

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT
PERSONNEL POLICY NO. 10
COMPLAINT POLICY**

PURPOSE

The PED complaint policy is intended to offer its employees a fair and systematic method for addressing complaints and ensuring that employees receive prompt consideration.

POLICY

The Public Education Department (PED) complaint policy outlines procedures by which employees can seek to remedy problems associated with their working conditions.

REFERENCE

This policy is promulgated pursuant to State Personnel Board (SPB) Rule 1.7.6.13 NMAC.

DEFINITIONS

1. **COMPLAINT:** A complaint is a misinterpretation, claimed violation, or misapplication of State Personnel Board Rules, existing PED Personnel Policy, or any combination of circumstances within the control of the PED which materially affect an employee's working conditions, and are beyond the employee's control, but which may be subject to remedy by any of the employee's supervisors. Employee Development and Appraisal Plan (EDA) issues are not subject to complaint under this or any other PED policy.
2. **AFFIRMATIVE ACTION/EQUAL EMPLOYMENT OPPORTUNITY OFFICER (AA/EEO):** The individual within the PED who has the responsibility for the development, implementation, and maintenance of the PED's Affirmative Action Program, monitors programs, and assures that both organizational and national EEOC policies are implemented.
3. **TITLE IX COORDINATOR:** The individual within the PED who has the responsibility for monitoring programs for Title IX compliance and for processing Title IX-related grievances from PED staff.
4. **INFORMAL RESOLUTION:** A discussion with the immediate supervisor, second-level supervisor, the Department's AA/EEO Officer, or the PED Human Resources Manager, for the purpose of attempting to resolve the issue/problem without formally filing a written complaint.

5. **FORMAL COMPLAINT:** A formal written complaint made to an employee's immediate supervisor, next level supervisor, the PED's AA/EEO Officer, or to the Secretary of Education for the purpose of resolving an issue or problem.

JURISDICTION

This policy covers current employees of the PED and does not apply to employees of the Division of Vocational Rehabilitation.

Complaints relating to sexual harassment, discrimination, and/or disability are addressed in other policies available through the PED. Information pertaining to those policies can be obtained from the PED's AA/EEO Officer.

Complaints must be current. The complaint procedure must be initiated by the complaining party within 30 calendar days if the complaint is related to a particular incident, or may be initiated at any time if the incident(s) leading to the complaint is (are) of a continuous nature.

INFORMAL RESOLUTION

The Public Education Department encourages its employees to attempt resolving their complaints at an informal level. An informal resolution can be attempted by first speaking with the immediate supervisor.

If the matter is urgent and the immediate supervisor is not available, or if the employee has reasons for not bringing the matter to his/her immediate supervisor, the employee may informally discuss their complaint with the next level supervisor for resolution.

FORMAL COMPLAINT PROCESS

- Level 1: The complaint becomes formal when it is presented in writing to the immediate supervisor and PED Human Resources Manager. The immediate supervisor shall respond in writing to the employee within 10 working days, with copies of the response to the PED's AA/EEO Officer.
- Level 2: If the employee is dissatisfied with the immediate supervisor's decision or plan of action, OR, if the immediate supervisor does not respond within 10 working days, the employee may present the complaint in writing to the next level supervisor within 5 working days of the date of the supervisor's decision or plan of action, OR after the expiration of 10 working days, whichever comes first.
- Level 3: If the employee is dissatisfied with the next level supervisor's decision or plan of action OR if the next level supervisor does not respond within 10 working days, the employee may present the complaint in writing to the division head within 5 working days of the date of the next level

supervisor's decision or plan of action, OR after the expiration of 10 working days, whichever comes first.

Level 4: If the employee is dissatisfied with the division head's decision or plan of action, OR if the division head does not respond within 10 working days, the employee may present the complaint in writing to the Secretary of Education within 5 working days of the date of the division head's decision or plan of action, OR after the expiration of 10 working days, whichever comes first.

Level 5: The Secretary of Education will render a decision within 20 working days from receipt of the complaint. He/she may request that an investigation be conducted.

TITLE IX GRIEVANCE PROCEDURE

General Information: The authority for this grievance procedure is Title IX of the Education Amendments of 1972 (20 US Code Section 1681) and 34 Code of Federal Regulations Parts 106 and 299. Within 90 days of hire, all new employees to the PED will be provided the name, office location, and telephone number of the Title IX Coordinator and be informed of their right to file a Title IX grievance. The information will be repeated to staff at appropriated intervals. Each employee shall sign an acknowledgment stating that he or she has read and understands the Policy No. 10 grievance procedure and Title IX Designation described in the appendix to this policy.

Filing: A Title IX grievance must be submitted in writing, signed by the complaining party and delivered to the PED Title IX Coordinator. The employee may submit supporting documentation along with the written grievance. The complainant may withdraw a complaint at any time by submitting a written withdrawal to the Coordinator. A Title IX must be filed within 180 days after the alleged unlawful discriminatory act was committed.

Content: Although any written document is acceptable so long as it is signed, complainants are encouraged to use the complaint form that is attached to this policy. A complainant must at a minimum allege with some detail that the PED or an employee or contractor of the PED has discriminated against the complainant on the basis of sex in regard to an education program or activity operated or managed by the PED.

Procedure: Within 5 calendar days of receipt, the PED Title IX Coordinator will acknowledge receipt of the written complaint in writing by giving the complainant a copy of their complaint bearing a DATE-RECEIVED stamp. The Coordinator will then conduct an investigation of the complaint by reviewing all documentation submitted and interviewing PED personnel or other individuals if deemed necessary. The Coordinator may impose deadlines for the filing of supporting documents or

supplementary statements. The Coordinator will issue a written decision and deliver it by mail or in person to the complainant within 60 calendar days of the filing of the complaint unless the Coordinator determines for good cause that an extension is warranted. The decision must contain findings and conclusions, and if the Coordinator finds that discrimination has occurred, a corrective action plan with identified timelines together with any other corrective measures including recommended disciplinary action of an employee.

Scope: The scope of an investigation under Title IX shall be limited to resolving allegations of discrimination on the basis of sex involving the operation or management of a PED education program.

Review: A complainant still dissatisfied may request a review of the Coordinator's decision by the PED Secretary of Education by submitting a written request to the Secretary within 5 calendar days of receipt of the Coordinator's decision. The Secretary, or a designee of the Secretary who shall be an impartial assistant or deputy secretary, shall issue a final decision within 15 calendar days of receipt of the request for review. Within 30 days of receipt of a final decision from the PED Secretary or designee, a complainant still aggrieved may request the Secretary of the United States Department of Education (US ED) to review the final decision. It is the complainant's responsibility to contact the US ED if pursuing a review of a final PED decision.

PROTECTION AGAINST RETALIATION

Employees of the PED have the right to present or make known their Title IX complaints of discrimination, free from retaliation. The PED will not permit retaliation against an individual who utilizes the complaint process. Retaliation is a serious violation of this policy and should be reported immediately to the Coordinator. Any PED employee found to have retaliated against another PED employee for utilizing the grievance procedure is subject to disciplinary action.

MISCELLANEOUS

- A. The Secretary of Education may extend any of the deadlines set forth in this policy.
- B. In the event any party or necessary witness is away from work due to leave or official travel, the time limits set forth in this policy are automatically extended for the period of time they are away.
- C. The Title IX Coordinator may be consulted for technical assistance at any time during the complaint process.

Approved by _____

Dr. Veronica C. García
Secretary of Education

Effective Date June 30, 2006

APPENDIX

Title IX Designation

Title IX of the Education Amendments of 1972, as amended, and as set forth at 20 United States Code, Section 1681 et seq. (“Title IX”), provides that “No person. . .shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.”

The Public Education Department, including its Division of Vocational Rehabilitation, support Title IX. Anyone who believes that they have been subjected to sex-discrimination under any educational program or activity of the State Board or State Department receiving any federal financial assistance, should contact the Title IX coordinator designated below.

Title IX Coordinator

Mr. Bernard Raymond
Human Resource Office
300 Don Gaspar, Room G15
Santa Fe, New Mexico 87501
Telephone (505) 827-5829
Fax (505) 827-5066

braymond@sde.state.nm.us

EMPLOYEE ACKNOWLEDGEMENT OF RECEIPT

Public Education Department Personnel Policy No: 10

I _____, an employee of the Public Education Department, acknowledge that I have received and read a copy of the “Complaint Policy,” including the Title IX Grievance Procedure and Title IX Designation on this date.

Signature

Date