



**UNM**

OFFICE of EQUAL OPPORTUNITY

**UNIVERSITY OF NEW MEXICO  
OFFICE OF EQUAL OPPORTUNITY  
DISCRIMINATION CLAIMS PROCEDURE  
– 609 BUENA VISTA NE – (505) 277-5251  
oeo.unm.edu**

The University is committed to creating and maintaining a community that is free from all forms of discrimination, including harassment, differential treatment, failure to accommodate, and retaliation because of participation in civil rights protected activity. The University has policies that prohibit all forms of discrimination and retaliation, and specifically prohibit all forms of sexual harassment, a form of gender discrimination that is prohibited by state and federal law (including, but not limited to Title IX of the Education Amendments of 1972). The prohibition includes sexual violence, which is considered a severe form of sexual harassment.

The University of New Mexico is committed to providing equal access to educational and employment opportunities for all individuals. The university considers the following protected statuses<sup>1</sup>:

- Age
- Ancestry
- Color
- Ethnicity
- Gender identity
- Gender/sex
- Genetic information
- Medical condition
- National origin
- Physical or mental disability
- Pregnancy
- Race
- Religion
- Sexual orientation
- Spousal affiliation
- Veteran status

The Office of Equal Opportunity (OEO) is the independent, impartial and neutral campus entity designated to ensure compliance with all University policies that apply to civil rights including investigations of any allegations of civil rights violations. When investigating an allegation of civil rights violations, the OEO acts as the finder of fact and will prepare an investigative report at the conclusion of the investigation as described below. The OEO has no sanctioning authority. If the OEO determines that a civil rights policy has been violated, the OEO will send the investigative report to the appropriate sanctioning authority as described in VII(D)(10)(i). The OEO reports directly to the UNM President’s office to maintain optimal independence and impartiality.

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<sup>1</sup> Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, religion, sex (gender), color, or national origin. The Pregnancy Discrimination Act (PDA) is an amendment to Title VII of the Civil Rights Act of 1964. Discrimination on the basis of pregnancy, childbirth, or related medical conditions constitutes unlawful sex discrimination under Title VII. Title IX of the Educational Amendments of 1972 prohibits discrimination on the basis of sex (gender) in any educational program or activity receiving federal financial assistance. Both Section 503/504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 prohibit discrimination against qualified individuals with disabilities. Title IV of the Civil Rights Act of 1964 prohibits discrimination on the basis of sex in public schools and colleges. The New Mexico Human Rights Act of 1978 and its amendments prohibit discrimination in employment on the basis of race, age, religion, national origin, sexual orientation, gender identity, spousal affiliation, ancestry, sex, physical or mental disability and serious medical condition. The Age Discrimination in Employment Act of 1974 (as amended in 1986) abolished mandatory retirement based on age and prohibits discrimination in employment against individuals age 40 and above. Title VI of the Civil Rights Act of 1964 prohibits discrimination in student programs on the basis of race, color, and national origin. The Equal Pay Act of 1983 prohibits discrimination in salary and wages on the basis of sex (gender). The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) is a federal law that establishes rights and responsibilities for uniformed service members and their civilian employers. Vietnam Era Veterans’ Readjustment Assistance Act, as amended (VEVRAA) at 41 CFR Part 60-300. VEVRAA prohibits federal contractors and subcontractors from discriminating in employment against protected veterans, and requires employers to take affirmative action to recruit, hire, promote, and retain these veterans.

The OEO staff will treat you with respect and will approach your case impartially and equitably. In fulfilling its dual tasks of educating and providing public service, the University shall demonstrate leadership in remedying discrimination and providing equal opportunities in employment and education. OEO, acting under the authority of UNM policies 2200(8), 2720, 2730, 2740, 2750, 2310, 2215, 3110, 3210, 3790 and Board of Regents Policy 2.3, may take necessary action to prevent, correct, and educate in relation to behavior that violates University civil rights policies or impacts the educational or employment environment. Leadership in the Office of Equal Opportunity includes the Director of OEO and ADA Coordinator, the Title IX Coordinator, and the Clery Act Compliance Officer

This Claims Procedure is the methodology employed by OEO when processing complaints that allege violations of University policy. Some of the complaints that may be brought under this procedure may also contain allegations that qualify as alleged violations of criminal statutes. As stated above, OEO only processes alleged policy violations; it does not process alleged crimes. All persons who believe they have been the victim of a crime may report such crime to law enforcement at any time.

## **DEFINITIONS**

- Good Cause - adequate or substantial grounds or reason to take a certain action.
- Preponderance of the evidence – the relevant evidence gathered during an administrative investigation that demonstrates that it is more likely than not that a policy violation occurred.
- Evidence – Evidence consists but of, but is not limited to, eyewitness statements, photos, video, security video, audio recordings, social media, emails, texts, cellular records, police reports, and any other information that would assist the investigator in making a finding.
- Complainant – the person or persons filing a complaint with OEO.
- Respondent – the person or persons responding to a complaint filed with OEO.
- Witness – Any person who may have direct or indirect knowledge of the evidence in the case.
- Jurisdiction – a determination that the circumstances of a matter or allegations of a complaint are such that OEO is empowered by University policy to investigate or remedy those circumstances or allegations.
- Protected Status – a trait or association recognized by law or policy as protected against unlawful discrimination. The University recognizes the following as protected statuses: age, ancestry, color, ethnicity, gender identity, gender/sex, genetic information, medical condition, national origin, physical or mental disability, pregnancy, race, religion, sexual preference, spousal affiliation, and veteran status.
- COA – Confirmation of Allegations.
- COR – Confirmation of Response.
- PLOD – Preliminary Letter of Determination.
- FLOD – Final Letter of Determination.
- Closure Letter – Notice to the parties that the investigation file has been closed.

## **I. NOTIFICATION AND CORRESPONDENCE WITH OEO**

OEO generally sends official notifications and other documentation to individuals via email to official University email addresses. Individuals may request that OEO use an alternative email address or a

different method of contact, but unless and until this request is made, OEO will assume that its usual practice is acceptable, and will assume that all correspondence sent to individuals' University email addresses is received upon sending. Requests by an individual that OEO correspond with them via an email address other than their University email address must be made in writing via email to [oeounm@unm.edu](mailto:oeounm@unm.edu).

If an individual prefers to receive correspondence by mail, that preference and the individual's preferred mailing address must be specified in writing and delivered either by email to [oeounm@unm.edu](mailto:oeounm@unm.edu), or by mail to OEO's mailing address at 1 UNM, MSC05 3150, or by hand delivery to OEO during OEO's regular office hours at 609 Buena Vista Dr. NE.

All correspondence sent from OEO to an individual by email is deemed received by the recipient on the date the email is sent. All correspondence sent from OEO to an individual by mail is deemed received by the recipient three business days after the date of the postmark on the correspondence.

## **II. RETALIATION**

It is the policy of the University of New Mexico to foster an environment where faculty, staff, and students may raise civil rights claims without fear of retaliation or reprisal. All members of the University community have a right to redress for perceived violations of their civil rights. It is contrary to state and federal civil rights laws and University policy 2200(8) to retaliate against any person for asserting his or her civil rights or reporting civil rights related misconduct including sexual misconduct. These rights include notifying the University of civil rights concerns, filing a claim of discrimination, and participating as a witness in an investigation or responding to allegations of civil rights violations. Retaliation or reprisal against any participant in an investigation will not be tolerated by this institution. Retaliation against a person who seeks assistance from OEO, or files a claim of discrimination (including harassment, sexual harassment and failure to accommodate), or participates in an OEO investigation is grounds for a subsequent civil rights claim. Additionally, any participant in an investigation who is found to have intentionally misdirected an investigation, whether by falsehood or omissions, may be subject to disciplinary action consistent with University policy.

## **III. REPORTING CONCERNS**

All members of the University community, including those below, are encouraged to contact OEO if they observe, experience or encounter conduct they believe may be related to civil rights violations.

- UNM Students
- UNM Student Employees
- UNM Staff
- UNM Faculty
- UNM Applicants
- Visitors
- Former UNM Employees/Students

Any member of the University community may notify OEO of potential civil rights violations through any of the following means:

- by completing and submitting an [OEO Intake Form](#),
- by email ([oeounm@unm.edu](mailto:oeounm@unm.edu)), fax (505-277-1356), or mail (MSC05 3150) of a written

document describing the concerns,

- via the [UNM Ethicspoint Hotline Complaint Form](#),
- by appointment or walk-in at 609 Buena Vista Dr. NE, building 42 on the campus map.
- by telephone at 505-277-5251.

All complaints should include the following information:

1. The Complainant<sup>2</sup>'s name and preferred contact information; whether they are student, staff, faculty, applicant or a visitor to the University; and whether they are the individual whose civil rights have allegedly violated or are a person reporting on behalf of that person (3<sup>rd</sup> party complainant.)
2. The Respondent<sup>3</sup>'s name and contact information and whether the Respondent is staff, faculty, a student, or a visitor to the University.
3. The Complainant's protected status<sup>4</sup>.
4. The civil rights category the Complainant believes the allegations qualify for (i.e. sexual violence or misconduct, discrimination, harassment, failure to accommodate, etc.).
5. The reasoning for the civil rights category identified and protected status.

Persons who submit complaints may be contacted by OEO to discuss the details of the concerns and may be asked for certain factual information, including dates, times, and location of the events at issue, and names and contact information for witnesses who may have information regarding the allegations in the complaint.

OEO may receive information related to potential civil rights violations that may not qualify as a civil rights policy violation but still warrant some action by the University. In these cases, OEO will determine what informal action to take. These actions could include:

- Meeting with the Respondent to ensure they are aware of University policies and expectations;
- Requesting the supervisor, faculty member, department chair, or other supervising official monitor the environment for inappropriate behavior,
- Conduct an educational conference (as described below),
- Conduct training for a specific department or other informal means of resolution as determined by OEO.

#### **IV. TIME FRAME**

Individuals who believe their civil rights have been violated at the university should file a complaint within 180 calendar days from the most recent alleged discriminatory incident. This time frame may be extended due to the severity of the allegations (such as sexual violence) as determined by OEO.

#### **V. JURISDICTION**

OEO reviews complaints of discrimination brought by the University community to determine whether

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<sup>2</sup> Complainant is the person who has a complaint related to their civil rights.

<sup>3</sup> Respondent is the person who is responding to the allegations.

<sup>4</sup> See Page of this document for a list of the protected statuses.

OEO is authorized to investigate the complaints. To make this determination, OEO may interview the Complainant about the allegations and discuss which of the three (3) available procedural options described below the Complainant would prefer to pursue. Mediation which is not conducted by the OEO, has been listed as a fourth procedural option and but in some circumstances may be utilized as a resolution to a civil rights concern, or in addition to one of the procedural options offered by OEO. If Complainant submits concerns via mail, email or other electronic format, OEO will meet with the Complainant to gather the relevant facts. OEO reviews the information and makes a determination as to whether OEO has jurisdiction over:

1. The parties involved. OEO investigates policy violations. Therefore, the policy alleged to have been violated must apply to at least one of the persons involved in the issue raised with OEO.
2. The subject matter of the allegations underlying the complaint. OEO has jurisdiction to investigate alleged policy violations regarding civil rights. In order for OEO to have jurisdiction to investigate allegations in a complaint, the allegations must qualify on their face as a violation of one or more of the University's civil rights policies. If the allegations in the complaint do not allege that one of the University's civil rights policies have been violated, then OEO may not be able to accept jurisdiction. As noted above, OEO may take informal action related to allegations that do not, as alleged, violate university policy and therefore, the university and OEO encourage everyone who has any concerns related to civil rights to bring their concerns to OEO.

OEO must have jurisdiction over at least one of the parties involved and the subject matter of the allegations underlying the complaint in order to investigate. Nevertheless, even if it determines that it has such jurisdiction, neither an investigation nor the outcome of an investigation is guaranteed. Rather, OEO reserves the right to determine what action it will take to ensure the University's compliance with civil rights policy and state and federal regulations that relate to civil rights.

OEO will notify the Complainant within five (5) business days (barring documented extenuating circumstances) of one of the following:

1. OEO has jurisdiction over the allegations.
2. OEO needs more information in order to determine jurisdiction. If the complaint lacks specificity to determine jurisdiction, OEO will seek additional information or clarification from the Complainant. If additional information or a request for extension is not provided within five (5) business days of OEO's request, OEO will close the case for lack of jurisdiction.
3. OEO has determined that it does not have jurisdiction over the concerns. If OEO
4. determines it lacks jurisdiction, it may take any or all of the following actions:
  - a. close the inquiry;
  - b. refer the case to the appropriate campus resource for issues not related to civil rights; and/or
  - c. take informal action as determined by OEO to stop potentially harassing, discriminatory, or retaliatory behavior, or any other informal action intended to mitigate circumstances that, if continued, may qualify as a policy violation, including a hostile work or learning environment. OEO may partner with other University departments, as appropriate, to mitigate these concerns through educational or other informal measures.

## **VI. ACCEPTED JURISDICTION**

If OEO accepts jurisdiction of allegations of a civil rights policy violation, OEO then notifies Complainant and Respondent that a complaint has been accepted as jurisdictional, and provides the parties the name and title of the individual assigned to process the allegations.

Upon acceptance of jurisdiction, the investigator attempts to schedule a meeting with the Complainant, if a face-to-face meeting has not already occurred. During this meeting the investigator and Complainant discuss the three (3) procedural options described below and determine which one the Complainant prefers to pursue. Mediation which is not conducted by the OEO, has been listed as a fourth procedural option and but in some circumstances may be utilized as a resolution to a civil rights concern, or in addition to one of the procedural options offered by OEO. OEO takes procedural preference into account but reserves the right to determine the option it will employ to address any concerns. Such a determination will be made based on the circumstances presented, including the nature and severity of the concerns alleged and whether the alleged behavior creates or may create a hostile educational or working environment for the Complainant and/or others on campus.

## **VII. PROCEDURAL OPTIONS**

### **A. Withdraw the complaint**

A Complainant may elect to withdraw his or her complaint at any time after bringing concerns to OEO. If Complainant chooses to withdraw the complaint, Complainant will be asked to sign a statement verifying this decision. If OEO receives notice of allegations and Complainant does not respond to OEO or chooses not to participate, OEO generally considers this as Complainant effectively withdrawing the complaint even without a signed statement. However, even if a Complainant withdraws his or her complaint, OEO reserves the right to continue its inquiry into the concerns independent of the Complainant in order to ensure compliance with University policy and related state and federal regulations. OEO will notify the Complainant within five (5) business days if any further action will be taken regarding their complaint. OEO may take informal or formal actions as deemed appropriate to ensure a working and learning environment free from harassment and discrimination.

### **B. Educational Conference**

An educational conference, when selected by Complainant or deemed appropriate by OEO, is a path designed to eliminate the alleged conduct, prevent its recurrence, and remedy its effects in a manner that ensures compliance and the safety and welfare of the campus community. The purpose of an educational conference is to inform Respondents that allegations have been made against them and to make them aware of University policies and expectations of behavior. This is an informal process where an investigation is not conducted and the allegations in the complaint are therefore neither corroborated nor contested. An educational conference is not disciplinary in nature.

Examples of educational conferences include, but are not limited to:

- Meet with Respondent to discuss the allegations and University policy;
- Meet with Respondent and with Respondent's supervisor separately if the allegations regard a

work environment;

- Meet with Respondent and supervisor or other authority figure together; or
- Provide training or engage in other collaborative processes as deemed appropriate by OEO. The

type of educational conference is selected by OEO after discussion with the complainant.

Once the type of educational conference is determined, OEO notifies Respondent of the alleged conduct at issue. If requested, OEO may attempt to maintain the anonymity of Complainant; however, the effectiveness of an education conference may be diminished if a Complainant chooses to remain anonymous. In addition, complete anonymity may be impossible, as a Respondent may be able to identify a Complainant based on the specific concerns raised.

After the educational conference, OEO sends follow-up correspondence to Respondent, and/or to Respondent's supervisor or other authority figure, documenting what action was taken by OEO. OEO notifies Complainant of the action taken and follows up with Complainant regarding the complainant's initial concerns in approximately three (3) months, to ensure they have been eliminated.

As with all procedural options, OEO reserves the right to determine the option it will employ in order to ensure compliance with University policy and related law and regulations. Educational conferences may not be appropriate for all forms of conduct prohibited by University civil rights policies. Educational conferences are not an available procedural option when OEO determines that an informal process is not appropriate based on the severity of allegations pursuant to Administrative Policies 2720, 2200 and 2740.

### **C. Mediation**

OEO encourages parties to use OMBUDS Faculty and Staff services at any point to develop options for resolutions and communication between the parties. Mediation may alleviate the need for a formal investigation or educational conference or may be utilized concurrently. Mediation is not an available procedural option when OEO determines that an informal process is not appropriate based on the severity of allegations pursuant to Administrative Policies 2720, 2730, 2200 and 2740.

### **D. Formal Investigation**

Please see Addendum 1 for an abbreviated checklist of the formal investigation process that is described in detail in this section.

A Complainant may request that OEO conduct a formal investigation into alleged civil rights policy violation(s). OEO may also determine that a formal investigation is warranted regardless of Complainant's election or participation. Please note that if the Complainant elects not to pursue an investigation or does not participate in OEO's investigation OEO may still conduct a formal investigation into the alleged civil rights policy violation(s) regardless of Complainant's election or non-participation, if OEO determines that it is necessary to prevent the recurrence of the conduct and/or remedy its effects. If OEO determines that it must investigate regardless of Complainant's election or non-participation, OEO will notify Complainant of the reasons for this determination.

Because it is empowered to investigate only those allegations of civil rights policy violations within

its jurisdiction as provided by University policy, OEO reserves the right to determine whether to conduct a formal investigation as well as the specific allegations it will investigate and the manner in which it will conduct that investigation if an investigation is conducted.

### **1. Formal investigation process overview**

The formal investigation is a neutral evidence gathering process during which OEO gathers evidence from Complainant and Respondent, any witnesses they identify, any witnesses OEO identifies, and from any other source with relevant information that OEO determines may be useful or relevant to the investigation. Both Complainant and Respondent are encouraged to provide any and all evidence and witnesses they deem relevant to their case and should consider submitting evidence that is described in the definition section above. At the completion of the investigation, based on the relevant evidence gathered and in consideration of the totality of circumstances, OEO determines whether the University civil rights policy(ies) that Complainant alleges to have been violated by Respondent have in fact been violated. The terminology used to identify OEO's determination is POLICY VIOLATION or NO POLICY VIOLATION.

In making a determination whether a civil rights policy has been violated, OEO uses a Preponderance of the Evidence Standard. This means that a violation is deemed to have occurred when the evidence gathered during OEO's investigation supports the conclusion that the UNM civil rights policy(ies) under investigation "more likely than not" was violated.

### **2. General statement regarding timelines for formal investigations**

Investigations of civil rights policy violations typically take approximately 60 business days to complete, but may take additional time dependent upon on the complexity of the particular claim and other extenuating circumstances. When there are factors that extend this time frame, both Complainant and Respondent are notified of the extension and OEO documents the reasons for the extension. Similarly, when circumstances dictate that any of the timelines specifically identified herein be extended, OEO notifies both Complainant and Respondent and documents the reasons for the extension.

Should Complainant or Respondent require a limited extension of any time limits applying to them as stated herein, they should submit a request as soon as they learn of the need for an extension and state the reason for the request. If good cause for an extension is provided, OEO may grant the request. If a request is granted, OEO will notify Complainant and Respondent of the length of the extension and the reason provided for the extension.

### **3. The complaint**

OEO investigates complaints of violations of University civil rights policy. In this context, the term "complaint" means a perfected statement of allegations that one or more University civil rights policies were violated. A statement of allegations is considered perfected when Complainant fully and finally verifies the specific civil rights allegations and issues Complainant wants OEO to investigate, by signing and returning the Confirmation of Allegations Letter drafted by OEO that contains a recitation of those allegations.

The 60 day investigation timeline referred to above does not begin until the Complainant's statement of allegations has been perfected and signed as described above.



#### **4. Modification of the formal investigation process**

This procedure may be modified in cases of severe allegations, such as sexual assault, that may potentially impact the environment or safety of members of the campus community. These modifications could include interviewing Respondent prior to Complainant perfecting the complaint or having signed the confirmation letter or interviewing witnesses or gathering evidence prior to meeting with Complainant or Respondent.

#### **5. Complainant Meeting**

Typically, as part of the formal investigation, OEO engages in an interview process with Complainant so that they can identify the specific allegations of civil rights policy violation(s) that Complainant wishes OEO to investigate. This interview process may consist of multiple meetings as needed.

During the interview, OEO will describe the investigative process, the rights and responsibilities of the parties and the University's policy prohibiting retaliation. During this process, Complainant may bring any support person they wish, within reason<sup>5</sup>. OEO can also arrange for an advocate from one of the University's advocacy resources to be present to support Complainant during the OEO meeting(s), if requested.

When the interview process is complete and the specific allegations of civil rights policy violation(s) have been identified for investigation, OEO drafts and sends a Confirmation of Allegations Letter (COA) to Complainant within ten (10) business days after completing the interview process. The COA contains a recitation of the specific allegations that Complainant asked OEO to investigate.

Complainant has the opportunity to review the allegations identified in the COA and verify that that statement of allegations is an accurate statement of the allegations Complainant desires OEO investigate. This is verified by Complainant signing and returning the COA within five (5) business days of the date Complainant receives the COA.

If, upon review, Complainant wishes to edit or make additions to the statement of allegations, Complainant must notify OEO within five (5) business days of receipt of the COA. If revisions are made to the COA, OEO will revise the document and return it to the Complainant for verification signature within five (5) business days of OEO receiving notification of the needed revisions. OEO will include and factual revisions or additions, however, retains the authority to ensure that the COA contains relevant facts that establishes jurisdictional elements. Complainant has two (2) business days from receipt of the revised COA to sign and return the COA to OEO.

If Complainant does not return the COA or respond to OEO communication, OEO accepts this as the Complainant withdrawing the complaint. However, OEO continues to reserve the right to take any action it deems necessary to ensure a working and learning environment free from harassment and discrimination.

#### **6. Respondent Meeting**

If a formal investigation is elected, OEO schedules a meeting with Respondent. During this meeting,

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<sup>5</sup> Within reason typically means that the number of persons would have to physically fit into the interview room, and they cannot be a direct witness or party to the investigation.

OEO describes the investigation process, the rights and responsibilities of all parties, and the University's policy prohibiting retaliation. During this meeting, Respondent may bring any support person they wish, within reason<sup>6</sup>. OEO can also arrange for an advocate from one of the University's advocacy resources to be present to support the Respondent during the OEO meeting(s), if requested.

At the initial meeting, OEO notifies Respondent of the nature and scope of Complainant's allegations and the University policy(ies) Complainant alleges Respondent violated, and give Respondent the opportunity to provide a statement and answer questions in response to those allegations. More than one meeting may be needed in order for OEO to fully develop the response.

When the interview process is complete and the specific response has been provided by Respondent, OEO drafts and sends a Confirmation of Response (COR) to Respondent within ten (10) business days after completing the interview process, with a recitation of Respondent's response to the allegations Complainant identified for investigation. Once received, Respondent has the opportunity to review the response statement in the COR and verify that it is accurate. Verification is accomplished by Respondent signing and returning the COR Letter.

If upon review, Respondent wishes to edit or make additions to the confirmation of response, Respondent must notify OEO within five (5) business days of receipt of the COR. If revisions are made to the COR, OEO revises the document as instructed by Respondent and returns it to Respondent for verification signature within five (5) business days of OEO receiving notification of the needed revisions. OEO will include and factual revisions or additions, however, retains the authority to ensure that the COR contains relevant facts that establishes jurisdictional elements. Respondent has two (2) business days from receipt of the revised COR to sign and return the COR to OEO.

If Respondent does not return the COR or respond to OEO communication, OEO moves forward with its investigation, even if it does not have Respondent's response to the allegations or other input<sup>7</sup> from the Respondent.

OEO will conduct independent Complainant and Respondent meetings, but will attempt to conduct them as close in time as possible.

## **7. Evidence Gathering**

As part of its formal investigation, OEO gathers information it deems pertinent to the investigation. Complainant and Respondent may submit any documentation they believe should be considered, and may identify any witnesses they believe should be interviewed. Complainant and Respondent should submit any evidentiary items that are listed in the Definition section above including electronic evidence such as social media posts, audio, text and phone records. Complainant and Respondent should notify OEO as soon as possible of any electronic evidence such as surveillance or video tape and social media, in order for OEO to preserve the evidence. OEO may also identify documents and witnesses not identified by Complainant or Respondent if OEO determines that such documents may be relevant to its investigation or that the witnesses may have information relevant to that investigation.

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<sup>6</sup> Within reason typically means that the number of persons who would have to physically fit into the interview room, and they cannot be a direct witness or party to the investigation.

<sup>7</sup> It is noted that OEO investigations may result in a finding that university policy has been violated which can result in disciplinary action.

OEO may also receive information from other University offices as appropriate or review public sources such as social media or public records.

OEO has sole discretion to determine which specific allegations it will investigate and the manner in which it will conduct that investigation. As such, OEO has sole discretion to determine which witnesses and documentation will be considered, the relevance of the information to the investigation, and what, if any, weight and credibility to assign that information.

OEO does not have subpoena authority or other authority to compel document production or witness participation. Document production and witness participation is therefore voluntary; however, the University strongly encourages all members of the University community to participate in OEO investigations and provide information when OEO requests it pursuant to its role as investigator.

## **8. Draft Report**

When its review of the evidence is completed, OEO issues a Draft Report to Complainant and Respondent simultaneously that includes: 1) Complainant's statement, 2) Respondent's statement, and 3) a description of the evidence gathered. Complainant and Respondent each have five (5) business days to respond to the draft report with any new factual evidentiary information they wish OEO to consider.

## **9. The Preliminary Letter of Determination (PLOD)**

After both parties have received an opportunity to provide new factual evidence in response to this Draft Report within the stated time limit, and in consideration of any such evidence received, OEO issues a Preliminary Letter of Determination (PLOD), which includes 1) a preliminary statement regarding whether the preponderance of the evidence supports a finding that University civil rights policy has been violated, and 2) an analysis containing a description of the evidence that was considered, how it was considered, and how it relates to the preliminary finding. OEO issues the PLOD to Complainant and Respondent simultaneously.

Complainant and Respondent have two (2) business days from the date they receive the PLOD to respond. A response to the PLOD, by Complainant or Respondent, may only consist of new, not-yet-provided information or evidence and a statement of the relevance or pertinence of that new information or evidence to the analyses, conclusions, and/or findings in the PLOD.

## **10. The Final Letter of Determination (FLOD)**

If Complainant and/or Respondent submits a response to the PLOD as provided above, OEO considers the response prior to issuing a Final Letter of Determination (FLOD). If neither Complainant nor Respondent submits a response to the PLOD, or if responses do not provide any new, not-yet-considered information that requires further investigation and/or consideration, OEO issues the FLOD simultaneously to Complainant and Respondent within two (2) business days of the expiration of the timeline to respond to the PLOD.

If Complainant's and/or Respondent's response to the PLOD requires additional investigation and/or consideration, OEO notifies Complainant and Respondent that new, not-yet-provided information was

submitted that requires additional investigation and/or consideration and endeavors to complete such additional investigation and/or consideration as quickly as practicable. Upon completion of such additional investigation and/or consideration, OEO simultaneously issues the FLOD to Complainant and Respondent.

The FLOD reflects OEO's final determination as to whether or not the preponderance of the evidence it gathers during its formal investigation demonstrates that UNM civil rights policy has been violated as alleged by Complainant. A copy of the FLOD is kept in the file and an original is provided to both Complainant and Respondent. The FLOD contains findings and concludes whether or not discrimination, retaliation, and/or harassment has occurred in violation of University policy (stated as POLICY VIOLATION or NO POLICY VIOLATION).

#### **10.(i.) Sanctions**

OEO has no sanctioning authority. If OEO's final determination is that a policy has been violated by a preponderance of the evidence, the OEO will send a copy of the Draft Report and the Final Letter of Determination to the appropriate sanctioning body on the date the Closure Letter is issued. If the Respondent found to have violated policy is a student, the Draft Report and FLOD will be sent to the Dean of Students. If the Respondent found to have violated policy is a faculty member, the Draft Report and FLOD will be sent to the Provost's office and to the Dean of the school or specialty area where the faculty is located. If the Respondent is a staff member, the Draft Report and FLOD will be sent to Human Resources to be shared with the staff supervisor or manager. Investigative reports may also be shared with others with a legitimate business reason to be advised of the determination, including UNMPD, student conduct, residence life, Clery Coordinator, Greek Life, or athletics. OEO will determine what information and what officials must be advised of findings, in order to remedy the effects of discriminatory conduct and prevent its recurrence.

#### **11. Records**

In order to protect the integrity of the investigation, no documents or records are released to the Complainant or Respondent until the Draft Report is issued. The Draft Report contains a description of the documents and records OEO gathered during the investigation and will use to determine whether policy was violated.

### **VIII. DEPARTMENTAL INVESTIGATIONS**

**Please see Addendum 2 for an abbreviated checklist of the departmental investigation process that is described in detail in this section.**

As an equal opportunity employer and an equal educational opportunity institution, the University is legally obligated to provide and maintain an atmosphere free from discrimination. The University must respond appropriately to all reports of discrimination. Such response may include investigating claims and taking appropriate corrective action even when there are no individuals standing in the roles of Complainant and/or Respondent as provided above.

If OEO receives reports of alleged violation(s) of University civil rights policy, including but not limited to alleged discriminatory actions, and those reports include allegations of violations that may affect multiple individuals within one department, OEO may exercise its authority to

conduct a civil rights-related departmental investigation to address any actual or potential harm and remedy any effects of that harm.

Departmental investigations may be initiated at OEO's sole discretion when the totality of allegations in one or multiple reports or claims of discrimination indicates that a discriminatory environment may exist within that department. Under such circumstances, the University stands as the Complainant in the matter. A Dean of an academic area or Director of a unit may also request that OEO conduct a departmental investigation. Under such circumstances, the Department stands as the Complainant in the matter. In all such cases, OEO determines whether it is authorized by University civil rights policy to exercise its jurisdiction to investigate an alleged discriminatory environment, and at its sole discretion defines the scope of the investigation, if any is to occur.

There may exist circumstances where OEO is not authorized to exercise jurisdiction over allegations pertaining to an individual Complainant (for example, the allegations do not state violation(s) of University civil rights policy or the conduct complained about is not related to civil rights). However, there may be other factors, such as the existence of multiple complaints with similar shared facts or circumstances that are sufficient to indicate a pattern of acts that, in the aggregate, violate University civil rights policy. Under such circumstances, OEO may determine that a departmental investigation is warranted despite individual complaints not being accepted as jurisdictional.

***Departmental Investigation Process:***

OEO determines jurisdiction of a departmental complaint within five (5) business days of compiling the facts that indicate an investigation is warranted. OEO immediately notifies Respondent that jurisdiction has been accepted, indicates the investigator assigned, and seeks to schedule a meeting with Respondent to discuss the process, the rights and responsibilities of the parties, the University's prohibition against retaliation, and provide an overview of the allegations of civil rights violations that have been raised.

After gathering all available, relevant information in the investigation, OEO invites the Respondent to discuss the allegations in detail and provide a response to the allegations via an interview. Once the interview process is complete, OEO drafts and sends a Confirmation of Response (COR) containing a recitation of Respondent's response to the allegations to the Respondent within ten (10) business days after completing the interview process.

When the COR is received, the Respondent has the opportunity to review the response statement in the COR and verify that that statement is an accurate representation of Respondent's response. Verification is accomplished by Respondent signing and returning the COR Letter.

If, upon review, Respondent wishes to make further edits or additions to the response, Respondent must notify OEO within five (5) business days of receipt of the COR. If revisions are made to the COR, OEO revises the document and returns it to the Respondent for verification signature within five (5) business days of OEO receiving notification of the needed revisions. If revisions have been made, Respondent has two (2) business days from receipt of the revised COR to sign and return the COR to OEO.

If Respondent does not return the COR as provided in this section or respond to OEO

communication, OEO moves forward with its investigation, even if it does not have Respondent's response to the allegations or other input<sup>8</sup> from the Respondent.

At the conclusion of the investigation, OEO issues a Draft Report that contains information on the allegations, response from the Respondent and all relevant evidence gathered in the investigation. OEO provides this draft report to the Respondent and appropriate Dean or Director. Those who receive the draft report have five (5) business days to provide comment, response, or new, factual information.

After the parties have provided comments and/or new, factual information, or when the deadline has passed with no response from the parties, OEO writes a Final Report which includes the information from the draft report, any new information gathered from the parties, and an analysis and finding of whether or not any civil rights policy was violated. The Final Report reflects OEO's final determination as to whether or not the Preponderance of the Evidence it gathers during its formal investigation demonstrates that UNM civil rights policy has been violated. A copy of the Final Report is kept in the file and an original is provided to those who received the Draft Report. The Final Report contains findings and concludes whether or not discrimination, retaliation, and/or harassment has occurred in violation of University policy (stated as POLICY VIOLATION or NO POLICY VIOLATION).

#### **IX. APPEAL TO THE OFFICE OF THE PRESIDENT AND TO THE BOARD OF REGENTS**

Individuals may appeal a final determination issued by OEO to the President of the University of New Mexico within five (5) business days of the date of issuance of the final determination from OEO.

The President will consider an appeal of a final OEO determination only if the appeal alleges one or more of the following extraordinary circumstances:

1. **Proper procedure has not been followed.** If an appeal states this as its basis, the specific procedure that was allegedly not followed should be identified and a description of how that procedure was not followed should be provided.
2. **The determination is unsupported by the facts.** If an appeal states this as its basis, the specific allegations of fact and specific conclusions that the appealing party wishes to dispute should be identified, and the appealing party should describe how the conclusions being challenged are not supported by the identified facts.
3. **The decision violates University policy.** If an appeal alleges this as its basis, the specific policy that was allegedly violated by the decision should be identified, and a description of how that policy was allegedly violated should be provided.

The appeal must clearly state which one (or more) of these three grounds for appeal is alleged. No other grounds for appeal will be considered.

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<sup>8</sup> It is noted that OEO investigations may result in a finding that university policy has been violated which can result in disciplinary action.

Appeals to the President must be received by the Office of the President within five (5) business days of the date the OEO determination was issued. Exceptions to this time limit will only be considered on a case by case basis with sufficient justification provided by the individual seeking the exception. Appeals that are not received within five (5) business days of the date of the OEO determination will be denied unless an exception to the appeal time limit has been granted by the President.

Appeals must be in writing and must identify the person appealing the determination; identify the determination(s) being appealed; contain a clear summary of the ground(s) for the appeal; contain a statement of how the individual appealing the determination will be harmed if the determination is not reversed or modified; and state the date upon which the appeal was submitted to the Office of the President. No additional written documentation will be required to appeal an OEO determination. Appeals that fail to meet these minimum criteria may be denied.

Appeals may be submitted electronically to [unmpres@unm.edu](mailto:unmpres@unm.edu), submitted by mail to **MSC05 3300, Scholes Hall Suite 144, 1 University of New Mexico, Albuquerque, NM 87131**, or hand delivered to the Office of the President at **Scholes Hall, Suite 144**. Emailed appeals will be considered received by the Office of the President the date and time they are sent. Appeals sent by mail will be considered received by the Office of the President as of the date of postmark on the document. Hand-delivered appeals will be considered received by the Office of the President when a representative from the Office physically accepts delivery of the document and notes the date and time of receipt thereon. Appeals that are not submitted as provided above may be denied.

If an individual files an appeal of an OEO determination, OEO will be informed of the appeal. OEO will notify the other interested parties to the determination in writing that an appeal has been filed. OEO may wait to notify disciplinary authorities of its determination pending the outcome of the appeal.

If an appeal alleges that OEO has not followed proper procedure in its finding, OEO will be given the opportunity to respond to this allegation.

Best efforts shall be made to make a decision within 20 business days after the appeal is received. If the appeal is considered, the President may decide to uphold the determination being appealed in its entirety or may remand all or part of the appealed determination back to OEO for additional proceedings or other action. Written notice of the President's decision will be provided to the appealing party and to OEO. All other parties will be simultaneously notified of the decision by OEO.

If the Office of the President denies an appeal of OEO's final determination or upholds that final determination without change, OEO may take whatever further action it deems is warranted on the matter, including but not limited to forwarding its final determination to appropriate disciplinary bodies or administratively closing the matter.

Under Regents' Policy Manual - Section 1.5: Appeals to the Board of Regents, the Board of Regents has the discretion to review the President's decision on an appeal OEO's final determination. An appeal may be submitted to the Board of Regents only after the President's review and decision are completed. The Board of Regents has sole discretion to determine whether the appeal will be accepted and/or considered. Additional information on Appeals to the Board of Regents can be found at <https://policy.unm.edu/regents-policies/section-1/1-5.html>.

## **X. CLOSURE LETTER**

At the conclusion of any appeal to the President, OEO closes the investigative file and sends notices to the parties that the investigative file is closed. If any policy violations have been established, OEO will proceed pursuant to VII (D)(10)(i) – Sanctions.

## **XI. CONFIDENTIALITY**

The University strives to respect individuals' privacy and requests for confidentiality to the extent permitted by state and federal laws. However, the University has an obligation to investigate and resolve civil rights claims. To meet this obligation, the University may be required to share information with persons who have a legitimate need to know that information. For example, those who are responsible for sanctioning individuals OEO found to have violated University civil rights policy may have a legitimate need to know the factual findings and determination made by OEO. Those who manage the processes for appeals of OEO final determinations may have a legitimate need to know the details of OEO's investigation and/or need to review the evidence underlying a finding.

As such, while it strives to respect the confidentiality and privacy of all parties involved in the process, the University cannot under any circumstances guarantee complete confidentiality unless required to do so by law. Examples of situations in which confidentiality cannot be maintained include, but are not limited to:

- when the University is required by law to disclose information (such as in response to a legal process or a request for information under the Inspection of Public Records Act);
- when OEO determines that disclosure of information is necessary for conducting an effective and fair investigation; and
- when confidentiality concerns are outweighed by the University's obligation to protect the safety or rights of others.

All University students, staff, and faculty who participate in an internal civil rights investigation are expected to keep investigation information confidential during the course of the investigation in order to maintain the integrity of the investigation. Any attempt by any participant in an internal civil rights investigation to influence the outcome of an investigation, including by divulging information to others who have no legitimate need to know that information, may be grounds for disciplinary action.

## **XII. REQUESTS FOR ANONYMITY**

Individuals who report discrimination may choose to deliver those reports to OEO through anonymous means, such as through the University's anonymous [compliance hotline](#). OEO's ability to conduct a full investigation into the alleged discrimination may be limited. Similarly, an individual who reports discrimination anonymously may have only limited protection from retaliation. Additionally, complete anonymity can never be guaranteed as the specific allegations in a complaint may make the anonymous reporter identifiable.

Individuals may anonymously report allegations of gender discrimination prohibited by Title IX of the Education Amendments of 1972, including allegations of sexual harassment, sexual



misconduct, and sexual violence. If the individual reporting alleged gender discrimination requests that his or her identity remain anonymous or requests that the University take no action regarding the alleged discrimination, the University takes reasonable steps to honor those requests. However, the University may, depending on the allegations, still be required to investigate and take reasonable action in response to the allegations raised notwithstanding the reporting party's request for anonymity or that no action be taken. OEO evaluates requests for anonymity and requests that no action be taken in a case-by-case basis and makes determinations regarding such requests at its sole discretion. For more information about the rights of individuals participating in procedures related to alleged gender discrimination in violation of Title IX of the Education Amendments of 1972, please refer to University Administrative Policy 2740: Sexual Violence and Sexual Misconduct.