| Subject: Anti-Discrimination, Harassment, and Retaliation | | Policy Number: ADM: 34 |
|---|---|---|
| Revision Number: 09 | Effective Date: 11/17/2025 | Original Issue Date: 11/30/2001 |

## 1) PURPOSE

a) The purpose of this policy is to define discrimination, harassment, retaliation, and hazing; to provide procedures for the reporting and investigation of discrimination, harassment, retaliation, and hazing claims; and to ensure that violations are prevented and fully remedied.

## 2) POLICY

a) It is the policy of the Department of Public Safety to vigorously enforce anti-discrimination laws. The DPS will not tolerate issues involving discrimination or harassment based on an individuals' real or perceived age (40 and older), race, sex, national origin, disability, color, religion, sexual orientation, veteran status, marital status, gender identity, spousal affiliation, pregnancy (including childbirth or related medical conditions) or genetic information. Retaliation, because of opposition to discrimination, harassment, or participation in the investigation of a complaint, or hazing will not be tolerated. Complaints received will be addressed in the order in which they were received unless the EEO Bureau Chief or DPS Secretary approves an exception.

## 3) APPLICABILITY

a) This policy applies to all employees of the Department of Public Safety (DPS) regardless of their employment relationship with the Department. This policy further extends and applies to all applicants for employment, contractors, employees or clients of DPS sub-recipients, and all clients of the Department of Public Safety.

## 4) REFERENCES

a) Personnel Board Rule 1.7.6.13 NMAC
b) Title VII of the Civil Rights Act of 1964, as amended
c) The New Mexico Human Rights Act (HRA of 1969), as amended
d) Americans with Disabilities Act (ADA) of 1990, as amended

e) Civil Rights Act of 1991
f) CALEA Chapter 26 - Disciplinary Procedures
g) Genetic Information Nondiscrimination Act (GINA) of 2008
h) Lilly Ledbetter Fair Pay Act of 2009
i) Equal Pay Act of 1963 and the New Mexico Fair Pay for Women Act
j) The Rehabilitation Act of 1973 Section 504
k) Age Discrimination in Employment Act (ADEA) of 1967
l) Uniformed Services Employment and Reemployment Rights Act (USERRA)
m) Title IX of the Education Amendments of 1972
n) Omnibus Crime Control and Safe Streets Act of 1968
o) Title VI of the Civil Rights Act of 1964
p) Partnerships with Faith-Based and Other Neighborhood Organization, 28 C.F.R. Section 38

## 5) DEFINITIONS

a) **Chief** – DPS Deputy Secretary of Operations, Chief of the New Mexico State Police.
b) **Client** – Any person or organization requesting or receiving services from the Department of Public Safety or a DPS sub-recipient.
c) **Complainant** – A person making an oral or written report of discrimination, harassment, or retaliation whether on their own behalf or on the behalf of another.
d) **Department** – Department of Public Safety, also referred to as DPS.
e) **Discrimination** – The actual behavior towards group members or individuals who possess or are perceived as possessing qualities characteristic of the group based on: age; race; sex; national origin; disability; color; religion; sexual orientation; veteran status; marital status; gender identity; genetic information; or spousal affiliation. It involves excluding or restricting members of one group from opportunities that are available to other groups.
f) **EEO Officer** – The DPS Equal Employment Opportunity (EEO) Officer is the individual designated by the Secretary of the Department as responsible for overseeing the investigation of civil rights-based discrimination, harassment, and retaliation complaints and the coordination of anti-discrimination, harassment, and retaliation training. The Secretary of the Department may designate as many EEO Officers as deemed necessary. All EEO Officers will receive training in the recognition, investigation, and mediation of all types of discrimination, harassment, and retaliation complaints as described in this

policy. The EEO Officer is also designated as the coordinator responsible for overseeing complaints against DPS sub-recipients.

g) **Employee** – For purposes of this policy only, employee shall be defined as a person employed in a position in the Department, including full, part-time and probationary employees, recruits, and applicants for employment with the DPS. Employees of DPS sub-recipients are also covered by the term.

h) **Harassment** – Is a form of discrimination. It is prohibited by federal law, state law, and this policy. Unwelcome comments, and derogatory or adverse treatment that is based on a protected class or motivated by animus towards a protected class, and other verbal or physical conduct based on a protected class, constitute civil rights based harassment when:

   i) Submission to such conduct and/or comments is made either explicitly or implicitly a term or condition of an individual's employment or the receipt of services; or

   ii) Submission to, or rejection of, such conduct by an individual is used as the basis for employment or service decisions affecting such individual; or

   iii) Such conduct is sufficiently pervasive (meaning conduct was frequent and/or widespread) and/or severe (meaning very serious) so as to unreasonably interfere with an employee's job performance or create an intimidating, hostile, or offensive environment for employees or clients.

   iv) For purposes of this policy, the term harassment covers inappropriate conduct (whether welcome or unwelcome) on the basis of any protected class.

   v) Harassment can involve individuals being harassed either by members of the same or another protected class. Harassment can involve a harasser in a position of greater authority than the person being harassed and individuals in positions of lesser or equal authority can also be found responsible for engaging in prohibited harassment.

   vi) Conduct not rising to the level described above, but is based upon and/or motivated by an individual's membership in a protected class, is a violation of this policy and will not be tolerated.

i) **Hazing** – Is a form of harassing conduct whereby an employee, regardless of service or rank, without proper authority causes another employee to suffer or be exposed to any activity which is cruel, abusive, humiliating, oppressive, demeaning, or harmful. Soliciting or coercing another to perpetrate any such activity is also considered hazing. Hazing need not involve physical contact by employees; it can be verbal or psychological in nature. Actual or implied

consent to acts of hazing does not eliminate the culpability of the perpetrator. Hazing does not include command-authorized or operational activities; the requisite training to prepare for special operations missions, authorized physical training, or the mission of the Law Enforcement or State Police Academy.

j) **Inquiry** – is a process that involves the EEO Bureau (EEOB) completing the following:
   i) determining whether there is sufficient information to conduct an EEO inquiry or investigation;
   ii) determining if the subject matter of the complaint provides EEOB with jurisdiction over it,
   iii) interviewing complainants, respondents, and other potential witnesses; and
   iv) determining whether the alleged respondent does or does not contest the allegation(s).

k) **Investigation** – is the EEOB's formal investigation of an EEO complaint following an EEOB inquiry. An EEO investigation includes, but is not limited to, fact finding, interviews, obtaining documents, and composing letters and reports.

l) **Inappropriate Conduct** – For the purposes of this policy, inappropriate conduct refers to conduct which violates the anti-discrimination laws, as well as conduct which falls short of the legal definition but is a violation based on the zero-tolerance policy of the DPS.

m) **Respondent** – The individual or organization accused of discrimination, harassment, retaliation, or hazing, in an oral or written complaint made to the EEO Officer or any supervisor.

n) **Retaliation** – Retaliation is prohibited by federal law, state law, and this policy. Retaliation occurs when an individual makes a report, files a formal charge, or speaks up against conduct which s/he reasonably believes constitutes discrimination, harassment, hazing, or when an employee cooperates in good faith in an investigation, proceeding or hearing of an allegation of discrimination, harassment, or hazing, and then is treated negatively by their employer or another employee because of their complaint or report.

o) **Secretary** – The Cabinet Secretary of DPS.

p) **Sexual Harassment** – Sexual harassment is a form of sex discrimination. It is prohibited by federal law, state law, and this policy. Unwelcome sexual

advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

i) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or receipt of services; or
ii) Submission to or rejection of such conduct by an individual is used as the basis for employment or service decisions affecting such individual; or
iii) Such conduct is sufficiently pervasive (meaning conduct was frequent and/or widespread) and/or severe (meaning very serious) so as to unreasonably interfere with an employee's job performance or create an intimidating, hostile, or offensive environment for employees or clients.
iv) Sexual harassment can involve males or females being harassed by members of either sex. Sexual harassment can involve a harasser in a position of greater authority than the person being harassed; individuals in positions of lesser or equal authority can also be found responsible for engaging in prohibited harassment.
v) Conduct not rising to the level described above but is sexual in nature (whether welcome or unwelcome) is also a violation of this policy, and will not be tolerated.

q) **Sub-recipient** – Grantees of the Department of Public Safety who are implementing funding from the United States Department of Justice.
r) **Supervisor** – For purposes of this policy, a supervisor is any law enforcement or civilian employee of the DPS who is charged with overseeing the work assignments of one or more individuals, whether civilian personnel or commissioned officers, as well as all uniformed employees holding the rank of sergeant or higher, and the Deputy Secretary and Secretary of the DPS. Persons not specifically designated supervisors who have the authority to direct the day-to-day activities of one or more individuals may be considered supervisors under this policy.

## 6) OPERATIONAL PROCEDURES

### a) General Guidelines

i) Discrimination, harassment, and retaliation in the workplace or in connection with the delivery of services are illegal and shall not be tolerated by the DPS. The DPS is committed to the vigorous enforcement of anti-discrimination laws and this policy and has adopted a **zero-tolerance** policy for all discrimination, harassment, and retaliation. This includes conduct which may fall short of the legal definition but is

nevertheless inappropriate conduct under this policy. This policy will be enforced by taking appropriate corrective or disciplinary action, up to and including termination, against any individual who engages in such conduct, any employee who was aware of the situation and did not report it, as well as any supervisors who were, or should have been, aware of the situation and did not report or respond to it.

ii) All individuals shall promptly report inappropriate conduct under this policy in accordance with the procedures described below. Supervisors must take the steps set forth in this policy in response to any witnessed, written, or oral report of inappropriate conduct. Retaliation against any individual for making a good faith report regarding conduct which s/he reasonably believes to be inappropriate, or for otherwise opposing what s/he believes to be unlawful discrimination, is illegal and will not be tolerated. Retaliation against any individual for participating in good faith in an investigation, proceeding, or hearing of a complaint under this policy is also illegal, and will not be tolerated.

iii) Employees are prohibited from discriminating, harassing, or retaliating against other employees whether or not the incidents occur on the Department's or a DPS sub-recipient's premises and whether or not the incidents occur during working hours. Employees are similarly prohibited from discriminating, harassing, or retaliating against clients of the Department or of a DPS sub-recipient who have the right to apply for and receive services and benefits free from any form of discrimination, harassment, or retaliation.

iv) Consensual sexual or romantic relationships between DPS employees are strongly discouraged. These same types of relationships are **prohibited** if one employee has supervisory authority over the other employee.

v) All employees have a responsibility to prevent all forms of inappropriate conduct in the workplace and in the delivery of services. Specific responsibilities of employees are detailed further in this policy.

vi) Employees and clients have a right to report any behavior which they believe to be inappropriate conduct, as defined in this policy, to any supervisor or directly to the EEO Officer, in accordance with this policy, and to have their allegations investigated and promptly resolved in a reasonable period of time.

b) **Reporting Procedures**

i) All incidents of discrimination, harassment, or retaliation shall be reported as provided in this policy.

ii) For hazing, and other concerns which are not protected class based, follow the procedures in *ADM: 03 Grievances*.

iii) Individuals shall bring complaints of any form of discrimination, harassment, or retaliation whether against an employee of the DPS or an employee of a DPS subrecipient, to the attention of the DPS EEO Officer or designee, or any DPS supervisor. Any individual who believes that they have been subjected to discrimination, harassment, or retaliation, or is aware of such conduct shall report the alleged conduct as soon as possible and preferably within 90 days from the last alleged incident, but no later than either 180 days or one calendar year, depending on the relevant statute.

iv) An individual who is subject to discrimination, harassment, or retaliation, or who is aware of such conduct within the DPS, or a DPS sub-recipient shall make either an oral or written report to the DPS EEO Officer or any DPS supervisor.

v) Individuals are not required to follow the chain of command in reporting discrimination, harassment, or retaliation to supervisory personnel under this policy. If the harasser is the employee's direct supervisor, the employee can report the incident/s to any supervisor, or directly to the DPS EEO Officer or designee.

vi) Non-supervisory DPS employees receiving a report of discrimination, harassment, or retaliation from an individual shall direct that individual to a DPS supervisor or the DPS EEO officer.

vii) Employees and clients may be able to stop or prevent discrimination, harassment, or retaliation by immediately and directly expressing their disapproval of an individual's conduct. Employees are required to either address or report the conduct.

viii) Complaints should be reported as soon as possible after an incident of alleged discrimination, harassment, or retaliation. To ensure a prompt and adequate investigation the complainant shall provide as much of the following information as possible. A complainant shall make an oral or written complaint, whether or not all of the following information is known:

(1) The name, division, and position of the person(s) allegedly engaging in the discrimination, harassment, or retaliation.

(2) The alleged protected class basis/bases for the discrimination or harassment.
(3) A description of the incident(s) including the date(s), time(s), location(s), and the presence of any witnesses.
(4) Whether the complainant believes that the incident(s) had any effect on the complainant's position, salary, benefits, promotional opportunities, or other terms or conditions of their employment or in the complainant's or any other persons receipt of services.
(5) The names of others who might have been subject to the same or similar inappropriate conduct.
(6) Whether the complainant has taken any steps to try and stop the inappropriate conduct.
(7) Any other information the complainant believes to be relevant to the complaint.

ix) Any supervisor who receives a written or oral report of discrimination, harassment, or retaliation **shall immediately forward the report to the DPS EEO Officer, regardless of the supervisor's assessment of the veracity of the complaint.**

x) Neither supervisors nor the DPS EEO Officer may require an individual to reduce their reduce any oral complaint to writing on Attachment B, the Discrimination, Harassment, and Retaliation Complaint Form, and have the complaining employee sign the form. Supervisors shall take this step before forwarding the complaint to the DPS EEO Officer. In the event that an employee refuses to sign the Discrimination, Harassment, and Retaliation Complaint Form, the supervisor or EEO Officer shall so note that on the form and process it as though it had been signed.

xi) Complaints against the EEO Officer should be reported directly to a supervisor or the Secretary, who shall follow the investigation procedures set out in this Anti-discrimination, Harassment, and Retaliation Policy for the EEO Officer.

xii) Complaints can be submitted to the EEO Officer by mail or telephone at:
New Mexico Department of Public Safety
ATTN: EEO Director
4491 Cerrillos Rd. Santa Fe, NM 87507
(505) 538-0388

c) **Responsibilities of All Employees**

i) All employees shall report any inappropriate conduct about which they are aware.
ii) All employees share responsibility for ensuring that the DPS is a workplace free of all inappropriate conduct.
iii) DPS employees are subject to corrective action or discipline, up to and including termination, for engaging in conduct prohibited under this policy, or for engaging in conduct that assists or encourages others in engaging in such conduct.
iv) If employees or clients of the DPS, or DPS sub-recipients, believe that they have been subjected to discrimination, harassment, or any unwanted sexual comments or conduct, they shall make their unease and/or disapproval directly and immediately known to their harasser if they are comfortable doing so. All employees are required to either address the harasser or report the conduct to a supervisor or the EEO Bureau.
v) If employees or clients of the DPS, or DPS subrecipients, believe they have been subjected to retaliation they shall report the incident(s) to any DPS supervisor or the Department's EEO Officer.
vi) All incidents of inappropriate conduct should be reported regardless of their seriousness.
vii) Lodging a bona fide complaint will not be used against the complainant or have an adverse impact on the complainant's employment status; however, filing groundless (not based on facts) or malicious (false or retaliatory) complaints is an abuse of policy and will be treated as misconduct subject to disciplinary action. While DPS encourages the reporting of potential violations of policy, even those based on very little information, the filing of complaints based purely on a hunch is discouraged. The performance evaluations of all employees shall evaluate compliance with this policy. When deciding whether an employee should receive a promotion, award, or other performance related benefit, DPS shall consider an employee's compliance with this policy. Individuals who believe they have been subjected to discrimination, harassment, or retaliation shall not be negatively impacted in their performance evaluations or in their receipt of performance related benefits as a result of their failure to report.

d) **Additional Supervisory Responsibilities**

i) Supervisors ***must*** accept all reports of inappropriate conduct, and forward those reports **immediately** to the EEO Officer, regardless of whether the reporting employee is someone over whom they have direct supervisory responsibility. Supervisors shall put any and all oral reports in writing on the Discrimination, Harassment, and Retaliation Complaint Form to be signed by the complainant except as provided in B. 10., before they are forwarded.

ii) Supervisors must deal expeditiously and fairly with allegations or observations of, inappropriate conduct by or against employees or clients whether or not there has been a written or oral complaint. A supervisor must:
   (1) Act promptly to notify the EEO Officer.
   (2) Take immediate corrective action against any individual under their supervision to prevent prohibited conduct from recurring as necessary to preserve the work environment.

iii) Supervisors shall report any individual who is not under their supervision and whom they are aware that has engaged in inappropriate conduct to the EEO Officer.

iv) Supervisors shall regularly inspect the office area, district, sub district, and all other facilities under their supervision and immediately remove any explicit, suggestive, or offensive photographs, magazines, letters, postcards, posters, screensavers, or other related materials based on an individual or group's characteristic which are enumerated in this policy. The supervisors shall draft an **IDC** identifying the employee found responsible for displaying such materials and forward it to the EEO Officer for further inquiry or investigation, if necessary, and appropriate corrective or disciplinary action, if applicable.

v) A supervisor shall not:
   (1) Discourage any individual from making a report of inappropriate conduct under this policy.
   (2) Refuse to accept a report or fail to reduce it to writing on the Discrimination, Harassment, and Retaliation Complaint Form.
   (3) Fail to forward any report to the EEO Officer, whether or not signed by the complainant.
   (4) Insist that any report be put in writing by the complainant.

vi) Performance evaluations for supervisors shall evaluate compliance with this policy as well as enforcement and communication of this policy with respect to employees under their supervision.

vii) Supervisors shall be subject to corrective action and/or discipline, up to and including dismissal if they were, or should have been, aware of inappropriate conduct, and did not report and/or respond to it as required by this policy.

viii) Supervisors shall ensure that employees under their supervision are in compliance with this policy. Supervisors shall enforce and communicate this policy to employees under their supervision.

e) **EEO Officer Responsibilities**

The EEO Officer is responsible for the following:

i) Accept any and all complaints of inappropriate conduct against employees of the DPS or DPS sub-recipients and determine the proper procedural disposition of the complaint.

ii) Ensure that both the complainant and the respondent are aware of the seriousness of a complaint. In no event shall the EEO Officer attempt to discourage an individual from making a complaint.

iii) If the EEO Officer determines that a formal EEO investigation is warranted under this policy, the EEO Officer will explain the Department's anti-discrimination, harassment, and retaliation policy and investigation procedures to the complainant and the respondent, providing them with a copy of this policy and a copy of the procedure for investigating and resolving complaints.

iv) Refer the complainant and/or the respondent to the Employee Assistance Program for counseling and referral services, if appropriate.

v) Notify the Department's Cabinet Secretary, if criminal activities are alleged.

vi) If the EEO Officer determines that a formal EEO investigation is warranted, the EEO Officer, or designee, will conduct an impartial investigation of the alleged inappropriate conduct, and will prepare a written report and recommendation to be submitted to the Secretary or Chief, in accordance with this policy.

vii) If a formal EEO investigation is conducted, the EEO Officer will notify the complainant, in writing, of the outcome of the investigation.

f) **Corrective Action and Discipline**

i) Any employee found to have engaged in inappropriate conduct, or to otherwise be in violation of this policy, shall be subject to corrective action or disciplinary action up to and including termination.

ii) Individuals who believe they have been subjected to inappropriate conduct, and fail to report it, shall not be subject to discipline.

iii) Corrective or disciplinary action is mandatory when the EEO Officer determines that the accused individual has engaged in inappropriate conduct under this policy. That determination will be based on the totality of the circumstances involved.

iv) An employee is not entitled to progressive discipline for the first, or subsequent, incidence of inappropriate conduct and employees are advised that an initial incident may result in discipline up to and including termination as determined by the Chief or the Secretary of the DPS.

(1) For commissioned law enforcement personnel, the nature of disciplinary action shall be determined by the Chief and the Secretary of the DPS after consultation with the EEO Officer.

(2) For civilian personnel, the nature of disciplinary action shall be determined by the Secretary of the DPS after consultation with the EEO Officer.

v) If disciplinary action is to be taken against the EEO Officer, then the same procedures will apply except that the disciplinary action shall be determined by the Secretary of the DPS.

vi) The enforcement of disciplinary action shall be subject to any rights to challenge disciplinary action in accordance with the DPS policy or other rules, regulations, or laws regarding discipline.

vii) If the EEO Officer determines that a DPS sub-recipient has engaged in inappropriate conduct, the EEO Officer shall notify the sub-recipient's agency head and shall work with the agency head or a designee to resolve the issue(s).

g) **Right to Complain to Outside Agency**

i) In addition to the complaint procedures set forth in this policy, any individual has a right to file a complaint of civil rights-based discrimination or harassment or retaliation with the New Mexico Human Rights Commission, Department of Labor, 1596 Pacheco Street, P.O. Box 4218, Santa Fe, NM 87502-4218; the Equal Employment Opportunity

Commission (EEOC), 505 Marquette NW, Suite 900, Albuquerque, NM 87102-2189.

ii) A complaint of discrimination, harassment, or retaliation must be filed with these agencies within a certain period of time after the alleged act occurred to be timely under the federal and state statutes prohibiting employment discrimination.

iii) Individuals complaining of discrimination, harassment, or retaliation by the DPS or a DPS sub-recipient in employment practices or the delivery of services may also file a complaint with the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street N.W., Washington, DC 20531.

h) **Hazing**

Hazing, as defined above, will not be tolerated at the DPS and may be addressed through corrective action or discipline up to and including termination.

For hazing, and other concerns which are not protected class based, follow the procedures in *ADM: 03 Grievances*.

i) **Policy Training and Dissemination**

The Department of Public Safety will employ several methods for providing training on and dissemination of this policy.

i) Internal Training and Dissemination
   (1) This policy will be posted on the Department of Public Safety's intra-net website; The *Insider*.
   (2) A copy of this policy will be distributed to all supervisory personnel.
   (3) This policy will be reviewed during annual supervisory training.
   (4) Copies of this policy will be posted at the Human Resources Office distribution center.

ii) External Training and Dissemination
   (1) A copy of this policy will be posted on the Department of Public Safety's publicly available web site.
   (2) All contractors, vendors, and sub-recipients that do business with the Department of Public Safety will be provided a copy of this policy.
   (3) Copies of this policy will be made available to other law enforcement organizations statewide.

(4) Job applicants will be made aware that copies of the Department's policy are available upon request.
(5) Sub-recipients will be required to have copies of this policy available at their facilities.

## 7) ATTACHMENTS

a) **Examples of Discriminatory, Harassing, and Retaliatory Conduct**
b) **Discrimination, Harassment, and Retaliation Complaint Form**

## 8) APPROVAL

**APPROVED BY:** _____ **DATE:** 11/17/25
**DPS Cabinet Secretary**