

This is an amendment to 5.100.6 NMAC Sections 14 and 18 effective 2/11/2025.

5.100.6.14 STUDENT COMPLAINT PROCEDURE: An institution shall provide proof of an adopted complaint procedure that complies with the minimum requirements set by the department. Institutions shall retain records that make available the student complaint received and record of the institution's processing the complaint (that comports with the institution's policies and procedures for handling grievances or complaints) as required by law. The institution shall have and make available to all students, the adopted complaint procedure that describes, in detail, how students or other parties may register a complaint or grievance, how the institution will investigate the complaint, and how the institution will attempt to resolve the complaint. Such policies shall at a minimum include the following components:

- A. requirement that students or other parties with complaints or grievances against an institution first seek to resolve their complaint or grievance directly with the institution;
- B. a time frame within which the institution will investigate the complaint and respond to the complainant;
- C. assurance of the involvement of a person who will serve as an impartial representative of the institution but not be directly involved in the area of the complaint;
- D. assurance that no adverse action will be taken against the complainant for registering the complaint; and
- E. identification of the [higher education] department as the agency to be contacted in cases where a complaint cannot be resolved and include the mailing address, website and phone number for the department. [5.100.6.14 NMAC - N, 12/26/2017; A, 2/11/2025]

5.100.6.18 COMPLAINT TO THE DEPARTMENT:

~~[A. — A student or other party not satisfied with an institution's resolution of a complaint may submit a complaint to the department in writing on a form provided by the department. A student must file a complaint with the department within three years of their last date of enrollment.~~

~~B. — Upon receipt of a written complaint, the department or its authorized representative shall verify that the complaint involves one or more standards for registration of the institution and is therefore a legitimate subject of complaint to the department. If the complaint is determined to be legitimate, the department or its authorized representative shall forward the complaint to the institution for a written response and shall facilitate possible resolution of the complaint between the student and the institution. The institution shall have 10 days to forward its response to the department. A copy of the institution's response will be forwarded to the student with a request that the student indicate satisfaction or dissatisfaction with the response.~~

~~C. — In attempting to resolve a complaint, the department or its authorized representative may, but is not obliged to, convene a hearing or meetings and shall give written notice to the institution and to all persons involved, regarding the time, date, and place of the hearing or meeting. Such hearings or meetings, if held, shall be informal and for the purpose of determining the facts surrounding the claim and if the parties can come to a resolution or compromise.~~

~~D. — In the event that the institution refuses to respond or refuse to attend a hearing or meeting:~~

~~(1) — The department shall make three attempts to contact the institution including at least one attempt through certified mail, to notify the institution of the complaint, request, action, hearing or meeting; and~~

~~(2) — If the institution does not respond or fails to attend the hearing or meeting after three attempts to contact the institution by the department have been made, the department may invoke its powers to take such action as shall be necessary for the indemnification of the claimant.]~~

A. — Upon receipt of a student complaint, the department shall determine whether the complaint meets initial criteria to permit use of the department's complaint procedure. The following initial complaint criteria must be satisfied:

(1) — A student must file a complaint with the department within three years of the student's last date of enrollment.

(2) — The complaint must be made to the department in writing utilizing the designated complaint form published by the department. The student may include supporting documentation or evidence related to the complaint. The department may request additional documentation from the student, as needed, to conduct an initial assessment.

(3) The complaint must detail and provide evidence that the student has exhausted all complaint procedures at the institution.

(4) The complaint must contain a question of fact or question regarding potential violation of or deviation from policy, regulation, or law.

B. If the department determines the complaint meets the initial complaint criteria, it shall serve as an intermediary in attempting to facilitate a resolution or to obtain information from the institution to eliminate questions of fact or possible violations or deviations from policy, regulation or law raised by the complaint. Satisfaction of initial complaint criteria, in no way means the department has assigned greater weight to the student's allegations. If the department finds that the subject matter of the complaint falls within the investigatory purview of another entity, it may forward the complaint and cease further review (for example the office for civil rights).

(1) Acting as an intermediary, the department shall request a response from the institution addressing the student's complaint. The complaint and any documentation provided by the student shall be sent to the institution with a request for a written response. The institution shall have 10 days to forward its response to the department. The institution may request additional response time, if inquiry into the complaint requires greater than 10 days. The institution may provide any supporting documentation or evidence to address questions or concerns raised by the complaint with the response.

(2) After considering the institution's response and any documentation or evidence supplied by the institution, the department may conduct further inquiry of the parties or may continue to serve as an intermediary for possible compromise between the parties. The department may seek additional clarifying information or supporting documentation from either party and may request additional response from either party.

(3) If the institution accepts the desired outcome proposed by the student in the complaint, the department shall inform the student. If the institution proposes an alternate desired outcome, the department shall convey such information to the student and the student shall indicate acceptance or denial of the alternate proposed outcome, or create a different proposed outcome, to allow for compromise. If at any point, the student and the institution reach an agreed upon outcome, the department may help facilitate fulfillment of the outcome, as necessary.

(4) If the parties are unable to reach a mutually agreeable outcome, the department may, but is not obligated to, convene a meeting between the parties. Such meetings, if held, shall be informal and for the purpose of clarifying the facts surrounding the complaint and to facilitate the parties reaching a resolution or compromise, if possible. If a meeting is convened, the department shall give written notice to the institution and to the student, regarding the time, date, and place of the meeting.

C. The department may help facilitate a compromised resolution between the parties. However, the department shall not impose an outcome and shall not act as an adjudicatory entity. If the department has received evidence to support potential violation of or a deviation from policy, regulation, or law through the department's inquiry, the department may refer the complaint to either law enforcement, the United States department of education, the institution's accreditor, or any other applicable oversight entities for further investigation, as applicable to the type of potential violation or deviation. If the department determines, at any time, that questions raised by the complaint are alleviated or the complaint relates to grades or student conduct violations, it shall cease further inquiry into the complaint and inform the student that the complaint will be closed with no further action by the department.

[5.100.6.18 NMAC - N, 12/26/2017; A, 2/11/2025]