

DIRECTIVE/POLICY/PROCEDURES  NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION		DIRECTIVE/POLICY/PROCEDURE NUMBER: 1A-20
		ACA/ACI/PBS RELATED STANDARDS: ACA 2-CO-1C-09, 2-CO-1C-09-1; Central Office
CHAPTER TITLE: 1. Administration and Management	SECTION: A. General Administration	SUBJECT: Complaints from Employees or Sub-Recipients receiving Federal Funds

Effective Date: September 29, 2010

Revision/Review History

Revised: February 1, 2012
 Revised: December 9, 2013
 Revised: July 8, 2014
 Reviewed: April 7, 2015
 Reviewed: February 8, 2016

Summary of Revision(s)

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| 1. Reformatted page numbers. |
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<p style="text-align: center;">NORTH DAKOTA</p>  <p style="text-align: center;">DEPARTMENT OF CORRECTIONS AND REHABILITATION</p> <p style="text-align: center;">DIRECTIVE</p>		<p>DIRECTIVE NUMBER:</p> <p>1A-20</p>
		<p>APPENDICES:</p> <p>A. Complaint Verification Information B. Complainant Consent/Identity Release Form C. Federal Civil Rights Compliance Checklist</p>
		<p>ACA/PbS RELATED STANDARDS:</p> <p>ACA 2-CO-1C-09, 2-CO-1C-09-1; Central Office</p>
<p>CHAPTER TITLE:</p> <p>1. Administration and Management</p>	<p>SECTION:</p> <p>A. General Administration</p>	<p>SUBJECT:</p> <p>Complaints from Employees or Sub-Recipients receiving Federal Funds</p>

1. **AUTHORITY:** Authority for this directive with expectations is found in chapter 54-23.3 of the North Dakota Century Code; Title VI of the Civil Rights Act of 1964, as amended, 42 USC § 2000d; Omnibus Crime Control and Safe Streets Act of 1968, 42 USC § 3789d(c)(1); Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; Title IX of the Education Amendments of 1972, as amended, 20 USC § 1681; the Age Discrimination Act of 1972 42 USC §§ 6101-6107 and the Americans with Disabilities Act of 1990 as amended, 42 USC §12132.
2. **APPLICABILITY:** All employees of the Department of Corrections and Rehabilitation.
3. **DEFINITIONS:**
 - A. **Complainant:** An individual who alleges he or she has suffered an act of unlawful discrimination committed by a Department of Corrections and Rehabilitation sub-recipient, by an employee of a Department of Corrections and Rehabilitation sub-recipient, or by another individual acting on behalf of the sub-recipient. A complainant may be a client, customer, program participant, consumer, applicant, or employee of a sub-recipient who has made an informal or formal discrimination complaint under these procedures.
 - B. **De novo Investigations:** Latin expression meaning "from the beginning," "afresh," "anew. Used in investigations to mean a new investigation.
 - C. **Discrimination in Employment:** An act that results in adverse or unequal treatment of employee applicants or employees because of race, color, religion, sex, national origin, age, genetics, disability, status with respect to marriage or receipt of public assistance, participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer, or political opinions or affiliations.
 - D. **Discrimination in the Provision of Services:** An act that results in adverse or unequal treatment of a services applicant, client, customer, program participant, or consumer because of race, color, religion, sex, national origin,

age, disability, genetics or status with respect to marriage or the receipt of public assistance.

- E. Grievance for Employees: Any complaint to the appointing authority (except where a separate written complaint procedure exists to cover such areas as classification or pay grade) by an employee involving conditions of work, work relationship, or the interpretation or application of policies, rules, regulations, legislation which have been adopted to cover personnel practices in an agency, department, or institution. A grievance must concern a matter, which is subject to the control of the appointing authority.
 - F. Harassment: Verbal or physical conduct directed at an individual or group because of race, color, religion, national origin, age, sex, genetics, disability, status with respect to marriage or the receipt of public assistance, or any other unlawful basis when such conduct is sufficiently severe, pervasive, or persistent so as to have the purpose or effect of interfering with an individual's or group's academic or work performance or creating a hostile academic or work environment.
 - G. Investigator: The person responsible for investigating a formal complaint and making a determination regarding its merits.
 - H. Office for Civil Rights: An office within the Office of Justice Programs, United States Department of Justice that investigates complaints from individuals who claim a United States Department of Justice funded recipient or sub-recipient has discriminated against them, either in employment or in the delivery of services or benefits.
 - I. Recipient: The state agency receiving federal financial assistance funds from the United States Department of Justice. The North Dakota Department of Corrections and Rehabilitation is the State Administering Agency and recipient of federal financial assistance funds from the United States Department of Justice.
 - J. Respondent: An individual or entity alleged to have committed an act of unlawful discrimination.
 - K. Retaliation: Any adverse action taken against complainants who have alleged discrimination or have participated in the investigation of a complaint for unlawful discrimination.
 - L. Sub-Recipient: An entity receiving United States Department of Justice federal financial assistance through and administered by the Department of Corrections and Rehabilitation.
 - M. Sub-Recipient Employee: An employee of an entity receiving United States Department of Justice federal financial assistance through and administered by the Department of Corrections and Rehabilitation.
4. **DIRECTIVE:** The Department of Corrections and Rehabilitation and its sub-recipients are committed to the principle of equal opportunity. Equal employment opportunities exist for all positions. The Department of Corrections and Rehabilitation and its sub-recipients will not discriminate against individuals on the basis of race, color, religion, sex, national origin, age, genetics, disability, status with respect to marriage or receipt of public assistance, or any other unlawful basis under applicable state or federal law.

The Department of Corrections and Rehabilitation and its sub-recipients are committed to preventing and stopping discrimination, including harassment, on any of these unlawful bases and any associated retaliatory behavior. **(2-CO-1C-09)**

- A. All individuals have the right to participate in programs and activities provided with federal financial assistance and operated by the Department of Corrections and Rehabilitation and its sub-recipients regardless of race, color, national origin, sex, religion, disability, genetics, or age. The Department of Corrections and Rehabilitation and sub-recipients of United States Department of Justice funds will comply with the following federal laws prohibiting discrimination.
 - 1. Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin in the delivery of services.
 - 2. The Omnibus Crime Control and Safe Streets Act of 1968, which prohibits discrimination on the basis of race, color, national origin, religion, or sex in the delivery of services and employment practices.
 - 3. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in the delivery of services and employment practices.
 - 4. Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs.
 - 5. The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age in the delivery of services.
 - 6. Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability in the delivery of services and employment practices.
 - 7. Age Discrimination in Employment Act, which prohibits discrimination on basis of age in employment practices.
 - 8. The United States Department of Justice regulations on the Equal Treatment for Faith-Based Organizations.
 - 9. The Genetic Information Nondiscrimination Act of 2008 which prohibits the use of genetic information in health insurance and employment.
- B. The Department of Corrections and Rehabilitation and its sub-recipients shall have a mechanism to process requests for reasonable accommodations to known physical or mental impairments of a qualified individual with a disability, either an applicant or an employee. **(2-CO-1C-09-1)**
- C. The Department of Corrections and Rehabilitation and its sub-recipients will also not retaliate against an individual for taking action or participating in action to secure rights protected by the above laws.
- D. Individuals who violate this nondiscrimination policy are subject to appropriate disciplinary action, which may include termination of employment.

5. **EXPECTATIONS:** Guidelines for the Department of Corrections and Rehabilitation and Department of Corrections and Rehabilitation sub-recipients shall be followed when they receive and respond to an employment or services discrimination complaint from a Department of Corrections and Rehabilitation sub-recipient client, customer, program participant, consumer, applicant, or employee. Individuals who claim they have been discriminated against by a Department of Corrections and Rehabilitation sub-recipient may pursue a discrimination complaint under the procedures below and may pursue other remedies provided by law.
- A. All Department of Corrections and Rehabilitation sub-recipient supervisors, administrators, and managers are responsible for assisting in the prevention and elimination of discrimination.
 - B. Any Department of Corrections and Rehabilitation sub-recipient employee who is informed or believes discrimination is occurring, whether in their area of responsibility or not, should report it as soon as possible after the time of occurrence.
 - C. The Department of Corrections and Rehabilitation sub-recipient, including its supervisors, administrators, and managers, will safeguard the rights of the complainant, the respondent, and any witnesses. The sub-recipient shall ensure no retaliation occurs against complainants or persons who participate in a complaint investigation.
 - D. Resolution Options:
 - 1. Individuals who claim they have been subjected to unlawful discrimination may seek relief through the informal resolution process, the formal complaint procedure, or both. The informal resolution and formal complaint procedures in this policy are not mutually exclusive and neither is required as a pre-condition for choosing the other; however, they cannot both be used at the same time.
 - E. Informal Department of Corrections and Rehabilitation Resolution Process:
 - 1. Complainants are encouraged to resolve employment and services discrimination complaints informally by discussing the complaint with the respondent and the respondent's supervisor.
 - 2. A complainant may also meet and consult with the Department of Corrections and Rehabilitation sub-recipient's office of Human Resources without making a formal written complaint. At the informal level, the Department of Corrections and Rehabilitation sub-recipient's office of Human Resources should notify the complainant of the grievance process for filing formal complaints and document the complaint. In addition, the Department of Corrections and Rehabilitation sub-recipient's office of Human Resources shall notify the Department of Corrections and Rehabilitation Director of Human Resources of the complaint.
 - 3. The complainant may, at any time, decline to continue with the informal process. Use of the informal procedure is not required before making a formal complaint.

F. Department of Corrections and Rehabilitation Formal Complaint Filing Procedures:

1. Complainants who believe they have been the target of employment or services discrimination should file a complaint with the Department of Corrections and Rehabilitation Director of Human Resources as soon as possible. In most circumstances, the complainant must file a complaint within one year from the date of the alleged discriminatory conduct.
2. To file a formal civil rights complaint with the Department of Corrections and Rehabilitation, contact the Department of Corrections and Rehabilitation office of the Director of Human Resources for assistance at the following address:
 - a. North Dakota Department of Corrections and Rehabilitation
Office of the Director of Human Resources
PO Box 1898
3100 Railroad Avenue
Bismarck ND 58502-1898
Phone: (701) 328-6100
3. Complaints will be treated confidentially, to the extent permitted by law, and the Department of Corrections and Rehabilitation to protect the rights of the complainant and the respondent, to promptly investigate alleged discrimination and to take any appropriate remedial action.
4. The North Dakota Labor Department's Human Rights division and the United States Equal Employment Opportunity Commission are also available for assistance. Information may be located at the following websites: <http://www.nd.gov/labor> and <http://www.eeoc.gov>.
5. Computation of time:
 - a. In computing any period of time required or allowed in this policy, the day of the event from which the period of time begins to run is excluded, and the last day of the period of time is included, unless the day is a Saturday, Sunday, or legal holiday. A working day is 8:00 a.m. to 5:00 p.m., Saturday, Sundays, and legal holidays are not working days.

G. Training:

1. The Department of Corrections and Rehabilitation and Department of Corrections and Rehabilitation sub-recipients will provide annual training to appropriate Department of Corrections and Rehabilitation and Department of Corrections and Rehabilitation sub-recipient employees about applicable state and federal civil rights laws and related complaint procedures and policy.
2. New hires and promotions:
 - a. New supervisory employees must be trained within six months of their assumption of a supervisory position, and annually thereafter.

H. The Department of Corrections and Rehabilitation will disseminate these procedures to sub-recipient employees by posting these procedures on the Department of Corrections and Rehabilitation Intranet website. Department of Corrections and Rehabilitation sub-recipients will also develop their own agency procedures to disseminate these policies and procedures to new and existing employees.

I. Recordkeeping and Disclosure:

1. The Department of Corrections and Rehabilitation and Department of Corrections and Rehabilitation sub-recipients shall retain records related to complaints and investigations in accordance with North Dakota and federal laws. Sub-recipients shall submit copies of all such records to the Department of Corrections and Rehabilitation Director of Human Resources. The Department of Corrections and Rehabilitation Human Resources office shall be responsible for records related to all complaints. Information about the identity of any persons providing information related to or assisting in an investigation must be maintained in a confidential manner to the extent possible. In the event it is necessary to disclose a person's identity, the person shall be protected from retaliation.

J. External State and Federal Agencies:

1. While the Department of Corrections and Rehabilitation encourages individuals to file employment and services discrimination complaints with the department, this policy is not intended to impair or limit the rights of anyone seeking other remedies that may be available under state or federal law. As a result, an aggrieved party may also inquire with the Department of Corrections and Rehabilitation about rights to file a discrimination complaint with another state or federal agency. These agencies include:

a. North Dakota Department of Labor Division of Human Rights
600 East Boulevard Avenue, Dept 406
Bismarck North Dakota 58505-0304
Phone: (701) 328-2660

b. United States Equal Employment Opportunity Commission
909 First Avenue, Suite 400
Seattle Washington 98104
Phone: (800) 669-4000

c. United States Department of Education
Office for Civil Rights
915 Second Avenue, Room 3310
Seattle Washington 98174
Phone: (206) 607-1600

d. Office for Civil Rights
Office of Justice Programs
United States Department of Justice
810 7th Street, NW
Washington DC 20531
Phone: (202) 307-0690

- K. If the Department of Corrections and Rehabilitation elects to investigate a complaint involving a federal civil rights law over which United States Department of Justice has jurisdiction, the United States Department of Justice retains the authority:
1. Conduct supplementary or *de novo* investigations;
 2. Approve, modify, or reject recommended findings;
 3. Approve, modify, or reject proposed voluntary resolutions; and
 4. Initiate formal enforcement action.
6. **SIGNATURE:** This directive with expectations becomes effective when signed by the Director of the Department of Corrections and Rehabilitation.

This copy has been approved by the Director with the original signature on file.