



DEPARTMENT OF DEFENSE, VETERANS AND EMERGENCY MANAGEMENT
JOINT FORCE HEADQUARTERS, MAINE NATIONAL GUARD
33 STATE HOUSE STATION
AUGUSTA, ME 04333-0033

NGME-Z (600-20a2)

11 September 2021
TAG Policy 21-12

MEMORANDUM FOR All Maine Army and Air National Guard Personnel

SUBJECT: Military Procedures for Discrimination and Harassment Request for Resolution (Complaints)

1. References:

- a. National Guard Regulation 600-21, Equal Opportunity Program in the Army National Guard, dated 22 May 2017
- b. Air National Guard Instruction 36-7, Air National Guard Military Equal Opportunity Program, dated 25 April 2003
- c. Chief National Guard Bureau Instruction 9601.01, National Guard Discrimination Complaint Program, dated 27 September 2015
- d. TC 26-6, Commanders Equal Opportunity Hand book, dated June 2008

2. Effective. This policy supersedes TAG 21-03. These procedures are in effect as of 1 January 2020 and will be in effect until revised.

3. Applicability. Equal Opportunity (EO) resolution processes are available for all military personnel to include Army, Air, M-Day/Traditional and Title 32 AGR.

4. Processes. If an individual believes they have been discriminated against or harassed based on race, religion, sex (includes pregnancy, gender/gender identity and sexual harassment), national origin, sexual orientation, or reprisal for previous complaint activity or participation in the complaint process. **All complaints start as an Informal Request for Resolution (IRR)**, which may or may not change to a Formal Request for Resolution (FRR). If the issue is still not resolved during the FRR, it may move to a hearing process. At any time during the complaint process, the individual may request Alternative Dispute Resolution (ADR) to try and resolve the issue.

5. Lowest Level. All personnel are highly encouraged to first seek resolution through the unit commander, first line leadership and unit EO professionals using the ADR process before utilizing the IRR process.

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6. Value. The goal is to ensure a safe and supportive environment for all personnel. Retention is paramount, personnel will conduct themselves in a professional and respectable manner at all times. Leaders are responsible for initiating communication and resolution when there is any situation not reflecting the EO values.

7. Anonymity. Personnel who wish to remain anonymous must notify the State Equal Employment Manager (SEEM), ANG EO Office, Military EO Officer (MEO), or Equal Opportunity Advisor (EOA) when first initiating an IRR. A complainant may not remain anonymous when filing a military complaint or when filing a FRR, however, information is only shared on a need to know basis.

8. Reporting. The only individuals able to intake an EO complaint are: Army MACOM EOA, State/JFHQ level MEO/EOA, SEEM, Air MEO or SEEM.

9. Timelines. Personnel have **180 days** to file an IRR from the date of the alleged discrimination/harassment or the date the individual became aware of the discriminatory/harassing event or action. Timelines for processing requests are in accordance with (IAW) applicable federal, state and local regulations.

10. Complaint Resolution. **All complaints are initiated at the informal level and will be referred to as Informal Requests for Resolution (IRR).** All IRR's require a trained EOA to intake and process. If the first supporting EOA within the chain of command is unavailable, the SEEM will identify an EOA to process the case. All sexual harassment and discrimination IRR's will be documented on an NGB Form 333, Discrimination Complaint in the Army and Air National Guard. NGB 333's will be forwarded directly to the SEEM upon intake completion.

a. Command Responsibilities. Commanders will engage their MACOM EOA immediately when personnel request to process an IRR or when any situation of discrimination or harassment arise.

(1) Commanders have the primary role of negotiating the resolution of all IRR's and will not delay the process.

(2) Commanders will cooperate with the EOA and the SEEM to ensure all case records are complete and meet all required timelines. The engagement of leadership is essential in the resolution process resolving at the lowest level.

(3) Upon notification of a complaint, the commander will immediately initiate a Commander's Reprisal Prevention Plan (RPP), brief members within the immediate chain of command and any members involved. This ensures protection from any reprisal for prior EO activity.

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b. Timelines. Personnel have 180 days from the alleged incident to file an IRR (complaint).

(1) EOA has **2-3 days** to forward the NGB Form 333 to the SEEM.

(2) SEEM has **7 days** from the receipt of the NGB Form 333 to acknowledge receipt, notify the commander at the lowest level and send the NGB Form 333 to NGB in order to assign a tracking number.

(3) Commander or SJA will assign/appoint an Inquiring/Investigating Officer (IO) to conduct interviews of **ALL** witnesses.

(4) IO will meet with MEO/EOA and SJA within **1-2 days** of appointment. IO will be briefed by the EOA/SJA as to the expectations of the inquiry/investigation.

(5) IO will conduct a fact finding/investigation and complete a Leadership Inquiry Report (LIR). Once completed, the LIR will be reviewed by SJA, EOA and next higher command within **60 days** of appointment.

(6) Commander with next level commander input will draft proposed recommendations in the form of a Notice of Proposed Resolution (NPR) and submit to the EOA for review within **30 days**.

(7) After the EOA reviews and provides recommendations, the commander will meet with the complainant as soon as possible to review the NPR.

(8) Complainant accepts, withdraws or request an FRR (has **30 days**).

c. Forms and Submissions:

(1) Preamble. Complainants with alleged sexual harassment cases will read and sign the preamble, acknowledging they understand; the definition, reporting options, and differences between sexual harassment and sexual assault, prior to the intake. The preamble clarifies the basis of the complaint and could dictate a hand off to the units Victim Advocate (VA) or Sexual Assault Response Coordinator (SARC) if applicable, while maintaining the individual's option for a restricted report.

(2) NGB Form 333. Discrimination Complaint in the Army and Air National Guard. This form begins the IRR process.

(3) IO Appointment Memo. Will be completed by the SJA or Commanding Officer.

(4) Complainant statement. Will be completed on a DA Form 2823, Sworn

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Statement.

(5) Witness statements. Will be completed on a DA Form 2823. The statements will be in writing on this form to reduce redundancy for any IRR's that are later escalated to FRR's.

(6) Leadership Inquiry Report (LIR).

(7) Notice of Proposed Resolution (NPR).

d. EOA/SEEM Responsibilities. SEEM will oversee and track the status of all IRR/FRR cases.

(1) EOA's will immediately contact the SEEM when an IRR is initiated or when any situation of discrimination or harassment arises. Unit EO Leaders (EOL) will assist commanders and the EOA with limited fact-finding and tracking timelines.

(2) EOA's receiving the IRR assists the complainant in completing NGB Form 333, Part 1 and submits to the SEEM within 2-3 calendar days. SEEM will process allegations as described herein. If reprisal for EO activity is alleged, the SEEM will refer the case to the Inspector General (IG) to address Whistleblower Protection Act concerns.

(3) SEEM submits NGB Form 333 to the National Guard Bureau, Office of Equity and Inclusion, Complaints Management and Adjudication (NGB-EI-CMA), and is issued an NGB case tracking number.

(4) SEEM or EOA will send an acknowledgment receipt of the IRR in writing to the complainant within 7 calendar days. Will also notify the complainant's commander of the alleged discrimination. If the commander is involved in the complaint, the next higher command will be notified.

e. Inquiry/Fact Finding. All investigations into discrimination or sexual harassment are conducted IAW current applicable federal, state and local regulations. Utilization of an AR 15-6 investigation or Command Directed Inquiry (CDI) for the purpose of gathering evidence and facts, and ultimately resolving the complaint is recommended. Investigating these types of complaints can be determined the best means to assure a thorough and unbiased resolution.

(1) Commander or SJA will appoint an IO in writing and must be of equal or higher rank than the alleged offender(s) and forward a copy of the order to the EOA and SEEM. The IO appointment and investigation report will be part of the official case file. Upon being appointed, IO's will contact the EOA or SEEM and SJA within 1-2 business days for procedural guidance.

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(2) The IO conducts an investigation, obtains witness statements (sworn statements) and collects relevant documents. Within **60 days of appointment** the IO completes and submits the Leadership Inquiry Report (LIR) which includes the recommended resolution to the commander.

f. Decision Phase. Within **30 days of receiving the LIR**, the unit commander will review it and draft a NPR (finding, conclusions and proposed recommendations) next level higher commander will approve it. It's then forwarded to JAG for a legal review. Following JAG review, the EOA and SEEM will review.

g. Command Decision. Commander and complainant will complete Part II of NGB Form 333 upon review of the NPR and a redacted copy of the LIR. The complainant is the only person who is authorized a copy of the LIR without a FOIA request. The complainant signs the NPR indicating if they (1) accept the proposed resolution, (2) withdraw their complaint, or (3) intend to file a formal complaint (FRR, they have 30 days to file the formal complaint).

h. Final Interview. EOA/SEEM conducts a final interview with the complainant of the IRR process. **The IRR process is complete when the NPR and Part II of the NGB Form 333 has been signed by the command and complainant. The final interview concludes the IRR process.** The NGB Form 333, and all case files are submitted to the SEEM within (7) days of case completion. SEEM will submit a signed copy of the NPR to NGB-EI-CMA.

11. Complaint Resolution. Formal Requests for Resolution: The only means of appealing an IRR is to file a FRR, per the 30 day notification memorandum provided at the closing counseling of the IRR by the commander. FRR's are filed through the SEEM office to National Guard Bureau, Complaints Management Division (NGB-CMD). All FRR's will be documented on an NGB Form 333 and will be forwarded to NGB with the investigation supporting case files.

a. Timelines. If the complainant elects to file a FRR, they have **30 calendar days** from receipt of the NPR.

(1) Within **30 calendar days** of the receipt of the NGB FRR and case file, NGB-EI-CMA will decide whether or not to accept the complaint for investigation.

(2) If an IO is appointed, they will conduct a formal investigation and complete a report with findings to NGB-EI-CMA within **45 calendar days** from the date of the appointment.

(3) NGB-EI-CMA will issue an NGB NPR within **30 calendar days** of receipt of the ROI.

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(4) If the complaint is substantiated and corrective actions are recommended in the NGB NPR, the complainant will be informed by the SEEM or another designated state representative, of the completion of the corrective actions within **60 calendar days** of receipt of the NGB NPR.

(5) If the complaint is unsubstantiated, in whole or in part, the complainant may file a request for a hearing within **30 calendar days** of receipt of the NGB NPR.

(6) SEEM submits a written response to the NGB-EI-CMA and to the complainant, within **30 calendar days** of receipt of the NGB NPR. SEEM will provide a periodic update on the continuing remedial efforts every **30 calendar days** to NGB-EI-CMA.

b. SEEM Responsibilities. Will receive the NGB FRR from the complainant on NGB Form 333, Part III, and usually contains a signed statement from the complainant, forming the basis for their non-acceptance of the commander's proposed resolution.

(1) Will ensure legal (SJA) and the Adjutant General have reviewed the package prior to forwarding to NGB- EI-CMA.

(2) If NGB accepts the complaint for investigation, an IO will be appointed.

(3) If NGB denies the request, the SEEM will share the findings of the Notice of Proposed Dismissal with the complainant and advise them of their rights to request a hearing.

(4) If the complaint is substantiated and corrective measures are recommended, the SEEM will inform the complainant of the corrective actions within **60 calendar days** of receipt of the NGB NPR. The complainant may file a hearing with NGB-EI-CMA to request remedies for a state's non-compliance with recommendations after 60 calendar days following receipt of the NGB NPR.

(5) SEEM submits a written response to the NGB-EI-CMA and the complainant within **30 calendar days** of receipt of the NGB NPR. SEEM will provide updates on the continuing remedial efforts every **30 calendar days** to NGB-EI-CMA and the complainant or as necessary.

c. NGB responsibilities. Within **30 calendar days** of receipt of the NGB FRR and case file, NGB-EI-CMA will decide to accept or deny the complaint for investigation. NGB-EI-CMA will notify the SEEM to have an IO appointed. In the event of a request denial, NGB-EI-CMA will issue a Notice of Proposed Dismissal detailing the decision to

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d. dismiss. The complainant will be advised of their rights to request a hearing.

(1) If an IO is appointed, they will complete a formal investigation and issue a report with findings to NGB-EI-CMA within **45 calendar days** from the date of the appointment. Expenses required to conduct a formal investigation to include; travel, translator, technical support for investigations conducted by video conference or telephone, will be funded by the owning state of the alleged. If the command conducts a 15-6/CDI during the IRR process, and the case is later elevated to an FRR, the NGB-EI-CMA will utilize the Report of Investigation (ROI) to determine accountability.

(2) NGB-EI-CMA will issue an NGB NPR **within 30 calendar days** of receipt of the ROI.

(3) If the complaint is substantiated, the NGB NPR will recommend appropriate corrective actions to the state in accordance with CNGBM 9601.01. If the complaint is substantiated and corrective measures are recommended, the complainant will be informed of the completion of corrective actions within 60 calendar days of receipt of the NGB NPR. Complainant may file a hearing request to seek remedies for a state's noncompliance with NGB-EI-CMA recommendations after 60 calendar days following receipt of the NGB NPR.

(4) If the complaint is unsubstantiated, in whole or in part, the complainant may file a request for a hearing within **30 calendar days** of receipt of the NGB NPR. The complainant will be advised of their rights to request a hearing.

12. Record Keeping. NGB Form 333, preamble and case files are all inspectable items. SEEM is the official custodian of all records for discrimination and harassment/sexual harassment cases. Units will send all case records to the SEEM, as well as ensure current/on-going case/investigation files are secured and maintained at a classification level of "confidential." Only individuals with an official need to know basis should have access to these records. All resolution agreements will be documented on the NGB Form 333.

13. Reprisal Prevention Plan. Commanders will **immediately** initiate a Reprisal Prevention Plan (RPP) upon being notified of a complaint. The RPP will ensure all personnel named in the IRR; the complainant, witnesses, bystanders and leadership are counseled on the definition of retaliation, reprisal, the consequences of such actions, and where to file a complaint with the IG for protection under the Whistle Blowers Act. A copy of the RPP will also be forwarded to the EOA/SEEM. **Reprisal will not be tolerated. It deteriorates trust in leadership and our organization and it undermines the resolution process.**

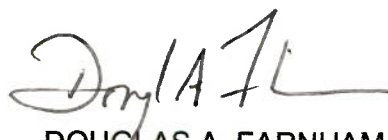
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14. Other Resources. The NGB EO Hotline (1-800-371-0617) provides procedural information on discrimination and harassment complaints ONLY. If an Equal Employment Analyst is not available, your call will be returned the next working day.

15. Complaints of discrimination or harassment cannot be filed by calling the hotline. The hotline is a resource, NOT a channel for resolution.

16. Point of contact is Mr. Daniel Dubay, State Equal Employment Manager (SEEM) at (207) 430-6149 or daniel.s.dubay.mil@mail.mil.

A handwritten signature in black ink, appearing to read "Douglas A. Farnham", with a stylized flourish at the end.

DOUGLAS A. FARNHAM
Maj Gen, MENG
The Adjutant General