



# OFFICE OF EQUAL OPPORTUNITY

## DISCRIMINATION GRIEVANCE PROCEDURE

**FEBRUARY 4, 2021**

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## **CEEO DISCRIMINATION GRIEVANCE PROCEDURE**

The University of New Mexico (“UNM”) 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 for participation in civil rights protected activity. UNM has policies that prohibit all forms of discrimination and retaliation, and specifically prohibiting all forms of sexual harassment, a form of gender discrimination that is prohibited by state and federal law. The prohibition includes sexual violence, which is considered a severe form of sexual harassment.

UNM is committed to providing equal access to educational and employment opportunities for all individuals. UNM considers the following as protected statuses:<sup>1</sup>

- Age
- Ancestry
- Color
- Disability
- Ethnicity
- Gender
- Gender identity
- Genetic information
- Medical condition
- National origin
- Pregnancy
- Race
- Religion
- Sex
- Sexual orientation
- Spousal affiliation
- Veteran status

The Office of Compliance, Ethics and Equal Opportunity (CEEO) is the independent, impartial, and neutral campus entity designated to ensure compliance with all UNM policies that apply to civil rights, including investigations of any allegations of civil rights violations. When investigating an allegation of civil rights violations, CEEO acts as the finder of fact and will prepare a report at the conclusion of its investigation, as described herein. CEEO has no decision making or sanctioning authority. Once CEEO finalizes a report after an investigation into civil rights violations, CEEO refers the matter to the appropriate UNM office, which will ultimately determine whether a University policy has been violated or otherwise resolve the issue. CEEO reports directly to the UNM President’s Office to maintain optimal independence and impartiality.

CEEO staff treats all parties with respect and approaches each case impartially and equitably. In fulfilling its dual tasks of educating and providing public service, UNM shall demonstrate leadership in remedying discrimination and providing equal opportunities in employment and education. CEEO, acting under the authority of University

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<sup>1</sup> Title VII of the Civil Rights Act of 1964 (“Title VII”) 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. Discrimination on the basis of pregnancy, childbirth, or related medical conditions constitutes unlawful sex discrimination under Title VII. Title IX of the Education Amendments of 1972 (“Title IX”) prohibits discrimination on the basis of sex (gender) in any educational program or activity receiving federal financial assistance. Both the Rehabilitation Act of 1973 at Sections 503 and 504 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 over. 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”) 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.

Policies [2720](#), [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 UNM policies or impacts the academic or work environment. Leadership in CEEO includes the Chief Compliance Officer, the Compliance Coordinator, Director of Equal Opportunity, and the Title IX Coordinator.

CEEEO’s grievance procedures do not restrict rights guaranteed under the First and Fourth Amendments to the U.S. Constitution nor the Due Process Clause of the Fifth and Fourteenth Amendments to the U.S. Constitution. CEEEO shall comply with the Family Educational Rights and Privacy Act (“[FERPA](#)”).

This CEEEO Discrimination Grievance Procedure (“DGP”) outlines the method CEEEO uses when processing complaints alleging violations of UNM policy. Some of the complaints brought under this procedure may also contain allegations that qualify as violations of criminal statutes. As stated above, CEEEO 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. **CEEEO does NOT independently report alleged crimes to law enforcement except in limited circumstances, such as harm to a minor.**

### **DGP DEFINITIONS**

Actual Knowledge	Notice of sexual harassment or allegations received by CEEEO or the Title IX Coordinator regarding discrimination, including sexual harassment.
Advisor	A person chosen by a party or provided by UNM who acts as an advocate for the party during a UNM administrative hearing, if applicable. An Advisor acts as a party’s representative during a hearing for the purpose of conducting cross-examination of witnesses and the opposing party.
COA	Confirmation of Allegations. A Complainant’s written statement of the allegations they are making against a Respondent or Respondents.
Complainant	The person or persons filing a complaint with CEEEO.
COR	Confirmation of Response. A Respondent’s written statement in response to a Complainant’s COA.
Differential Treatment	Occurs when a protected class of people – whether an individual or a group – are treated differently than similarly situated individuals who are not in the protected class, due to their membership in the protected class.
Discrimination	Conduct based on protected class that excludes a person(s) from participation in, denial of benefits of, treats the person(s) differently than similarly situated individuals who are not in the protected class, or otherwise adversely affects the terms of condition of the person(s)’s employment, education, living environment, or participation in a UNM program or activity. Harassment (including hostile environment and quid pro quo) and differential treatment are forms of discrimination.
Education Program and Activity	Locations, events, or circumstances where UNM exercises substantial control over both the Respondent and the context in which harassment or discrimination occurs, and also includes any building owned or controlled by a student organization that is officially recognized by UNM.
Evidence	Evidence consists of, but is not limited to: eyewitness documents, records, statements, photos, video, security footage, audio recordings, social media, emails, text messages, cellular records, police reports, and any other information that would assist the investigator in finalizing a report.

Exculpatory Evidence	Evidence which tends to show that a Respondent is not responsible for an alleged policy violation.
Failure to Report	Responsible employees under <a href="#">University Policy 2740</a> are required to report allegations of known or suspected violations of <a href="#">University Policy 2740</a> or of gender discrimination to CEEO and/or the Title IX Coordinator with 24 hours or as soon as reasonably practicable. Per <a href="#">University Policy 2720</a> , supervisors are required to report allegations of known or suspected violations of UNM's civil rights policies to CEEO. Failure to report to CEEO within a reasonable timeframe could be considered a failure to report and a violation of University policy.
Final Determination	The Hearing Officer's conclusion by a preponderance of the evidence deciding whether alleged conduct occurred and whether that conduct violates UNM policy.
Formal Complaint	A document filed by a Complainant or signed by the Title IX Coordinator or CEEO alleging discrimination, including sexual harassment against a Respondent pursuant to <a href="#">University Policy 2740</a> , and requesting that CEEO investigate the allegations of discrimination or harassment.
Hearing	The adjudicatory process that takes place after CEEO has concluded its investigation of an alleged civil rights policy violation.
Hearing Coordinator	The individual responsible for coordinating a hearing among the parties, Advisors, witnesses, and other hearing participants.
Hearing Officer	The individual responsible for evaluating the evidence presented by the parties at a hearing and issuing a subsequent determination as to whether a civil rights policy violation occurred.
Hostile Environment	Conduct sufficiently serious (severe/pervasive) and objectively offensive so as to deny or limit a person's ability to participate in or benefit from UNM's programs, services, opportunities, or activities, or conduct that has the purpose or effect of unreasonably interfering with a person's employment or education.
Inculpatory Evidence	Evidence which tends to show that a Respondent is responsible for an alleged policy violation.
Informal Resolution	An informal process where CEEO does not conduct an investigation, and the allegations in the complaint are therefore neither corroborated nor contested. An informal resolution is not disciplinary in nature. In cases where a violation of <a href="#">Policy 2740</a> is alleged to have occurred, two conditions must exist: 1) both parties must agree to an informal resolution; and 2) the alleged conduct must not have been committed by a UNM employee against a student.
Investigative Report	The final report issued at the conclusion of a formal investigation, which includes: Complainant's statement(s), Respondent's statement(s), witness statements, documentary evidence, and threshold record to be used in an evidentiary hearing.
Jurisdiction	Occurs when the circumstances of a complaint are such that CEEO is authorized by UNM Policy to investigate or remedy those circumstances or allegations.
Post-Closure Action	Informal action that may be taken after the closure of an investigation that does not proceed to a live hearing which is designed to stop alleged conduct and prevent its recurrence.
Preponderance of the Evidence	The relevant evidence gathered during an administrative investigation that demonstrates it is more likely than not that a policy violation occurred.
Protected Class or Status	A trait or association recognized by law or policy as protected against unlawful discrimination. UNM 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 orientation, spousal affiliation, and veteran status.
Remedies	To be provided to a Complainant when a Respondent is found to have violated UNM policy. Remedies are designed to maintain the Complainant’s equal access to education and may include the same individualized services described as supportive measures herein. Remedies for a Complainant are not, however, required to be non-disciplinary or non-punitive for the Respondent and need not avoid burdening the Respondent.
Respondent	The person or persons responding to a complaint filed with CEEO.
Retaliation	Any action taken in order to seek an adverse academic or employment result against any individual or group of individuals opposing discrimination, filing a complaint, reporting alleged discrimination, participating in a civil rights investigation, or filing an external civil rights complaint.
Support Person	A support person is any person of a Complainant or Respondent’s choosing who attends CEEO interviews and helps to guide the party through the CEEO process. A support person cannot participate in CEEO interviews; rather, they act as a second set of ears for the Complainant and Respondent. A support person <b>CANNOT</b> be a potential witness in the CEEO investigation that the Complainant or Respondent is involved in, nor can they be someone in the Respondent’s supervisory chain. A support person cannot participate in an evidentiary hearing, if applicable.
Supportive Measures	<p>Non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or UNM’s educational environment, or deter harassment.</p> <p>Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.</p> <p>UNM will maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality does not impair UNM’s ability to provide the supportive measures.</p> <p>The Title IX Coordinator and/or Director of Equal Opportunity is responsible for coordinating the effective implementation of supportive measures, as appropriate.</p>
Third-Party Report	A report filed by someone other than the party affected by civil rights violations, including a responsible employee, witness, or other individuals with knowledge or information regarding potential civil rights violations.
Title IX	Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex or gender in any educational program or activity receiving federal financial assistance. Title IX violations include: sex/gender discrimination, sexual harassment, stalking, dating violence, domestic violence, and intimate partner violence, or any other form of sexual violence.
Unaffiliated	When a party is referred to as “unaffiliated,” it means that they do not have a direct relationship to UNM as a student, faculty, staff member, or contractor.

Union Representative	A union representative is a person from a party's employment/labor union who may attend CEEO interviews and help guide the party through the CEEO process. A union representative cannot participate in CEEO interviews; rather, they act as an observer for the party.
Witness	Any person who may have knowledge of the evidence in an investigation or complaint.

**I. NOTIFICATION AND CORRESPONDENCE WITH CEEO**

CEEEO generally sends official notifications and other documentation to individuals via email to official UNM email addresses; if the individual does not have a UNM email address, it is sent to an email address provided by the individual. Individuals may request that CEEEO use an alternative email address or a different method of contact, but unless and until this request is made, CEEEO will send all correspondence using this method. Requests that CEEEO send communications to an email address other than a UNM 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), by mail to CEEEO's mailing address at 1 University of New Mexico, MSC05 3150, Albuquerque, NM 87131-0001, or by hand delivery to CEEEO during CEEEO's regular business hours at 609 Buena Vista Dr. NE, Albuquerque, NM 87106.

All CEEEO correspondence sent to an individual by email is deemed received on the date the email is sent. All correspondence sent from CEEEO to an individual by mail is deemed received by the recipient **three (3) business days** after the postage date.

**II. RETALIATION**

It is the policy of UNM to foster an environment where faculty, staff, and students may raise civil rights claims without fear of retaliation or reprisal. All members of the UNM community have a right to redress for perceived violations of their civil rights. It is contrary to UNM policies (under [2720\(13\)](#) and [2740\(4\)](#)) to retaliate against any person for asserting his or her civil rights or for reporting civil rights related misconduct, including sexual misconduct. These rights include, but are not limited to: notifying UNM (faculty, staff) of civil rights concerns; filing a claim of discrimination; participating as a witness in an investigation; declining to participate 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 UNM. Retaliation against a person who seeks assistance from CEEEO is grounds for a subsequent civil rights claim.

**III. TIME FRAME**

Individuals who believe their civil rights have been violated at UNM or in a UNM program 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 and/or pervasiveness of the allegations (such as sexual violence), allegations of a continuing pattern of conduct, or as determined by CEEEO.

**IV. REPORTING CONCERNS; TYPES OF COMPLAINTS**

Any person may report discrimination, including those below, to contact CEEO if they observe, experience, become aware of, or encounter conduct they believe may be related to civil rights violations:

- UNM Students
- UNM Staff
- UNM Applicants
- Former UNM Employees or Students
- UNM Student Employees
- UNM Faculty
- Visitors to UNM
- Parents and Guardians of Applicants or Students

Reports of potential civil rights violations can be made through any of the following means:

- Complete and submit an online CEEO complaint form;
- Email ([oeounm@unm.edu](mailto:oeounm@unm.edu)), fax (505-277-1356), or mail a written document describing the concerns;
- Complete the online [UNM EthicsPoint Hotline Complaint Form](#);
- Make an appointment with an CEEO employee;
- Walk-in at CEEO's office during regular business hours; or
- Call 505-277-5251.

Inquiries may be made outside of UNM to:

Office for Civil Rights (OCR)

U.S. Department of Education

400 Maryland Avenue SW

Washington, D.C. 20202-1100

Customer Service Hotline #: (800) 421-3481

Facsimile: (202) 453-6012

TDD#: (877) 521-2172

Email: [OCR@ed.gov](mailto:OCR@ed.gov)

Web: <http://www.ed.gov/ocr>

There are different types of complaints that may be made to CEEO under this DGP, as outlined below.

#### A. Informal Complaint from Complainant

A Complainant may file an [informal complaint](#) of discrimination or harassment in order to seek supportive measures and as a means of obtaining information regarding their rights and the CEEO formal grievance procedure, as described in Section VI. Once informed, the Complainant may decide to initiate the formal grievance process. An informal complaint by itself, however, will not activate the formal grievance process. A report from a third party reporter is considered an informal complaint.

The informal complaint should include:

1. The Complainant's name and preferred contact information, as well as their affiliation with UNM (student, staff, faculty, applicant, or visitor to UNM);
2. The Respondent's name and contact information, and whether the Respondent is a student, staff, faculty, or UNM visitor;
3. The Complainant's protected status under which the alleged discrimination or harassment has occurred;
4. The civil rights category to which the Complainant believes the allegations belongs (i.e., sexual harassment or misconduct, discrimination, harassment, failure to accommodate, retaliation, etc.); and

5. A description of the alleged discriminatory conduct and the Complainant's protected status (as defined on page 1).

Upon receipt of the informal complaint, the following will occur:

1. CEEO will reach out to the Complainant with resources to address their concerns. These resources are specific to the Complainant's role at UNM (student, staff, or faculty) and outline access to groups on and off campus to assist the Complainant with the impacts that alleged discrimination has had on them;
2. CEEO will offer the Complainant the opportunity to request supportive measures;
3. CEEO will advise the Complainant of their right to file a formal complaint and information regarding the formal grievance procedure.

Complainants may provide the required information orally or in writing. CEEO may contact persons who submit complaints in order to discuss the details of the concerns and obtain additional factual information.

#### B. Formal Complaint from Complainant

A Complainant may file a [formal complaint](#) of discrimination and/or sexual harassment that triggers the formal grievance procedure set forth in Section VI. See Section VI(A) for more information regarding formal complaints.

The formal complaint shall:

1. Be filed utilizing the CEEO [formal complaint form](#) (if the complaint is received verbally or via a third-party report, the Complainant electing a formal complaint process shall utilize the CEEO form);
2. Be signed and dated by the Complainant;
3. Include Respondent's name and contact information (if known), and whether the Respondent is a student, staff, faculty, or UNM visitor;
4. Include Complainant's protected status, which they claim as the basis for the alleged discrimination or harassment;
5. Include the civil rights category to which the Complainant believes the allegations belong (i.e., sexual harassment, violence, or misconduct, discrimination, harassment, failure to accommodate, retaliation, etc.);
6. Include a description of the alleged discriminatory conduct and the Complainant's protected status (as defined on page 1 herein);
7. Identify the UNM program, activity, or location where the alleged conduct occurred; and
8. Indicate whether the alleged conduct occurred in the United States.

A Complainant who files a formal complaint with CEEO will have the opportunity to seek supportive measures.

#### C. Third-Party Reports and Reports from Responsible Employees; Failure to Report

CEEEO receives reports from third-party reporters, responsible employees, or others who have information regarding potential civil rights violations. In these cases, the third-party report may lack the detail present in a Complainant's direct report. In such cases, CEEEO may reach out to the individual(s) the third-party reporter identifies as having experienced the civil rights violation or other witnesses the third-party reporter identifies for more information. CEEEO will evaluate and accept third-party reports to determine if the report is sufficiently detailed to accept jurisdiction and constitute actual knowledge of a complaint. In all cases where reports are

received from third parties, CEEEO will reach out to the alleged Complainant to discuss the report, determine the alleged Complainant's need for supportive measures, and how they wish to proceed.

#### 1. Failure to Report

When CEEEO receives information that a UNM employee with reporting responsibilities, pursuant to University Policies [2720](#) and [2740](#), has failed to report allegations of known or suspected policy violations in a timely fashion, CEEEO will initiate the following process.

Depending upon the nature of the FTR, CEEEO may issue a memorandum or proceed with additional fact-finding processes. If an FTR is a singular occurrence, an FTR memorandum will be sent to the Respondent (the person who failed to report to CEEEO under UNM Policies) and their supervisor. This memorandum serves as a reminder of the responsible employee's duties as outlined in University Policies [2720](#) and [2740](#), and is not disciplinary or punitive. No CEEEO investigation is conducted and no hearing is held.

In cases where there are multiple instances of FTR or when an FTR could result in significant harm to the campus or member(s) of the campus community, CEEEO will notify the Respondent (the person who failed to report to CEEEO under UNM Policies) of the information that CEEEO has related to the FTR in writing, and will provide Respondent **five (5) business days** to respond to the FTR allegations, by either providing a verbal or written statement. See Section VI(C)(3)(b).

CEEEO will review all relevant documents and interview any witnesses, if available and necessary, to determine if Respondent failed to report in relation to their duties, position, and responsibility under UNM policy. This information will be gathered into a Draft Investigative Report and provided to Respondent for review. Respondent will have **five (5) business days** from the date of the Draft Investigative Report to provide additional, factual, relevant information. CEEEO will then prepare a memorandum stating whether the information gathered demonstrates a violation of policy (POLICY VIOLATION or NO POLICY VIOLATION) and will provide the memorandum to Respondent. **There is no live hearing associated with an FTR investigation**; the determination of a policy violation is made by the CEEEO investigator. Respondent will have the same opportunity to appeal per the process outlined in Section X herein. After the appeal window closes, CEEEO will provide the FTR memorandum to Respondent's supervisor and the appropriate sanctioning authority on campus.

#### D. Anonymous Reports

Individuals who report to CEEEO may choose to do so through anonymous means, such as through UNM's anonymous compliance hotline. CEEEO's ability to conduct a full investigation into the alleged discrimination may be limited in this circumstance. 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. See Section XI.

#### E. Report Filed by the Title IX Coordinator or CEEEO

Based on information CEEEO and/or the Title IX Coordinator receives, the Title IX Coordinator or CEEEO may exercise their authority to initiate a formal complaint and investigation on behalf of UNM, regardless of the cooperation or involvement of a Complainant or affected party.

#### F. False Reports

In the event CEEO receives clear and credible information demonstrating that a Complainant or other filing party has submitted a false report, CEEO will investigate as outlined herein against the party alleged to have filed a false report. A person who is determined to have filed a false report is subject to the sanctions and discipline outlined in Section VIII.

## V. JURISDICTION

### A. Jurisdiction Generally

CEEEO reviews discrimination complaints to determine whether it is authorized to address them. CEEEO's jurisdiction is generally limited to conduct that occurs on UNM property or within UNM education activities, programs, sponsored events, or functions. In some cases, however, CEEEO may assert jurisdiction when the complaints are alleged to impact the campus environment or a staff, faculty, or student's work or academic environment.

CEEEO will take no action on any complaint filed with CEEEO unless it has jurisdiction over one of the parties involved and the subject matter as described in greater detail below:

1. The parties involved. CEEEO investigates policy violations. Therefore, the policy alleged to have been violated must apply to at least one of the persons involved in the report.
2. The subject matter of the allegations underlying the complaint. CEEEO has jurisdiction to investigate alleged policy violations regarding civil rights. For CEEEO to have jurisdiction to investigate a complaint, the allegations must state facts that, taken in the light most favorable to the Complainant, qualify as an alleged violation of one or more of UNM's policies. If the allegations in the complaint do not allege sufficient facts demonstrating that one of UNM's civil rights policies have been violated, then CEEEO may not be able to accept jurisdiction and/or may dismiss the matter as outlined in **Section XX**. As noted above, CEEEO may take informal action related to allegations that do not, as alleged, violate UNM policy; therefore, UNM and CEEEO encourage anyone who has any concerns related to civil rights at UNM to bring their concerns to CEEEO.

To make a jurisdictional determination, CEEEO may also consider:

1. Previous and contemporaneous reports or violations against Respondent;
2. Pattern of behavior;
3. Severity of the allegations;
4. Use of weapons, drugs, or coercion;
5. Physical threats or violence;
6. The power dynamic between the parties involved;
7. Where the incident(s) took place;
8. The impact on the parties;
9. Whether multiple parties were impacted.

### B. Jurisdiction of Complaints Subject to University Policy 2740

In order to accept jurisdiction in cases of alleged sexual harassment as defined in [University Policy 2740](#), the alleged incident must have occurred in UNM's education program or activity, which includes physical locations and events over which UNM exercises substantial control, over both the Respondent and the context in which the sexual harassment occurs. This includes any building owned or controlled by a student organization that is officially recognized by UNM. Additionally, at the time of the alleged conduct, the Complainant must be

participating or attempting to participate in UNM's educational programs or activities. Complaints filed under [University Policy 2740](#) must have occurred in the United States.

## VI. FORMAL GRIEVANCE PROCEDURE

### A. Formal Complaint

A Complainant may file a [formal complaint](#) of discrimination and/or sexual harassment to initiate the formal grievance procedure outlined in this section.

The Complainant shall file a formal complaint by either signing and dating the CEEO [formal complaint form](#) or by signing a Confirmation of Allegations after providing a verbal statement of their complaint to an investigator. A Complainant who files a formal complaint will have the opportunity to seek supportive measures.

### B. Notice

Upon receipt of a formal complaint of discrimination as described in Section VI(A), CEEO will notify the parties of the following:

1. A formal complaint has been received;
2. The ability to informally resolve the complaint. The parties must agree to an informal resolution in cases alleging violation of University Policy 2740. Informal resolutions are unavailable in cases where a UNM employee is alleged to have sexually harassed a student;
3. A notice of the allegations, including the identities of relevant participants;
4. The specific policy or policies that Respondent is alleged to have violated;
5. The date and location of the incident, if known;
6. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
7. Inform the parties that they may have an Advisor of their choice during any subsequent hearing, including an attorney at their own expense, if they choose;
8. Advise the parties of UNM policies prohibiting false statements. See [UNM Student Code of Conduct](#), Section 2.3; [University Policy 2720](#), Section 12; [University Policy 2740](#).
9. Inform the parties about retaliation as described in University Policies [2720\(13\)](#) and [2740\(4\)](#);
10. Provide notice of any additional allegations that arise after the initial notice to the parties; and
11. State the purpose of all investigative interviews with a party, with enough time for the party to prepare for the interview.

### C. Process Options

After a Complainant files a formal complaint as outlined in Section IV(B) and the parties are provided with notice, the following process options are available:

#### 1. Withdraw the Complaint

A Complainant may elect to withdraw their complaint at any time after bringing concerns to CEEO. If Complainant chooses to withdraw the complaint, Complainant will be required to sign a form verifying this decision; a written request by the Complainant will meet this requirement. A Complainant is still allowed to seek supportive measures as described in the Definitions section of this DGP.

Even if a Complainant withdraws their complaint, CEEO reserves the right to continue its inquiry into the concerns in order to ensure compliance with UNM policy and related state and federal regulations. Within **five (5) business days** of either receiving Complainant's notice of withdrawal or CEEO's final attempt at communication with Complainant, CEEO will notify Complainant if any further action will be taken regarding their complaint. CEEO may act to ensure a working and learning environment free from harassment and discrimination.

If, after a withdrawal by Complainant, CEEO determines it will not proceed with the formal process and investigation, it will dismiss the complaint and notify the parties of the dismissal and justification. See **Section VI(C)(3)(e)(i)**.

## 2. Informal Resolution

An informal resolution is a path designed to eliminate the alleged discriminatory or harassing conduct, prevent its recurrence, and remedy its effects in a manner that ensures compliance, along with the safety and welfare of the campus community. The purpose of an informal resolution is to inform Respondents that allegations have been made against them and to make them aware of UNM policies and behavioral expectations. This is an informal process where an investigation is not conducted and the allegations in the complaint are therefore neither corroborated nor contested. An informal resolution is NOT disciplinary in nature. **An informal resolution will not be offered to facilitate a resolution for allegations that a staff or faculty member sexually harassed a student.**

A Complainant may elect to proceed with an informal resolution after filing a formal complaint in all cases. In order for an informal resolution to proceed in cases involving allegations of [Policy 2740](#) violations, the parties must both agree with this option. If the parties do not agree, CEEO will afford the Complainant an opportunity to either withdraw the complaint or proceed to a formal investigation as outlined in Section VI(C)(3). As outlined in Section VI(C)(1), however, CEEO reserves the right to continue the investigation in order to ensure compliance with UNM policy and related state and federal regulations.

An informal resolution does not follow a pre-determined process. Rather, CEEO consults with the parties and then proceeds with a solution that prevents recurrence of the alleged conduct. Examples of informal resolutions include, but are not limited to:

- Meet with Respondent to discuss the allegations and UNM policies;
- Meet with Respondent and Respondent's supervisor separately if the allegations regard a work environment;
- Meet with Respondent and supervisor or other authority figure together;
- Provide training or engage in other collaborative processes as deemed appropriate by CEEO;
- Initiate the ADA reasonable accommodation process in cases where a failure to accommodate has been alleged;
- Provide information and discuss reasonable accommodations for pregnancy/lactation;
- Dialogue about the issues to improve the environment or remedy the effects of the alleged conduct; or
- Refer the parties back to a supervisor or other appropriate party for remedial action and monitoring of the work and/or academic environment. The supervisor will notify CEEO of the actions taken to address the work and/or academic environment.

After an informal resolution occurs, CEEO sends follow-up correspondence to Respondent and/or to Respondent's supervisor or other authority figure (if applicable), documenting what action was taken by CEEO. CEEO notifies Complainant of the action taken and, when appropriate, follows up with the parties regarding Complainant's initial concerns for **sixty (60) days**, to ensure the conduct at issue has stopped. At the conclusion of the sixty (60) day period, CEEO will close the case. CEEO may modify monitoring periods on a case by case basis.

Informal resolutions may not be appropriate for all forms of conduct prohibited by UNM policies. **Informal resolutions may not be an available procedural option when CEEO determines that an informal process is not appropriate based on the severity or pervasiveness of allegations.** In those instances, CEEO may proceed with a formal investigation, which can lead to an evidentiary hearing before a Hearing Officer. See Section VI(C)(3)(f).

### 3. Formal Investigation

The investigation is a neutral process during which CEEO gathers evidence directly related to the allegations in the formal complaint from the parties, any witnesses they identify, any witnesses CEEO identifies, and from any other source. The parties 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 Definitions section of this document. As described in greater detail in the subsections below, each party will have the following opportunities during a full CEEO investigation:

- Be interviewed by the investigator;
- Review their own statements prior to the statement being included in an Investigative Report and distributed to the other party.
- Provide evidence to the investigator;
- Suggest witnesses to be interviewed by the investigator; and
- Propose questions to be asked of witnesses and parties.

If additional allegations are identified during the investigation, the investigator shall provide additional notice to the Respondent pursuant to Section VI(B) above. The Respondent will have the opportunity to provide additional information in response to any new allegations.

#### a. *Initial Assessment*

Following receipt of a formal complaint, CEEO will engage in an initial assessment, which is meant to determine sufficiency of the complaint. During the initial assessment, the CEEO investigator will meet with the reporter to outline the CEEO formal grievance process and gather relevant information to make a jurisdiction determination. If, during the initial assessment, the available evidence shows that the matter is not within the scope of CEEO, the formal complaint will be dismissed. The parties will receive a dismissal letter outlining the justification and appeals information as outlined in the following section. A dismissal can happen at any point throughout the investigative process. If the matter falls within the scope of CEEO, notice will be sent to both parties as described in Section VI(B) and the complaint will proceed with the grievance process outlined herein.

#### b. *Dismissal Letter*

If at any point in the investigative process the evidence gathered indicates that no discriminatory or harassing behavior took place, the conduct described is not civil rights related, or does not fall within the jurisdiction of CEEO, CEEO will issue a Dismissal Letter to the parties, summarizing the evidence and its justification for

dismissing the complaint. A Dismissal Letter can be issued at the beginning of the formal complaint being filed if the alleged conduct does not fall within CEEO's jurisdiction (e.g., academic dishonesty, bullying).

CEEEO will issue a dismissal in cases where the complaint is not jurisdictional to CEEEO. CEEEO will issue a Dismissal Letter, as required by Title IX of the Education Amendments of 1972, in cases that allege violation of [University Policy 2740](#) when:

- Alleged conduct does not meet the definition of sexual harassment under [University Policy 2740](#);
- The alleged conduct did not occur within UNM's education program or activity; or
- The alleged conduct occurred outside of the United States.

**If CEEEO issues a Mandatory Dismissal for an alleged violation of University Policy 2740, it may still proceed with a formal investigation under other applicable University policies.**

CEEEO will consider a Discretionary Dismissal in all cases as follows:

- Where a Complainant notifies CEEEO or the Title IX Coordinator in writing that they want to withdraw the formal complaint or any allegations therein;
- Where the Respondent is no longer enrolled in or employed by UNM;
- Where specific circumstances prevent CEEEO from gathering evidence sufficient for a decision-maker to reach a determination (e.g., alleged misconduct is not targeted at a specific individual; there is no nexus between alleged misconduct and a protected status).

Parties may appeal an CEEEO dismissal pursuant to Section X herein.

Even when it issues a Dismissal Letter, CEEEO may determine that the academic and/or work environment requires some informal action, such as training or education for the parties or a department. In cases where post-closure action is deemed appropriate, parties who need to know will be notified. This informal action may include:

- Referring the issue to a department, division, or unit to address climate issues (CEEEO will require the department to provide CEEEO with information outlining the remedial action that was taken);
- An educational or other training opportunity conducted by CEEEO or other entity;
- Referral to another department on campus with authority to address the concerns including the UNM Police Department, Dean of Students, Academic Affairs, or Human Resources.

### *c. Complainant Meeting*

Typically, as part of the formal investigation, CEEEO engages in an interview process with Complainant to determine the specific allegations Complainant requests CEEEO to investigate. **This interview process may consist of multiple meetings, if needed. For example, the Initial Assessment meeting may yield sufficient information to proceed, but that is not always the case.**

During the interview, CEEEO will describe the investigative process, the rights and responsibilities of the parties, and UNM's policy prohibiting retaliation. Complainant will provide a statement to the investigator – whether verbal or written – outlining the specific allegations they are making against Respondent(s). If Complainant provides a verbal statement, CEEEO will draft a written Confirmation of Allegations (COA) and provide it to Complainant within **two (2) business days** of the initial Complainant meeting in which they disclose the allegations. Complainant will have **two (2) business days** after receiving the COA to confirm its accuracy and

then sign and return to CEEO. When the interview process is complete, Complainant has returned the COA, and the specific allegations of policy violation(s) have been identified for investigation, CEEO will simultaneously notify Complainant and Respondent within **two (2) business days** which allegations have been accepted for investigation, which type of discrimination the Complainant has identified, and which University policies the Respondent is alleged to have violated.

d. *Respondent Meeting*

If a formal investigation is elected, CEEO schedules a meeting with Respondent. Prior to meeting with Respondent, CEEO will provide Respondent with written notice and information that constitutes the complaint, including the protected status, the type of discrimination, and a summary of allegations raised by the Complainant. During this meeting, CEEO describes the investigation process, the rights and responsibilities of all parties, and UNM's policy prohibiting retaliation.

At the initial meeting, CEEO notifies Respondent of the nature and scope of Complainant's allegations and the UNM policy(ies) Complainant alleges Respondent violated. During the meeting, Respondent may provide a statement to the investigator – whether verbal or written – in which Respondent addresses the allegations raised by Complainant and answers questions posed by the investigator. If Respondent provides a verbal statement, CEEO will draft a written Confirmation of Response (COR) and provide it to Respondent within **two (2) business days** of the initial Respondent meeting. Respondent will have **two (2) business days** after receiving the COR to confirm its accuracy and then sign and return to CEEO.

e. *Evidence Gathering*

As part of its investigation, CEEO gathers information it deems relevant to the allegations and any defenses. The parties may submit any documentation they believe should be considered, as well as identify any witnesses they believe should be interviewed. Witnesses are given the opportunity to review a draft of their statement before the statement is included in the Investigative Report. The parties should submit any evidentiary items that are listed in the Definitions section herein, including electronic evidence such as social media posts, audio, text, and phone records. The parties should notify CEEO as soon as possible of any electronic evidence, such as recordings and social media, in order for CEEO to request and preserve the evidence.

CEEEO shall also identify evidence independently of the parties if CEEEO determines that such evidence may be relevant to its investigation. CEEEO may also receive information from other UNM offices as appropriate or review public sources, such as social media or public records.

CEEEO has sole discretion to determine which allegations it will investigate and the way it will conduct an investigation. As such, CEEEO has sole discretion to determine the relevance of information to the investigation. Any evidence that CEEEO finds irrelevant to the investigation will be documented in the Investigative Report for purposes of final review by the Hearing Officer.

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

f. *Inspection and Review Process*

The parties will be provided an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

Prior to issuing a final Investigative Report, CEEO will send to each party and the party's support person, if any, the evidence subject to inspection and review in an electronic format. The parties will have **ten (10) business days** to submit a written response, including any **new, factual information which was not reasonably available to the parties prior to issuing the Investigative Report**, which the investigator will consider prior to completion. See **Section VI(C)(3)(e)(ii)** herein.

*g. Post-Investigation Steps*

At the conclusion of an investigation, CEEO will either dismiss the formal complaint **pursuant to Section (VI)(C)(3)(b)** or continue the investigatory process for further action if a dismissal is not warranted.

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*i. Investigative Report*

If dismissal of a formal complaint is not warranted, CEEO will create an Investigative Report. The Investigative Report will offer no opinion as to whether a policy violation occurred.

The Investigative Report will include: a citation to the policies alleged to have been violated; Complainant's statement; Respondent's statement; witness statements; all relevant evidence gathered in the investigation; a citation of evidence gathered that the investigator finds irrelevant; the investigative steps taken; and a statement outlining the reason for any delay in an investigation.

The Investigative Report shall:

- Objectively state all relevant evidence, including both inculpatory and exculpatory evidence;
- Start from a premise that the Respondent did not engage in the discriminatory conduct until a determination of responsibility is made at the conclusion of the grievance process by a preponderance of the evidence;
- Outline disputed and undisputed facts uncovered during the investigation, including any evidentiary anomalies or discrepancies.

At the request of a party or witness, or at its discretion, CEEO will exclude and redact from the report content falling into one of the following categories:

- **Prior Sexual History.** Generally, an individual may exclude evidence of their own prior sexual history with anyone other than a party;
- **Mental Health Treatment and/or Diagnosis.** Generally, an individual may exclude evidence of their own mental health diagnosis and/or treatment;

- Sensitive Personal Identifying Information and Medical Records. Sensitive personal identifying information, such as Social Security numbers and irrelevant information contained in medical records, will be excluded;

The investigator will also exclude and redact content that is impermissible under applicable law. Exclusions and redactions will be noted and thereby become part of the investigative record.

In order to protect the integrity of the CEEO investigation, no documents or records are released to the Complainant or Respondent until the Investigative Report is issued. The Investigative Report contains a description of the documents and records CEEO gathers during its investigation and which the Hearing Officer may use to determine whether UNM policy was violated.

After the Investigative Report is issued, the parties will have **ten (10) business days** to submit any new, relevant, factual information to be included in the final Investigative Report. The response may include corrections or clarifications to the party's own statement, questions for the other party or witnesses, along with any additional evidence or witnesses **not reasonably available to the parties prior to issuing the Investigative Report**. This new information will be included as part of the record in the final Investigative Report, which will be issued to the parties within **five (5) business days** of having received the parties' responses to the Investigative Report.

The final Investigative Report will then be compiled and forwarded to the UNM Hearing Coordinator to begin the grievance [hearing process](#). Thereafter, CEEO will close the investigative file and provide notice to the parties of the same.

#### *h. Grievance Hearing Process*

A live hearing presided over by a Hearing Officer will be held to adjudicate the formal complaint and CEEO investigation. Upon the request of either party, the hearing may be conducted by videoconference with the parties in separate rooms, pursuant to the [University Hearing Procedure](#). At all times, however, all participants – including the parties, Advisors, witnesses, and decision-maker – must be able to see and hear each other.

The Hearing Officer has extensive training in Title IX procedures as well as all applicable evidentiary requirements, standards of proof, and relevant state and local laws. The Hearing Officer is tasked with reaching a determination by applying a preponderance of the evidence standard, which is the standard utilized in all UNM hearing processes.

The [hearing process](#) is determined by the Hearing Officer.

## **VII. OTHER MATTERS RELEVANT TO THE FORMAL GRIEVANCE PROCESS**

### **A. General Statement of Investigation Timelines**

CEEEO attempts to complete investigations in a timely manner, generally concluding within **sixty (60) calendar days** of accepting a formal investigation; however, some investigations may take additional time depending upon the complexity of the claim(s) and other extenuating circumstances. **See Section XX**. When there are factors that extend the normal time frame, the parties are notified of the extension and CEEEO documents the

reasons for the extension. Similarly, when circumstances dictate that any of the timelines specifically identified herein be extended, CEEO notifies the parties and documents the reasons for the extension.

If a party requires an extension of any time limits applying to them as stated herein, they should submit a request to the investigator 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, CEEO may grant the request. If a request is granted, CEEO will notify the parties of the length of the extension and the reason provided for the extension.

In investigations where there is also a criminal investigation by a law enforcement agency, the CEEO process will run concurrently with such an investigation. CEEO may grant temporary delays reasonably requested by law enforcement for evidence gathering and preservation.

#### B. Responsibilities of the Parties

All persons involved in a CEEO investigation are encouraged, and all UNM employees are required, to preserve all information and tangible material relating to alleged discriminatory or harassing conduct. Examples of evidence include, but are not limited to: electronic communications, photographs, video and/or audio recordings, clothing, and medical information.

At all stages of an CEEO investigative and hearing process, UNM students and employees are expected to provide truthful information to investigators, hearing coordinators, and hearing officers. Making false representations to the University is prohibited under policy and applies to all UNM community members. See [UNM Student Code of Conduct](#), Section 2.3; [University Policy 2720](#); [University Policy 2740](#).

All UNM students, staff, and faculty who participate in a CEEO investigation and any subsequent hearing are encouraged to keep investigation and hearing information confidential during the investigation and hearing in order to maintain the integrity of the process.

#### C. Modification of the Formal Investigation Process

CEEEO may elect to deviate from standard process when facts or situations require it. Any deviation from standard reports will be described in detail in the Investigative Report and will include the reasoning for this deviation. Examples include, but are not limited to:

1. Unaffiliated Respondents. If the Respondent is unaffiliated with UNM or becomes unaffiliated with UNM, CEEEO may continue the formal investigation and issue an Investigative Report.
2. Hiring or Policy Challenges. CEEEO may accept a hiring or policy challenge based on protected status, where the complaint demonstrates a potentially disparate impact on Complainant. In these situations, CEEEO may elect to name a department, division, unit, or office as Respondent and review the hiring process, procedure, candidate pool, or hiring outcome. In these situations, CEEEO may not name a specific Respondent and will issue only a Final Report, similar to a climate investigation described herein. See Section IX.
3. Failure to Report. See Section IV(C)(1).

#### D. Advisors, Support Persons, and Union Representation

Complainants and Respondents are encouraged to bring a support person of their choice to provide guidance during the CEEEO process, including the investigatory stage. A support person may be any person who is not a

party or potential witness in the case or a supervisor of one of the parties; their role is to assist the party in navigating UNM's administrative processes. Support person roles may vary based upon the specific needs of the party.

In the event a CEEO investigation advances to a hearing, the parties are required to have an Advisor of their choice. The Advisor assists the party during the hearing stage, including conducting cross-examination of the opposing party and witnesses.

If the party has union representation, the party has a right to request that a union representative be present at any meeting with CEEO. If the party feels it is necessary to have a union representative during the interview, the party may ask to stop the interview at any time. The party will be given **three (3) business days** to obtain a union representative and reschedule the interview.

The parties may be accompanied by their respective support person to any CEEO meeting or interview. The support person is allowed to ask questions regarding CEEO's process but is **not** allowed to answer questions posed to the parties, to present arguments or evidence, or otherwise participate directly in the investigation. A support person shall make themselves reasonably available for all aspects of the CEEO grievance process. CEEO will review and grant good cause extensions as it deems necessary and on a case-by-case basis; scheduling conflicts alone generally do not constitute good cause. Parties are encouraged to utilize UNM's on-campus resources.

CEEEO will communicate directly with the parties unless the parties indicate otherwise in writing. If a party wishes CEEEO to communicate directly with a support person, the party must sign a release and describe the parameters of CEEEO's communication with the support person. If the party is a student, the student must sign a FERPA waiver provided by CEEEO.

Advisors and/or support persons shall not share [FERPA](#)-protected or other confidential information learned through the CEEEO process. Advisors and/or support persons shall not engage in harassment or retaliation of any person or party. Support persons will be asked to sign a Confidentiality Agreement to protect the integrity of the CEEEO grievance process and investigation.

#### E. Conflict of Interest and Bias

When a party alleges that there is a conflict of interest or bias that would prevent CEEEO from conducting a fair, impartial, and neutral investigation, CEEEO will conduct an assessment to determine whether an actual conflict or bias exists. A party's perception of a conflict or bias do not create an actual conflict or bias. An actual conflict exists where it is demonstrated that:

- The investigator has or has had a personal relationship with a party; or
- The named parties include – in good faith – the President of the University or the President's Chief of Staff, as CEEEO reports directly to these individuals.

Each CEEEO staff member is trained to disclose to CEEEO leadership an instance in which they have a conflict or potential bias in a complaint assigned to them. An investigator is not presumed to have a particular bias based on any of their own protected statuses, prior affiliations, or prior investigation outcomes.

The Title IX Coordinator's or CEEO's direction to proceed with a formal complaint does not create an actual conflict of interest or bias for or against a party involved in the complaint. Such a direction does not endorse or accept as true the allegations in a complaint; rather, the direction is made to ensure UNM meets its obligations under the law and/or University policy.

If a party believes that a conflict of interest or bias affected the outcome of an OEO investigation, they may appeal any CEEO or Hearing Officer determination on that basis. [See Section XXX.](#)

## **VIII. SANCTIONS AND REMEDIES**

CEEEO does not have sanctioning or disciplinary authority. If the Hearing Officer's final determination is that a policy violation has occurred, the Hearing Coordinator will send a copy of the Investigative Report and the Hearing Officer's Final Determination to the parties, their Advisors, and CEEEO as outlined in the [hearing procedure](#).

Investigative Reports and Final Determinations may also be shared with others who have a legitimate business reason to be advised of the determination, including but not limited to: National Institutes of Health (NIH), National Science Foundation (NSF), UNMPD, Student Conduct, Residence Life, the Clery Compliance Officer, Greek Life, and Athletics. CEEEO will determine what information and what officials must be advised of the Hearing Officer's findings in order to remedy the effects of discriminatory conduct and to prevent its recurrence.

The Title IX Coordinator or Student Conduct Officer may submit a written statement regarding aggravating and mitigating factors to the sanctioning authority, including whether the Respondent was previously found to have violated University policy.

Sanctions can range from a verbal warning to expulsion or termination of employment.

If the Respondent is determined to have violated [University Policy 2740](#), the Title IX Coordinator may provide the Complainant with remedies that are separate from the Respondent's sanction. Remedies are designed to maintain the Complainant's equal access to the academic and/or work environment. Remedies may include extending supportive measures as defined in this DGP. Remedies are not required to be non-disciplinary or non-punitive for the Respondent and need not avoid burdening the Respondent. Remedies are confidential and are not shared with the Respondent except to ensure the remedy is carried out.

## **IX. CLIMATE ASSESSMENTS; DEPARTMENTAL INVESTIGATIONS; CONSOLIDATED COMPLAINTS**

### **A. Climate Assessment**

As an equal opportunity employer and an equal educational opportunity institution, UNM is legally obligated to provide and maintain an atmosphere free from discrimination. UNM 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 described herein.

If CEEEO receives reports of alleged violation(s) of UNM policy, including but not limited to, alleged discriminatory actions, and those reports include allegations that may affect multiple individuals in one department, CEEEO may exercise its authority to conduct a civil rights-related climate assessment to address any actual or potential harm, and remedy any effects of that harm.

Climate assessments may be initiated at CEEO's or the Title IX Coordinator's sole discretion when the totality of allegations in one or multiple reports indicates that a discriminatory environment may exist within a department. Under such circumstances, UNM stands as the Complainant in the matter. A Dean of an academic area or Director of a unit may also request that CEEO conduct a climate assessment. Under such circumstances, the Department stands as the Complainant in the matter. In all such cases, CEEO, defines the scope of the assessment if one is to occur. Climate assessments will generally not be conducted when there are active investigations or inquiries into alleged misconduct by a particular Respondent or Respondents, but may be pursued after those active investigations are resolved. If CEEO determines that a climate assessment should be initiated while a separate investigation is ongoing, it will conduct the assessment so as not to interfere with the active investigation.

Once CEEO determines jurisdiction of a climate assessment, CEEO notifies the department Director or Chair that jurisdiction has been accepted, indicates the investigator assigned, and seeks to schedule a meeting with the department Director or Chair to discuss the process, the rights and responsibilities of the parties, UNM's prohibition against retaliation, and provide an overview of the allegations of civil rights violation(s) that have been raised. CEEO will also notify the Dean, Office of the Provost or Human Resources, or other party, as appropriate.

At the conclusion of its assessment, CEEO issues a Climate Report that contains information on the allegations, witness statements, and all relevant evidence gathered during the investigation. CEEO provides the Climate Report to the appropriate Chair or Director. Those who receive the Climate Report have **ten (10) business days** to provide comment, response, or new, factual information.

After CEEO has received new, factual information, or when the deadline has passed with no response, CEEO writes a Final Climate Report which includes the information from the Climate Report, and any new information submitted. The Final Climate Report does not result in the issuance of a finding of responsibility; rather, the investigator will indicate whether the assessment revealed that there is a climate of discrimination or harassment in the department.

A copy of the Final Climate Report is forwarded to the Chair or Director and their supervisor, as well as higher level departments if deemed appropriate, such as the Office of the Provost or Human Resources. A meeting is then scheduled between the Chair or Director, their supervisor, the CEEO Director and/or Title IX Coordinator to determine a solution for stopping the harassment or discrimination if any is determined to exist, addressing the harm the discrimination and harassment has caused, and preventing its recurrence. CEEO and the department may collaborate with other campus departments or community resources to effectuate remedial action.

Because there is no finding of responsibility in a climate assessment, there is no opportunity for either a hearing or appeal by the Chair or Director of the department in which the climate assessment is conducted.

#### B. Consolidated Complaints; Cross-Claims

Where there are several complaints against a Respondent by more than one Complainant, CEEO may consolidate those complaints into one investigation when possible. In order to consolidate multiple complaints into one investigation, the complaints must arise out of the same set of facts or circumstances.

In instances where parties to an investigation each have a claim against the other – a cross-claim – that is jurisdictional to CEEO, the investigator assigned to the first report will also investigate the second report

simultaneously. The cross-claims will be consolidated into one investigation. This is done to ensure a timely investigation, as well as save time for parties and witnesses to the investigation. In addition, this allows for the ultimate live hearing following an investigation to address both parties' claims, preventing the need for an additional hearing.

### C. Departmental Investigation

A departmental investigation is one in which CEEO or the Title IX Coordinator stand in as the Complainant in a formal investigation in which there are multiple complaints against one Respondent.

Unlike the consolidated complaint process outlined in Section IX(B), a departmental investigation is held where there are multiple complaints against one Respondent, but the complaints **do not** arise from the same set of facts or circumstances. In this type of case, the occurrence of multiple complaints may be sufficient to indicate a pattern of acts that, in the aggregate, could violate UNM policy. Under such circumstances, CEEO may determine that a departmental investigation is warranted even though the individual complaints giving rise to the departmental investigation are not accepted as jurisdictional.

When CEEO determines that a departmental investigation is the appropriate procedural option, it will follow the investigative process as outlined in Section VI(C)(3), as applicable.

### D. Hearings with Multiple Complaints against One Respondent

In instances where there are multiple complaints involving the same Respondent but which CEEO cannot consolidate the complaints, the cases may be adjudicated in one hearing at the discretion of the Hearing Officer.

## X. **APPEALS**

Parties may appeal a CEEO dismissal, the determination issued by the Hearing Officer, and accompanying sanction for findings of responsibility as follows:

### A. Appeals to the President/Health Sciences Center (HSC) Executive Vice President (EVP)

A party may appeal CEEO's dismissal, the Hearing Officer's Final Determination, and accompanying sanction to the President of the University of New Mexico within **seven (7) business days** of the date of the Final Determination's issuance.

UNM HSC students may appeal to the EVP with a discretionary appeal to the President of the University of New Mexico. The President Appeal Form should be used for appeals sent to the President of the University of New Mexico.

The President and EVP will consider an appeal only if it alleges one or more of the following extraordinary circumstances:

1. Procedural irregularity that affected the outcome
2. New evidence that was not reasonably available when the determination of responsibility was made that could affect the outcome; or
3. The Title IX Coordinator, investigator, or decision-maker had a general or specific conflict of interest or bias against the Complainant or Respondent that affected the outcome.

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

Appeals must be received by the Office of the President within **seven (7) business days** of the date the Final 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 by the stated deadline will be denied unless an exception to the appeal time limit is granted by the President or HSC Executive Vice President.

Appeals may be submitted electronically through an [online form](#) or via email to [unmpres@unm.edu](mailto:unmpres@unm.edu); by mail to MSC05 3300, Scholes Hall, Suite 144, 1 University of New Mexico, Albuquerque, NM 87131; or by hand-delivery to the Office of the President at Scholes Hall, Suite 144. Emailed appeals will be considered received by the Office of the President on 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 of the Office physically accepts delivery of the document and notes the date and time of receipt thereon. Appeals that are not submitted as outlined in this paragraph may be denied without consideration.

If an individual files an appeal of a Final Determination, CEEO and the Hearing Officer will be informed of the appeal. The Hearing Coordinator will notify the other interested parties that an appeal has been filed. The party who is not filing an appeal will be given **five (5) business days** to submit an impact statement to the Hearing Coordinator for consideration. If an appeal alleges that CEEO or the Hearing Officer have not followed proper procedures, those parties will be given the opportunity to respond to the allegation.

Best efforts shall be made to issue a decision with **twenty (20) business days** after the appeal is received. If the appeal is considered, the President may decide to uphold the Final Determination in its entirety or may remand all or part of the appealed determination to the Hearing Officer or CEEO for additional proceedings or investigation. Written notice of the President decision will be provided to the appealing party, the Hearing Officer, and CEEO. All other parties will be simultaneously notified of the decision by the Hearing Coordinator.

If the President denies an appeal of the Final Determination or upholds that Final Determination without change, the Hearing Officer and Coordinator may take whatever further action they deem is warranted on the matter, including but not limited to forwarding its Final Determination to appropriate disciplinary bodies or administratively closing the matter.

#### B. Appeals to the Board of Regents

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 of the 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 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>.

### XI. CONFIDENTIALITY

UNM strives to respect individuals' privacy and requests for confidentiality to the extent permitted by state and federal laws. However, UNM has an obligation to investigate and resolve civil rights claims. To meet this

obligation, UNM may be required to share information with persons who have a legitimate need to know that information. For example, those who are responsible for determining whether UNM policies have been violated or those sanctioning individuals found to have violated UNM policy have a legitimate need to know the factual findings made by CEEO. Those who manage the processes for appeals of CEEO factual findings have a legitimate need to know the details of CEEO's investigation and/or need to review the evidence underlying a finding.

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

1. Parties (Complainant and Respondent) have a right to examine and respond to all the evidence gathered by CEEO. While CEEO maintains information protected by [FERPA](#), parties may be able to view FERPA-protected information;
2. When UNM is required by law to disclose information (such as in response to a legal process or a request for information under the New Mexico Inspection of Public Records Act);
3. When disclosure of information – such as the identity of witnesses, sources of information – is necessary for conducting an effective and fair investigation, such as allowing for cross examination questions or providing facts and documentation to parties;
4. Communicating with managers, supervisors, deans, chairs, and HR agents on a need to know basis, in order for them to effectively manage the work and/or academic environment;
5. For the purpose of implementing supportive measures pursuant to Title IX; or
6. When confidentiality concerns are outweighed by UNM's obligation to protect the safety or rights of others.

CEEEO cannot grant anonymity to a person pursuing a formal investigation, as these cases may result in a live hearing before a Hearing Officer to determine if policy has been violated. For more information about the rights of individuals participating in processes related to alleged gender discrimination, please refer to [University Policy 2740](#).

CEEEO cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in that capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the party provides voluntary, written consent to do so as part of this grievance process.