the limitation to sexual violence, any issues related sexual harassment that were not considered sexual violence were not considered part of this Climate Assessment. Moreover, P&A did not have access to the general student population for the Climate Assessment, nor did P&A interview or have access to various other student groups unless they were separately affiliated with UNM residential housing or the UNM athletics programs.<sup>82</sup> As such, Greek Life was excluded from this Climate Assessment. To the extent that P&A obtained information about Greek Life during the Climate Assessment, it was during the course of interviewing and surveying individuals affiliated with or who had knowledge of the UNM residential housing and athletic programs.

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<sup>79</sup> During its Climate Assessment, P&A received additional documentation regarding investigations at Ohio State University, Princeton University and other schools that had been investigated by the DOJ.

<sup>80</sup> See UNM Climate Assessment Update & 2<sup>nd</sup> Visit Letter dated October 3, 2014, which is attached as Exhibit "8" to this Report.

<sup>81</sup> See list of documents not received which is attached as Exhibit "9" to this Report. Some documents were not provided because they were deemed outside the scope of P&A's Climate Assessment mandate. Other documents and information were, apparently, unavailable during the timeframe necessary to complete and submit this Report.

<sup>82</sup> For example, members of the Residential Hall Association were surveyed about UNM's climate on sexual violence because they were all students in residential housing.

For purposes of the Climate Assessment, P&A also did not speak to any UNM faculty members, unless they were staff and administrators affiliated with UNM residential housing or the UNM athletics program. Thus, the statements and views of faculty and staff outside of those two areas of UNM campus life were not obtained.

Consequently, this Report should be read with an understanding that the findings are limited to the narrow focus of P&A's mandate, namely, an assessment of the climate of sexual violence in UNM residential housing and the UNM athletics programs and the UNM constituents involved therein.

#### **IV. Climate Assessment Findings on Sexual Violence – UNM Residential Housing**

##### **A. Staff & Administrator Viewpoint on Sexual Violence**

The attitudes and perceptions of UNM staff and administrators about the atmosphere regarding sexual violence in UNM residential housing is best summarized as acknowledging the seriousness and the importance of issues surrounding sexual violence, and expressing confidence in their ability to recognize and address such incidents.

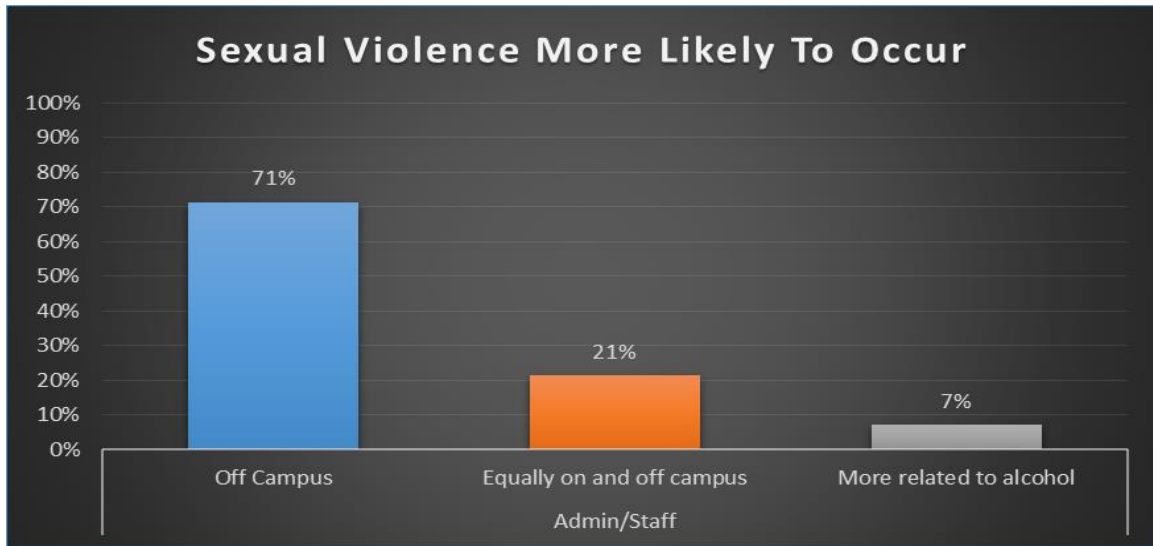
UNM's senior and executive housing staff believe that incidents of sexual violence are less likely to occur in on-campus residential housing, as opposed to off-campus and ACC-managed housing, given the existing housing policies,<sup>83</sup> rules of conduct, restrictions and oversight of students by UNM housing staff.<sup>84</sup> As noted in the chart below, 71 percent of UNM administrators and staff stated that incidents of sexual violence are more likely to occur off campus.

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<sup>83</sup> See UNM Residence Hall Handbook: A Guide to Community Living Guide 2014-2015 (<http://housing.unm.edu/zz-documents/comlivingguide.pdf>), Lobo Village Resident Handbook 2014-2015, which is attached as Exhibit "10", and Casas del Rio Resident Handbook 2014-2015, which is attached as Exhibit "11".

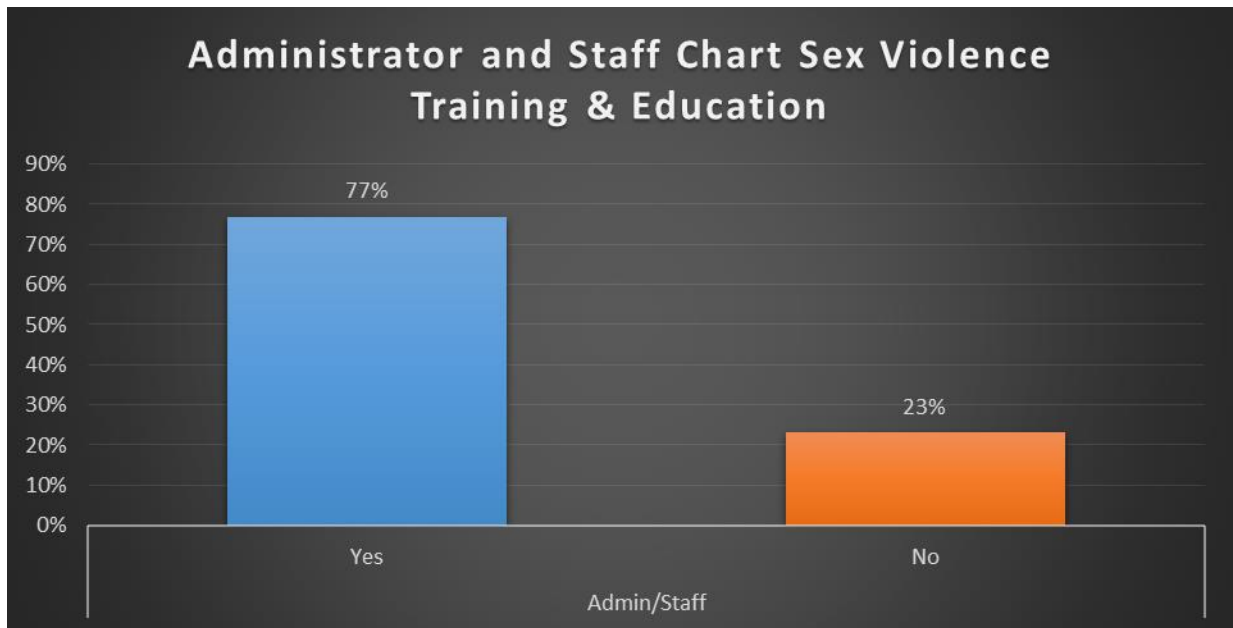
<sup>84</sup> High Level Administrator Interview, September 26, 2014; Non-UNM Interview, October 16, 2014; High Level Administrator Interview, September 22, 2014.

Chart A



UNM housing staff and administrators expressed an awareness of recent UNM initiatives and newly established programs to address issues of sexual violence at UNM. In addition, they believe that sexual violence reports are generally being handled effectively and appropriately by the university due to continued attention, staffing support, education and training.<sup>85</sup> 77 percent of UNM administrators and staff indicated receiving recent training on sexual violence.

Chart B



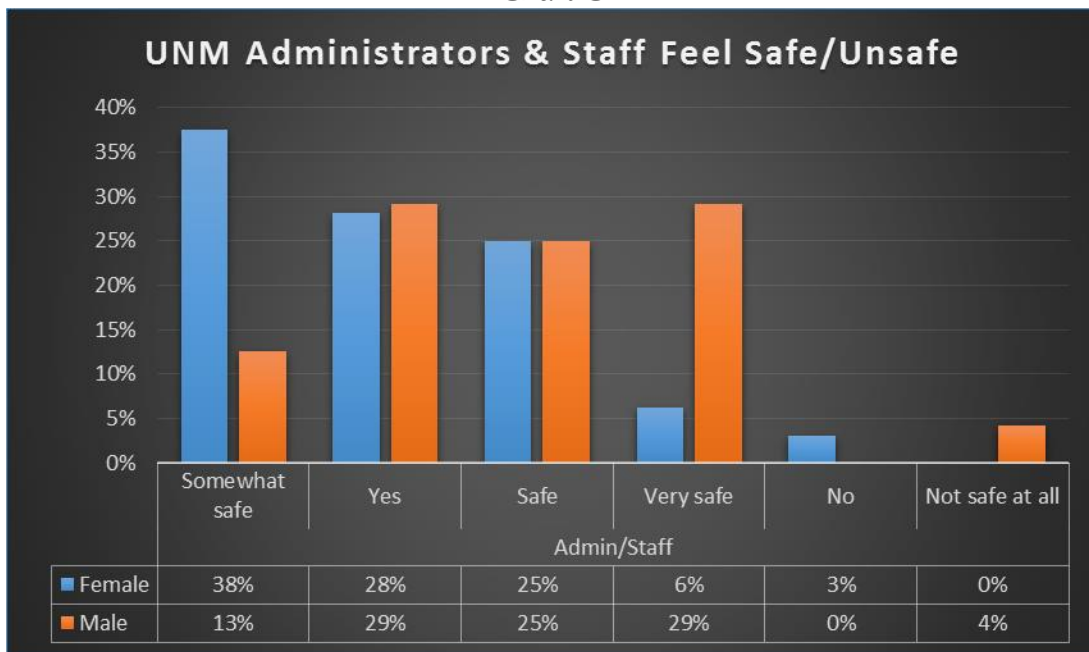
<sup>85</sup> Mixed focus group, September 25, 2014; High-Level Administrator Interview, September 26, 2014.

## CLIMATE ASSESSMENT REPORT ON SEXUAL VIOLENCE

A primary area of concern expressed by administrators and staff was the need to continue to improve and support the recent sexual violence programs and initiatives. They expressed the need to enhance sexual violence training and outreach at UNM as well as the crucial need to establish solid, credible, viable and legitimate systems and processes to address sexual violence issues when, and if, the need arises.<sup>86</sup> UNM staff and administrators discussed key components of a successful sexual violence prevention program including a dedicated financial investment to increase education, and staffing support. They stated that the need for continued and enhanced sexual violence education and training was buttressed by the desire for a clear understanding that the commitment to addressing sexual violence should come from the 'top down' and be led and directed from the UNM's top leadership and senior level staff.

With respect to the issue of on campus safety, UNM administrators and staff expressed feeling quite safe during the daytime, on campus.

**Chart C**



UNM administrators and staff focused on UNM as a “commuter” campus that has, no more or no less, issues and incidents of sexual violence than any other similarly-situated college campus community.<sup>87</sup>

Notwithstanding this viewpoint that UNM residential housing seems safe, P&A must highlight that during the interviews across the spectrum of UNM constituents included in the Climate Assessment, a

<sup>86</sup> Mixed focus group, September 25, 2014; High Level Administrator Interview, September 26, 2014; High Level Administrator Interview, September 19, 2014; High Level Administrator Interview, September 23, 2014; High Level Administrator Interview, September 22, 2014.

<sup>87</sup> High Level Administrator Interview, September 26, 2014.



number of individuals mentioned sexual violence incidents that allegedly occurred in UNM residential housing.<sup>88</sup> Unfortunately, the information provided in the interviews and focus groups was unclear with respect to the time period<sup>89</sup> and location, and many of the interviewees may have been referencing the same incident in a different manner.<sup>90</sup>

### **B. Students in Resident Housing Viewpoint on Sexual Violence**

The attitudes and perceptions of UNM students living in UNM residential housing about the atmosphere regarding sexual violence at UNM is best summarized as feeling safe and believing that only limited incidences of sexual violence have occurred.

As reflected in Chart D below, UNM students living on campus in residential housing generally feel safe. Approximately 92 percent of male students but only 50 percent of female students surveyed stated that they felt safe or very safe on UNM's campus. A large percentage of female students stated that they only felt somewhat safe on campus (40 percent). The main safety issues mentioned were: a) UNM is an "open" commuter-style campus that can be easily accessed by non-students and random visitors from Central Avenue and the adjoining hospital; and b) at night, several areas and pathways of the campus that are dimly lit for students returning from night classes. Specifically, students who live in residential housing and walk back from night classes to residence halls in "dimly" lit campus areas and pathways, particularly Redondo Hall, did not feel safe at these times.<sup>91</sup> Students who live in on-campus housing perceive that UNM's 'open' commuter style campus is more likely to expose them to non-students coming on to campus, particularly around Johnson Field, the Duck Pond, and Central Avenue. One female student reported what she believed was an attempted sexual violence attack when she was walking across campus back to her residence at Casas del Rio.<sup>92</sup> Fortunately, this student was able to fight the attacker off and get away from him.

The safety and security that students in residential housing generally feel appears to come from what students view as the proper protocols, rules and regulations that are in place to create a safe and secure living environment. The UNM housing leadership has established consistent protocols, oversight and monitoring by trained in-house Resident Advisors, campus security and UNM police.<sup>93</sup> Also, the secure entrances and exits to residence halls with security guards and identification requirements reportedly creates a sense of safety for students living in residential housing.

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<sup>88</sup> 38 percent of sexual violence incidents mentioned by interviewees to P&A were in UNM-managed housing. Additionally, 9 percent of sexual violence incidents mentioned to P&A occurred in ACC housing. *See* Chart E.

<sup>89</sup> Two years, several years ago, several months ago, or "I can't remember exactly what year it was" are examples of the types of responses received by P&A regarding the time period of sexual violence incidents.

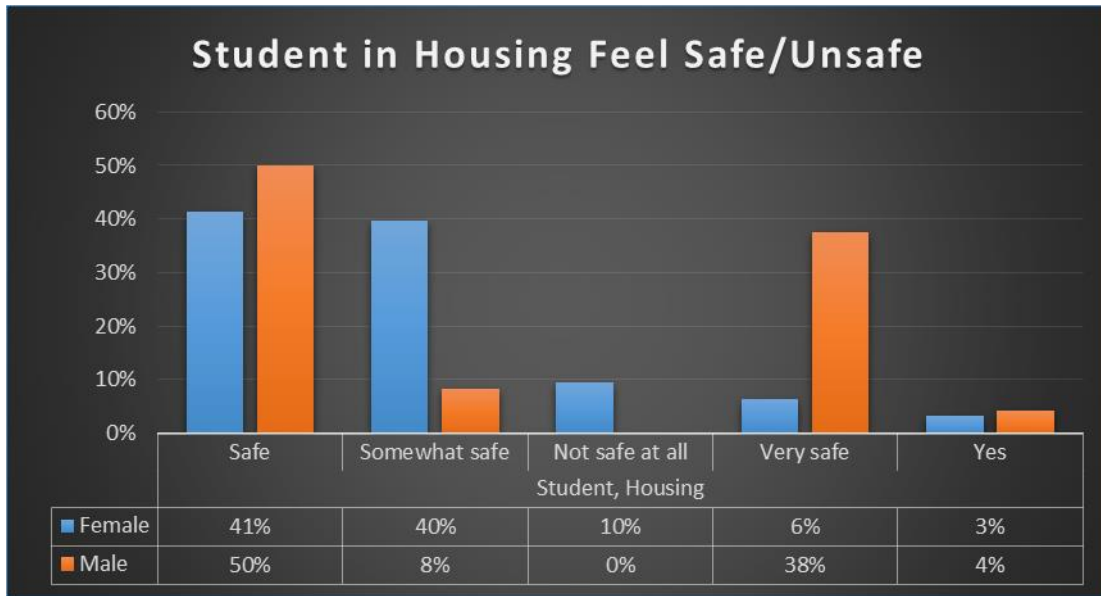
<sup>90</sup> For instance, several people mentioned the April incident involving the football players or the groping incident at Johnson Field during their respective interviews.

<sup>91</sup> Residential Hall Association meeting, October 14, 2014.

<sup>92</sup> Casas del Rio Incident Report dated August 24, 2012, which is attached as Exhibit "12".

<sup>93</sup> *Id.*

Chart D



The vast majority of the students living in UNM residential housing who participated in the Climate Assessment have *not* experienced sexual violence personally and have *not* witnessed incidents of sexual violence directed towards others on the UNM campus. Approximately 87 percent of the students who took the Climate Assessment survey stated that they have not personally experienced sexual violence.<sup>94</sup> Approximately 86 percent of participants who took the Climate Assessment survey stated that they had not witnessed sexual violence directed towards others.<sup>95</sup> However, the survey data did not distinguish whether or not the incident of sexual violence experienced or witnessed occurred on or off campus.<sup>96</sup> In the interviews, students were asked where they thought acts of sexual violence were more likely to occur. The majority of students interviewed indicated that incidents of sexual violence were more likely to occur off campus (approximately 58 percent).<sup>97</sup> However, Chart E below demonstrates that of those students who mentioned an incident and a location during interviews, 38 percent of those incidents occurred in UNM-managed housing and 9 percent occurred in ACC-managed housing. P&A must note that most incidents mentioned in the interviews did not include the location of the incident. Moreover, it is possible that interviewees were referring to the same incident but did not provide enough detail to confirm that it was in fact the same incident.<sup>98</sup>

<sup>94</sup> See Q14 of the Climate Assessment Survey Report.

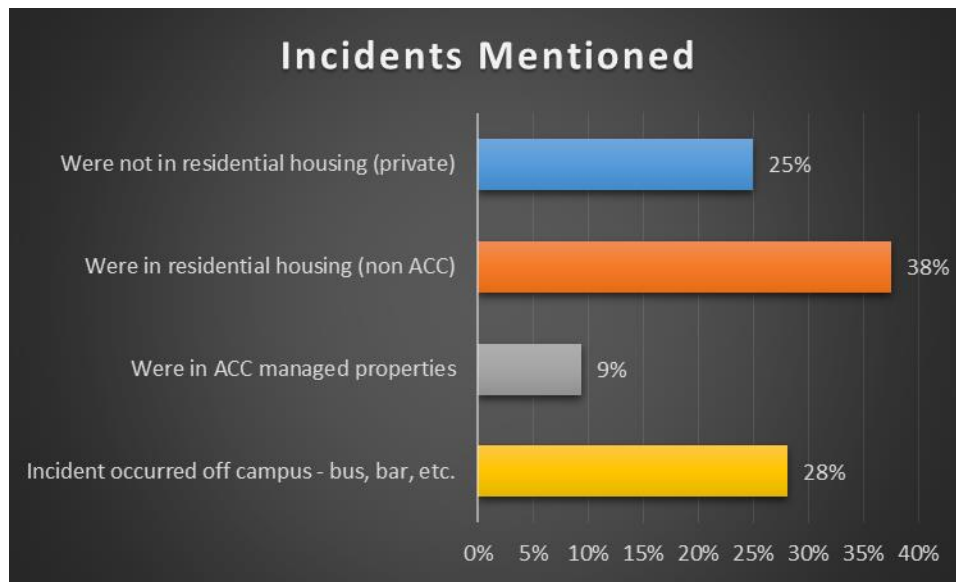
<sup>95</sup> See Q15 of the Climate Assessment Survey Report.

<sup>96</sup> There was much confusion among interviewees and focus group participants regarding what housing was “on campus” or “off campus”. Some considered Lobo Village off campus, while others considered it on campus.

<sup>97</sup> See Chart on Incidents More Likely to Occur On or Off Campus, which is attached as “Exhibit 13”.

<sup>98</sup> For example, several interviewees discussed the football incident and a groping incident at Johnson Field.

Chart E



Despite the relatively low percentage of students who had not experienced or witnessed sexual violence, a large percentage of survey participants (approximately 43 percent) thought that sexual violence was a problem on UNM’s campus. Additionally, approximately 41 percent of survey participants thought that the occurrence of sexual violence was “somewhat a problem” at UNM. However, approximately 91 percent of survey participants thought that sexual violence was the same (approximately 70 percent) as or more of a problem (approximately 21 percent) on other campuses than UNM.<sup>99</sup>

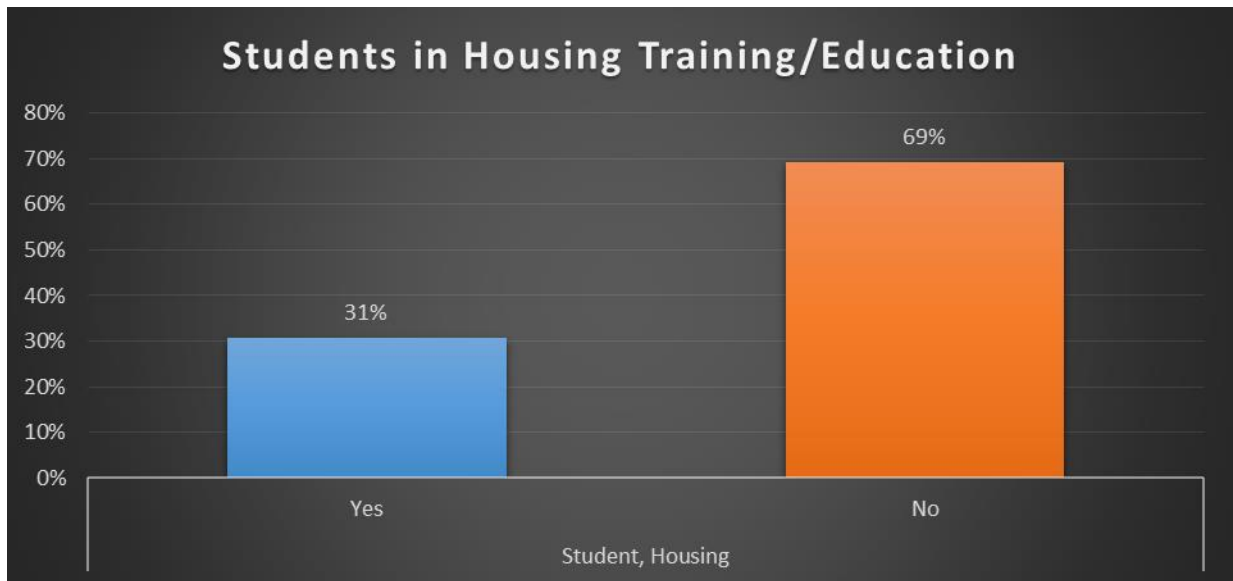
Moreover, the survey participants from residential housing expressed a willingness to learn more about issues of sexual violence on UNM’s campus. A little more than 60 percent of participants stated that they were planning to learn more about the problem of sexual violence on campus.<sup>100</sup> Also, approximately 60 percent of participants indicated that they were thinking about learning more about sexual assault but have not done so.<sup>101</sup> According to the interviews conducted by P&A, students said they received sexual violence training as part of their freshman orientation. Residential Advisors also received sexual violence training as part of their Residential Advisor training. Despite this willingness to learn more about sexual violence issues, 69 percent of students living in residential housing stated that they had not received any training on sexual violence, although all UNM freshmen are required to receive a sexual violence component as part of their freshmen orientation (*see below* Chart F).

<sup>99</sup> There have been many recent media reports of incidents of sexual violence and sexual assault on college campuses. Alleged incidents have occurred at Virginia Wesleyan College, the University of North Carolina, Florida State University, and the University of Virginia, among many others. *See* Student Sues College After Brutal Rape, USA Today, Oct. 8 2014. Walt Bogdanich, A Star Player Accused, and a Flawed Rape Investigation, The New York Times, April 16, 2014. Rebecca Johnson, Campus Sexual Assault: Annie E. Clark and Andrea Pino Are Fighting Back - And Shaping the National Debate, Vogue, Oct. 9, 2014. Sabrina Rubin Erdely, A Rape on Campus: A Brutal Assault and Struggle for Justice at UVA, Rolling Stone, November 19, 2014.

<sup>100</sup> *See* Q72 of the Climate Assessment Survey Report ([Exhibit “5”](#)).

<sup>101</sup> *See* Q71 of the Climate Assessment Survey Report ([Exhibit “5”](#)).

Chart F



**C. Unaffiliated Individual’s Viewpoint on Sexual Violence**

The attitudes and perceptions of individuals not currently and officially working for UNM about the atmosphere regarding sexual violence in residential housing is best summarized as mixed.

Individuals previously employed by UNM who are not currently working at the university recalled past issues of sexual ‘harassment’ and inappropriate conduct of a sexual nature. These individuals were uncertain whether there has been any significant change in the University’s attitude towards sexual violence issues, since their employment at UNM. Other former staff members stated that historically, issues of sexual violence were reviewed and addressed by UNM with significantly different protocols and levels of reporting accountability.<sup>102</sup> The perceptions of the former staff vary from those who perceive that there has been substantial positive change in the past year as to how UNM manages sexual violence reports, to those who are unaware or are unsure about the current commitment of UNM to address sexual violence issues and handle sexual violence reports.<sup>103</sup>

**D. Factual Findings**

Available third party objective data analyzed by P&A indicates that the above-described attitudes and perceptions of students, administrators, and staff about the atmosphere regarding sexual violence in UNM residential housing is generally accurate. The P&A team was not made aware of any significant issues or major safety concerns regarding current reports of sexual violence in resident housing that were not being addressed or managed appropriately by the University. Notwithstanding this fact, the sexual violence

<sup>102</sup> Non-UNM Interview, September 24, 2014; Non-UNM Interview, October 16, 2014.

<sup>103</sup> Non-UNM Interview, September 24, 2014; Non-UNM Interview, October 16, 2014.

figures discussed below should be disregarded. Because UNM has recently initiated visible and active campus programs to address issues of sexual violence, housing staff and administrators perceive that UNM is taking proactive and effective measures to address these issues at UNM.

UNM has eight (8) student residential housing locations – Coronado, Hokona, Alvarado, DeVargas/Laguna Hall, SRC, Santa Clara, Redondo. These locations are managed and operated by UNM employees, staff and administrators. American Campus Communities (hereinafter "ACC") manage student housing locations at Casas del Rio (Jemez, Gila, Pecos and Chama) and Lobo Village on UNM's campus. The UNM managed residence halls and apartments can house approximately 2,200 students (the current number of students being housed is approximately 1,861), while there are approximately 1,697 students living in the ACC managed properties of Casas del Rio and Lobo Village. Therefore, there are approximately 3,558 students currently living in UNM residential housing.

In 2012, there were four (4) incidents of forcible sex offenses reported by UNM under the Clery Act.<sup>104</sup> Two of these incidents occurred in UNM residential housing, one of which was reported by a student that lived in Casas del Rio housing.<sup>105</sup> In 2013, there were eleven (11) incidents of sexual assault reported by UNM under the Clery Act.<sup>106</sup> Seven (7) of those incidents occurred within UNM residential housing. There was one incident of sexual violence reported in the ACC housing in 2013.<sup>107</sup>

From January 2014 to October 2014, there were four (4) sexual violence incident reports filed by students in UNM residential housing.<sup>108</sup> Two of the reports involved student athletes living in residential housing. Therefore, given the size of the UNM student population, reports and cases of sexual violence in residential housing have been minimal. This objective data corresponds to the survey data demonstrating that many residential students have not experienced or witnessed sexual violence on campus. Thus, it appears that the students' perception seems to match the reality: there are not many reported incidents of sexual violence on campus. However, UNM must take into account whether 7 out of 11 and 50% -- 2 out of 4 – is an acceptable and reasonable level of incidents of sexual violence on campus.

In this regard, UNM's numbers are well below the national average.<sup>109</sup> According to various studies, between 19<sup>110</sup> and 25 percent<sup>111</sup> of women experience sexual assault during college. If the 7

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<sup>104</sup> See UNM's 2014 Annual Fire & Safety Report (<https://police.unm.edu/unm-campus-safety-2014.pdf>).

<sup>105</sup> This incident was the attempted assault involving female student referred in Section IV(B) above.

<sup>106</sup> See UNM's 2014 Annual Fire & Safety Report.

<sup>107</sup> This incident occurred at Lobo Village.

<sup>108</sup> 2 incidents were in Redondo, 1 incident was in Hokona and 1 incident was in Lobo Village.

<sup>109</sup> There were 19 reports at the University of Maryland in 2013, up from nine the year before, and 27 at the University of Virginia, up from 11. Among other universities with significant increases in reports of forcible sex offenses on campus were the University of Wisconsin at Madison (29, up from 15); University of Maine (19, up from 5); University of Oklahoma (17, up from 6); University of Wyoming (15, up from 5); University of Kansas (18, up from 8); and University of Connecticut (23, up from 13).

Nick Anderson, Forcible Sex Offense Reports Double at U-Md and U-Va., Echoing Increase Across U.S., The Washington Post, Nov. 5, 2014 ([http://www.washingtonpost.com/local/education/forcible-sex-offense-reports-double-at-u-md-and-u-va-echoing-increase-across-us/2014/11/04/bf7bc38a-6440-11e4-836c-83bc4f26eb67\\_story.html](http://www.washingtonpost.com/local/education/forcible-sex-offense-reports-double-at-u-md-and-u-va-echoing-increase-across-us/2014/11/04/bf7bc38a-6440-11e4-836c-83bc4f26eb67_story.html);

<http://apps.washingtonpost.com/g/page/local/sex-offenses-on-us-college-campuses/1077/>)

<sup>110</sup> See the Department of Justice Campus Sexual Assault Study, 2007 (<https://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>).

<sup>111</sup> See Hirsch, Kathleen (1990) "Fraternities of Fear: Gang Rape, Male Bonding, and the Silencing of Women." *Ms.*, 1(2) 52-56.

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residential housing incidents of sexual assault were extrapolated over the total UNM student population<sup>112</sup> so as to compare with figures from other universities, the number of projected UNM incidents would total 55. This would represent approximately 0.002 percent of the total student population experiences of sexual assault at UNM. P&A notes that the difference between UNM’s numbers and the national average could be due to underreporting and the limited segment of the UNM student populations to whom P&A had access to for the Climate Assessment. National data states that 70 percent of physically forced sexual assault victims tell somebody about the assault.<sup>113</sup> However, only 16 percent of those victims contact a victim crisis or health care center and only 13 percent of those victims report the incident to law enforcement.<sup>114</sup> Interestingly, when compared with the responses from survey participants at UNM, approximately 93 percent of participants stated that they would feel at least comfortable reporting an incident of sexual violence to the Rape Crisis Center Of Central New Mexico; approximately 85 percent stated that they would feel at least comfortable reporting an incident of sexual violence to the Student Health and Counseling Center; and approximately 72 percent stated that they would feel at least comfortable reporting an incident of sexual violence to UNM Campus Police. Thus, UNM students perceive that they would not have an issue reporting an incident of sexual violence.

**Chart G**

Survey – Reasons for Not Reporting – Students in Housing

Num	%	Response
1	7.11%	I would be ashamed/embarrassed
2	5.15%	I would feel partially responsible
3	2.82%	I would feel responsible
4	4.41%	I would feel guilty
5	4.78%	I think it is a private matter - I would want to deal with it on own
6	6.37%	I would be concerned others would find out
7	1.35%	I would not want the person who did it to get in trouble
8	7.60%	I would be afraid of retribution from the person who did it
9	7.35%	I would be afraid of not being believed
10	7.23%	I would be afraid of being blamed
11	3.31%	I would think what happened was not serious enough to talk about
12	5.64%	I would think others would think it was not serious or not important

Of course, it is easier to report an incident when a student knows where to report. In the survey, participants mentioned 36 different places that they would report an incident of sexual violence.<sup>115</sup>

<sup>112</sup> According to UNM’s Official Enrollment Report (<http://oia.unm.edu/documents/enrollment-reports/fall-14-ocr.pdf>), the total amount of students enrolled at UNM is 27,889 students.

<sup>113</sup> See the Department of Justice Campus Sexual Assault Study, 2007.

<sup>114</sup> *Id.*

<sup>115</sup> See write-in answers to Q23 of the Climate Assessment Survey Report (Exhibit “5”).



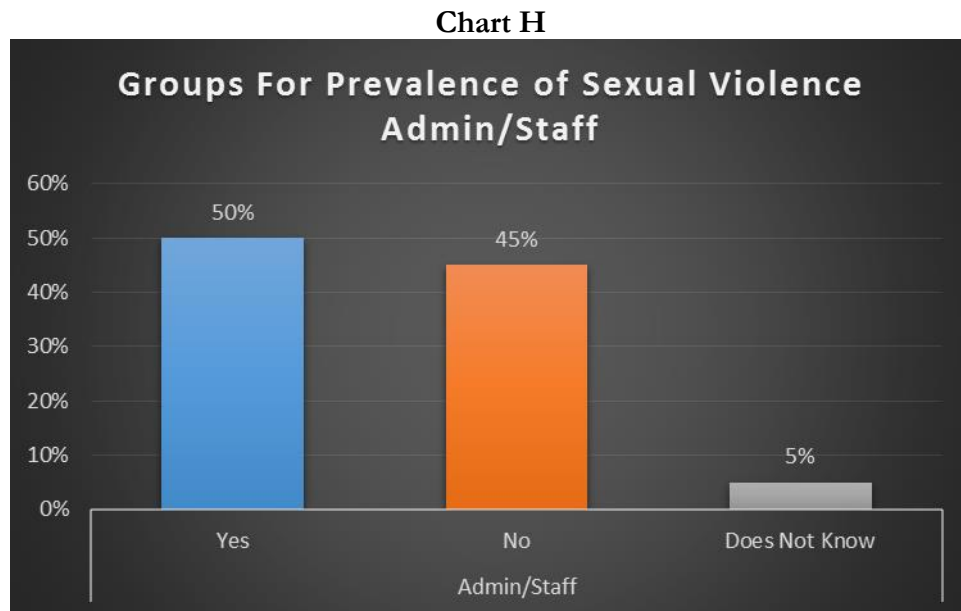
Some of this confusion could be due to the lack of training of residential housing students’ on sexual violence issues (*see above* Chart F). UNM students indicated a willingness to find out more about sexual violence; however, only 32 percent of them had actually received training on sexual violence (*see above* Chart F). This large discrepancy indicates that students in residential housing feel they would benefit from receiving more information about sexual violence issues but have not yet received the training from UNM.

**V. Climate Assessment Findings on Sexual Violence – UNM Athletics Program**

**A. Staff & Administrator Viewpoint**

The attitudes and perceptions of UNM staff and administrators about the atmosphere within the UNM athletics program regarding sexual violence is best summarized as being that student athletes are no more likely to be involved in acts of sexual violence than other areas of the university or the general body, contrary to public perception.

Data obtained by P&A supports the idea that UNM staff and administrators’ belief that athletics is no more likely to have student athletes involved in acts of sexual violence than the general student body (*see below* Chart H). UNM administrators interviewed did not identify any one particular group as being involved in acts of sexual violence. They cited factors such as alcohol<sup>116</sup> and drugs (mostly marijuana), as common contributing factors to acts of sexual violence among all groups of students versus any affiliation with student athletes as a common factor in the incidents of sexual violence on campus.<sup>117</sup>



<sup>116</sup> On average, at least 50% of college students’ sexual assaults are associated with alcohol use. *See Abbey et al., 1996a, 1998; Copenhagen and Grauerholz, 1991; Harrington and Leitenberg, 1994; Presley et al., 1999*; *see also* High Level Administrator Interview, September 26, 2014.

<sup>117</sup> High Level Administrator Interview, September 26, 2014; Staff Interview, September 24, 2014; High Level Administrator Interview, September 22, 2014.



Concerns do exist among the athletic department staff and athletic administration over the media interest and public scrutiny that follow reports of alleged act of sexual violence involving UNM athletes.<sup>118</sup> The athletics staff and athletics administration, have recognized or identified that the “[n]eedle moves once an athlete is accused”, that “players are vulnerable to media scrutiny” and “a predetermination of guilt usually attached to minority athletes.”<sup>119</sup> The feeling of heightened scrutiny and predetermined guilt may rest on the belief that “if there is an allegation and the perpetrator is African-American, they assume he is an athlete.”<sup>120</sup>

### **B. Student Athlete Viewpoint on Sexual Violence at UNM**

The attitudes and perceptions of UNM student athletes about the atmosphere within the UNM athletics community regarding sexual violence at UNM is best summarized as feeling safe, although generally aware of sexual violence.

Overall, based on the data obtained by P&A, 96 percent of student athletes feel safe on the UNM campus and that university security is present and available, with female student athletes feeling less safe on all parts of the UNM campus (*see below* Chart I).<sup>121</sup> The areas of concern for student athletes include lighting on the main campus, around Johnson Field and the Duck Pond, and commuting between south and north campus at night (*see below* Chart J).<sup>122</sup>

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<sup>118</sup> Staff Interview, September 24, 2014; Staff Interview Summary dated September 23, 2014; High Level Administrator Interview, September 26, 2014; Staff Interview, October 16, 2014.

<sup>119</sup> Staff Interview, September 23, 2014; Non-UNM Interview, September 24, 2014.

<sup>120</sup> High Level Administrator Interview, September 26, 2014.

<sup>121</sup> Female Student Athlete Interview, October 13, 2014.

<sup>122</sup> Lighting problems: Male Student Athlete Interview, October 16, 2014; Female Student Athlete Interview, October 14, 2014; Female Student Athlete Interview, October 13, 2014; Johnson Field: Male Student Athlete Interview, October 16, 2014; Male Student Athlete Interview, October 16, 2014; Female Student Athlete Interview, October 13, 2014; Duck Pond: Male Student Athlete Interview, October 16, 2014; Female Student Athlete Interview, October 15, 2014; Female Student Athlete Interview, October 13, 2014.

4. Safety on campus - uncomfortable at night: Female Student Athlete Interview, October 16, 2014; Male Student Athlete Interview, October 16, 2014; Female Student Athlete Interview, October 15, 2014; Female Student Interview, October 13, 2014; Female Student Athlete Interview, October 16, 2014; Female Student Athlete Interview, October 15, 2014; Female Student Athlete Interview, October 13, 2014.

5. Commuting issues - bus stations, Central, area around campus: Female Student Athlete Interview, October 13, 2014; Female Student Athlete Interview, October 13, 2014; Male Student Athlete Interview, October 16, 2014.

Chart I

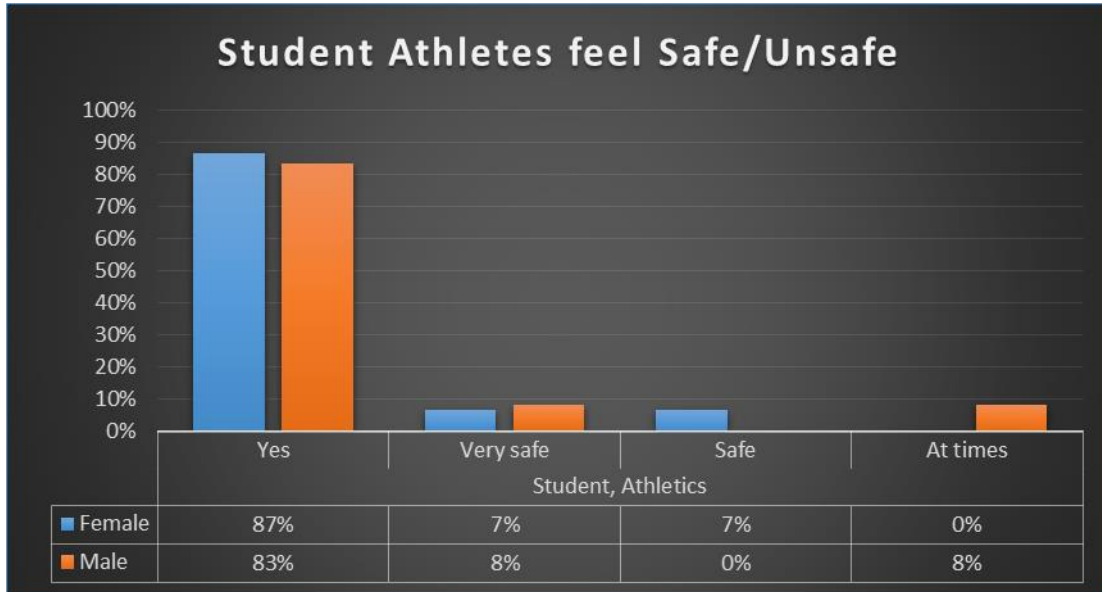
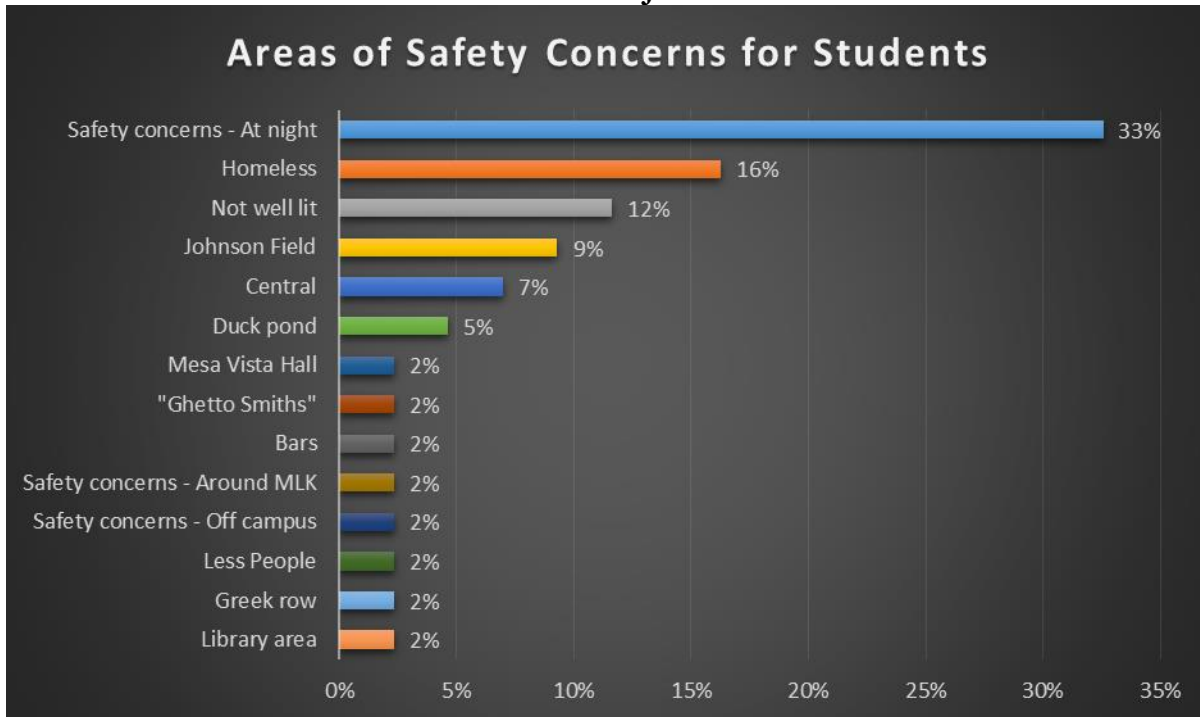


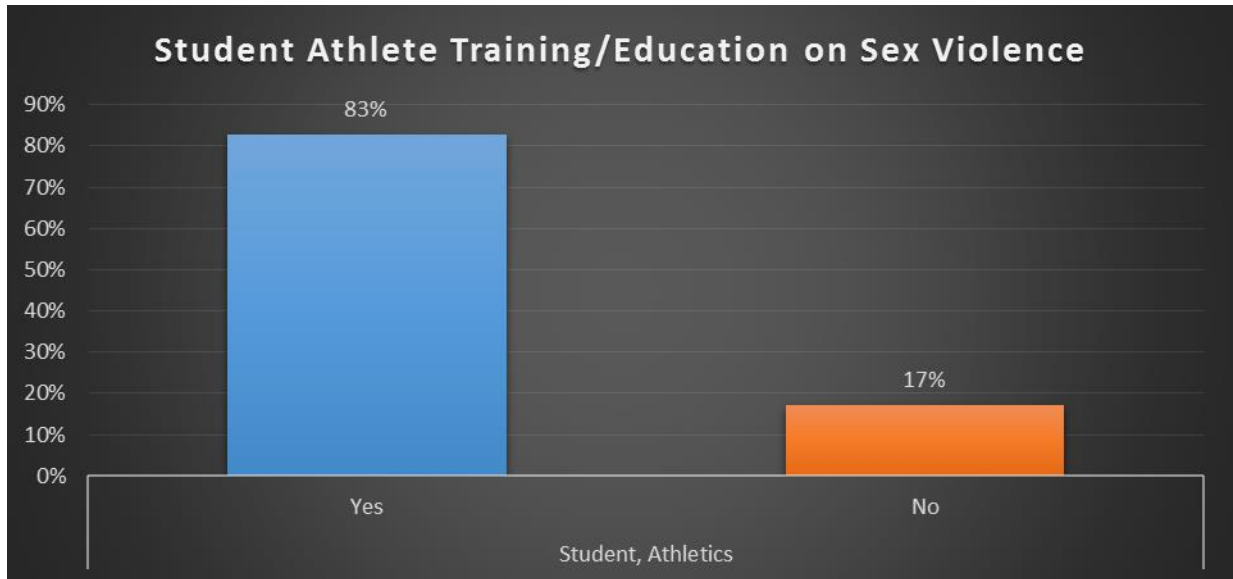
Chart J



UNM student athletes are generally aware of sexual violence and understand the impact that actual and alleged incidents of sexual violence involving student athletes has on the reputation of the individual athlete, all student athletes, the athletic program and the university. This fact is likely due to

UNM’s outstanding efforts, since the spring of 2014, to initiate sexual violence and sexual assault themed education and training for student athletes. An overwhelming majority of student athletes (*see below* Chart K)<sup>123</sup> acknowledged having recently received some basic education and training on sexual violence through programs and classes offered by UNM and the athletic department.<sup>124</sup> Given the educational efforts of UNM, 84 percent of student athletes were able to list at least one key element of the definition of sexual violence is 1) physical sexual conduct, 2) “without consent” of the other person, or 3) when the other person lacks the ability to consent.<sup>125</sup> However, some student athletes continue to have difficulty applying their knowledge beyond the education and training sessions offered by the athletic department and university. In one instance, a female student athlete reported that she observed another female student in a circumstance that could have been or could have lead to an incident of sexual violence but she was unclear, unsure or unable to intervene.<sup>126</sup> Hence, some student athletes thought it would be beneficial for the university to provide ongoing education programs annually or every semester.<sup>127</sup>

Chart K



Although 96 percent of student-athletes reported a willingness to report acts of sexual violence that they observed or were reported to them, 27.78 percent would report because “it was the right thing to do.”<sup>128</sup> Other student athletes reported that they were most concerned about the impact reporting would

<sup>123</sup> 83 percent of student athletes acknowledged receiving some kind of sexual violence training.

<sup>124</sup> Only 37% of schools in the national sample provide sexual violence training targeted to athletes. "These numbers increase significantly for schools that participate in Division I athletics, where 82% if schools target training for student athletes." Sexual Violence on Campus, United States Senate Subcommittee on Financial & Contracting Oversight, July 9, 2014.

<sup>125</sup> See Chart on Definition of Sexual Violence, which is attached as [Exhibit “14”](#).

<sup>126</sup> A female student athlete witnessed an interaction involving an intoxicated female student being led upstairs to a male student athlete’s room and returning down stairs in the same state. The female student athlete did not intervene because she was not a friend of the female student and did not know the relationship between the two students. Female Student Athlete Interview, October 13, 2014.

<sup>127</sup> Male Student Athlete Interview, October 14, 2014; Male Student Athlete Interview, October 15, 2014.

<sup>128</sup> Male Student Athlete Interview, October 15, 2014; Male Student Athlete Interview, October 16, 2014; Male Student Athlete, October 15, 2014.

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have on teammates.<sup>129</sup> Student athletes stated they were more likely to intervene or report incidents of sexual violence when it involves a teammate or friend.<sup>130</sup> One student athlete stated that she feels safer at parties with other athletes because “there is a mutual understanding of what they do as athletes [due to the fact that] all the athletes are aware of their additional obligations from their coaches, the school, and the NCAA.”<sup>131</sup>

A majority of student athletes believe that they are no more likely to be involved in or commit acts of sexual violence than any other group or groups within the UNM community (*see below*; Chart L). However, one student athlete stated “[s]exual violence is a power play – someone wants to assert their dominance – and the football players feel dominant in that environment. It is a culture that is perpetuated from the moment they get to UNM. Everything is taken care of for them. It is never implicitly stated that they will get away with things, but when the football players are fed this for so long, it perpetuates it.”<sup>132</sup> Moreover, there is a general consensus among male student athletes that they are more vulnerable to media attention relating to actual or alleged reported incidents of sexual violence.<sup>133</sup> Another male student athlete specifically reported “[i]f an athlete messes up, there is a bigger spotlight on the athlete, the focus should be on everybody rather than the athletes.”<sup>134</sup> This intense scrutiny can be attributed, in part to, more and more instances of sexual violence allegedly committed by college football players receiving national media attention. For example, recently, Florida State University and local law enforcement have been under fire for the handling of the rape allegation against star quarterback Jameis Winston.<sup>135</sup> This “spotlight,” or feeling of the need for measured behavior, was also expressed by female student athletes.<sup>136</sup>

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<sup>129</sup> Female Student Athlete Interview, October 15, 2014; Female Student Athlete Interview, October 14, 2014.

<sup>130</sup> Men’s Focus Group, October 14, 2014; “intervention ... it’s usually second nature because she and her teammates watch each other’s backs.” Female Student Athlete Interview, October 13, 2014.

<sup>131</sup> Female Student Athlete Interview, October 14, 2014.

<sup>132</sup> Male Student Athlete Interview, October 16, 2014.

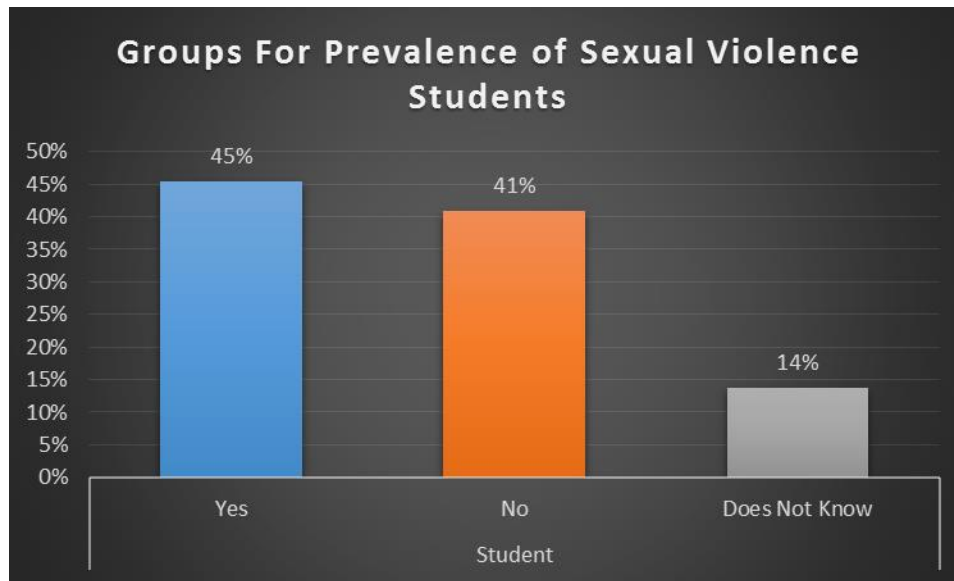
<sup>133</sup> Men’s Focus Group, October 14, 2014; Male Student Athlete Interview, October 14, 2014.

<sup>134</sup> Male Student Athlete Interview, October 15, 2014.

<sup>135</sup> Walt Bogdanich, A Star Player Accused, and a Flawed Rape Investigation, The New York Times, April 16, 2014 (<http://www.nytimes.com/interactive/2014/04/16/sports/errors-in-inquiry-on-rape-allegations-against-fsu-jameis-winston.html>), which is attached as Exhibit “15”.

<sup>136</sup> Female Student Athlete Interview, October 14, 2014.

Chart L



Student athletes tend to live together, by sport, in housing on and off campus.<sup>137</sup> These housing arrangements are predominantly in the south campus area of UNM, near athletic facilities and the Student Success & Services Center, all of which appears to contribute to UNM students athletes’ general sense of security and safety on the university campus. However, these athletically focused living arrangements also contribute to a climate of two separate UNM campuses one for student athletes and one for “regular” students.<sup>138</sup> Thus, student athletes tend to socialize within their respective sports team groups and with other athletic team members. For example, student athletes easily identify non-student athletes and recognize the benefits of being a student athlete:

“You could tell who the non-athletes were really easily at the parties. The athletes kind of have their own little community.”<sup>139</sup>

“Being a student athlete is a blessing with access to certain amenities such as the Student Success Center and equipment, that non-student athletes don’t have access to. There are aspects of being an athlete that give them an upper hand for the future.”<sup>140</sup>

Some student athletes reported the campus divide between athletes and non-athletes from a more balanced perspective:

“A decent amount of the student body loves athletics, some people think athletics gets too much funding and it’s taking away from the regular student body.”<sup>141</sup>

<sup>137</sup> Staff Interview, September 24, 2014; Staff Interview, September 23, 2014.

<sup>138</sup> Female Student Athlete Interview, October 13, 2014; Male Student Athlete Interview, October 16, 2014.

<sup>139</sup> Male Student Athlete Interview, October 16, 2014.

<sup>140</sup> Female Student Athlete Interview, October 13, 2014.

<sup>141</sup> Male Student Athlete Interview, October 14, 2014.

While other student athletes recognized the high-profiled nature of being an athlete on campus:

“There are not professional teams here, so the UNM athletes are worshipped.”<sup>142</sup>

While another student athlete believes:

“Football and basketball get the most support because they bring in the most money, and baseball comes third. Overall, I think the support is evenly spread amongst all the sports at UNM.”<sup>143</sup>

However, student athletes’ attitudes towards non-athletes are most dramatic when female non-student athletes socialize in the mixed or male student athlete party environment. It is in this environment that the knowledge that student athletes obtain from the educational efforts of the university on sexual violence must be applied. If student athletes fail to recognize situations, or ignore learned protocols such as consent, bystander and intervention, acts of sexual violence may occur and go unreported.

“The attitude of males is that it is ok. There won’t be any consequences if they don’t get caught so it’s no big deal” ... the male attitude ... stems in part because there are women on campus who will target male athletes because they want the attention, the ‘jersey chasers’ or ‘cleat chasers.’ Those few women help cultivate this attitude. Those women make the men think that because it’s easy with them, it’s easy with all women.”<sup>144</sup>

It is cause for concern that female athletes, who have previously reported that as student athletes they have each other’s backs, will not or are unable to intervene on behalf of someone who was not a friend, such as a female regular student.

### **C. Unaffiliated Individual’s Viewpoint on Student Athletes and Sexual Violence**

The attitudes and perceptions of individuals not currently and officially working for UNM about the atmosphere within the UNM athletics community regarding sexual violence is best summarized as evolving and continuing to be inclusive and transparent in addressing issues of sexual violence.

The unaffiliated individuals interviewed are former UNM employees, a former UNM student athlete, and a community advocate. These individuals past-working relationship with athletics included educating student athletes on personal conduct matters, sexual violence, responsibility, and leadership.<sup>145</sup> Also, these individuals continue to monitor the university’s and the UNM athletic department’s actions regarding investigations of sexual violence allegedly involving student athletes to assess whether the university’s policies and procedures are being followed in order to provide for a fair and complete review of

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<sup>142</sup> Female Student Athlete Interview, October 22, 2014

<sup>143</sup> Male Student Athlete Interview, October 16, 2014.

<sup>144</sup> Female Student Athlete Interview, October 13, 2014.

<sup>145</sup> Non-UNM Interview, September 24, 2014; Non-UNM Interview, October 16, 2014; Non-UNM Interview, November 7, 2014.

any sexual violence incidents and provide general student life programs.<sup>146</sup> To achieve this goal, the university and the athletic department have continued to seek advice from these individuals that has been critical in improving its sexual violence policy and procedures, student athletes' code of conduct, and student life programs. For example, the athletics department has partnered with the Women's Resource Center on an educational platform on issues of sexual violence.

On the issue of UNM African-American athletes and perceptions, non-affiliated UNM groups have also express concerns that the university's African-American student athletes are "closely scrutinized."<sup>147</sup> However, this concern for scrutiny subsides when there is a showing of procedural fairness by UNM administration and the Albuquerque Police Department in processing allegations of sexual violence.<sup>148</sup>

### **D. Factual Findings on Sexual Violence in UNM Athletics Program**

Available third party objective data analyzed by P&A indicates that the above-described attitudes and perceptions of students, staff, and administrators about the atmosphere within the UNM athletics community regarding sexual violence is accurate in that the athletics program or student athletes are no more likely to be involved in incidents of sexual violence on the UNM campus or affiliated campus housing than other UNM programs or non-athlete students.

Clery reporting does not specify the identity or affiliations of the victims and perpetrators related to sexual violence. Likewise, the OEO staff stated they do not know that information unless it is volunteered by the person making the report. Thus, it is hard to glean how many of the incidents reported actually involved student athletes because collecting that data is neither part of the Clery nor the OEO process. However, information supplied by those responsible for investigating incidents of sexual violence at UNM is helpful to this discussion.

A high level administrator stated that there have been three incidents of sexual violence in 2014 since the transfer of sexual violence investigations from the Dean of Students' Office to OEO.<sup>149</sup> Presumably, two of these incidents were the football incidents referred to in Footnote 1 of this Report that led to this Climate Assessment. A staff member assigned to the athletics department reported that she had received two complaints of sexual violence in 2014 and two complaints of sexual violence in 2013 involving student athletes as part of her Clery reporting.<sup>150</sup> Likewise, a high level administrator who has conducted investigations in the past confirmed that athlete victims were substantially less than non-athlete victims, and athlete perpetrators were less than non-athlete perpetrators.<sup>151</sup> Another high level administrator stated that

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<sup>146</sup> Non-UNM Interview, September 24, 2014; Non-UNM Interview, October 16, 2014; Non-UNM Interview, November 7, 2014.

<sup>147</sup> Non-UNM Interview, November 7, 2014.

<sup>148</sup> Non-UNM Interview, November 7, 2014; Staff Interview, September 23, 2014; High Level Administrator Interview, September 26, 2014; High Level Administrator Interview, September 23, 2014; Staff Interview, October 16, 2014.

<sup>149</sup> High Level Administrator Interview, September 22, 2014.

<sup>150</sup> Staff Email dated October 15, 2014, which is attached as Exhibit "16."

<sup>151</sup> High Level Administrator Interview, September 23, 2014.



he was only personally aware of three incidents in which he had information and that those three incidents involved either housing, Greeks or athletics.<sup>152</sup> Thus, the UNM professionals responsible for investigating these claims, confirm that the perception of the administrators, staff and students meets the factual reality: that acts of sexual violence are no more likely to involve student athletes than other student groups or the general student body. Whether this is the perception of the media and those outside of UNM residential housing and the UNM athletics program is unclear.

During the Climate Assessment period, P&A was not made aware of any new reported complaints of sexual violence involving the UNM athletics program.

## **VI. Analysis**

### **A. UNM Policies on Sexual Violence<sup>153</sup>**

On September 4, 2014, when the Climate Assessment began, UNM had 17 policies in place that a victim of sexual violence, or someone seeking to report such an incident, could access to obtain information and assistance.<sup>154</sup> In addition, upon visiting the UNM campus, P&A was informed about and observed pamphlets and posters distributed at various locations that provided differing levels of information regarding sexual violence. Also, in one-on-one and group conversations with students and staff associated with UNM residential housing and athletic programs, we learned of the many efforts to educate the UNM community about the serious issue of sexual violence. As such, UNM evidences a strong commitment to safeguarding its students and employees from incidents of discrimination, specifically sexual violence.

While UNM must be commended for having policies in place to redress allegations of sexual violence, unfortunately, several of these policies fail to comply with the dictates of Title IX, the DC Letter, and related guidance issued thereunder. Furthermore, the benefits of having numerous written policies to address and redress sexual violence claims are negated by the fact that (i) having 17 policies is too copious for alleged victims and perpetrators to gain a clear understanding of which policy applies to their circumstances; (ii) many of the policies are unclear and inconsistent with each other; (iii) many of the policies contain incorrect or incomplete information; (iv) many of the policies refer to each other in such a manner that flow charts are necessary to track the content and procedural steps; and (v) the language in many of the policies is written in such legalese and complicated manner that it would be difficult for a young unsophisticated adult without legal training, or many adults, to understand its meaning. The net effect of

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<sup>152</sup> High Level Administrator Interview, September 22, 2014.

<sup>153</sup> On the date that the Climate Assessment began – September 4, 2014 – P&A was provided with the drafts of some new policies under revision, and was informed that certain policies had recently been amended and that others would soon be amended with a view towards improved compliance with the dictates of Title IX. For purposes of this Report and Climate Assessment, focus was maintained on those policies in force and in place between September 4 and November 30, 2014. We acknowledge that some of the UNM policies discussed herein may have been revised or may be in the process of revision, as of the date of issuance of this Report, and that some of the recommendation discussed herein may already have been implemented or are on schedule to be implemented.

<sup>154</sup> P&A asked the UNM University Counsel's office for a list of UNM policies it believed impacted sexual violence. P&A relied on the UNM University Counsel assessment of UNM policies and did not independently seek to determine if this list was or was not accurate.

## CLIMATE ASSESSMENT REPORT ON SEXUAL VIOLENCE

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these drawbacks is that a victim of a sexual assault, or witness to an incidence of sexual violence seeking to report it, will likely be frustrated and discouraged from reporting simply by an inability to decipher the policies and the guidance he or she is seeking.

By way of initial analysis, it is unclear which policy UNM intends to be its Notice of Nondiscrimination. Of all the policies reviewed by P&A, UNM's Equal Opportunity, Non-Discrimination, and Affirmative Action Policy<sup>155</sup> appears to most likely qualify as UNM's Notice of Nondiscrimination. However, it omits the necessary Title IX-mandated language, and states as follows:

Differential treatment occurs when people, whether an individual or a group, are treated differently because of their race, color, religion, national origin, ancestry, physical or mental disability, pregnancy, age, sex (including sexual harassment), sexual preference, gender identity, spousal affiliation, veteran status, genetic information, or any other characteristic protected under applicable law . . .<sup>156</sup> The University prohibits harassment on the basis of race, color, religion, national origin, ancestry, physical or mental disability, pregnancy, age, sex (including sexual harassment), sexual preference, gender identity, spousal affiliation, veteran status, genetic information, or any other characteristic protected under applicable law.<sup>157</sup>

While this language references sexual harassment, it does not directly link this type of discrimination with Title IX, and does not explicitly mention sexual violence. Likewise, the general UNM non-discrimination language does not provide a student with a clear description of what conduct constitutes sexual harassment, and does not state that prohibited sex discrimination includes sexual violence or provide examples of what types of conduct are covered.

Another policy, UNM's Sexual Harassment Policy,<sup>158</sup> addresses sexual harassment and sex-based discrimination and does provide examples of what qualifies as sexual harassment. However, the policy refers to sexual harassment and sex-based discrimination separately.<sup>159</sup> Thus, the language of this policy does not make it clear that sexual harassment is a form of sex-based discrimination but rather appears to treat these as two distinct types of claims. Furthermore, the Sexual Harassment Policy does not mention Title IX and, therefore, does not comply with that law's dictate to state that Title IX requires UNM not to discriminate on the basis of sex, including sexual violence, in its educational programs.

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<sup>155</sup> University Administrative Policies and Procedures Policy 2720 (<http://policy.unm.edu/university-policies/2000/2720.html>).

<sup>156</sup> See University Administrative Policies and Procedures Policy 2720, Section 2.1.

<sup>157</sup> See University Administrative Policies and Procedures Policy 2720, Section 4.

<sup>158</sup> University Administrative Policies and Procedures Policy 2730 (<http://policy.unm.edu/university-policies/2000/2730.html>).

<sup>159</sup> For example, it says "the University is committed to creating and maintaining a community in which students and employees can learn and work together in an atmosphere that enhances productivity and draws on the diversity of its members and is free from all forms of disrespectful conduct, harassment, exploitation, or intimidation, including sexual harassment and sex-based discrimination [emphasis added]." University Administrative Policies and Procedures Policy 2730, Section 1.

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The DC Letter states that, at a minimum, a university’s Notice of Nondiscrimination should also include the name, title, office address, telephone number and email address of the Title IX Coordinator.<sup>160</sup> None of the UNM policies provided to P&A for the Climate Assessment explicitly explain that a complaint of sexual violence should be referred to the university’s Title IX Coordinator. A few policies state that a complaint can be referred to the Office of Equal Opportunity (hereinafter “OEO”) but only as part of a larger list of options. These policies also do not provide the name or contact information of the Title IX Coordinator, and only one policy provides the address or contact information for OEO.<sup>161</sup> This failure to provide OEO’s contact information within the relevant UNM policies applicable to sexual violence, undoubtedly contributes too many UNM students and staff, not being clear about contacting OEO to report an incident of sexual violence, as demonstrated by the 36 different places that students would report an incident to in Chart M below.<sup>162</sup>

**Chart M**

<b>Num</b>	<b>Where to report</b>	<b>Num</b>	<b>Where to report</b>
1	Campus Police	19	Coach
2	Dean of Students	20	CSA's
3	Women's Resource Center	21	EOD
4	Call Hotline	22	HR
5	LGBTQ resource center	23	In person
6	OEO	24	Office of Equity and Inclusion
7	UNM PD	25	Online
8	SHAC	26	Rape Crisis Center
9	Police	27	Residence staff
10	Supervisor	28	SANE
11	RA	29	I don't know.
12	Academic advisors	30	Student Health center
13	Agora	31	The Blue light system
14	Anonymous report	32	Trusted teacher/mentor
15	Any Sexual Assault Response Team (SART) member	33	University staff
16	Any university official	34	UNM Health services
17	APD	35	UNM Hospital
18	CARS	36	UNM supervisor

As an in-depth review of the 17 different UNM policies relevant to sexual violence is beyond the scope of the Climate Assessment mandate, a review of selected relevant policies is presented below.

<sup>160</sup> The Department of Justice specifically highlighted in its investigation that a university must provide the contact information for an office handling sexual violence investigations so as to provide a complainant with the necessary information to be able to reach out to the appropriate department to report an incident of sexual violence: “the policies...provide no contact information, location, or individual identified with this office, and leave unclear whether this is the same Office as the EEO/Affirmative Action Office.” See DOJ University of Montana Investigative Findings, which is attached as Exhibit “17”.

<sup>161</sup> UNM Student Handbook, Procedures for Redress of Sexual Harassment.

<sup>162</sup> For evidence that staff and administrators are also confused as to where to report, *see* Chart R.

## 1. Student Code of Conduct

A UNM student is likely to look to the Student Code of Conduct<sup>163</sup> and, perhaps, would also locate the associated Student Grievance Procedure when faced with a sexual violence incident involving another student. In so doing, a student might not realize, but might assume, that Sections 1.3 – Disciplinary Matters – applies to an incident of sexual violence. In Section 1.8 – Discrimination Allegations – a student might notice in the second line of text, the reference to “sex/sexual harassment” and later in the sentence, that he or she must address such allegations to OEO.

While the Student Code of Conduct provides a good overview of what behaviors and actions could result in disciplinary action, including sexual assault, it: would not provide quick instructions for an alleged victim, alleged perpetrator, or bystander seeking to obtain information about sexual violence; is dense with legal language whose import is unclear and is not fully explained or defined;<sup>164</sup> provides incomplete information with respect to disciplinary procedures for the alleged perpetrator of a sex offense within the laundry list of other “acts of misconduct;” refers to “procedures, rules or regulations as deemed necessary to implement this Code of Conduct” without identifying these or providing a website link to them online; and uses language that is not easy for a young adult to comprehend quickly, especially in a highly charged emergency situation.

## 2. Sexual Assault Policy

A UNM student with access to The Pathfinder UNM Student Handbook may also find the Sexual Assault Policy provisions contained therein<sup>165</sup> and immediately recognize that it would apply to “rape, acquaintance rape, and other forcible and non-forcible sex offenses.” After wading through the dense language in “Section I. PURPOSE OF POLICY,” a reader would be confident that he or she has found the definitive document that would provide all of the relevant guidance on what to do next. It is not until Section II, however, that “sex offense” is defined in great detail in two provisions labeled “Sex Offense – Forcible” and “Sex Offense – Non-forcible”. Inexplicably, Section III is “EDUCATIONAL PROGRAMS”, and “PROCEDURES STUDENTS SHOULD FOLLOW IF A SEX OFFENSE OCCURS” does not appear until Section IV. At this point, the reader is referred to the Student Code of Conduct, followed by a warning that “victims of sex offenses” should “preserve evidence as it may be necessary in the proof of sexual assault in the criminal process and the student discipline system.” Thus, “[v]ictims should not bathe, shower, wash, douche, brush one’s teeth, comb one’s hair or change clothes before seeking medical attention.”<sup>166</sup> Finally, after this warning, information about who to contact to obtain

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<sup>163</sup> <http://pathfinder.unm.edu/campus-policies/student-code-of-conduct.html> (May 1995) (Last visited 11/19/14 at 5:15 pm ET).

<sup>164</sup> “Students’ rights under the state and federal constitutions are specifically acknowledged and affirmed, including the rights of freedom of speech, freedom of association, freedom of religion, and due process. The provisions of this Code of Conduct shall be construed so as not to infringe upon these rights, as those rights are defined by law.” *Id.* at 3. RIGHTS OF STUDENTS IN DISCIPLINARY MATTERS.

<sup>165</sup> Pathfinder Sexual Assault Policy: <http://pathfinder.unm.edu/common/policies/sexual-assault-policy.html> (October 1995) (Last visited 11/20/14 at 4:30 pm ET).

<sup>166</sup> *Id.*

assistance appears, albeit in sections labeled “Main Campus”, Extended University-Santa Fe”, “Taos Branch Campus”, “Valencia Branch”. Ultimately, the reader is told, if on the main campus, to: (1) call the UNM Police Department (“UNM PD”) at 505-277-2241, (2) 911, or (3) if off-campus, Albuquerque Police Department (“APD”). The reader is informed that the UNM PD will contact the Rape Crisis Center of Central New Mexico to have a counselor available when the victim and police arrive at a medical facility. After providing the number for the Rape Crisis Center of Central New Mexico, the following paragraph, presumably intended to provide comfort to the victim, appears:

The University recognizes the need for victims of sex offenses to have a caring and knowledgeable support person available to discuss their situation with, assist them in receiving appropriate medical attention and filing appropriate criminal charges. The University, including the University Police Department, works closely with the Rape Crisis Center of Central New Mexico in providing this assistance.<sup>167</sup>

Instructions that are similar in many respects, but require contacting different law enforcement entities, appear in the text related to the different UNM campus locations.

While providing a lot of relevant information, the UNM Sexual Assault Policy is: poorly organized from the perspective of an alleged victim, alleged perpetrator, or bystander seeking to report needing quick instructions; dense with language that is confusing and with changing terminology throughout;<sup>168</sup> provides incomplete information with respect to disciplinary procedures for the alleged perpetrator of a sex offense; refers to several other UNM policies; and uses language that is not easy for a young adult to comprehend quickly, especially in a highly charged emergency situation.

### **3. Administrative Policies and Procedures Manual – Policy 2210: Campus Violence**

A UNM student, employee and/or faculty member faced with an incident of sexual violence might logically look to UNM’s “Campus Violence”<sup>169</sup> policy for guidance. A quick review of this document would indicate to the reader that UNM does not tolerate “acts or threatened acts of violence;” that such behavior is subject to discipline; that all members of UNM’s community share responsibility to ensure an “environment that is free of fear;” that threats of violence must be reported to the police; that employees who are witnesses or victims of violent behavior, as defined in Section 2,<sup>170</sup> must report to their supervisors (or the supervisors’ supervisors) or anonymously call “Crime Stoppers (277-STOP);” that supervisors are “encouraged” to contact the University Counseling, Assistance, and Referral Service (CARS); and that a supervisor should “contact CARS, the University Dispute Resolution Department, the University Safety & Risk Services, or Campus Police” for information about dealing with potentially violent behavior. The first reference to “sexual harassment” appears at the end of the third paragraph and refers the reader to UAP 2730 (“Sexual Harassment”). The last sentence of the third paragraph mentions that, for “information

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<sup>167</sup> *Id.* at Section IV-A-1.

<sup>168</sup> “victim”, “accuser”, “alleged victim”, “sex offense”, “alleged sex offense”, “accused”, “perpetrator”, “alleged perpetrator”.

<sup>169</sup> Administrative Policies and Procedures Manual – Policy 2210: Campus Violence (January 2001) found at <http://policy.unm.edu/university-policies/2000/2210.html> (Last visited 11/19/14 at 6:00 pm ET).

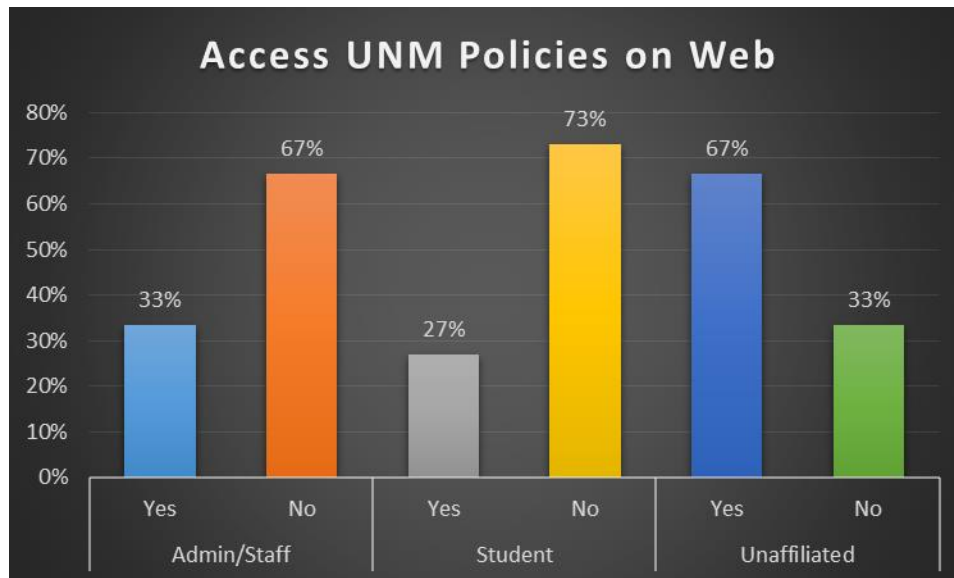
<sup>170</sup> *Id.* at Section 2 Violent Behavior.

## CLIMATE ASSESSMENT REPORT ON SEXUAL VIOLENCE

specifically related to students,” a student must consult the Student Code of Conduct located in the Policies Section of The Pathfinder: The UNM Student Handbook.”<sup>171</sup>

Thus, the first section alone of the Campus Violence policy itself refers the reader to seven different resources to redress an incident of sexual violence, without defining “sexual harassment,” and refers the reader to another policy for that critical definition. Furthermore, if a student was not convinced that this policy did not apply to him or her by the end of the second paragraph and, in fact, was persistent enough to read through the third paragraph, only then would he or she confirm that the Campus Violence policy does not, indeed, apply and that he or she should seek out the Student Code of Conduct. Proceeding through the remainder of this policy, the reader would be referred to eight additional resources – UAP 3220 (“Ombuds/Dispute Resolution Services for Staff”), UAP 3215 (“Performance Management”), UAP (“Separation of Employment”), UAP 2730 (Sexual Harassment”) and OEO, UAP 3270 (“Suspected Employee Impairment at Work”), The Faculty Handbook, UAP 2200 (“Reporting Misconduct and Retaliation”). Thus, it appears that this policy is intended for UNM employees who are not students, without stating so explicitly in the beginning, and without addressing the circumstance of a student who is employed by UNM.

Chart N



<sup>171</sup> *Id.* at Section 1 General.



### **B. Procedures<sup>172</sup>**

Many of the 17 policies UNM had in place on September 3, 2014 were accompanied by procedures for redress of discrimination – sexual violence – complaints and/or referred to such procedures. UNM must be commended for having procedures in place to redress allegations of sexual assault; however, these procedures fail in many significant respects to comply with the dictates Title IX, the DC Letter, and related guidance issued thereunder. As an in-depth review of 17 different UNM policies and their 4 related procedures<sup>173</sup> relevant to sexual violence is beyond the scope of the Climate Assessment mandate, a review of selected relevant procedures is presented below.

#### **1. Office of Equal Opportunity Discrimination Claims Procedure<sup>174</sup>**

As of April 2014, UNM shifted responsibility for conducting disciplinary investigations of sexual violence complaints from the Office of the Dean of Students to the OEO. From this point forward, UNM implemented a two-prong system in which (a) OEO would investigate sexual violence complaints and make a “Probable Cause” determination; and (b) once a determination had been made, the matter would be referred back to the Office of the Dean of Students to determine the disciplinary sanction to be imposed if Probable Cause is found.<sup>175</sup> OEO uses its Discrimination Claims Procedure (“OEO Procedure”) to investigate incidents of sexual violence.

Pursuant to the OEO Procedure, a student, staff or faculty member seeking to report an incident of sexual violence must submit a written claim on the OEO intake form.<sup>176</sup> Once the claim is received, OEO makes a determination on whether it has jurisdiction over the claim, by looking at three requirements: 1) the complaint must be civil rights related; 2) the complaint must involve some kind of policy violation; and 3) the claimant or the respondent must have some kind of affiliation with UNM.<sup>177</sup> If

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<sup>172</sup> On the date the Climate Assessment began – September 4, 2014 – P&A was provided with drafts of some new procedures under revision, and was informed that certain procedures had recently been amended and that others would soon be amended with a view towards improved compliance with the dictates of Title IX. For purposes of this Report and Climate Assessment, focus was maintained on those procedures in force and in place between September 4 and November 30, 2014. We acknowledge that some of the UNM procedures discussed herein may have been revised or may be in the process of revision, as of the date of issuance of this Report, and that some to the recommendation discussed herein may already have been implemented or are on schedule to be implemented.

<sup>173</sup> P&A is unclear whether there are three or four different procedures that could be relevant to an incident of sexual violence (OEO Grievance Procedure, Student Grievance Procedure, the Visitor Grievance Procedure (which may or may not be distinct from the Student Grievance Procedure) and the Grievance Procedure for Employees.

<sup>174</sup> <http://www.unm.edu/~oeounm/discrimination/DiscriminationClaimsProcedure.pdf>.

<sup>175</sup> However, as is discussed below, the Dean of Students does not make the initial sanction decision, he refers that matter to the Student Conduct Officer, and after OEO finds that probable cause of the sexual violence exists would have an opportunity to select among several different methodologies for determining his or her punishment – Student Conduct Officer administrative hearing, or Student Conduct Committee final hearing – with an appeal back to the Dean of Students, and further appeal to the Vice President for Student Affairs.

<sup>176</sup> It is unclear whether an OEO staff person meets with potentially traumatized alleged victim and offers any guidance in completing the “written” OEO intake form.

<sup>177</sup> These requirements are not provided in the OEO Procedure but P&A was informed of this practice by the OEO staff and counsel. OEO Staff Interview on September 8, 2014. If OEO determines that it does not have jurisdiction, the claim could then revert back to the Office of the Dean of Students in order to determine if other violations have occurred under the Student Code of Conduct. *See* Section 4.4(D) of the Student Grievance Procedure.

## CLIMATE ASSESSMENT REPORT ON SEXUAL VIOLENCE

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OEO exercises jurisdiction over the claim, OEO will schedule a meeting with the complainant in order to determine which of the following options the complainant would like to pursue: a) withdraw the complaint<sup>178</sup> or b) formal investigation.<sup>179</sup> Once the option is elected and verified by the complainant in a subsequent letter, OEO will contact the respondent; meet with him or her; discuss how the investigation will be conducted; and provide a letter outlining the sexual violence allegations. Thereafter, the respondent has the opportunity to formally answer the allegations. An OEO investigator will then conduct an investigation by interviewing relevant witnesses and considering other available evidence. The average investigation time frame in the OEO Procedure is two weeks to four months. Upon completion of its investigation, OEO issues a Preliminary Letter of Determination. Both parties then have the opportunity to respond to the Preliminary Letter of Determination. After reviewing the parties' respective responses and conducting any further investigation warranted by the receipt of new information (new witnesses or documents), OEO issues a Final Letter of Determination. This letter contains recommendations and a conclusion, framed as "Probable Cause" and "No Probable Cause," as to whether or not the conduct was a violation of University policy.<sup>180</sup> Once the Final Letter of Determination is issued, the case is referred to the Dean of Students' Office to determine the sanction. However, a party can appeal the "Probable Cause" or "No Probable Cause" determination to the President under specific, limited circumstances. There are several ways in which the OEO Procedures do not appear to be fully compliant with Title IX.

Although UNM has adopted and published several procedures relevant to incidents of sexual violence, it is unclear whether students, parents, and employees are aware that the OEO Procedure is the one procedure intended by the university to address sexual violence claims.<sup>181</sup> The OEO Procedure appears not to (a) have been widely distributed; (b) is not in a place or places that are easily accessible; and (c) is not easily comprehended.<sup>182</sup> First, the DC Letter states that students and faculty must have notice of the relevant grievance procedures in order to comply with Title IX. It is clear that the required notice is intended to be "prior" notice – knowledge and awareness -- of grievance procedures relevant to incidents of sexual violence. These procedures are required to include all of the requirements stated in the DC Letter.<sup>183</sup> Because UNM changed the procedures to include investigation and a Probable Cause determination by OEO in the spring of 2014, and because many of the widely distributed and easily available policy documents have not been updated to incorporate and fully explain the new role of OEO, UNM has failed

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<sup>178</sup> Some might view this is an odd option and could be construed as exerting pressure on alleged victim not to pursue claim. However, others may take the perspective that the victim's withdrawal does not necessarily absolve OEO from a duty to continue its investigation. In Section II(A) of the OEO Procedure, OEO reserves its right to investigate independent of the concerns of the Claimant.

<sup>179</sup> While it is not explicitly stated in the OEO Procedure, mediation and educational conferences are not allowed to be used in connection with sexual violence complaints despite being options for other discrimination complaints. OEO Staff Interview on September 8, 2014.

<sup>180</sup> It is unclear why OEO doesn't determine that there has or has not been a sexual assault.

<sup>181</sup> In interviews between P&A and OEO staff, the intent to use only OEO Procedures for Title IX sexual violence incidents was clearly communicated. *See* OEO Staff Interview on September 8, 2014.

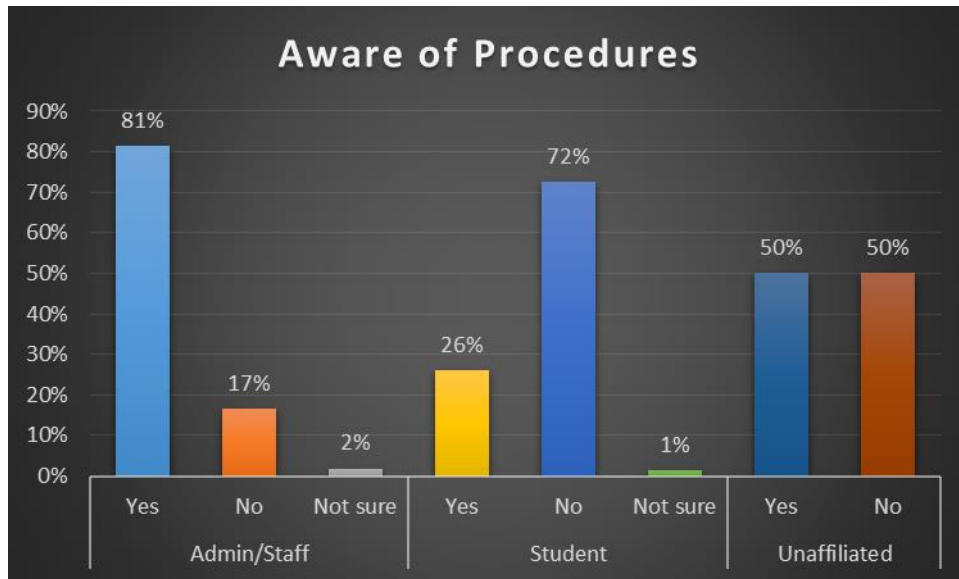
<sup>182</sup> *See below* Chart O on "Lack of Knowledge of what procedures would apply to sexual violence/assault;" *see also* Response to Q13 of the Climate Assessment Survey Report (Exhibit "5").

<sup>183</sup> : 1) notice to students, parents and employees of procedures and where to file; 2) processing of sexual harassment complaints in accordance with procedures; 3) investigation that is adequate, reliable and impartial with each party able to present witnesses and evidence; 4) prompt time frames for each stage of process; 5) notice to parties of outcome; 6) school's assurance to take steps to prevent recurrence or correct discriminatory effects to all involved, as appropriate.

## CLIMATE ASSESSMENT REPORT ON SEXUAL VIOLENCE

to provide the required prior notice.<sup>184</sup> It should be noted that, since the spring of 2014, UNM has initiated a significant number of education and training sessions relative to sexual violence and sexual assault. These efforts do not appear to achieve the Title IX-mandated function of providing notice of grievance procedures relative to sexual violence because a significant number of UNM students and staff interviewed by P&A were unaware of what procedures would be used to address incidents of sexual violence.<sup>185</sup> A few students were unable to distinguish the school's disciplinary procedures from the procedure used in a criminal investigation relative to sexual violence.<sup>186</sup>

Chart O



The confusion between the school's disciplinary procedure and the state's criminal investigation ties directly in to the next element detailed in the DC Letter for which UNM was not in compliance. Some key employees responsible for implementation of the university's anti-discrimination policies and procedures were unclear about the interplay of UNM's disciplinary investigation of a sexual violence complaint and UNM PD's criminal investigation.<sup>187</sup> One high level administrator expressed concern that the UNM PD was not sharing sexual assault investigative information with him. While the DC Letter states that there should be cooperation between local law enforcement and a university's investigators, it also highlights that a criminal investigation does not determine whether an incident of sexual violence violates

<sup>184</sup> Due to the limited scope of the Climate Assessment mandate, P&A did not investigate the extent and nature of the notice provided generally to parents of UNM students or UNM employees.

<sup>185</sup> See below Chart O on "Lack of Knowledge of what procedures would apply to sexual violence/assault," see also Response to Q13 of the Climate Assessment Survey Report (Exhibit "5").

<sup>186</sup> Male Student Athlete Interview, October 15, 2014 (mentioning that he thought the perpetrator would go to jail); Female Student Athlete Interview, October 15, 2014 (stating that she thought UNM would press charges against the perpetrator).

<sup>187</sup> High Level Administrator Interview, September 23, 2014.

## CLIMATE ASSESSMENT REPORT ON SEXUAL VIOLENCE

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Title IX, among other issues. UNM must ensure that its staff understands that the university's obligation to conduct investigations into sexual violence complaints is separate and apart from UNM PD's criminal investigation, and that such investigation must proceed regardless of cooperation from police authorities.<sup>188</sup> It may be that UNM moved the investigation of such claims to OEO, precisely to address this misunderstanding.

Turning to the standard of proof, there is no discussion of the applicable standard of proof in the OEO Procedure itself; although, OEO's training materials do disclose that the standard of proof in its investigations is a "preponderance of the evidence" standard.<sup>189</sup> The final decision from OEO is framed as a Probable Cause or no Probable Cause determination. The use of this language, common in criminal law, could easily cause students, parents and UNM staff to be confused about the nature of OEO's investigation as well as the distinction between disciplinary and criminal proceedings.

The DC Letter also states that each party must be treated equally. Under the OEO Procedure, the OEO investigator meets with the complainant first, without also separately meeting with the alleged respondent during the same phase of the investigation. The complainant has the option to elect how the investigation will occur by selecting the type of procedure, again without the respondent's input. Not only does the respondent not have a say in the methodology applied to the allegations against her or him, that individual has not yet been put on notice that there is a serious sexual misconduct allegation pending until after the complainant has selected how the investigation will be conducted. Such an outcome seems neither Title IX compliant, nor consistent with federal due process protections. Furthermore, this is only one of several inequities evident within the entire sexual violence investigation and sanctioning process. The others are addressed in detail below.<sup>190</sup>

The DC Letter requires all investigators to be well trained in handling complaints of sexual violence and have adequate knowledge of the applicable confidentiality requirements and the subject of sexual violence in general. Having interviewed the relevant individuals involved with OEO, P&A is concerned that the investigators, with the exception of one investigator with years of Title IX investigation experience, are not sufficiently trained to conduct Title IX investigations. When compared the officers handling sexual violence cases with the UNM PD, the general lack of experience of UNM staff investigating these types of claims becomes quite evident. Most of the officers who work on sexual violence cases at the UNM PD have decades of experience working on sexual violence cases, mostly with the Albuquerque PD. On the other hand, the only person in OEO with similar experience working Title IX disciplinary investigations involving sexual violence on the university side is the one investigator previously mentioned.<sup>191</sup>

Finally, turning to the time frames for the various activities within the OEO Procedure to take place, there are additional Title IX compliance concerns. First, the initial investigation resulting in a

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<sup>188</sup> This is important because the standard of proof for UNM's investigation is lower than the standard of proof for a criminal investigation. It is clear, however, that UNM took seriously its obligation to conduct investigations into allegations of sexual violence, even without cooperation from UNMPD.

<sup>189</sup> See Slide 12 of the OEO Title IX and Sexual Misconduct Training PowerPoint presentation, which is attached as Exhibit "18".

<sup>190</sup> See Student Grievance Procedure section for further discussion of inequities.

<sup>191</sup> The investigator is temporarily on leave from the OEO.

## CLIMATE ASSESSMENT REPORT ON SEXUAL VIOLENCE

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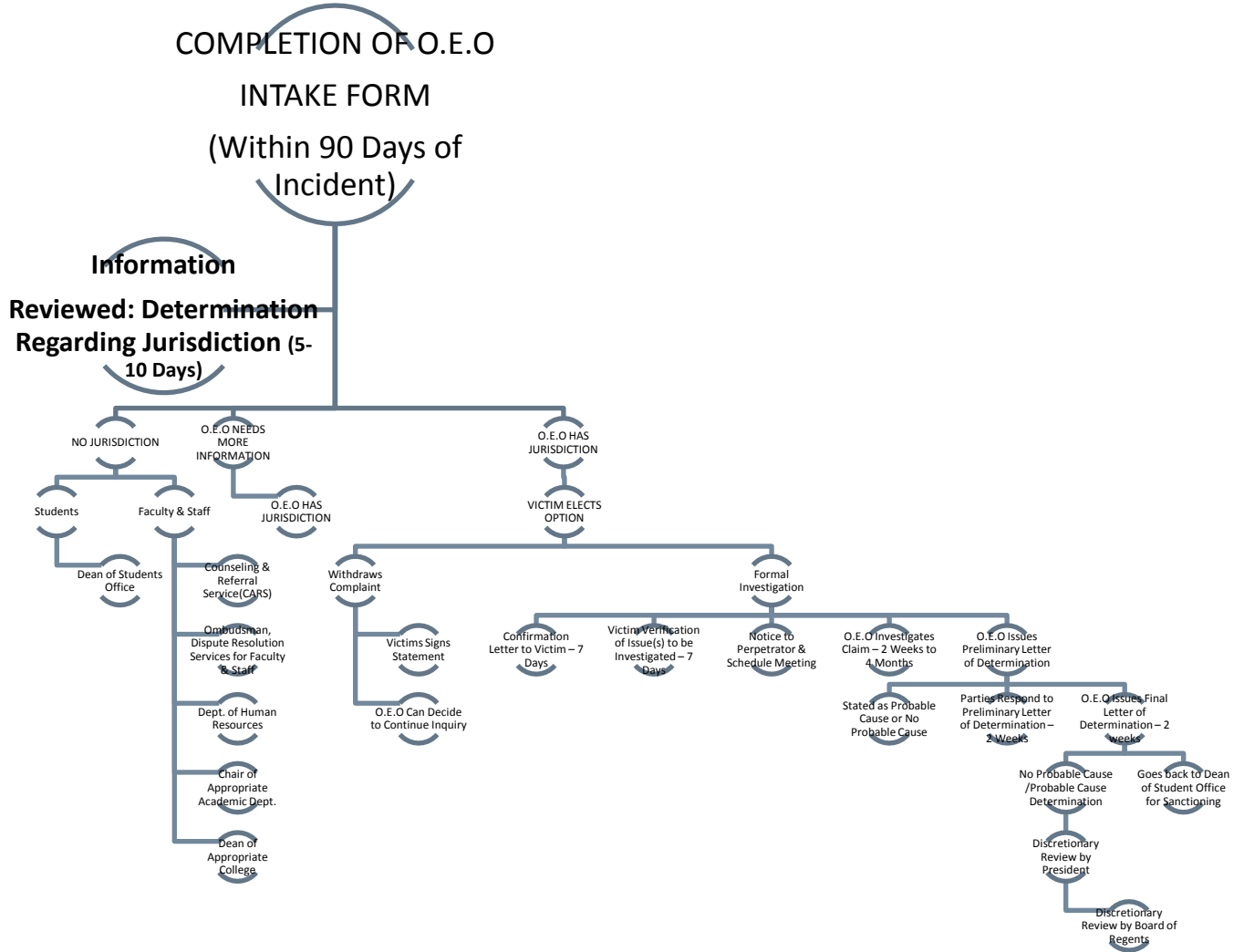
“Probable Cause” finding by OEO can take two weeks to four months, or longer when the entire procedural process is undertaken. The latter time frame far exceeds the 60 days recommended in the DC Letter for a normal case. Additionally, the OEO Procedure allows deadlines to be extended for “good cause,”<sup>192</sup> without an explanation of what constitutes such “good cause.” The DC Letter states that the procedures must explain the process for extending time frames. Without further guidance, it would be impossible for a student to determine what constitutes “good cause.” Moreover, the OEO Procedure does not clarify the time frames or the criteria for limited review for an appeal of the Probable Cause determination to the President. A student would have to know to reference the Student Grievance Procedure in order to figure out the relevant information. Given the 7 day time frame for submitting an appeal to the President, the OEO Procedure should have some discussion of the appeals procedure.

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<sup>192</sup> As examples, *see* Section II(D) and Section 4 of the OEO Discrimination Claims Procedure.

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Chart P





## 2. Student Grievance Procedure

Given that a UNM student faced with a sexual violence incident is likely to look to the Student Code of Conduct and related Student Grievance Procedure<sup>193</sup> when faced with a sexual violence incident involving another student, below is a review of that procedure as related to a hypothetical claim of sexual assault. Having found and reviewed the Student Grievance Procedure, Section 4.4 – Investigation of Complaints of Sexual Violence and Sexual Harassment -- would come into focus. Once here, the student would not be provided with a definition of “sexual violence” in the text, but would be referred to footnote #1<sup>194</sup> and further told to find the definition in “University Administrative Policy #2730.” The text goes on to direct the student to OEO. Reading further into Section 4.4 would, however, enable to student to find a brief explanation of the OEO procedures, without seeking out another document. A student reading this condensed, four paragraph summary of the OEO procedures, would be severely misled to believe that a three-step process – investigation, letter of determination, and appeal – would quickly resolve whether or not “Probable Cause” is found that a student committed an act of sexual violence;<sup>195</sup> followed by another series of two steps – referral to Office of the Dean of Students, involvement of Student Conduct Officer – to determine sanctions. With diligence and perseverance, a student might read on to find out that there is an additional step – appeal under Section 7. If the student were to read further, he or she would discover that OEO could, alternatively, find No Probable Cause that a student committed an act of sexual violence.<sup>196</sup> Further, the No Probable Cause finding is followed by another process with the Office of the Dean of Students, who will review the situation to “determine whether charges under any other provision of the UNM Student Code of Conduct are warranted or other action should be taken,” presumably related to the reported sexual violence incident that resulted in the No Probable Cause finding.<sup>197</sup>

While the above-described procedural synopsis seems clear and simply, the true depth and intricacies of the OEO Procedure, or the procedures to determine whether charges under any other provision of the UNM Student Code of Conduct are warranted or other action should be taken are not apparent. These facts are illustrated in the procedural flow charts below:

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<sup>193</sup> <http://pathfinder.unm.edu/campus-policies/student-grievance-procedure.html> (May 2014) (Last visited 11/19/14 at 5:00 pm ET).

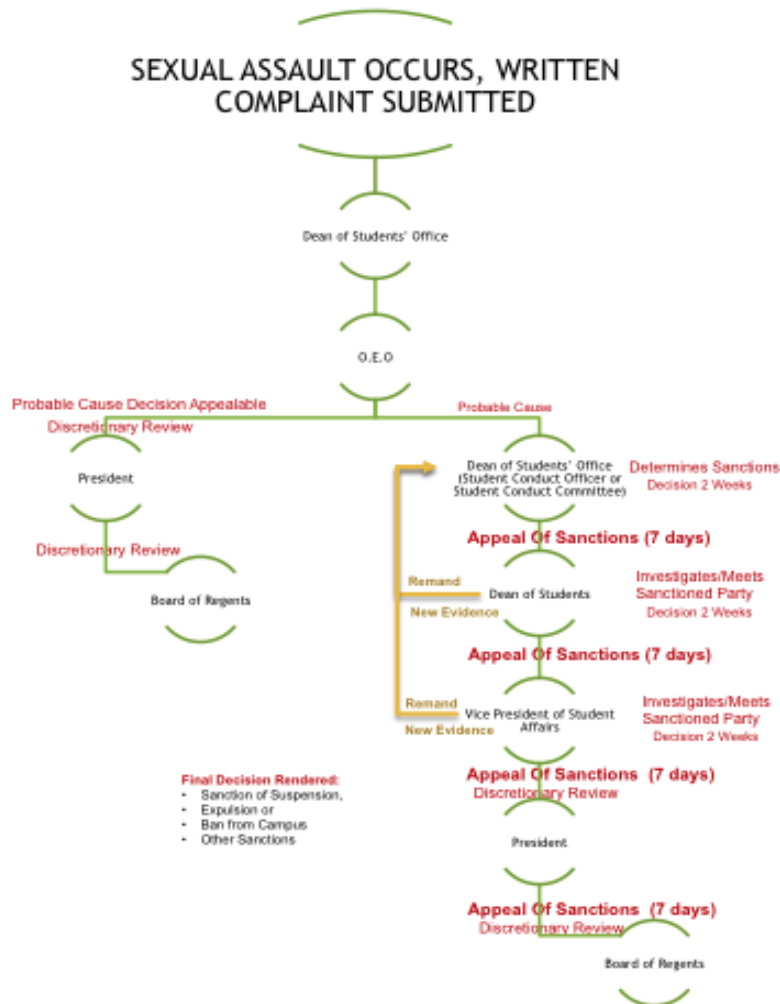
<sup>194</sup> “Sexual violence” as that term is used in the Student Grievance Procedure means physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or alcohol, or due to an intellectual or other disability. Examples of sexual violence include, but are not limited to, rape, sexual assault, sexual battery and sexual coercion. *Id.*

<sup>195</sup> *Id.* at Section 4.4(B).

<sup>196</sup> *Id.* at Section 4.4(D).

<sup>197</sup> *Id.*

Chart Q



### 3. Sexual Assault Policy – Procedures For Campus Disciplinary Action

As discussed above, the UNM Sexual Assault Policy is a challenging document for an alleged victim, alleged perpetrator or bystander witness seeking to report sexual violence. The explanation of the disciplinary process to resolve such complaints appears in Section VII and inaccurately implies that the Dean of Students would handle such a complaint, unless it occurred in the residence halls and, therefore, under the disciplinary authority of the Office for Residential Life. The document also suggests somewhat vaguely that a report of sexual assault should be made to “appropriate law enforcement authorities” and UNM’s Student Discipline Officer “in the Dean of Students Office to discuss pursuing charges under the relevant policy.” It further states that a “victim” could be accompanied by “A support person of their (sic) choice”, and informs that counselors from the Albuquerque Rape Crisis Center, Student Mental Health, UNM PD Victim Assistance Program, Women’s Center and the District Attorney’s Victim Impact Program are available throughout the UNM disciplinary process. Furthermore, the Sexual Assault Policy then

references two different disciplinary processes -- Student Grievance Procedure and the Residence Life Disciplinary Policies.<sup>198</sup> Finally, the document states that both the alleged victim and alleged perpetrator are “entitled to the same opportunities to have others present as advisors during the disciplinary proceedings” and to receive the information related to the final outcome, including sanctions imposed. However, while the Sexual Assault Policy goes on to detail specific rights applicable to support alleged victims it fails to address what, if any, additional rights are available to support alleged perpetrators.

#### 4. Sexual Assault Response Efforts by UNM

One of the more effective responses to sexual violence in general has been the use of coordinated Sexual Assault Response Teams (SART). Most schools use a team approach to respond to sexual assaults. Approximately 85% of institutions in the national sample use a team approach.<sup>199</sup> UNM is among the educational institutions that uses the best practice of having a SART.<sup>200</sup>

Many schools do not include representatives of services that could help the survivor. For example, only 25% of institutions that use a team approach incorporate the local prosecutor’s office.<sup>201</sup> And, although more than 90% of institutions state that sexual assault survivors have access to community victim assistance/advocacy programs, only 51% of schools reported incorporating those services into their team approach.<sup>202</sup>

At UNM, the Presidential Task Force includes participation by representatives from outside agencies: The Rape Crisis Center of Central New Mexico and the SANE program, as well as the on-campus service, The Women’s Resource Center. Those groups were also included in the formation of the SART/SMART team, and provide services for victims and survivors.

In addition, many schools do not use a written protocol for how the team should coordinate its response to sexual violence. Only 52% of institutions in the national sample reporting doing so.<sup>203</sup> P&A is not aware of UNM having a written protocol for how the SART/SMART team should coordinate its response.

Most institutions also fail to provide access to a Sexual Assault Nurse Examiner (SANE), a specially trained nurse who can provide medical and other services to survivors of sexual assault. Only 15% of institutions in the national sample have a SANE available on campus. Approximately 42% of the nation’s

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<sup>198</sup> This is confusing because there is no separate Residential Life Disciplinary Policies. The disciplinary procedures for the residential life department are found in the Residential Hall Handbook; however, the Residential Hall Handbook provides that any cases of sexual violence would be referred to the Dean of Students Office.

<sup>199</sup> Sexual Violence on Campus, United States Senate Subcommittee on Financial & Contracting Oversight, July 9, 2014.

<sup>200</sup> For more information on how UNM’s SART operates, see website for UNM SMART program (<http://sart.unm.edu/sart-services-/index.html>).

<sup>201</sup> Sexual Violence on Campus, United States Senate Subcommittee on Financial & Contracting Oversight, July 9, 2014.

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

largest public schools and 21% of the largest private schools have a SANE.<sup>204</sup> Here again, UNM is in compliance with best practices as it does have a SANE.<sup>205</sup>

### 5. Conclusion on Policies and Procedures

As noted above, UNM administrators and staff possess excellent awareness and knowledge regarding sexual violence and victim's services, but are not as clear on procedures post-incident procedures.

One final aspect of UNM's procedures related to sexual violence is worthy of note. The Dean of Students and his staff play a pivotal role in receiving, directing, overseeing, resolving, and deciding punishment for all manner of code of conduct issues related to UNM students, including students living in residential housing and participating in the athletics program. For this reason, it is critical, as well as a Title IX mandate, that the person holding such a key role be, and be perceived as impartial and fair. P&A identified a critical area of criticism related to the many contradictory roles the Dean of Students may play in the student disciplinary process related to sexual violence, and other matters. He also conducts sexual violence training for students and staff. It is inadvisable for an individual to sit on the body making a decision and then change hats to serve as the individual to whom that decision is appealed. Yet, the UNM Dean of Students sits as chair of the Student Conduct Committee, and hears appeals from that same committee. As discussed above and illustrated in confusing detail in Charts P and Q, the Dean of Student and Student Conduct Officer are well in the mix of disciplining students found to have committed sexual violence in violation of multiple UNM policies, yet they appear to have conflicting roles and duties which subject UNM to legitimate criticism as a conflict of interest – or multiple conflicts. Furthermore, neither the Dean of Students nor his direct report, the Student Conduct Officer, are lawyers although they investigate disciplinary matters and train other non-lawyers on what are fundamentally substantive legal principles and legal procedure.

In sum, as of the date of the policies and procedures reviewed and interviews conducted as part of the Climate Assessment, UNM was not in full compliance with the following aspects of Title IX's grievance procedure requirements related to sexual violence complaints:

- Notice of non-discrimination related to sexual violence claims is not in compliance resulting in confusion with respect to imparting knowledge of where to report incidents; lack of understanding of procedures that apply to sexual violence complaints; failure to provide statement that UNM will take steps prevent recurrence of and correct effects of discrimination; lack of notice of identity and contact information for Title IX Coordinator(s) and related responsibilities; and lack of appropriate notice to parents, students

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<sup>204</sup> *Id.*

<sup>205</sup> See website for UNM SMART program (<http://sart.unm.edu/sart-services-/index.html>).

and staff of key elements of the disciplinary procedures related to sexual violence;<sup>206</sup>

- OEO appears to not be in compliance with their procedures. P&A is unable to ascertain whether or not OEO is following the existing procedures for sexual violence incidents because the necessary files were not made available for review. For instance, in the set of Letters of Final Determination provided to P&A related to the football incident, the Letter of Determination to the complainant stated that there was “No Probable Cause” without denoting which alleged respondent that applied to.<sup>207</sup>
- Investigation and sanctioning being conducted by UNM staff without appropriate level investigative and/or legal expertise and knowledge, given the nature of sexual violence complaints, as well as apparent conflicts of interests which might undermine confidence in the disciplinary process
- Investigative and disciplinary procedures not compliant with basic due process principles
- Timeframes for resolution of sexual violence complaints too extenuated with too many levels of complicated procedures, some of which have no published time frame associated with them<sup>208</sup>
- Preventive education and training programs are not fully effective due to lack of coordination under the Title IX Coordinator, or his or her designee, and are not coordinated, nor utilizing the most effect trainers.

### C. Climate Among UNM Staff & Administrators About Sexual Violence

The attitudes and perceptions of UNM staff and administrators about the UNM policies and procedures to address sexual violence is best summarized as unfamiliar, unclear and confused. Upwards of 70% of UNM staff and administrators first notion of where to report was Dean of Students, followed by UNMPD, student health center and not sure.

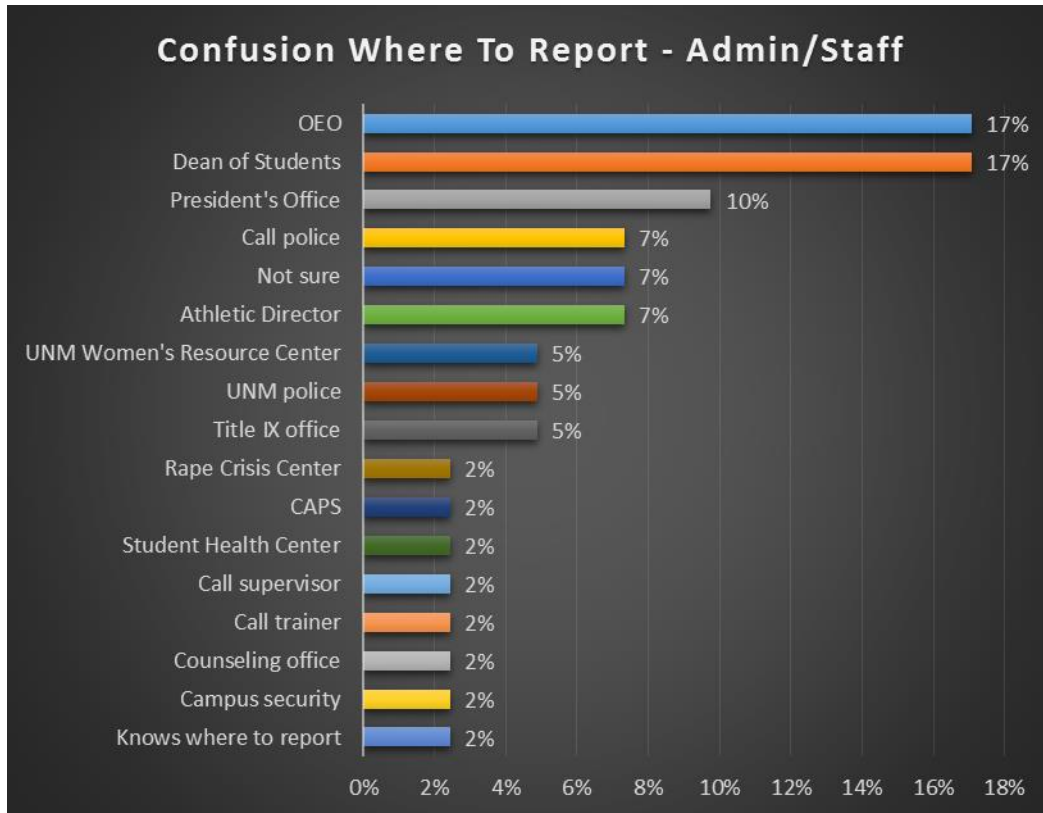
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<sup>206</sup> Recently, OCR found Princeton University in violation of Title IX. OCR determined that Princeton's policies did not comply with Title IX because the policies were not clearly articulated to the university population. The policies lacked information on how to file a complaint and the investigation process in general. Princeton violated many of the elements critical to establishing prompt and equitable grievance procedures as well. Princeton's policies did not clearly reference each other, the policies were confusing, and difficult to find. Additionally, one of the policies lacked a timeframe for appeals and another policy lacked timeframes for complaint resolution and appeals. Ruby Shao, Updated: Princeton Found in Violation of Title IX, Enters Into Resolution Agreement with Office for Civil Rights, The Daily Princetonian, Nov. 5, 2014 (<http://dailyprincetonian.com/news/2014/11/breaking-princeton-found-in-violation-of-title-ix-enters-into-agreement-with-office-of-civil-rights/>), which is attached as Exhibit “19”.

<sup>207</sup> See Final Letter of Determination to Complainant dated September 15, 2014, which is attached as Exhibit “20”.

<sup>208</sup> One of the many reasons Princeton University was found in violation of Title IX was its failure to eliminate a hostile environment by taking too long to implement a no-contact order in favor of the complainant. Ruby Shao, Updated: Princeton Found in Violation of Title IX, Enters Into Resolution Agreement with Office for Civil Rights, The Daily Princetonian, Nov. 5, 2014 (<http://dailyprincetonian.com/news/2014/11/breaking-princeton-found-in-violation-of-title-ix-enters-into-agreement-with-office-of-civil-rights/>) (Exhibit “18”).

Chart R



Nonetheless, some staff and administrators were able to reference resources that are available to the UNM resident housing community and list appropriate locations where UNM students and the campus community could access sexual violence resources, (SART/SMART, OEO/Women’s Resource Training, campus security, campus police, Albuquerque police, SANE, SHAC, Resident Advisors, Resident Managers, Dean of Students, Presidential Task Force on Violence and Sexual Assault, Lobo RESPECT Lobo RESPECT).

However, the general perception is that campus leadership’s interest in sexual violence seems to coincide with any challenging publicity and damaging media coverage.<sup>209</sup> There appears to be a correlation between the attention and focus that UNM campus leadership places on reports of sexual violence, and the intense scrutiny and media coverage that is generated by individual(s) from an identifiable group of student athletes or UNM campus community.<sup>210</sup>

**D. Climate Among UNM Students to Address Sexual Violence**

The attitudes and perceptions of UNM students about the UNM policies and procedures to address sexual violence is best summarized as unfamiliar, unclear and confused. The largest percentage of

<sup>209</sup> High Level Administrator Interview, September 19, 2014; High Level Administrator Interview, September 22, 2014.

<sup>210</sup> Staff Interview Summary, September 24, 2014; High Level Administrator Interview, September 22, 2014; Staff Interview Summary, October 16, 2014.



students interviewed indicated, as their top three choices, that they 1) were not sure where to report; 2) would report to campus security; or 3) would report to the Dean of Students. (*See above* Chart M).

### 1. Students in Residential Housing Attitudes on Sexual Violence

The general perception of the students living in residential housing is that fewer incidents of sexual violence were reported in UNM's residential campus housing than elsewhere in the UNM community. This perception is bolstered by the fact that P&A's random selection of students who were interviewed captured a significant number of freshmen students who were either new to the campus or not fully aware and knowledgeable of potential safety issues on campus. The issue of the low reporting rate is something that the University will need to address as the current reporting numbers is less than the national average.<sup>211</sup>

The introduction of programs like LoboRESPECT and SART/SMART coincided with the 2014 freshman class that entered UNM therefore it is likely that they see a campus that is effectively highlighting and addressing issues of sexual violence. Many of these students were not a part of the UNM campus community before the current initiatives became apart of the UNM culture. Just as the introduction of the SART/SMART Program and sexual violence initiatives seemed to increase the sexual violence reporting numbers, the more education, training and information provided to the students, the more accurate UNM's campus violence number will be reflected in subsequent reports. Although the UNM has instituted new initiatives and programs for education and training of its staff and administrator's in residential housing, over half (67%) of the UNM residential life students stated that they have not received sexual violence training (*see above* Chart F). This is another likely contributing factor to the low reporting numbers.

During the Resident Life Association meeting, the students living in residential housing openly discussed the fact that although no alcohol or drugs were permitted on campus or in the dorms, students often go to off campus locations to drink alcohol and "stumble" back to campus.

While 67 percent of incapacitated sexual assault victims do not report the incident to law enforcement as they did not think it was serious enough,<sup>212</sup> we must note that this is not an apples-to-apples comparison when looking at UNM's incident reporting figures reflected in this Report. P&A's mandate did not cover the entire UNM community. In addition, the UNM campus survey data noted that students living in residential life listed 36 different possible reporting locations, which evidences their confusion and frustration in knowing where to report incidents. This fact may be an additional cause for the apparently low reporting number for sexual violence incidents in UNM residential housing.

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<sup>211</sup> See article citing October 2014 University of Oregon study, which found that 1 of 10 female students at the University had been raped and one in five women are sexually assaulted while in college. Thomason, Andy, *1 in 10 Female Students at U. of Oregon Has Been Raped, Study Finds*, October 3, 2014 (<http://chronicle.com/blogs/ticker/1-in-10-female-students-at-u-of-oregon-has-been-raped-study-finds/87385>), which is attached as Exhibit "21".

<sup>212</sup> The Department of Justice Campus Sexual Assault Study, 2007

With respect to alcohol use among college student, consistent national data supports the Climate Assessment data gathered from UNM that links sexual violence incidents to the use of alcohol. UNM staff and faculty consistently bemoaned the overconsumption of alcohol by UNM students in their residential environments and other locations, as a major contributing factor to sexual violence.<sup>213</sup> Students interviewed by P&A also frequently mentioned alcohol use by students and its contribution to sexual encounters. Students mentioned that many students choose to live in non-UNM managed student housing – private housing or ACC-managed properties -- precisely because there is more freedom and they can have and consume alcohol without being detected. By way of example, alcohol is allowed in Lobo Village for students over the age of 21, but is not allowed in UNM residential housing. The policies and regulations for students living in residential housing have created a student housing environment discouraging alcohol consumption. The dilemma for UNM, and all universities in the U.S. is that, although UNM has no way of tracking students use of alcohol and sexual violence incidents at off campus locations (i.e., the Cottages, private residences), it is still required by Title IX to address the effects of sexual violence occurring off campus that impact a students educational experience.

Alcohol consumption is a critical component when assessing the likelihood of sexual violence incidents. The students interviewed, and those students who responded in the focus groups and the campus survey, informed the P&A team that UNM is a “dry” campus, where no alcohol was permitted. For this reason, P&A interviews confirm that students’ perception is that a majority of parties do not happen within UNM’s residential housing (approximately 9 percent of student interview responses mentioned a facility within UNM residential housing as a “party location”). The most common location mentioned (approximately 31 percent) by students as a party location was off campus private housing; The Cottages. The second most common response was privately managed on campus housing, Lobo Village, at approximately 16 percent. However, almost 7 percent stated that it “used to be” Lobo Village, confirming reports that ACC is tightening the reins on partying and the associated drinking. The third most “party location” mentioned was Casas del Rio at approximately 11 percent. Thus, while ACC housing was mentioned, the majority of partying happens off campus. Given that almost 60 percent of the survey participants listed alcohol as the most common substance used in sexual assaults,<sup>214</sup> the fact that most partying occurs off campus correlates with the student’s perception that incidents of sexual violence are more likely to occur off campus.

## 2. Student-Athlete Attitudes on Sexual Violence

The factual findings of the Climate Assessment supports the UNM athletics program general view that excluding the earlier reports of sexual violence in 2014, the UNM athletics department is not plagued with student-athletes who are involved in rampant acts of sexual violence. In fact, the data confirmed that UNM student-athletes are no more likely to engage in acts of sexual violence compared to other UNM groups. (*See* Charts G and K)

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<sup>213</sup> Staff Interview, September 24, 2014; High Level Administrator Interview, September 22, 2014.

<sup>214</sup> *See* Q18 of the Climate Assessment Survey Report ([Exhibit “5”](#)).

## CLIMATE ASSESSMENT REPORT ON SEXUAL VIOLENCE

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The athletics program has somewhat effectively used its and the university's resources to provide ongoing education and training for student-athletes to become aware of, to avoid, identify and react to potential acts of sexual violence. The data showed that 83% of student-athletes received some education and training on sexual violence (*see* Chart J) and student-athletes have requested more training and education.<sup>215</sup> However, it remains unclear whether student-athletes have exercised their knowledge in real world circumstances. The factual data show that 83% of student-athletes have not witnessed a student being threatened or attacked, and some student-athletes reported being unclear that the circumstance required them to intervene.<sup>216</sup> Moreover, the data suggests that although 72% of student athletes are aware of the university's policy on sexual-violence, student-athletes remain unclear on where to or how to report in accordance with the university policy (*see above* Chart R).

Although 100% of student-athletes interviewed stated having no personal experience with sexual violence, many of the student-athletes feel a responsibility to report acts of sexual violence committed on others.<sup>217</sup>

UNM's leadership has approached this Climate Assessment with seriousness and purpose to determine what the stakeholders of the university think and believe about UNM's efforts, methods and procedures to provide a safe campus to students, student-athletes, staff, faculty and administration.

UNM's leadership has provided P&A with much information and access to many individuals in order to carry out the mandate of this Climate Assessment. Athletics assumed a leadership role in assisting the General Counsel office to make available the requested randomly selected student-athletes, coaches, athletics department staff and administration to be interviewed.

As stated throughout the report the data revealed that the prevalence of sexual violence is no more likely to occur with athletes or involve the athletics program than they general student population or other university departments. Interviews conducted by P&A revealed, athletes feel they must pay special attention to their actions and conduct given the position they hold within the university. The privilege that student-athletes have as representatives of the university is under more scrutiny from the public, administration and media.

In addition, sports specific residential assignments and socializing (partying) may contribute a student-athlete versus non-student athlete (NARP or "jersey chasers") divide. Student-athletes feel they must always be mindful to avoid circumstances that might lead to reported incidents which are likely to cause damage to a student athlete's reputation, team interest and/or the athletic department.

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<sup>215</sup> Male Student Athlete Interview, October 14, 2014; Male Student Athlete Interview, October 15, 2014.

<sup>216</sup> Female Student Athlete Interview, October 13, 2014; *compare with* Non-UNM Interview, September 24, 2014 ("The disclosures have happened more recently, over the past year probably, since she started doing the trainings. She would say probably at least 50 students shared stories with her since then").

<sup>217</sup> *See* Chart on Comfortable Reporting for Student Athletes attached as Exhibit "22".

## VII. Considerations for Improving Climate Regarding Sexual Violence & Sexual Assault

### A. Policies

Generally, in an effort to be proactive and compliant with applicable federal law, including Title IX and the Clery Act, and out of genuine concern for the safety of its students and staff UNM has created a web of policies that would challenge even the most committed person seeking information about sexual violence. They are collectively confusing in structure, dense with legalese, make frequent references to other documents and/or policies, ultimately rendering UNM's policies impacting sexual violence ineffective as a resource for most seeking guidance. This viewpoint was confirmed by comments from numerous UNM-affiliated individuals, notably many of whom are well-educated high-ranking administrative officials and staff working at the university. It appears to P&A that the apparently territorial manner in which different segments of the university operate, resulting in disjointed and uncoordinated initiatives on sexual violence,<sup>218</sup> contributes to the current state of affairs at UNM.

P&A encourages UNM to consider simplifying its web of policies impacting sexual violence to create a single accurate,<sup>219</sup> user-friendly and easily accessible sexual misconduct policy, applicable to students and employees.<sup>220</sup> It may be better for UNM not to have a separate sexual violence policy statement for residential housing because this adds to confusion over how these matters are handled and could lead to inconsistent and unequal treatment. Alternatively, it may be prudent or useful for UNM to have two simplified and user-friendly policies on sexual violence, one for employees and one for students. However, consideration should be given to avoid complicating the procedures for students who are also employees. P&A also recommends that careful consideration be given to choosing the task force or working group that develops the more simplified sexual violence policy so that all the key stakeholders are included in the development process: students (male and female), campus security, law enforcement, sexual violence survivors (male and female), on-campus advocates, student affinity groups, criminal and civil lawyers from the local chapter of the New Mexico Bar Association, and local victim advocate organizations. Rather than placing "figure heads" on this working group, P&A recommends that a concerted effort be made to make sure that individuals involved have expertise and knowledge on sexual violence, and that the culture of the group allows contributions without fear of retaliation or adverse consequences.<sup>221</sup>

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<sup>218</sup> As P&A was preparing this report, UNM was finalizing a report for the CARE initiative, which would seek to coordinate these various segments under a single program.

<sup>219</sup> The Pathfinder policies provided to P&A do not state that investigations of sexual violence claims would be handled by OEO. Rather, these policies only list OEO as an option for reporting of discrimination or sexual harassment.

<sup>220</sup> UNM may have already begun preparing such a policy, as P&A is aware of a newly drafted sexual violence policy dated August 25, 2014.

<sup>221</sup> "There is one student at the Task Force [on Sexual Violence] meetings and high level administrator can't say things when he is around. She should be the one saying a lot, so there is an issue of who has a voice at the table. The outsiders at the table can only say so much. A high level administrator shut her down a lot in the beginning because she was insisting that this work does not stop at the college/campus map. The high level administrator only wanted to look at rape on the campus map itself and she said that is not where the rape is happening. Out of 13 cases, 12 were off campus. This administrator pushed and the other high level administrator finally accepted." High Level Administrator Interview, September 19, 2014.

Paramount to the simplification of the UNM policies impacting sexual violence is strict compliance with the notice requirements of Title IX and the DC Letter, particularly, defining sexual violence.<sup>222</sup> An appropriate goal for UNM should be that everyone in the UNM community is aware of and knows what sexual violence is and how to access UNM's policy provisions on reporting and confidentiality protocol.<sup>223</sup> Use of the Internet and social media, are logical means of achieving notice of sexual violence policies. Furthermore, expanding notice beyond simple UNM website postings, text messages and email pushes is recommended, as many students communicate via Facebook, Twitter, SnapChat, Instagram and YikYak.

From an education and training perspective, UNM should consider consolidating and coordinating these efforts under one office or responsible group that will oversee and ensure consistency across all education and training initiatives. It would help if administrators and staff took the online sexual violence training more seriously, and if UNM added in-person training modules that are likely to have more of an impact. In addition, UNM could benefit from developing an on-going training schedule for all university community members, including faculty,<sup>224</sup> so that everyone understands sexual violence and learns about prevention strategies.<sup>225</sup>

UNM is advised to identify trained, confidential victim advocates who can provide emergency and on-going support for victims and their families once knowledge of a sexual assault is provided. Information about how to contact a confidential victim advocate should be provided in a variety of formats and locations (including social media) accessible to all university community members, as well as on appropriate Lobo Respect pages. Sexual assault is very complex and traumatic experience, and immediate response and on-going services need to be provided by someone who has expertise in this area.

### **B. Procedures**

UNM has the challenge of compliance with federal and state law while satisfying all university constituents. As such, “[t]he students' interest in unfair or mistaken exclusion from the educational process must be balanced against the school's interest in discipline and order.”<sup>226</sup>

Thus, while implementing immediate and effective steps to combat sexual violence, UNM must also ensure that both the alleged victim and alleged perpetrator are not hampered in their ability to enjoy the benefits of their education without due process and fair procedure. UNM should be careful to not only seek to provide preventive interventions and post incident support for alleged victims – usually female –, but

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<sup>222</sup> It would be helpful to update definitions in “Pathfinder, UNM Student Handbook, Section II, Definitions” to include lack of consent or inability to consent and add definition of consent from UNM draft sexual violence policy dated 8/25/14 listed in number 4.

<sup>223</sup> Title IX and Recommendation from Not Alone: The First Report of the White House Task Force to Protect Students from Sexual Assault.

<sup>224</sup> During the Climate Assessment, P&A learned of two or three instances of staff and faculty sexual violence towards student. P&A was informed that these instances were outside the scope of our mandate. However, understanding UNM's commitment to safeguarding all its constituent groups, these instances must be handled as they have a similar impact on a student's ability to fully access his or her educational benefits, as a student-on-student incident or even more so. Staff Interview, October 13, 2014; High Level Administrator Interview, September 22, 2014; Staff Interview, September 23, 2014.

<sup>225</sup> For instance, UNM staff would likely benefit from learning more about the Bystander Intervention strategy to sexual violence.

<sup>226</sup> *See Goss*, 419 U.S. at 584.



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must also be sure to provide support and preventive interventions for alleged perpetrators.<sup>227</sup> In the first instance, UNM may consider relationship classes for both female and male students, separately or together, as part of mandatory and continued life skills series of courses throughout the four years of college. As the saying goes “an ounce of prevention, is worth a pound of cure,” the university should aim through Lobo Respect and other initiatives to educate students about healthy sexual relationships in the 21<sup>st</sup> Century.

If, regrettably, an incident of sexual violence does occur, UNM must provide support for both the female and male student involved. Such an approach is not only mandated by law, it is good practice. If an alleged perpetrator is unclear and confused in the context of sexual relationships, providing support and help for that individual, to avoid further incidents of sexual violence, is as important as providing victim services to the alleged victim. If the incident is a misunderstanding or miscommunication between a dating couple, there is even more reason for psycho-social support and counseling so that both may resume their participation in their education and enjoy the benefits that UNM has to offer.

In addition to supporting the alleged victim and alleged perpetrator, UNM must promptly invoke its procedures and provide support to both parties in its disciplinary process. It may be wise for UNM to seek an alliance with the New Mexico local bar association, so that both parties may enjoy guidance and advice during what is essentially a civil legal process. P&A heard protests that male student athlete alleged perpetrators were supported in finding legal counsel, while female student alleged victims were unable to obtain experienced legal advice.<sup>228</sup> The entire UNM disciplinary process would likely be better served with both parties having experienced legal advisors, which UNM is in a position to assist in making available to students.<sup>229</sup>

It may be wise for UNM to review its investigative and adjudicative systems. UNM should secure professional and appropriately trained individuals to gather evidence. Rather than make a probable cause determination as to whether a violation of the Student Code of Conduct occurred, the process should determine if a sexual assault occurred. UNM should also look into who decides the sanction and streamline the appeals process. As the flow charts above illustrate, the Dean of Students has multiple conflicting roles in the UNM student disciplinary process. His office handles both the sanctioning and the first level of appeal. Also, both the Student Conduct Officer and Student Conduct Committee (which includes students) are not trained legal professional arbitrators or hearing officers. While the individuals in these roles for UNM currently are educated, competent professionals, their training<sup>230</sup> and complex overlapping

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<sup>227</sup> A High Level Administrator mentioned that accommodations for a male perpetrator had been made in the past at UNM. High Level Administrator Interview, September 22, 2014.

<sup>228</sup> This may be a perception versus reality situation, as the student rumor mill usually is unaware of factors like, the financial wherewithal of a family to hire an attorney, or professional or family connections that are able to secure pro bono or low cost assistance.

<sup>229</sup> UNM should explore seeking pro bono attorney volunteers for all UNM students involved in disciplinary proceedings, via the New Mexico Bar Association and/or the American Bar Association. Rather than fear legal representation of students, UNM and other universities might be better served to have early attorney intervention, rather than lawsuits later if the process is deemed to have gone wrong.

<sup>230</sup> In fact, the Student Conduct Officer, a non-lawyer, trains the Student Conduct Committee, all non-lawyers, on the legal standards and administrative hearing process related to disciplining students found guilty of sexual misconduct. Continuing this practice will expose UNM to criticism, as has been the case with other universities. Jed Rubinfeld, *Mishandling Rape*, The New



involvement in the disciplinary process does not promote confidence in the system as related to discipline of sexual violence incidents. Moreover, some of these individuals are unclear about how the administrative disciplinary process does and should differ from criminal proceedings.

As mentioned above, UNM is well advised to reduce the length of its sexual violence disciplinary investigation and disciplinary process in order to resolve the incident more promptly.<sup>231</sup> Currently, OEO states that an investigation can take anywhere between two weeks and four months depending upon the complexity of the case.<sup>232</sup> The DC Letter states that an investigation should take 60 days. Given the subsequent sanctioning process and the five levels of appeals that are possible, the full disciplinary process could take an additional two and half to three months if everything works smoothly and there are no delays. UNM needs to look at ways to streamline this process in order to satisfy the prompt requirement of Title IX.

### C. Concerns About Campus Safety & UNM Police

Although a significant number of the UNM constituents interviewed for this Climate Assessment expressed feeling safe on UNM campus, many of them qualified that statement with an exception based on time period of the day, a specific set of locations on campus, and UNM's open campus, specifically mentioning released mental patients and homeless people roaming around.<sup>233</sup> In fact, one alum of UNM stated, “[i]f he had a daughter, he would not want her to take night classes at UNM. It is an open campus and there are a lot of homeless people.”<sup>234</sup>

UNM should consider improving its security in a manner that would prevent sexual violence incidents from occurring. The university should consider adopting a program like the one at the University of Florida, which provides a unique service to help increase student safety at night. The Student Nighttime Auxiliary Patrol (“SNAP”) is a free transportation service that has been offered since 1976. SNAP provides a “point-to-point vehicular escort service.” The SNAP program is an on-call “buddy” service for students, staff, and visitors upon request. SNAP employees are university students who have passed a background check and driving test. The University of Florida Police Department, Community Services Division, oversees this service. There is a designated SNAP police coordinator as well. A SNAP escort can be contacted in two ways. There is a SNAP App, which is a free download, or students can call the SNAP number, which directs them to a dispatcher. There are certain places on campus that are designated as SNAP pick-up locations. SNAP runs from 6:30pm to 3:00am during the fall and spring semesters and runs from 8:30pm to 3:00am during the summer semester.<sup>235</sup>

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York Times, Nov. 15, 2014 (<http://www.nytimes.com/2014/11/16/opinion/sunday/mishandling-rape.html>), which is attached as Exhibit “23”.

<sup>231</sup> Non-UNM Interview, October 16, 2014; *see also* Not Alone: The First Report of the White House Task Force to Protect Students from Sexual Assault (Exhibit “4”).

<sup>232</sup> *See* OEO Procedure Section IV: Investigation (<http://www.unm.edu/~oecounm/discrimination/DiscriminationClaimsProcedure.pdf>).

<sup>233</sup> Staff Interview, October 16, 2014; Female Student Athlete Interview, October 13, 2014.

<sup>234</sup> Non-UNM Interview Summary, October 16, 2014.

<sup>235</sup> Student Nighttime Auxiliary Patrol, University of Florida Police Department, November 30, 2014 (<http://www.police.ufl.edu/community-services/student-nighttime-auxiliary-patrol-snap/>).

Regarding the issue with the open campus, one student, who transferred from Arizona State University, mentioned that Arizona State created a task force to address the homeless person issue in Tempe.<sup>236</sup> She stated that the task force was pretty successful at reducing the homeless problem in areas around campus.<sup>237</sup> A similar task force could be created at UNM to help address this issue.

### **D. Sexual Violence Education, Training & Policy and Procedures Awareness**

UNM should be applauded for being ahead of the curve, compared to other institutions of higher education, in proactively providing multiple opportunities for training about sexual violence.<sup>238</sup> However, this training appears to be focused on a small segment of the UNM student population – student athletes – and on administrators and staff in the areas of UNM residential housing and the athletics program, as well as Greek Life. To the extent that it is not already doing so, and in light of UNM being primarily a commuter campus with the vast majority of students living in private housing off campus, the university should ensure that sexual violence training is expanded, consistent and coordinated. In addition to having a streamlined, coordinated education and training program for all of its constituency groups, not just student athletes, UNM should seek to hire non-UNM affiliated trainers who are younger, gender and ethnically diverse, and who “speak the language” and “know and live the culture” of the diverse body of students being trained. The relationship between men and women among Latino, Asian, African-American, Europeans, South East Asian, African, Muslim, Hindu, Christian and other cultures, religions and ethnicities differs from that of the dominant white, Judeo-Christian culture of the United States. Thus, to the extent that UNM has a culturally, ethnically, and religiously diverse constituency of students on campus and participating in athletic programs, those educating them about sexual norms and laws in the U.S. should be knowledgeable and sensitive to their diversity. Likewise, the staff and administration of UNM should be educated in the social and cultural norms of the students they interact with. UNM must ensure that sexual violence training geared towards students is impactful to them. Some student interviewed by P&A indicated that the freshman orientation and/or other UNM training was comical and not to be taken seriously.<sup>239</sup> At least, one interviewee reported that UNM administrators in attendance at a student training session made an inappropriate comment about the clothes a female trainer was wearing and appeared to be unsupportive of the endeavor.<sup>240</sup> This may be an example of the “gender gap” and lack of understanding of millennial youth culture, and/or older white male intolerance. Whatever the reason, UNM should ensure that staff in attendance at sexual violence training is “fully on board” with the program.

Additionally, the people in charge of putting together education and training sessions should coordinate with the department responsible for alcohol abuse training in order to work on a combined program. Many students and administrators, as well as national data, described the link between incidents of

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<sup>236</sup> Female Student Athlete Interview, October 13, 2014.

<sup>237</sup> Although several interviewees mentioned that there was a problem with homeless people coming on campus, no one mentioned an incident of sexual violence involving a homeless person. However, some did mention catcalls and other forms of sexual harassment involving homeless people.

<sup>238</sup> Alarming, approximately 20-21% of institutions surveyed provide no sexual assault response training at all for members of their faculty and staff. Additionally, approximately 31% of schools do not provide any sexual assault training for students. Sexual Violence on Campus, United States Senate Subcommittee on Financial & Contracting Oversight, July 9, 2014.

<sup>239</sup> Female Student Athlete Interview, October 15, 2014.

<sup>240</sup> High Level Administrator, September 19, 2014.

sexual violence.<sup>241</sup> Alcohol abuse and sexual violence training should not be completely separate given both the perceived connection within UNM's culture and the real connection based on objective data. P&A thinks that it is imperative that the departments in charge of sexual violence and alcohol training coordinate and integrate aspects of their individual training into each other's training.

### **E. UNM Administrators & Staff**

In addition to more coordinated and serious staff education on sexual violence, UNM would be wise to intensify the aspect of the training that emphasizes UNM's legal obligations under Title IX to report incidents of sexual violence, specifically the distinction between who is a mandatory reporter and who is a confidential reporter as well as the significance of that distinction. While many high level and long-serving administrative staff indicated they would not fear retaliation for reporting sexual violence, an alarming number indicated that they knew and understood why lower level, less job-secure staff, would be reluctant to report such incidents.<sup>242</sup> Some UNM staff reluctance about reporting sexual violence stemmed from confusion about where to report (*see* Chart R). UNM would be well advised to eliminate this barrier to reporting among its staff or risk Title IX consequences.

### **F. Student Concerns About Reporting Sexual Violence within UNM Community**

UNM is taking proactive steps to improve its response to sexual violence on campus, and thus improve safety for all students. During the course of Climate Assessment over the last several months, potential obstacles still remain that could prevent students, faculty or staff from reporting an incident. In the in-person interviews conducted by P&A during two on-campus visits, the majority of people stated they would be very comfortable or comfortable reporting an incident if they were aware of it. Some comments during those interviews are helpful to consider ways to improve reporting comfort levels. Those general comments can be summarized in the following categories: 1) the victim should be the person reporting; 2) the interviewee was not comfortable reporting; or 3) the interviewee did not know where to report.

However, the Climate Assessment Survey Report (*see* Q38) indicated much different levels of comfort, and some concerning attitudes about reporting sexual violence.<sup>243</sup> There were a significant number of answers that indicated fear, lack of support, or lack of education about sexual violence. Some of those answers were: 1) fear of retribution; 2) fear of not being believed, being blamed, or ashamed/embarrassed; 3) would want to forget it happened, 4) fear others would find out, 5) fear others would not think it was serious or not important, or 6) feeling partially responsible.

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<sup>241</sup> High Level Administrator Interview, September 22, 2014; High Level Administrator Interview, September 26, 2014; Female Student Athlete Interview, October 15, 2014; Female Student Athlete Interview, September 16, 2014; *see also* Women's Resource Center Sexual Violence Presentation (stating 90 percent of all campus rapes occur when alcohol is being consumed), which is attached as [Exhibit "24"](#).

<sup>242</sup> High Level Administrator Interview, September 22, 2014.

<sup>243</sup> *See* answers to Q38 of the Climate Assessment Survey Report ([Exhibit "5"](#)).

This area of question and responses indicates that UNM has an opportunity to expand its impact on reducing sexual violence on campus by expanding education and prevention efforts within the entire student body, as well as the whole academic community. Increased reporting efforts, since the implementation of SART/SMART, shows that, with a system-wide focus, the university's commitment to this issue will improve and bring the desired results.<sup>244</sup>

Additionally, Clery data shows that UNM has not reported any incidents of sexual violence on non-campus or public property within the last three years. These areas seem to be a blind spot and could also contribute to underreporting. UNM and the UNM PD should try to coordinate with Albuquerque PD in order to ensure that it is made aware of sexual violence incidents involving students off-campus, both so these incidents can be reported in their Clery data and also to ensure that there are no lasting effects on the survivors' education experience from the incident of sexual violence.

### **G. UNM Police Department**

Many individuals interviewed during the Climate Assessment spoke well of the UNMPD. UNM PD should be aware of the following critiques mentioned to P&A: 1) its lack of visibility, 2) its slow response times (periodically), 3) its lack of night patrols (especially on north and south campus), and 4) its unwillingness to share sexual violence investigative results with others. In addition, one individual reported that, even though a UNM PD representative is on the Presidential Task Force, that individual rarely attends meetings.<sup>245</sup>

One possible explanation for slower response times might be related to how calls to 911 are routed. On high level administrator indicated that “[f]irst, everyone primarily uses his or her cell phones almost 99% of the time. The 911 connect via a cell phone does not go to campus police directly. It goes to the city police then gets transferred to the campus police. If you use the landline on Lobo, for example, then that goes directly to campus police. There is a delay if people use their cell phones. That is a factor in response time.”<sup>246</sup>

A number of interviewees mentioned the blue security call box kiosks around campus, which link to the UNM PD. Some comments were mocking,<sup>247</sup> while others indicated that the kiosks were the place they would go for assistance in an emergency.

Some interviewees also mentioned that UNM, presumably with the assistance or cooperation of the UNM PD, sends students text and/or email alerts if there is any emergency on campus. This fact appeared to make students feel more secure.<sup>248</sup>

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<sup>244</sup> The SMART/SART team was implemented in 2013. Based on the Clery data, the reports went up from 4 incidents of sexual violence reported in 2012 to 11 incidents of sexual violence reported in 2013. That increase was in part attributed to the creation of the SART team by several interviewees. High Level Administrator Interview, September 19, 2014; High Level Administrator Interview, September 22, 2014.

<sup>245</sup> High Level Administrator Interview, September 19, 2014; Non-UNM Interview, September 24, 2014.

<sup>246</sup> High Level Administrator Interview, October 16, 2014 and November 21, 2014.

<sup>247</sup> One individual made a sarcastic statement that is best paraphrased as “what am I going to do if I get attacked, look for a blue kiosk while I’m fighting for myself?” Female Student Athlete Interview, October 15, 2014.

<sup>248</sup> Male Student Athlete Interview, October 14, 2014.

In light of the above criticisms, some recommendations that might be useful for the UNMPD to consider which would have a positive impact in preventing sexual violence at UNM include: 1) walking patrols, 2) bike patrols, 3) Segway patrols, 4) night patrols in isolated and dark areas of campus, and 5) more patrols during night hours when students are leaving late classes.

### **H. UNM Student Housing**

UNM students are living in various housing communities throughout the University and Albuquerque, including on-campus dormitories and apartments that are managed by UNM staff and employees, privately owned and operated on-campus housing that is managed by ACC, privately owned off-campus housing including private apartment rentals and privately owned homes that are not affiliated with UNM.

Under Title IX, UNM has a responsibility to safeguard the well-being of UNM students both on-campus and off-campus.<sup>249</sup> There were 7 reports of sexual violence in on-campus UNM housing facilities from 2013 to 2014, it is not known whether off-campus incidents, reported to the Rape Crisis Center of Central New Mexico, took place in off-campus privately-owned student housing. However, UNM must work to ensure student safety for UNM students in housing focusing on incoming freshmen who appear to be the most vulnerable population due to their naivety. UNM can begin improving this situation with the education and training of all students, and should coordinate with staffing to ensure that any changes in infrastructure or building renovations in on-campus housing units minimize the possibility of sexual assault, focusing on lighting, cameras (in non-private areas such as hallways), etc.

Based on the Title IX requirements, UNM has the responsibility of coordinating training for students in both UNM managed housing and AAC managed housing. While, the relationship between UNM-managed housing and ACC-managed housing appears to have improved recently, especially since the new director of Lobo Village Warren Porter was hired, there is room for more improvement. One high level administrator in UNM-managed housing stated that she was unaware of what goes on in Casas del Rio.<sup>250</sup> While P&A recognizes that ACC is separately operated, it is important that the UNM-managed housing and the ACC-managed housing effectively communicate with each other, especially as it relates to preventing sexual violence and Clery reporting, because this lack of communication could cause students to be victims of sexual assault and make UNM susceptible to a federal Clery and/or Title IX violation investigation. Likewise, the difference in the respective operations in UNM-managed housing and ACC-managed housing has led to inconsistencies in the message provided to students.<sup>251</sup> UNM-managed housing staff mentioned the use of bulletin boards and other centers of information within UNM-managed housing to convey important messages about sexual violence.<sup>252</sup> It is unclear if similar dissemination of materials related to sexual violence is taking place within the ACC-managed housing. Thus, UNM-managed housing and ACC-managed housing need to find ‘common ground’ and establish a more effective working relationship to

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<sup>249</sup> Off campus safeguards are required to the extent that they involved UNM programs conducting off campus events or where effects of events off campus affect a student’s educational experience.

<sup>250</sup> High Level Administrator Interview, September 26, 2014.

<sup>251</sup> Residence Hall Association Meeting, October 13, 2014.

<sup>252</sup> Female Student Interview, September 26, 2014; High Level Administrator Interview, September 26, 2014.



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deliver the same safety and anti-sexual harassment message to all UNM students who are living in residential housing.

Based on the variety and diversity of UNM housing locations, and as a way of fostering this effective working relationship, UNM-managed residential housing and ACC managed residential housing should operate consistently by providing the same training, standards, procedures and protocol to all Resident Advisors and housing staff for student matters including security, discipline, oversight and related housing responsibilities.

Since the University is responsible for the health, safety and well-being of all students irrespective of their on-campus, off-campus or private housing living environment, it may be useful for UNM to establish a mechanism (process) where UNM, ACC resident managers, and other private property managers of properties in which UNM students tend to reside, can meet, collaborate, share and dialogue about residential life issues on a regular basis.

The monitoring and oversight processes of residential housing for both UNM and ACC-managed housing should be consistent with regard to filing and documenting incident reports for security, Resident Advisors and housing staff employees. Within the parameters of the respective lease agreements: ACC managed student residential housing might be well served by establishing, learning and academic development programs related to: student Learning Development Communities, Residential Housing Association, other student/academic development and support programs. An early pre-semester orientation and training program for athletes and freshmen students arriving on campus before the beginning of school and living in residential housing should be undertaken by UNM.

Another important part of the on campus experience can be living in living-learning communities. These communities provide opportunities for students with similar interests to live near and interact with each other. UNM-managed housing provides as many as 15 distinct living-learning communities.<sup>253</sup> One high level administrator in residential housing stated that there was no specific student-affiliated housing in the ACC-managed student housing but that they did have some living-learning communities.<sup>254</sup> However, it appears that these are not at the same level as UNM-managed housing. Living-learning communities are important because, by pairing students with similar interests together, the housing arrangement can allow students to socialize together in activities related to their specific interests and create opportunities to tailor specific events for these groups. Thus, an alternative to partying can be provided through these social interactions and events related to the common interest of the living-learning community, which could, it is hoped, lessen the opportunities for sexual violence related to alcohol consumption and drug use.

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<sup>253</sup> The 15 living-learning communities are: Hokona: 1) the Business Hall and 2) the Scholars Wing; Laguna: 3) Engineering Hall, 4) Fine Arts Wing, 5) Sciences Community and 6) Gender Neutral community; Santa Clara: 7) Global Focus, 8) Education housing; SRC Apartments: 9) Second year experience; Alvarado: 10) Pre-health professionals, 11) Social Sciences; Coronado: 12) Service volunteering, 13) Outdoor recreation and eco-living; Redondo Village: 14) BA/MD community and 15) graduate student housing. Female Student Interview, September 26, 2014.

<sup>254</sup> Non-UNM Interview, October 16, 2014.



## I. UNM Student Athletes and the UNM Community

UNM should be commended for its outstanding efforts to train the student athlete population on the dangers of sexual violence. This effort has led to most, if not all, of the student athletes receiving such anti-discrimination education. That being said, in order for this training to have most meaningful impact, it should be constant throughout a student's college experience. UNM has provided additional training to freshman student athletes in the form of a "Freshman 101" class that cover sexual violence. P&A recommends that UNM expand the class offering to upperclassmen, on an annual or per semester basis, because how to have healthy non-abusive, rewarding sexual relationships is a strong basis for preventing sexual violence for all students on campus.

As stated in the Climate Assessment above, both athletes and non-athlete students noted a divide between the athlete student population and the non-athlete student population. It is paramount that UNM address this divide because it has negative consequences related to sexual violence. Consequently, UNM might well seek to integrate and engage the student athletes with the non-athletes outside the classroom to promote a better understanding among between groups.

One high level administrator noted that he felt there was not a lot to do on campus for students in general.<sup>255</sup> Many student athletes also mentioned that between practice and school, they do not have time to participate in many on campus activities.<sup>256</sup> One way that student athletes could be better integrated into the UNM community as a whole would be to ensure that student athletes are aware of social events going on within the UNM community. Therefore, P&A suggests that UNM establish an athletic department point person – student athlete ombudsperson<sup>257</sup> -- for issues of student life. Ideally, the ombudsperson would be experienced in matters of sexual violence prevention and serve as Life skills coordinator. The ombudsperson's responsibility could include working with others within Student Activities to create events and develop educational programs that encourage student athletes and non-athletes to socialize in order to combat the divide. Other possible activities could include pairing student athletes with UNM non-student athletes to perform various community service and charitable activities. These events might provide a substantially safer way for these groups to mingle and get to know each other better than other alternatives, such as "partying" with alcohol and drugs.

As explained above, the divide between student athletes and non-athletes stems from an attitude that student athletes are special because they participate in athletics. Student athletes are proud to represent UNM on the field. P&A suggests that another way to integrate athletes into the community at large is to have them represent UNM off the field, as well as by participating in the student government at UNM. An administrator familiar with the student government stated that there are currently a few athletes on the student government but that is not always the case.<sup>258</sup> Thus, P&A advises that UNM establish athletic

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<sup>255</sup> High Level Administrator Interview, September 26, 2014.

<sup>256</sup> Student Athlete Interview, October 15, 2014; Male Student Athlete Interview, October 14, 2014; Female Student Athlete Interview, October 15, 2014.

<sup>257</sup> The Staff has an ombudsperson, although the staff ombudsperson's duties are different than the duties of the ombudsperson proposed by P&A, but the students have no such ombudsperson.

<sup>258</sup> Female Staff Interview, October 16, 2014.

leadership position on UNM Student Government Association in order to encourage student athletes to get involved with the student governance on the UNM community as a whole. This role would allow student athletes to take a leadership role in the community as a whole and would allow non-athletes students to view student athletes in a manner outside the athletic arena.

As recommended earlier, female student athletes, in particular, noted concerns about the safety around athletic facilities due to lighting. Improved lighting around the athletic facilities combined with the SNAP program and the night patrols suggestions above should address this issue, so long as they cover south campus, where the athletes primarily reside and study.

Finally, UNM should publish definitions, procedures and policies, FAQ's on sexual violence in the Student Athlete Handbook and online in the athletics department's website for student athletes to review and use as a resource. This information could be made into posters and placed in student athletes' locker rooms and throughout the Student Success & Services Center.

### **J. Off Campus Support Groups & Organizations**

While UNM has established a working relationship with the local rape crisis service provider, Rape Crisis Center of Central New Mexico, expanding that relationship to a more developed and equal partnership where employees of the organization feel their expertise is valued more fully would improve collaborative efforts. Many victims of sexual assault who are students call the rape crisis center rather than a UNM resource for support. It would be beneficial to both the victims and UNM to develop stronger connections with that organization.

Likewise, UNM has a working relationship the Albuquerque branch of the NAACP, and an established university branch of the NAACP. The NAACP has partnered with UNM's African-American Student Services on issues of racial bias, employment discrimination and general issues involving African-American athletes at UNM.

Finally, UNM should consider establishing a relationship with its local bar association to provide students better, cheaper access to legal services. By partnering with the bar association, UNM can work out an arrangement or have a list of attorneys available to students who would be willing to work at a discounted rate or pro bono for both student complainants and student respondents.

### **K. Other**

In addition to the recommendations for critical attention mentioned above, P&A suggests that the UNM leadership may wish to look into the following issues and subject matters that arose during the Climate Assessment but which were beyond the scope of the current Climate Assessment:

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The Greek Life houses, which are on campus, were mentioned both as party locations and as places where sexual violence could be likely to occur.<sup>259</sup> UNM would be well advised to look further into Greek Life to determine if there is an issue with the climate of sexual violence there.

Likewise, the Cottages were also mentioned as a party location. Because the Cottages are off campus and unaffiliated with UNM, they were not part of this Climate Assessment. However, several people referenced the beginning of the academic year out-of-control parties at the Cottages.<sup>260</sup> Given the prevalence of partying and alcohol at the Cottages based on P&A's interviews, UNM would be well advised to look further into the climate of sexual violence at the Cottages.

### **L. Recommendations to Prevent Sexual Violence from UNM Students and Staff**

Finally, P&A would like to highlight a few of the recommendations for improvement offered by UNM individuals, students and staff. A full listing of the suggestions contained in Exhibit "25".

## **VIII. Conclusion**

It is clearly evident that UNM takes very seriously its obligation to safeguard its students from sexual violence. The staff responsible for safeguarding student athletes and students living in UNM resident housing, including ACC managed properties, are consummate professionals who are dedicated to UNM and serving its best interests. Virtually every individual UNM staff member interviewed by P&A was a qualified competent professional, many of whom have served the university for decades in various capacities; some even having been students at the university. Nonetheless, there is significant room for improving Title IX compliance, coordinating education and training, and implementing safety measures which could go a long way towards protecting UNM residential housing students, student athletes, staff and the UNM community at large, from sexual violence and its negative effects.

Respectfully submitted,

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<sup>259</sup> Female Student Interview, September 26, 2014; High Level Administrator Interview, September 26, 2014; Male Student Athlete Interview, October 14, 2014; High Level Administrator Interview, September 22, 2014 (specifically mentioning two female students coming up to him after the Greek Life sexual violence training and stating that that they were raped).

<sup>260</sup> High Level Administrator Interview, September 26, 2014; Male Student Athlete Interview, October 15, 2014; Female Student Athlete Interview, October 16, 2014.

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**IX Exhibits**

**See Separate Exhibit Book**