Subject: Investigation and Resolution of Complaints		Policy Number: ADM: 36
Revision Number: 06	Effective Date: 11/17/2025	Original Issue Date: 11/30/2001

1) PURPOSE

a) The purpose of this policy is to establish guidelines for the investigation and resolution of complaints arising under the Department of Public Safety's Anti-Discrimination, Harassment, and Retaliation Policy.

2) POLICY

a) These procedures govern the investigation and handling of complaints arising under the Department of Public Safety's Anti-Discrimination, Harassment, and Retaliation Policy.

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) The references contained in the Policy Number *ADM: 34 Anti-Discrimination, Harassment, and Retaliation* Policy apply herein.

5) DEFINITIONS

a) The definitions contained in the Policy Number *ADM: 34 Anti-Discrimination, Harassment, and Retaliation* Policy apply herein.

6) OPERATIONAL PROCEDURES

If, upon receipt of a complaint involving allegations of civil rights based discrimination, harassment, or retaliation, or at any time during an inquiry or investigation, the EEO Officer reasonably believes that immediate corrective or preventative action is required to assure the safety or well-being of the complainant and to preserve the work environment, the EEO Officer shall

recommend to the Secretary and/or the Chief that temporary corrective action (other than an adverse action against the complainant) be taken pending the resolution of the complaint. Such action, when warranted, may include separating the complainant and respondent, or temporarily removing the respondent, with no loss of pay, from the workplace. The DPS Secretary and/or the Chief shall make the determination on temporary corrective action in consultation with the EEOB (Equal Employment Opportunity Bureau) Compliance Officer. If the Secretary and/or the Chief determine that a report of discrimination, harassment, or retaliation is appropriately referred for criminal investigation, a criminal investigation referral shall be made by the Secretary and/or the Chief, or the Secretary if the Chief is involved in the complaint. The Chief or the Secretary, including if the Chief is involved, will also take the necessary steps to transfer, reassign, place on administrative leave, or otherwise remove the respondent from workplace contact with the complainant to assure the well-being and safety of the complainant. The complainant will be informed when a particular report is referred for criminal investigation.

a) **Informal Resolution Procedure**
   i) Some complaints may be resolved through other means that do not involve the DPS EEO Bureau (EEOB), such as Grievance and ADR (Alternative Dispute Resolution).
   ii) Grievance is covered in Policy *ADM: 03 Grievances*.
   iii) ADR is coordinated through the DPS Human Resources Bureau through the Alternative Dispute Resolution section of the Risk Management Division of the General Services Department of the State of new Mexico is successful, a written agreement is prepared by the assigned mediator. If ADR is successful, a written agreement must be signed by both parties and approved by the DPS Human Resources Officer and where necessary, the Secretary and/or the Chief. A copy is kept in a confidential file. Generally, the mediation agreement may include:
      (1) A pledge by the respondent not to engage in any behavior that could be construed as a violation of this policy;
      (2) A promise by the respondent not to retaliate against the complainant;
      (3) The restoration of any employment terms, conditions, or opportunities the complainant lost or was denied because of the discrimination or harassment, and any other relief necessary to remedy the situation; and/or

(4) A procedure for monitoring compliance with the agreement.

iv) If the complaint can be resolved through the Informal Resolution Procedure, the Formal Resolution Procedure detailed herein will not apply.

v) If the complaint cannot be resolved informally, the complaint shall follow the Formal Resolution Procedure in this Policy. The Informal Resolution Procedure is not required prior to initiating the Formal Resolution Procedure.

b) **Formal Resolution Procedure**

i) Administrative Inquiry or Formal EEO Investigation

(1) In the case of a complaint that is not resolved through the Informal Resolution Process, a complaint will handled through Formal Resolution procedures, at which point an administrative Inquiry or formal EEO Investigation will begin.

(2) An Inquiry involves the EEOB screening to confirm whether EEOB has jurisdiction of the subject matter - in the complaint -under *ADM: 34* Policy. If so, the EEOB provides the relevant complaint contents to the named respondent, requiring the respondent to reply to the allegation.

(a) In the case of an oral complaint received directly by a supervisor or EEOB or which, for any reason, has not been reduced to writing on the Discrimination, Harassment, and Retaliation Complaint Form, the supervisor or EEOB shall fill out the Form and then obtain the complaining employee's signature on it, verifying that it accurately reflects the employee's report.

(b) If an complainant refuses or decides not to sign the form, the supervisor or EEOB shall so note that on the form and process it as though it had been signed.

(c) If the alleged conduct could be a violation of policy, but an individual chooses not to file an individual complaint, the supervisor or EEOB will so note on the form and the matter will be reviewed in the name of the appropriate – supervisor who is aware of the complaint.

(d) The pendency of a criminal investigation and/or prosecution shall provide sufficient justification to delay the administrative Inquiry

or formal EEO Investigation in order to not compromise the criminal investigation and/or persecution.

(e) If, based upon the Inquiry, the EEOB determines that formal EEO Investigation is warranted, the EEOB or designee will conduct an Investigation. If necessary to expedite the resolution of a complaint or resolve any potential conflict of interest, the EEOB will coordinate with the Office of Legal Affairs to appoint a competent independent outside investigator to conduct the investigation. When the complaint of discrimination, harassment, or retaliation is against the EEO Officer, the investigation shall be conducted by a competent independent investigator appointed by the Secretary in accordance with these procedures.

(f) If the Respondent does not contest the allegation in the Inquiry stage, a determination is made and the EEOB applies section C. Final Resolution of Complaint. The EEOB attempts to complete administrative Inquiries within fifteen (15) working days, after the EEOB receives the written or oral complaint, except when extenuating circumstances apply.

(g) If, based upon the Inquiry, the EEOB determines that corrective disciplinary action is warranted, the EEOB will prepare and submit a report and recommend appropriate disposition of the matter to include appropriate corrective action, or the recommendation of discipline, including dismissal to the Chief and/or Secretary for consultation and final determination.

ii) Where an Investigation is conducted under this policy:

(1) The complainant and the respondent shall be apprised of the stage of the investigation not less than every twenty (20) working days.

(2) All interviews with the complainant, respondent, and witnesses shall be recorded and preserved.

(3) The EEOB, or designee shall contact the respondent, give them a copy of the complaint or explanatory key points of the complaint in another form, such as emailed bullet points, solicit the respondent's account of the alleged incidents, and inform the respondent that a recommendation and report will be prepared.

(4) The EEO Officer, or designee, shall interview the complainant, the respondent, and any other witnesses it deems relevant, or a narrow set of witnesses if the group of witnesses is large, identified by the

complainant, or the respondent, or otherwise brought to the EEOB's attention, or whom the EEOB believes may have relevant information. Witnesses should not be limited only to those who directly observed the complained about events, and may include others with knowledge of the working environment, the complainant, or the respondent. While EEOB or designee may attempt to get statements from potential witnesses external to DPS, these potential witnesses are not required to participate in the investigation process.

(5) The EEOB attempts to complete formal EEO Investigations within twenty-five (25) working days after the administrative Inquiry phase is completed, except when extenuating circumstances apply.

(6) All dates referenced above, may be impacted by many factors which include extenuating circumstances, such as untimely or lack of full and/or ongoing cooperation of participants (complainants, respondents, and witnesses); new information received by EEOB during the process; further interviews or requests for additional written statements from existing or new participants; time away from work by participants or EEOB staff including scheduled and unscheduled (emergency) leave; information requests from participants; and the degree to which the EEOB is sufficiently staffed. Further, exceptions to stated timelines can be granted by the Secretary based on other factors such as a high volume or complexity of complaints, with or without notice to participants.

iii) Application to both Inquiry or Investigation

(1) All individuals interviewed as part of an administrative Inquiry or formal EEO Investigation shall be informed that the DPS does not tolerate retaliation against any individual who opposes what they reasonably believe to be civil rights based discrimination, harassment, or retaliation or who cooperates in good faith in the Inquiry and/or Investigation of a complaint.

(2) All aspects of the complaint and investigation shall be held in the strictest confidence by all parties and the EEOB, or designee, except to the extent reasonably necessary to resolve the complaint or implement any corrective action or discipline. Neither anonymity nor complete confidentiality is guaranteed. Witnesses, the complainant, and the respondent shall not discuss the matter with each other or

other employees. Interviews shall be conducted with the interviewee alone.

(3) The EEOB, or designee, shall review the central registry, described below, to determine whether prior complaints of discrimination, harassment, or retaliation have been made by the complainant, or against the respondent, and the outcome of any prior complaints.

(4) The EEOB, or designee, shall determine if any supervisor was aware of the conduct and did not report or respond to it as required by this policy.

(5) Anonymous complaints may or may not be considered. A complainant and respondent must be named before a complaint can be considered for resolution.

(6) Full candor and cooperation are required of all employes, otherwise the lack thereof impedes progress towards complaint resolution. Failure to cooperate with an Inquiry or Investigation may lead to disciplinary action. Participants may be contacted more than once during the process and are expected to cooperate throughout the entirety of the process, until the complaint is resolved.

(7) All employees are required to cooperate fully, timely, truthfully, and honestly, when requested, with any Inquiry or Investigation into allegations of any type of inappropriate conduct. All employees are to state truthful, factual information, and provide information and evidential documents requested such as emails, texts, written notes, etc. Further, employees are expected to be forthright in stating factual information of others' contributions to the alleged conduct/events and also state their own contributions to alleged conduct/events, if any.

iv) Report and Recommendation

(1) Following completion of an Inquiry or Investigation, the EEO Officer shall make an assessment of the following:

(a) All of the facts and circumstances surrounding the complaint and the working environment;

(b) The credibility of the complainant, the respondent, and any witnesses; and

(c) The existence of prior complaints and their resolution.

(2) Based on this assessment, the EEO Officer shall arrive at a determination about whether the alleged discrimination, harassment, or retaliation occurred.

(3) No complaint shall be dismissed, or found to be unsubstantiated, solely because no witnesses other than the complainant and the respondent are available.

(4) The EEO Officer, or designee, shall prepare a written report and recommendation promptly following the completion of Inquiry or Investigation where disciplinary action is recommended. Except in the most unusual circumstances, the report will be completed within twenty (20) working days after the completion of the Inquiry or Investigation. Extensions beyond twenty (20) working days must be authorized by the Secretary, after review of a written request by the EEO Officer justifying the need for more time. The report and recommendation must include:

(a) A summary of the complaint;

(b) A summary of the response by the individual charged with discrimination, harassment, or retaliation;

(c) A summary of the statements and evidence obtained during the investigation;

(d) A finding of whether a policy violation has occurred and an explanation supporting that finding along with a finding of whether any supervisor was or should have been aware of the violation and failed to report or respond to it;

(e) If a violation occurred, the finding must include a statement about the severity of the violation;

(f) An assessment of any credibility concerns regarding the complainant, respondent, or any witness and an explanation for the basis of the concern;

(g) A summary of known prior corrective actions and discipline recommendations regarding similar conduct, or substantiated complaints against the respondent;

(h) A recommendation of corrective action or discipline against the respondent, witness, and/or complainant, if appropriate, along with an explanation for the particular recommendation;

(i) A recommendation of corrective action or discipline against a supervisor who knew or should have been aware of the

discrimination, harassment, or retaliation and did not report or respond to it, if appropriate, along with an explanation for the particular corrective or disciplinary action recommendation;

(j) A recommendation as to the restoration of any employment terms, conditions, or opportunities the complainant might have lost as a result of the discrimination, harassment, or retaliation; and

(k) An appendix containing relevant information and evidence obtained during the investigation.

c) **Final Resolution of Complaint**

i) Where disciplinary action is recommended, a copy of the report and recommendation shall be sent to the Secretary and/or the Chief.

ii) The Chief, in the case of law enforcement personnel, and the Secretary, in the case of civilian personnel, shall make the final determination as to the discipline, if any, to be imposed after consultation with the EEO Officer.

iii) If the Chief is being investigated, the determination as to the discipline to be imposed shall be made by the Secretary.

iv) Corrective or disciplinary action is mandatory when the EEO Officer determines that the respondent, witness, and/or complainant has engaged in discrimination, harassment, or retaliation. The corrective and/or disciplinary action imposed may range from corrective counseling up to and including termination. The Chief or Secretary can delegate authority to the EEO Officer to issue corrective actions through the appropriate supervisor.

v) After consideration of a report recommending disciplinary action, the Secretary and/or the Chief shall make a determination as to whether to take one or more of the following courses of action:

(1) Sustain the complaint, order the conduct to stop, impose appropriate discipline, recommend the restoration of any employment benefit the complainant lost because of the conduct, and provide any other relief necessary, within their purview, to remedy the situation;

(2) Order further investigation and require a supplementary report and recommendation; or

(3) Dismiss the complaint if it is found to be without merit.

vi) If the EEO Officer finds that discrimination, harassment, or retaliation occurred and the Secretary and/or the Chief determine that disciplinary

action should be taken which is less or more severe than that recommended by the EEO Officer, the Secretary and/or the Chief shall prepare a written memorandum, to be appended to the EEO Officer's report and recommendation, explaining the basis for the downward or upward deviation.

vii) Once the Secretary and/or the Chief have approved the recommendation and report:

(1) Respondent shall be provided with a copy or summary of the relevant sections of a separate report and recommendation only in cases where the complaint is sustained and discipline is imposed. The respondent is provided with a copy of the report solely to assist them in exercising their rights under the Department's Discipline Policy. The contents of the report are to be kept confidential except for this purpose and not to be disseminated for any other purpose.

(2) An employee complainant shall be provided a separate report that includes:

(a) A summary of the complaint;

(b) A summary of the response by the individual charged with discrimination, harassment, or retaliation;

(c) A finding of whether a violation of this policy occurred and an explanation supporting the finding; and

(d) A statement regarding whether disciplinary action has been recommended. This statement shall not detail the discipline recommended.

(3) The EEO Officer may meet with the employee complainant to explain the decision.

(4) Client complainants shall be informed in writing that the investigation was completed and that the Department has taken appropriate action.

viii) The respondent's division director and/or supervisor shall meet with the respondent to explain the decision and implement any corrective action or discipline in accordance with the Department's discipline policy and/or any other rules, regulations, or laws.

ix) Either party can respond in writing to the report and decision as a formal rebuttal to be included in the official file. If disciplinary action is taken, the respondent may exercise their rights under the Department's discipline policy and/or any other rules, regulations, or laws.

x) The supervisor of an individual found to have violated the Anti-Discrimination, Harassment, and Retaliation Policy is responsible for monitoring the individual's compliance with any recommendation made as a result of the finding. The supervisor must make their best efforts to ensure that the discrimination, harassment, or retaliation does not recur and that the complainant is not subjected to retaliation by the individual found to have violated this policy, or by other coworkers.

xi) The Secretary and/or the Chief shall ensure that any disciplinary action imposed by the Secretary and/or the Chief is implemented subject to the right of the respondent to appeal the disciplinary action in accordance with the Departments' policy regarding discipline, and any other rules, regulations, or other laws.

d) **Confidentiality**
All inquiries, complaints, and investigations under this policy will be confidential. Information is revealed strictly on a need-to-know basis.

e) **Central Registry**
A copy of all complaints, recorded interviews, investigation reports, final decisions, and all other evidence, shall be kept in a central registry for a minimum of ten (10) years, and accessible by the EEOB, in a secured, confidential file.

f) **Rights of the Complainant**
The procedures under this policy do not preempt or supersede any legal procedures or remedies otherwise available to a victim of discrimination, harassment, or retaliation under state or federal laws.

7) ATTACHMENTS

a) **NONE**

8) APPROVAL

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