



COMPLAINT RESOLUTION POLICY

I. PURPOSE

The purpose of the New Mexico Department of Finance and Administration's ("DFA") Complaint Resolution Policy ("Policy") is to provide Employees with a written complaint procedure by which Employees can seek to remedy problems associated with their working conditions and exercise their right to present or make known their complaints, free from interference, restraint, discrimination, coercion, or reprisal, pursuant to the New Mexico Administrative Code, § 1.7.6.13; and Governmental Dispute Prevention and Resolution Act, N.M.S.A. (1978) §§ 12-8A-1 to -8 (2000, as amended through 2007).

II. POLICY

DFA is committed to providing a safe and productive environment for the performance of work duties. To this end, DFA's policies are as follows:

- A. Provide procedure to resolve Employee Complaints;
- B. Prohibit prejudice and Disciplinary Action against an Employee for exercising his or her rights under this Policy;
- C. Provide procedure to resolve Employee reports of Retaliation; and
- D. Provide Disciplinary Action, including dismissal, for any Employee who retaliates against another Employee for following this Policy.

III. DEFINITIONS

The following definitions apply to this Policy:

- A. "**Agency**" means any state department, bureau, division, branch, or political subdivisions of the state and any of their branches, agencies, departments, boards, instrumentalities or institutions bound by the New Mexico State



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- B. **"Agency Head"** means the DFA Cabinet Secretary.
- C. **"Alternative Dispute Resolution"** means a process other than litigation used to resolve disputes, including mediation, facilitation, regulatory negotiation, fact-finding, conciliation, early evaluation and policy dialogues.
- D. **"Complaint"** means an informal or a formal request for relief in an employment matter made by an individual Employee, or a group of Employees, which affects them and is subject to control of DFA. Such complaints may include, but are not limited to: (i) harassment; (ii) intimidation; (iii) hostility; (iv) bullying; (v) discrimination; (vi) working conditions; and (vii) unfair treatment.
- E. **"Confidential Information"** means all information regarding complaints, pursuant to New Mexico law, including, but not limited to, N.M.S.A. (1978) § 14-2-1 and State Personnel Board Rule 1.7.1.12 N.M.A.C. "Confidential Information" means information and data of any kind concerning any matters affecting or relating to DFA, the business or operations of DFA, including but not limited to, financial documents and plans, customers, suppliers, partners, marketing strategies, vendors, products, technical product data, product samples, costs, sources, strategies, operations procedures, proprietary concepts, technical advice or knowledge, contractual agreements, software, data, and/or the products, drawings, plans, processes, or other data of DFA not generally known or available outside of the agency. Confidential Information does not include information communicated between only those individuals directly involved in a Complaint. "Confidential Information" includes non-disclosable information and data of any kind concerning any matters affecting or relating to DFA, the business or operations of DFA, including but not limited to, financial documents and plans, customers, suppliers, partners, marketing strategies, vendors, products, technical product data, product samples, costs, sources, strategies, operations procedures, proprietary concepts, technical advice or knowledge, contractual agreements, software, data, and/or the products, drawings, plans, processes, or other data of DFA not generally known or available outside of the Agency. "Confidential Information" includes communication made privately and not intended for further disclosure except to other persons in



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furtherance of the purpose of the communication.

- F. **“Disciplinary Action”** means any action taken by an Agency to influence change in an Employee’s performance or behavior to the expected standard, including Formal Disciplinary Action, Informal Disciplinary Action, and Progressive Disciplinary action, including but not limited to, letters of reprimand, suspensions, demotions, and Dismissal. Disciplinary Action includes punitive action taken to change an Employee’s performance or behavior to follow the classification description.
- G. **“Employee”** means (i) any person in a position in the classified service; (ii) an individual employed by the DFA, receives a wage from the DFA, and whose work is under the direct control and supervision of the DFA; (iii) term, probationary, temporary, permanent, and exempt positions; or (iv) an applicant for employment within the DFA. “Employee” does not include independent contractors who perform work for New Mexico.
- H. **“Neutral”** means a person who provides services as a mediator, fact-finder, or conciliator or who otherwise aids parties to resolve disputes.
- I. **“Retaliation”** means any form of discipline, reprisal, intimidation or retaliation for good faith reporting of incidents of Harassment of any kind, pursuing any Harassment claim or cooperating in related investigations. If an Employee would like more information about the DFA’s policy prohibiting retaliation, then contact the DFA HR or supervisor within the Supervisory Chain.

IV. COMPLAINT RESOLUTION PROCEDURE

If an Employee has reason to believe his or her employment has been adversely affected by unfair treatment, unlawful discrimination or conduct, unsafe working conditions, erroneous interpretation, or application of DFA policies, then **the Employee may initiate** a Complaint using the Policy’s Complaint Resolution Procedure (“Procedure”). All information provided by the Employee will be treated as Confidential Information. Employees may be represented by a person of his or her choosing at Steps Two and



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Three. An Employee's representative may negotiate resolution on behalf of the Employee so long as the Employee provides DFA HR with written consent. If the representative is another Employee, then the Employee acting as a representative shall be on approved leave or approved leave without pay while working on the Complaint as a representative. Before proceeding to Step Two and Three, Employees must first exhaust Step One.

A. Step One: Informal Complaint

1. Employee must initiate the Procedure by informing their immediate manager or supervisor about the problem and request resolution of the problem. If the Employee has reason not to bring the Complaint to the immediate manager or supervisor, then the Employee may bring up the issue with the second level supervisor, or request guidance from the DFA Human Resources Bureau ("DFA HR").
2. Within ten (10) working days, the immediate manager or supervisor must meet with the Employee who raised a Complaint and attempt to resolve the issue.
3. The DFA HR may facilitate the discussion or request the use of Alternative Dispute Resolution ("ADR") methods.
4. ADR methods: (i) may be used to prevent or resolve any dispute, issue or controversy; (ii) are voluntary; (iii) must be performed by a Neutral; and (iv) may be initiated at the request of the DFA or an interested party.
5. If the manager, supervisor, or the DFA HR are unable to resolve the Complaint, then an attempt must be made to determine who can resolve the Complaint and give the person an opportunity to resolve the Complaint at the lowest level possible.
6. If the Employee is not satisfied with the outcome of Step One of this Complaint Resolution Procedure, then the Employee may exercise his or her right to file a formal Complaint in accordance with this Policy.



B. Step Two: Formal Complaint - Level One

1. Within ten (10) working days of completing Step One, the Employee may file a formal Complaint using (i) a Complaint form available at the DFA HR; or (ii) a drafted formal Complaint that is compliant with Format requirements in section (IV)(I)(2), below;
2. **Format.** A drafted formal Complaint should include, at a minimum:
 - a) Employee's name and work telephone number;
 - b) Employee's job title;
 - c) Employee's work location and Agency;
 - d) Supervisor's name with whom the Employee discussed the dispute and the date of the discussion;
 - e) Brief statement of the Complaint, citing specific information for the Complaint: i.e., persons involved, date, time, witnesses, etc.;
 - f) Laws, rules, Agency policies, practices or procedures the employee believes to have been violated;
 - g) Requested remedy which the Employee believes to be appropriate;
 - h) Name, address and telephone number of the Employee's representative, if any; and
 - i) Signature of the Employee and the representative, if any.
3. Formal Complaint must be filed with the DFA HR, with a copy sent to the supervisor, unless the supervisor is involved in the substantive allegations of the Complaint;
4. The DFA will review all material and investigate all information, and any applicable policies, rules, or statutes;
5. The DFA will issue a written response to the formal Complaint within ten (10) working days; and
6. If the Employee does not agree or does not believe that the response resolves the problem or issue, the Employee may present the Complaint to the next and final level.



C. Step Three: Formal Complaint - Level Two

1. Within ten (10) working days from completion of Step Two, the Employee may submit the Employee's Complaint to the Shared HR Services Human Resources Manager ("Shared HR").
2. Shared HR shall review the written formal Complaint to determine the validity of the Complaint, status of the Complaint, and send a copy to the Agency Head, unless the Agency Head is involved in the substantive allegations of the Complaint.
3. If the Agency Head is involved in the substantive allegations of the Complaint, then follow (a), (b), and (c), below:
 - a) Shared HR may route the Complaint to the appropriate DFA management or representative;
 - b) Appropriate DFA management or representative will review and issue a final decision within fifteen (15) working days of receipt from the Shared HR; and
 - c) If the allegations are found to be valid, then a copy of the final decision will be sent to the entity commission or board responsible for appointing the DFA Cabinet Secretary.
4. A final decision will be rendered within fifteen (15) working days from the date of receipt of the Complaint from the Shared HR and a copy delivered to the Employee by a method that provides proof of service or attempted service.
5. The final decision is binding, unless the Complaint pertains to an interpretation of State Personnel Board Rules and Regulations ("Rules").
6. If the Complaint pertains to an interpretation of Rules, appeal may be made pursuant to section (V), below.



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V. APPEAL. If the Complaint pertains to interpretation of the Rules, the Complaint may be appealed to the State Personnel Director within thirty (30) calendar days of the date DFA issues a final decision. The State Personnel Director will issue an interpretation in accordance with 1.7.1.9 NMAC.

VI. RECORDS. Formal Complaints are Confidential Information and shall be maintained by the DFA HR. A copy of all formal materials placed in the Complaint record shall be provided to the Employee.

VII. REVIEWS AND APPROVAL. This Policy is effective upon signature by the DFA Cabinet Secretary, below.



Wayne Propst, Cabinet Secretary

12/29/23

Date