

This is an amendment to 5.5.5 NMAC Section 13 effective 2/11/2025.

5.5.5.13 STUDENT COMPLAINTS:

A. An institution shall adopt student complaint procedures which allow students to seek resolution to complaints or grievances. Institutions shall retain records that make available the student complaint received and record of ~~its~~ the institution's processing the complaint (that comports with the institution's policies and procedures for handling grievances or complaints) ~~[for a minimum of three years]~~ as required by law. The institution shall have and make available to all students, the adopted complaint procedure that describes in detail, how students 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:

- (1) requirement that students with complaints or grievances against an institution first seek to resolve their complaint or grievance directly with the institution;
- (2) a timeframe within which the institution will investigate and respond to the complainant;
- (3) assurance that the representative of the institution investigating or addressing the complaint will serve as an impartial representative and is not directly involved in the subject matter to which the complaint is related;
- (4) assurance that no adverse action will be taken against the complainant for registering the complaint; and
- (5) identification of the 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.

B. The initial responsibility for the investigation and resolution of complaints resides with the institution. A student not satisfied with the outcome of a complaint or the institution's handling of the complaint process may submit the complaint to the department. The department shall not engage in any complaint resolution procedures unless a student has exhausted all complaint procedures set by the institution or can demonstrate the institution's refusal to utilize its complaint resolution procedures. If the student can demonstrate all complaint procedures of the institution have been exhausted and the student is not satisfied with the outcome, the department may help facilitate resolution where possible, if the complaint contains a question of fact or potentially involves a violation of or a deviation from policy, regulation, or law.

C. Complaints regarding student grades or student conduct violations shall be governed entirely by institutional policy and shall not be reviewed by the department. Complaints containing allegations of fraud, abuse, or consumer protection violations, rising to the level of violation of state or federal law, as demonstrated through substantial evidence (evidence of such weight and quality that it is sufficient to persuade a reasonable person to support the allegation asserted), shall be reported to law enforcement, the United States department of education, and the institution's accreditor, or any other applicable oversight entities.

D. 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 ~~[two]~~ three years of ~~[their]~~ the student's last date of enrollment ~~[or incident about which the complaint is made, whichever is latest in time]~~.
- (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.

E. 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 ~~its~~ 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.

F. 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 ~~its~~ 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.

[5.5.5.13 NMAC - N, 12/11/2018; A, 2/11/2025]