

CHAPTER 4 - HUMAN RESOURCES - GENERAL POLICIES

4.05 Appeals/Grievances (See Due Process)

New Mexico State University is dedicated to providing equal employment opportunities in all areas of occupation without regard to age, ancestry, color, mental or physical disability, gender, gender identity, serious medical condition, national origin, race, religion, sexual orientation, spousal affiliation or veteran status, according to state and federal laws. This dedication extends to recruiting and hiring, promotion and other human resources actions such as compensation, benefits, transfers, layoffs, termination, training, education, tuition assistance, social and recreational programs. NMSU's comprehensive affirmative action program supports this effort. A listing of applicable state and federal laws includes the following:

- Age Discrimination in Employment Act of 1975
- Americans With Disabilities Act of 1990
- Civil Rights Act of 1991
- Education Amendments of 1972, Title IX
- Executive Order 11141
- Executive Order 11246
- Equal Pay Act of 1963
- New Mexico Human Rights Act
- Pregnancy Act of 1978
- Section 504 of the Rehabilitation Act of 1973
- Titles VI and VII, Civil Rights Act of 1964
- Vietnam Era Veterans Readjustment Act of 1974

4.05.10 Appeals/Grievances - Discrimination-Based Staff, Applicable to Applicant and Student Complaints of Discrimination to Include Sexual Harassment

Grievable items do not include basic management rights such as, but not limited to, the right to manage, direct and assign employees, determine staffing patterns, rates of pay and/or tasks to be performed. Any action or complaint commenced in any state or federal agency or court may, at the discretion of the president/executive vice president and provost result in a stay of any pending internal proceeding (grievance, tenure review, appeal, etc.) filed by or on behalf of a student or employee, unless the complainant alleges any form of prohibited discrimination. In that case, the internal proceeding will continue until all administrative remedies are exhausted, without regard to the nature of and/or conclusions of any external proceedings. Upon termination of the external proceeding, except those involving discrimination allegations as described above, the president/executive vice president and provost will review the status of the internal proceeding in the light of the results, if any, of the external proceedings. If, in the president's/executive vice president and provost's opinion, further action is required, the internal proceeding will continue according to policy and procedure. If the president/executive vice president and provost decide no further action is necessary, the internal proceeding will terminate.

Hostile Work/Academic Environment: A student or employee may file a claim based on offensive conduct or behavior that is sufficiently severe and/or pervasive to create a hostile work or academic related environment. See below for definition:

Discrimination-Based Harassment: The university prohibits any unlawful practice of harassment in work or academic environments based on an individual's age, ancestry, color, mental or physical disability, gender, gender identity, serious medical condition, national origin, race, religion, sexual orientation, spousal affiliation or veteran status. Any supervisor who engages in or condones any harassment of an employee/student based on discrimination will be sanctioned accordingly. All

Discrimination-based harassment, including third-party complaints, must be reported to the Institutional Equity/EEO Office immediately.

Discrimination Grievance Procedures: [Applicable to all regular non-probationary staff employees; applicants and, students alleging discrimination in the work place, classroom or related activities. Probationary, temporary, occasional, emergency hire employees and applicants may only appeal matters of discrimination through stage two of this procedure. Only performance evaluations with overall ratings of "unsatisfactory," "needs improvement," or "does not meet expectations" may be appealed using this procedure. See section 4.05.40 for faculty discrimination appeals procedures.]

While employees are encouraged to resolve issues through discussion with the immediate supervisor(s), all discrimination matters are to be reported to the Institutional Equity/EEO Office immediately. There may be occasions when disputes may be resolved at the departmental level without direct involvement of the office of Institutional Equity/EEO, however, the Institutional Equity/EEO director is to be consulted to ensure consistency. Employees shall be free to discuss matters with the Institutional Equity/EEO director and file grievances without fear of reprisal.

STAGE ONE – Institutional Equity Review

Informal Complaint: The complainant may elect to file an informal complaint by completing the EEO complaint form within 15 working days of occurrence of the grievable item(s). During the informal stage, the complainant may elect not to self identify. The remedy may include seminars, exchange of information, newsletter articles, memorandums, administrative review, or counseling. Informal settings (where the parties are identified) may also include mediation at the departmental level or other direct communication with both parties. If the informal filing does not result in resolution, the complainant may exercise the formal grievance process within 5 working days of completing the informal complaint process.

Formal Grievance: Any person with a sexual harassment or discrimination complaint should (whenever feasible) first approach the person or persons engaging in the inappropriate conduct and indicate that the conduct is unwelcome. If the inappropriate behavior persists, the aggrieved would either report the complaint to the appropriate supervisor or the Institutional Equity/EEO director. All discrimination complaints made to a person in a position of authority must be reported to the Institutional Equity/EEO director at the O'Loughlin House, 1130 East University Avenue, immediately, regardless of whether or not permission was given by the party subjected to the discrimination. Completion of the EEO Grievance Form is required within 15 working days after the occurrence or within 5 working days following the informal complaint process (unless extenuating circumstances warrant exception). The grievance will be accepted or denied in writing by the Institutional Equity/EEO director (or designee). If denied, the complainant may appeal in writing to the executive vice president and provost (or designee) within 5 working days of receipt of written denial letter. If accepted, the party charged will be provided with a copy of the complaint documents and will be extended 10 working days to respond. The complainant will be provided a copy of the response, and may amend the initial grievance within 2 working days of receiving the response. If amended, the party charged will also be extended 2 working days to provide any additional documentation. The Institutional Equity/EEO director (or designee) will investigate relevant issues, secure appropriate statements, and prepare a report for administrative review. All employees and students should be aware that the university is prepared to take action in a timely manner to prevent and remedy such behavior and that individuals who engage in such behavior are subject to disciplinary action. All individuals are required to cooperate with any investigation in response to an allegation of unlawful harassment. Refusal to cooperate in an investigation may result in disciplinary action in accordance with university policy. Any disciplinary action may be appealed through the appropriate procedure.

Confidentiality Statement: To the extent possible, every effort will be made to safeguard confidentiality, consistent with reporting obligations and the need to investigate promptly and thoroughly.

Disclosure of Documents: All witness statements are the responsibility of the person filing or responding to the grievance(s). Witness statements provided by either complainant or the party charged will be provided to the opposing party at the time the statements are presented to the Institutional Equity/EEO Office or the Employee Relations Office. The Institutional Equity/EEO director may conduct any further investigation deemed appropriate, which may include additional witness statements. The result of that investigation is the work product of the investigator and not subject to disclosure. Documents protected by the Family Educational Rights and Privacy Act (FERPA), Privacy Act of 1974, The New Mexico Public Records Act, etc. will not be subject to disclosure.

STAGE TWO - Administrative Review

The executive vice president and provost (or designee) will review the report and render a decision. The determination letter will be transmitted in writing by the Institutional Equity/EEO director (or designee) to the complainant, party charged and appropriate administrators. If the complainant or party charged is not in agreement with the decision, new or additional documentation may be provided through the Institutional Equity/EEO Office to the executive vice president and provost (or designee) within 5 working days of receiving the determination letter. Following the review of the new or additional information, a final decision will be issued from the executive vice president and provost (or designee) within 5 working days of receipt of the information to the complainant and party charged.

Retaliation: The university prohibits any unlawful practice regarded as retribution or intimidation against any university employee or student who has in good faith: (a) opposed any discriminatory or employment practice covered by university policies/procedures or state/federal laws; (b) filed a complaint of discrimination or grievance with the Institutional Equity/EEO Office or external state/federal agency with statutory jurisdiction over discrimination filings; (c) reported a discriminatory matter to a supervisor; or, (d) testified, assisted with or participated in an investigation, proceeding or hearing protected under same. Such retaliation in and of itself may result in disciplinary action, up to and including termination.

[This stage exhausts the internal appeal process available to applicants, students, probationary, and all complaints of discrimination, including sexual harassment, and/or retaliation.]

4.05.11 Appeals/Grievance - Non-Discrimination-Based Staff, Applicable to all Regular Non-Probation Employees

Hostile Work/Academic Environment: A hostile environment claim may be based on offensive conduct or behavior that is sufficiently severe and/or pervasive to create an abusive work/academic environment or related activities. See below for definition:

Nondiscrimination-Based Harassment: The university prohibits any unlawful practice of harassment in work place, classroom environments, including related activities, which has the effect of creating a "hostile environment" based on disputes arising from nondiscrimination matters. Responsibility for such matters is designated to the appropriate directors, department heads, deans, vice presidents or vice provosts. On the occasion that nondiscrimination harassment is reported or discovered during an investigation by the assistant director of Employee Relations, a referral to the appropriate official may be made for further review and action. Examples of nondiscrimination harassment may include conduct and behavior that is sufficiently severe and/or pervasive to create an abusive work or academic environment. (See section 4.05.10 for discrimination-based harassment)