

Aveda Institute New Mexico Section 504 Grievance Procedures

PURPOSE: The purpose of these procedures is to secure, at the lowest possible level, prompt and equitable resolutions of complaints based on disability discrimination in violation of Title II of the American with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 (collectively, "Section 504"), and violation of Aveda Institute New Mexico (AINM) policies that prohibit these types of discrimination. These procedures apply only to complaints alleging discrimination prohibited by Section 504.

These procedures shall be available in every AINM administrative office, posted on the AINM website, and included in student handbooks.

DEFINITIONS:

- **Complainant** –For Section 504 complaints, a complainant is a student, employee or third party alleging discriminatory action or treatment prohibited by Section 504.
- **Respondent** - the person alleged to be responsible for the prohibited conduct alleged in a complaint.
- **Day** – The calculation of days in complaint processing, except as otherwise expressly provided, shall exclude Saturdays, Sundays, and federal, state and school holidays or closures.
- **Section 504 of the Rehabilitation Act of 1973 and Title II of the ADA** - no otherwise qualified disabled individual in the United States shall solely by reason of his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
- **Complaint Submission Date** – the date on which a written complaint was received by the Responsible Administrator.
- **Responsible Administrator**–Responsible Administrator, Director of Human Resources or Aveda Institute New Mexico Director, the authorized designee of these individuals, or the administrator designated by the Director, as appropriate.
- **Neutral and objective investigator/administrator**–an administrator or designated investigator who is not the subject of a complaint or is not a Complainant.

PROCEDURAL REQUIREMENTS

Time Limits:

A complaint under this procedure should be filed as soon as possible after the time of occurrence, but at no time later than 90 calendar days of the occurrence of the alleged violation(s) of Section 504. Failure of a complainant or appellant to comply with any time limitation in the complaint procedure may result in dismissal of the complaint and/or denial of the appeal. Dismissal shall not preclude the individual's right to pursue the complaint through other appropriate external agencies. If an AINM representative fails to comply with any time limitation in the grievance procedure, the Complainant may immediately proceed to the next level permitted by these Procedures.

Service:

Service of any notice or decision provided for under this procedure shall be deemed effective on the person served as of the date of delivery, if personally served, faxed or e-mailed, or effective three (3) calendar days of deposit by first class mail if delivered by mail.

Confidentiality:

Confidentiality will be maintained to the greatest extent possible. Any information gathered during an informal procedure may be used during a formal procedure, if initiated. While there can be no assurance of complete confidentiality, complaints under this procedure will be treated as sensitive information not to be shared with others except in limited circumstances.

Examples of exceptions to maintaining confidentiality include:

- Information the law requires to be reported.
- Information imparted to others in supervisory positions in order to further an investigation or halt a discriminatory practice.
- Information given to the Respondent in order to have sufficient information to respond to the allegations.

AINM will take all reasonable steps to investigate and respond to a complaint consistent with a request by the complaining party not to disclose his/her name. However, such requests for confidentiality may limit AINM's ability to adequately investigate and respond to the allegations raised in the complaint. Requests for confidentiality, therefore, will be evaluated in the context of AINM's responsibility to provide a safe and nondiscriminatory environment for all students, and the request will be weighed against the following factors:

- The complainant's age
- Whether there have been other harassment complaints about the same individual
- The alleged harasser's rights to receive information under federal and State law and District policies. Information provided to the alleged victim(s) and their parents/guardians shall be in compliance with the confidentiality provisions of state and federal law pertaining to the confidentiality of employee and student information and records, including but not limited to, the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1417(c); 34 C.F.R. § 300.560; Family Educational Rights and Privacy Act ("FERPA") (20 U.S.C. § 1232g; 34 CFR Part 99) and the Inspection of Public Records Act ("IPRA"), N.M. Stat. Ann. §14-2-1 *ET. seq.* (2005), as amended and re-codified in the future.

All parties to a grievance, including the Complainant, Respondent and witnesses, have privacy interests and, therefore, all parties should be cautioned not to divulge or publicize the nature of the proceedings or the identity of those involved outside the scope of the investigation.

Informal and Formal Processes

Informal Resolution Process

Informal resolution may be an appropriate choice when the conduct involved is not of a serious or repetitive nature and disciplinary action is not required to remedy the situation. No formal investigation is involved in the informal resolution process, and the informal resolution process shall not be considered a precondition for the filing of a formal written complaint pursuant to Section III.B., below.

A written request for informal resolution must be made within ten (10) days of the date of the alleged incident. The Director or designee shall determine whether the nature of the problem is such that it is likely to be resolved by agreement on an informal basis.

Methods for informal resolution may include, but are not limited to, coaching the person on how to directly address a situation which is causing a problem; mediating the dispute with the parties; developing written behavior expectations of the alleged offender to redirect conduct; assisting with the resolution of a real or perceived problem; or arranging a documented meeting with the alleged offender that involves a discussion of the disability discrimination policies and requirements for compliance.

The director or designee shall document any informal resolution, and a copy of such documentation shall be forwarded to the Responsible Administrator, or the individual designated by the Director within three (3) days of resolution.

Formal Complaint Procedures

Initiation of the formal complaint procedures requires a written complaint. All written complaints regarding harassment or discrimination of students or employees in violation of Section 504 and Board of Education policies shall be submitted to:

Roxanne Fernandez
505-294-5333 X360
1816 Central Ave SW
Albuquerque, NM 87104

All other inquiries or complaints by employees regarding discrimination with regards to employment should also be directed to the Director of Human Resources.

Step 1 - Reporting Complaints

The Complainant may obtain a Complaint Form from the Responsible Administrator, Human Resources Department, AINM Director, or the AINM website. A complaint form also may be copied from a student handbook. The Complainant may attach a written narrative explaining the nature of the complaint to the Form. The Complaint Form or narrative shall contain information that describes the conduct that has violated prohibitions against disability discrimination and identify with reasonable particularity the respondent(s) and any witnesses to the alleged conduct.

Any AINM employee who either reasonably believes a student has been discriminated against based on disability or who receives a complaint of disability discrimination, harassment or violence from a student must immediately submit the Complaint Form to the Responsible Administrator. This reporting obligation is in addition to a school employee's reporting obligations to appropriate officials pursuant to law and Board or Education Policies when the employee has a reasonable belief that a student is being sexually abused or subjected to other forms of abuse and neglect prohibited by law.

Step 2 – Determining Applicability of the Procedures

The Responsible Administrator shall initially review the written complaint to determine whether the matter falls within the scope of these procedures. Within five (5) days after the Complaint Submission Date, the Responsible Administrator shall initiate an investigation of the matters alleged, or inform the Complainant in writing that the matters alleged in the complaint are not within the jurisdiction or authority of the AINM to investigate and that AINM will not carry out any further investigation. If the matter does not involve allegations of discrimination within the scope of these procedures, the Responsible Administrator shall forward the matter to the proper AINM administrative authority for review, if appropriate.

Step 3 – Investigation

The Responsible Administrator shall oversee that an adequate, reliable and impartial investigation of the complaint is conducted by the Director or designee of the school site where the student is enrolled, the employee is assigned, and/or where the alleged discrimination occurred.

In order to provide a neutral and objective investigation, neither the Responsible Administrator, nor the principal or designee conducting the investigation shall be a party to the complaint in the investigation.

In the event that the principal or his/her designee is not a neutral party, the Responsible Administrator shall designate a neutral and objective administrator to conduct the investigation. In the event that the Responsible Administrator is not a neutral party, the Superintendent shall designate a neutral and objective administrator to oversee the investigation.

In conducting the investigation, the designated investigator shall interview all parties identified in the complaint and other witnesses that the investigator determines may provide information relevant to resolving the complaint allegation(s). Both the Complainant and Respondent shall have the opportunity to identify witnesses to be

interviewed and provide documentation or other evidence for the designated investigator to review.

The Responsible Administrator shall consider the evidence compiled by the designated investigator and take whatever additional actions the Responsible Administrator deems necessary to complete the investigation.

The Responsible Administrator will maintain documentation of all proceedings, which may include written findings of facts, transcripts, notes, or audio recordings until such time as a final written investigative report is compiled and issued by the Responsible Administrator and AINM takes action on the Complaint, if necessary, including during any appeals authorized under these Procedures.

Step 4 – Notice of Resolution

The Responsible Administrator shall notify both the Complainant and Respondent in writing within twenty (20) days from the Complaint Submission Date of the results of the investigation.

The Responsible Administrator shall consider the totality of the evidence and determine whether the preponderance of the evidence establishes that the alleged discrimination occurred (i.e., it is more likely than not that discrimination occurred).

If the Responsible Administrator determines that the preponderance of the evidence does not support the allegations of discrimination, the Complainant may appeal the determination pursuant to Step 5, below.

If the Responsible Administrator determines that the preponderance of the evidence supports the allegations of discrimination by the Respondent, the Responsible Administrator shall provide written findings and conclusions supporting the determination. In addition, the written determination shall make recommendations for:

- Immediately ending the discriminatory conduct
- Ways to remedy the discriminatory effects of any discriminatory behavior on the complaining party and, if applicable, the School District's educational environment, and
- The steps to be taken to prevent the recurrence of any discriminatory or harassing conduct found to have occurred.

The recommendations of the Responsible Administrator shall become final and shall be implemented as a remedy to the complaint unless either party appeals as provided in Step 5 – Appeal Rights. The recommendations of the Responsible Administrator under these Procedures shall not be binding to any other complaint or in other situation as it is compromise and specific remedy to the grievance at issue only to avoid further discord and/or litigation without admission of liability.

Step 5 – Appeal Rights

A party not satisfied with the resolution in Step 4, above, may submit a written appeal within five (5) days to the Director. The written appeal shall state with particularity the

nature of the disagreement, the reasons underlying such disagreement, and how the outcome would be changed by reconsideration of the determination.

The Director or designee shall conduct a review of the record to determine whether the preponderance of the evidence supports the determination. The Director or designee shall issue a written decision and mail it to the parties within ten (10) days of the receipt of the appeal. The Director's decision is a final decision.

Information for complaints to an external agency

Any person believing there has been a violation of Section 504 may file a complaint with the Office of Civil Rights ("OCR") in Denver, Colorado. More information is available at the Office of Civil Rights, Federal Office, 1244 Speer Blvd, Suite 310, Denver, CO 80204-3582, (303) 844-5695.

Discipline

Employees and students may be disciplined if it is determined through this procedure that discriminatory action, treatment, harassment or retaliation for complaining, has occurred in violation of federal or state laws or Board of Education policies. The Responsible Administrator shall refer the matter to the Director to initiate disciplinary proceedings against the Respondent.

Students

If the recommended disciplinary consequences involve either a long-term suspension or expulsion, the student is entitled to pursue the hearing and appeal rights pursuant to Board of Education policies and New Mexico state law.

Employees

If the disciplinary consequence involves discharge or termination, the employee's hearing and appeal rights will be governed by New Mexico law and Board of Education policies.

No Retaliation

Students, employees or parents who make complaints in good faith, shall be free from retaliation, coercion, and reprisal in seeking resolution of their complaint.

Furthermore, persons acting as witnesses to a complaint, in good faith, shall be free from reprisal.

Retaliation is a separate violation distinct from the initial underlying harassment or discrimination allegation. Claims of retaliation, submitted in good faith and in writing to the Responsible Administrator, shall be investigated pursuant to these procedures. Individuals who engage in retaliation will be subject to discipline, regardless of whether there has been a finding of cause for the underlying complaint.

False Complaints

Individuals who knowingly file a false or misleading complaints alleging harassment, discrimination or retaliation are subject to appropriate disciplinary action, including, but not limited to, dismissal of the complaint.

If the preponderance of the evidence supports a finding that the Complainant submitted a false or misleading complaint alleging harassment, discrimination or retaliation, the complaint will be dismissed, and the student or employee who submitted the complaint will be recommended for discipline in a manner consistent with Board of Education policies and procedures.