

OFFICE OF EQUAL OPPORTUNITY
DISCRIMINATION CLAIMS PROCEDURE
UNIVERSITY OF NEW MEXICO – 609 BUENA VISTA NE – 505 277 5251

The University of New Mexico is committed to providing equal access to educational and employment opportunities regardless of race, color, religion, national origin, physical or mental disability, pregnancy, age, sex (including sexual harassment), sexual preference, gender identity, ancestry, spousal affiliation or medical condition.¹ The Office of Equal Opportunity (herein OEO) is the designated entity on campus for assuring compliance with all University policies, state and federal laws/regulations that apply to the civil rights of individuals. The Director of OEO serves as the Title IX Coordinator, ADA Coordinator and the 504 Coordinator for the University.

I. INTAKE

Any student, staff, or faculty member who believes that he or she has experienced an action that violates his or her civil rights or that he or she believes to be discriminatory based upon the above-referenced categories may bring concerns to OEO. OEO has jurisdiction to investigate claims of discrimination and/or sexual harassment brought by students, staff, and faculty against students, staff, faculty, and third parties (i.e., someone who is neither an employee nor a student of the University).

An individual may notify OEO of concerns through the completion and submission of an OEO Intake Form, through the submission of a written document describing the concerns, or through verbal notification. The time frame for notifying OEO of concerns is within 90 days of the last alleged incident. This time limit may be extended for good cause.

The information received from an individual will be reviewed and a determination will be made as to whether OEO has jurisdiction over the concerns. Within five (5) to ten (10) working days, individuals raising concerns will be informed as to whether 1) OEO has determined that it does not have jurisdiction over the concerns, 2) OEO needs more information in order to determine jurisdiction, or 3) OEO has determined that it does have jurisdiction over the concerns.

¹ Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, religion, sex (gender), color, or national origin. 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 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 prohibit discrimination against qualified individuals with disabilities. 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. New Mexico State Executive Order 85-15 of 1985 prohibits discrimination in student programs and in employment on the basis of sexual preference. 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).

Should OEO determine that it does not have jurisdiction over the concerns because of the failure of the individual raising the concerns to demonstrate a civil rights claim, students may be referred to the appropriate Dean of Students office for possible redress of the concerns. Faculty and staff may be referred to Counseling and Referral Services (CARS), the Ombuds/Dispute Resolution Services for Faculty or for Staff, the Department of Human Resources, the Chair of the appropriate academic department, and/or the Dean of the appropriate college, depending on the nature of the concerns raised.

II. ELECTION OF OPTION

If OEO determines that it has jurisdiction over the concerns raised, the assigned investigator will schedule a meeting with the individual raising the concerns (the Claimant) to verify the issues and discuss the options available to the Claimant. A Claimant may choose to pursue one of the four (4) options described below.

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 and to act upon all reports of discrimination. Accordingly, OEO reserves the right to determine the option employed to address the concerns raised independent of the Claimant's expressed election.

A. Withdraw the Complaint

A Claimant may elect to withdraw his or her complaint at any time after bringing concerns to OEO. If a Claimant chooses to withdraw, the Claimant will be asked to sign a statement verifying this decision. Even if a Claimant chooses to withdraw his or her complaint, OEO reserves the right to continue its inquiry into the concerns independent of the Claimant.

B. Educational Conference

A Claimant may elect to have OEO conduct an educational conference with the individual that the Claimant alleges has violated his or her civil rights (the Respondent). If a Claimant elects this option, the Claimant may remain anonymous. The Claimant will sign a form certifying his or her election of the educational conference option and his or her understanding that, should the complained-of conduct continue following the educational conference, the Claimant may return to OEO for further review of the concerns.

OEO will contact the Respondent's first-level supervisor and notify this person that concerns have been raised about the Respondent's alleged conduct. OEO will coordinate a meeting with the Respondent and the Respondent's first-level supervisor to discuss the concerns. While maintaining the anonymity of the Claimant, OEO will notify the Respondent of the specific conduct that has been raised as a concern. OEO will put the Respondent on notice that, if the alleged conduct is occurring, this conduct must cease immediately. OEO will provide copies of relevant UNM policies to the Respondent and coach the Respondent with regard to those policies.

OEO will send a follow-up letter to the Respondent, with a copy to the Respondent's first-level supervisor, documenting that the meeting described above has occurred. OEO will notify the Claimant by letter that OEO has met with the Respondent and will follow up with the Claimant in approximately three (3) months regarding the Claimant's initial concerns.

C. Mediation

A Claimant may elect to attempt mediation with the Respondent to resolve the concerns. If a Claimant elects this option, OEO will contact the Respondent with the Claimant's request to mediate. If the Respondent rejects the Claimant's request to mediate, OEO will contact the Claimant to discuss further options.

If the Respondent accepts the Claimant's request to mediate, OEO will contact the appropriate Mediation Program (herein the Program). The Program will identify the appropriate facilitator(s) and coordinate the mediation between the Claimant and Respondent. Participants will observe all Program policies and protocols.

The Program will notify OEO in writing that 1) the Claimant and Respondent have resolved the concerns through the mediation, or 2) the Claimant and Respondent have reached an impasse and failed to resolve the issues through the mediation. If the mediation has been successful, OEO will follow up with the Claimant in approximately three (3) months regarding the Claimant's initial concerns. If the mediation between the Claimant and the Respondent is unsuccessful, OEO will contact the Claimant to discuss further options.

D. Formal Investigation

A Claimant may elect to pursue a formal investigation that will result in a PROBABLE CAUSE or NO PROBABLE CAUSE determination as to whether there has been a violation of relevant University policy. A Claimant may elect this option in lieu of an attempt at informal resolution of the issues (educational conference or mediation) or he or she may elect this option following the unsuccessful attempt(s) at informal resolution.

If a Claimant elects the formal investigation option, within seven (7) working days after meeting with the Claimant, OEO will send a Confirmation Letter to the Claimant providing a summary of any actions taken to date to resolve the issues and specifying the civil rights issues to be investigated. This time limit may be extended for good cause. The Claimant will verify in writing the civil rights issues to be investigated within seven (7) working days of receipt of the letter. This time limit may be extended for good cause.

OEO will then contact the Respondent to give notice of the claim and will schedule a meeting with the Respondent. At the initial meeting, OEO will advise the Respondent of the investigative process and will provide the Respondent with a written letter outlining the specific allegations advanced by the Claimant. The Respondent will have seven (7) working days to provide a written response to OEO addressing the specific allegations advanced by the Claimant. This time limit may be extended for good cause.

Once OEO has received and reviewed the Respondent's response to the allegations, OEO will determine the scope of the investigation. Upon completion of its review of the factual information gathered, OEO will issue a Preliminary Letter of Determination and Final Letter of Determination as discussed below.

III. SCOPE OF INVESTIGATION

The Investigator will identify any additional documentation and witness testimony necessary to determine whether there is probable cause to believe that discriminatory conduct has occurred. OEO will also consult with other University offices as appropriate. If academic issues are simultaneously raised by the same set of facts that establish the alleged civil rights violation(s)/discriminatory act(s) OR if issues of academic freedom or tenure are involved OR if staff employment issues are involved, OEO will proceed with its investigation concurrently with other processes.

IV. INVESTIGATION

When an investigation is conducted, witnesses will be determined by reference to the information obtained during the investigation. The results of the investigation will be prepared at the conclusion of the investigation and issued to both parties in the form of a Preliminary Letter of Determination. The average investigation time frame is between two weeks and four months, depending on the complexity of the particular claim. The parties will each be given an opportunity to respond to preliminary findings before OEO makes its final determination. Parties will have two (2) weeks from their receipt of the Preliminary Letter of Determination to submit a response, if any, to OEO. This time limit may be extended for good cause.

V. DETERMINATION AND RECOMMENDATIONS

OEO will issue a Final Letter of Determination within two (2) weeks after receipt of the parties' responses, if any, to the Preliminary Letter of Determination. This time limit may be extended for good cause. A copy of the Final Letter of Determination will be kept in the file and an original will be sent to each of the parties. The Final Letter of Determination may contain recommendations and will conclude (stated as PROBABLE CAUSE or NO PROBABLE CAUSE) whether or not discrimination, retaliation, and/or sexual harassment has occurred in violation of University policy.

VI. DISCRETIONARY REVIEW BY PRESIDENT AND BOARD OF REGENTS

The President and the Board of Regents reserve the discretionary authority to review the final determination made by OEO pursuant to University Business Policies and Procedures Manual Policy #3220, Section 10, which states that the President and the Regents will normally accept review only in extraordinary cases, such as those where proper procedure has apparently not been followed, where the decision appears to be unsupported by the facts, and/or where the decision appears to violate University policy. If an appeal is accepted, it will first go to the President. The Board of Regents has the discretion to review the President's decision. Any review will be handled pursuant to the policies of the President and Regents concerning

discretionary reviews. An appeal to the President must be filed with the Office of the President within two (2) weeks of receipt of OEO's final determination.

VII. CONFIDENTIALITY

The University recognizes that individuals have a right to privacy. OEO strives to maintain confidentiality to the extent permitted by state and federal laws. However, the University has an obligation to investigate and resolve civil rights claims. Therefore, OEO must share information with persons who have a legitimate "need to know."

All participants involved with an internal civil rights investigation have a strict duty to keep investigation information confidential. Any attempt by any participant to influence the outcome of an investigation by divulging information to others (who have no legitimate "need to know") is grounds for disciplinary action.

VIII. ANONYMITY REQUESTS -- STUDENTS ALLEGING SEXUAL HARASSMENT

Student Claimants may request anonymity when alleging sexual harassment. OEO will evaluate the anonymity request in the context of the University's responsibility to provide a safe and nondiscriminatory work and learning environment. OEO will strive to abide by a Student Claimant's request for anonymity. However, when a Student Claimant continues to insist that his or her identity not be disclosed to the named Respondent/alleged harasser, the Student Claimant will be advised that an in-depth investigation may or may not be precluded depending on the circumstances presented in the claim. OEO reserves the right to disclose the name of a student when necessary to fulfill the University's obligations under anti-discrimination laws/regulations.²

IX. DEPARTMENTAL INVESTIGATIONS

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 and to act upon all reports of discrimination by investigating claims and taking appropriate corrective action. When allegations of civil rights violations/discriminatory actions affect more than one individual within a specific department OR in instances where issues affect multiple parties within one department, OEO may conduct a departmental investigation. Departmental investigations are requested by the appropriate Dean of an academic area or the Director of a department in consultation with OEO. OEO will determine the scope of the investigation and issue a final report containing the details of the investigation's results and also recommendations to the appropriate Dean or Director.

X. NOTICE OF THE INSTITUTION'S ANTI-RETALIATION POLICY

² Anonymity for students who raise issues of sexual harassment, is a provision promulgated by the Department of Education's Office of Civil Rights (OCR). The OCR does not (at least, not currently) make this provision applicable to faculty and staff of educational institutions.

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 any 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 to University policy to retaliate against any person for asserting his or her civil rights, which includes filing a claim of discrimination or participating as a witness in an investigation. Retaliation or reprisals against any participant in an investigation will not be tolerated by this institution. Retaliation against a person who seeks assistance from OEO or who files a claim of discrimination (including sexual harassment) is grounds for a subsequent civil rights claim. Further, any participant in an investigation who intentionally misdirects an investigation, whether by falsehood or omissions, will be subject to disciplinary action.