



NATIONAL GUARD BUREAU
1636 DEFENSE PENTAGON
WASHINGTON DC 20301-1636

CNGB DTM 9601.01
NGB-DI
31 May 2024

MEMORANDUM FOR ALL NATIONAL GUARD PERSONNEL

Subject: Interim Guidance for Processing Title 32 Military Equal Opportunity Sexual Harassment Complaints Under the National Guard Discrimination Complaint Program

References: See Attachment C.

1. Purpose. This Chief of the National Guard Bureau (CNGB) Directive-Type Memorandum (CNGB DTM) establishes interim guidance for processing Title 32 Military Equal Opportunity (MEO) sexual harassment complaints under the National Guard (NG) Discrimination Complaint Program in accordance with the references.

2. Cancellation. None.

3. Applicability.

a. This CNGB DTM applies to all NG personnel serving in a Title 32 status, including:

(1) NG Technicians for complaints that occur while the Service member is in a military pay status.

(2) To beneficiaries of services from the Army National Guard (ARNG) and Air National Guard (ANG) in programs receiving Federal financial assistance.

(3) When allegations concern fitness for duty in the reserve components.

b. This CNGB DTM does not apply to:

(1) NG Service members serving in a Title 10 status. Title 10 Service member complaints will be processed in accordance with applicable Service regulations.

(2) Title V civilians or Title 32 NG Dual Status Technicians who allege discrimination in their technician or civilian status, which will be processed in accordance with reference d and other applicable policies.

(3) Personnel in a State Active-Duty status. Those complaints will be processed in accordance with State guidelines.

(4) Beneficiaries of services from the ARNG and ANG in programs receiving Federal financial assistance. Those complaints are processed in accordance with reference c.

4. Policy. It is NGB policy to resolve Title 32 MEO sexual harassment complaints at the lowest appropriate level.

a. Intake. Responsibility for intake of sexual harassment allegations remains with Equal Opportunity (EO) personnel. All eligible personnel who make allegations of sexual harassment (regardless to whom they raise allegations) will first be referred to a full-time State Sexual Assault Response Coordinator or a full-time Sexual Assault Prevention and Response (SAPR) Victim Advocate, hereinafter referred to as "State SAPR personnel." To protect Complainant confidentiality, EO personnel must not complete the intake prior to referral.

b. Reporting. State SAPR personnel are not required to report potential or confirmed sexual harassment to EO personnel unless and until requested by the Complainant. Complainants have the right to maintain confidentiality while obtaining support services from State SAPR personnel. Complainants are not required to file an MEO complaint to obtain limited SAPR support services.

5. Responsibilities. See Attachment A.

6. Procedures. See Attachment B.

7. Information Collection Requirements. None.

8. Definitions. None.

9. Releasability. This CNGB DTM is approved for public release; distribution is unlimited. It is available at <<https://www.ngbpmc.ng.mil/>>.

10. Records Management. This CNGB DTM and all records created as a result, regardless of media and format, must be managed in accordance with the NGB Records Management Program.

11. Compliance. Per the CNGB 5000.01 Issuance Series, the Proponent/OPR will review this CNGB DTM annually on the anniversary of its effective date to either confirm the action has been completed, incorporate the directive into an CNGB Instruction, CNGB Manual or to update and extend the CNGB DTM's continued applicability, currency, and consistency with Federal, Department of Defense, and NGB policy.



DANIEL R. HOKANSON
General, USA
Chief, National Guard Bureau

Attachments:
As stated

ATTACHMENT A

RESPONSIBILITIES

1. Chief of Office of Diversity Equity and Inclusion (NGB-DI) Complaints Management and Adjudication Branch (NGB-DI-EC). NGB-DI-EC is the office of primary responsibility for implementing the NG Discrimination Complaint Program. The Chief of NGB-DI-EC will:

a. Administer the NG Discrimination Complaint Program to ensure compliance with the CNGB's policies and guidance.

b. Investigate alleged instances of discrimination, as needed.

c. Administer the Title 32 MEO Complaints Program, ensuring timely resolution and closure of formal complaints, including complaints of sexual harassment.

d. Provide updates, advice, and assistance to complainants, commanders, and NGB leadership throughout the complaint process.

e. Issue timely decisions, determinations, and certifications relating to the NG Discrimination Complaint Program.

f. Coordinate with the NGB Office of Complex Investigations (NGB-OCI) when processing Title 32 MEO sexual harassment discrimination complaints during the NGB Appellate Process.

g. Assist the Director of NGB-DI in:

(1) Promoting NG Discrimination Complaint Program awareness throughout the NG and providing training for personnel assigned to administer the program.

(2) Making NG personnel aware of existing NG Discrimination Complaint Program resources and how to access them, including updating the NGB-DI website.

(3) Advocating on behalf of the NG Discrimination Complaint Program.

(4) Soliciting NG Discrimination Complaint Program data from the field for reporting purposes and preparing a monthly summary report dashboard to the CNGB regarding case load and progress made in implementing the NG Discrimination Complaint Program, in accordance with this CNGB DTM.

(5) Follow Alternative Dispute Resolution (ADR) processes and support their use throughout the NG Discrimination Complaint process.

2. Chief of NGB-OCI. The Chief of NGB-OCI will:

- a. Investigate all Title 32 Sexual Harassment MEO complaints in the NGB Appellate process in accordance with the procedures in this CNGB DTM.
- b. Coordinate with State personnel to complete investigations.
- c. Coordinate with NGB-DI-EC personnel to facilitate Title 32 Military Equal Opportunity Sexual Harassment Complaint processing.
- d. Ensure NGB-OCI has sufficient personnel and other resources necessary to comply with this CNGB DTM.

ATTACHMENT B

TITLE 32 MEO SEXUAL HARASSMENT COMPLAINTS

1. Title 32 MEO Sexual Harassment Complaint State Processing. Once a complainant has received or declined SAPR support services and wishes to file a Title 32 MEO complaint, they will submit their sexual harassment allegations to State EO personnel. Upon receipt of a sexual harassment complaint, State EO personnel will obtain a tracking number from NGB-DI-EC. If the State concludes that the allegation should be dismissed or not processed for any reason, the State must submit a Notice of Proposed Dismissal to NGB-DI-EC and the complainant. Whether NGB-DI-EC concurs or disagrees with the non-acceptance of the complaint, the State must afford the complainant the opportunity to request a hearing in accordance with reference b. Under no circumstances can an EO professional or commander individually conclude not to accept or otherwise dismiss a sexual harassment complaint.

2. Complainant's Submission of an Initial Resolution Request. State EO personnel will inform The Adjutant General or the Commanding General of the District of Columbia of all initial complaints of sexual harassment. An Initial Resolution Request will be filed on NGB Form 333, "Discrimination Complaint in the Army and Air National Guard." The form must be signed by the Complainant, and it must identify the:
 - a. Individuals involved.

 - b. NG unit or organization involved.

 - c. Description of the actions or practices forming the basis of the alleged discrimination.

3. Alternative Dispute Resolution. When a Title 32 MEO complaint is submitted, Commanders will attempt to engage in ADR to determine if an expedited resolution is possible.
 - a. Complainants cannot be required to engage in ADR.

 - b. If the MEO complaint is resolved using ADR, the settlement agreement must be forwarded to NGB-DI-EC by email or hard copy delivery by hand, US Post Office, or other delivery service, with a request for closure. The complaint will not be closed until all remedial measures are complete. The State is required to maintain the agreement on file in the State's Equal Employment Manager office.

 - c. The State or the Complainant may request a hearing at NGB Office of General Counsel if they conclude the settlement agreement was breached. Any hearing request must be received by NGB-DI-EC within 30 calendar days of when either party knew, or should have known, the breach occurred.

d. Resolving an MEO complaint through ADR does not relieve the Commander of addressing any allegations of misconduct and taking appropriate actions. However, any subsequent command action would be outside of the Title 32 MEO Sexual Harassment Complaint Process.

e. Concurrent with ADR, the State will provide the Complainant the choice of how to process the matter. If the Complainant wants the Chain of Command to handle the matter expeditiously and prefers that the State not initiate an investigation, the Complainant can request a Leadership Inquiry. Alternatively, if the Complainant prefers an investigation into the allegations as opposed to an inquiry, the Appointing Authority will appoint an investigating officer from outside the Complainant's and Alleged Discriminating Official's (ADO) assigned brigade element or wing to conduct a sexual harassment complaint investigation in accordance with reference b. Ultimately, it is the Complainant's choice whether the State conducts an inquiry or an investigation during the informal phase.

(1) Inquiries. Sexual harassment complaint inquiries will comply with procedures and processing timelines established by reference b and are otherwise the same as Leadership Inquiries in all other discrimination complaints.

(2) Investigations. Investigations will comply with processing timelines established by reference b.

(a) Investigating officers must be a Commissioned officer, Warrant Officer, or GS-12 or higher, and cannot be in the same rating chain as either the Complainant or the ADO.

(b) Exceptions requiring appointment of an investigating officer from the same brigade or wing will be approved in writing by the first general officer in the chain of command and included as an enclosure to the investigation. This authority may not be delegated.

(c) Reasons for exceptions may include unit geographic location or type of mission. Under no circumstances may the investigating officer be from the same rating chain as either the Complainant or the ADO.

(d) The investigating officer must be qualified to conduct an MEO investigation by completing an online or in person training event. A training certificate will be included with the appointment letter in the complaint file. States may request assistance from NGB-OCI for more serious allegations (though NGB-OCI is not required to conduct investigations in the informal phase) or develop their own investigator certification program.

f. Upon completion of the investigation or inquiry, the report with all exhibits will be reviewed by State EO personnel for procedural correctness prior to submission for legal review. The State legal advisor will review the file for legal sufficiency.

g. The Appointing Authority that initiated the inquiry or investigation will issue a Notice of Proposed Resolution (NPR) and a copy of the Findings and Conclusions of the investigation or inquiry to the Complainant. The Complainant has 30 calendar days to determine whether they wish to:

- (1) Accept the NPR.
- (2) Withdraw the complaint.
- (3) Submit an appeal pursuant to NGB Appellate Process.

h. At any time, the State may pursue administrative, nonjudicial, or judicial adverse actions against the alleged discriminating official. If allegations are substantiated, the State will otherwise comply with Service regulations regarding a substantiated complaint.

4. NGB Appellate Process.

a. Appeal. Using the initial NGB Form 333, Part II, Block 10, when possible, Complainants must file an NGB Appeal with the State representative within 30 calendar days of receipt of the State's NPR, or the final interview, as described above. If NGB Form 333 is unavailable, the Complainant may submit an appeal by email to the State representative indicating their desire to appeal the State decision.

b. State Action. The State representative will forward the NGB Appeal to NGB-DI-EC within five calendar days of its receipt. A copy of the State's NPR, the investigation or inquiry report with all exhibits, and any accompanying documentation must be included in the package.

c. Preliminary Review of Appeal. Within 30 calendar days of receipt of the appeal and accompanying documentation, NGB-DI-EC will decide whether to accept the Appeal. In the event of an Appeal denial, NGB-DI-EC will issue a Notice of Dismissal detailing the decision to dismiss. The member will be advised of their rights to request a hearing in accordance with reference b, Enclosure C.

d. NGB-OCI. If otherwise acceptable for processing, NGB-DI-EC will refer the Appeal to NGB-OCI. NGB-OCI will complete an investigation and issue a complete report with recommended findings and conclusions to NGB-DI-EC within 120 calendar days from the start of the investigation. NGB-OCI is encouraged to review and adopt all or part of existing investigations, at their discretion. Expenses required to conduct a formal investigation, such as travel, a translator, and technical support personnel (for investigations conducted by videoconference or telephone) will be funded by the State NG against which the alleged discrimination is lodged.

(1) NGB-OCI will refer any sexual assault allegation that arises during a sexual harassment investigation to the State for processing in accordance with existing sexual

assault policies. The sexual harassment investigation will be administratively paused pending a determination on whether or how to proceed given the new allegation.

(2) NGB-OCI will refer any sexual harassment allegation that arises during a sexual assault investigation to the State for processing in accordance with this regulation.

e. Report Review.

(1) Redaction and Routing. NGB-OCI will submit the Report of Investigation (ROI) to NGB-DI-EC upon completion. NGB-DI-EC will redact the ROI and route copies to the State and Complainant. The ADO will receive a redacted copy of the Executive Summary of the ROI.

(2) Position Statement. The State, Complainant, or ADO may submit either a Position Statement or a rebuttal to the ROI to NGB-DI-EC within 30 calendar days of receipt of the ROI or Executive Summary.

(3) Supplemental Investigation. If NGB-DI-EC determines additional investigation is required based on the Position Statements, NGB-DI-EC will send the matter back to NGB-OCI to complete any supplemental investigation required. NGB-OCI will have 30 calendar days to complete any supplemental investigation.

f. NPR. NGB-DI-EC will draft an NGB NPR and obtain a legal review from Office of the NGB General Counsel within 40 calendar days of receipt of the final ROI. The NGB NPR will include NGB-DI-EC's findings and recommendations.

(1) If discrimination or harassment is substantiated, the NGB NPR will recommend appropriate remedial actions to the State, including mandatory initiation of involuntary separation of the ADO and other Service regulation requirements, if any. The State may request a hearing if it objects to the remedial actions or if it believes the matter should not have been substantiated within 30 calendar days. Likewise, within 30 calendar days, the Complainant may request a hearing if all allegations were not substantiated, or if the Complainant disagrees with the remedial actions recommended.

(2) If discrimination or harassment is substantiated, and remedial measures are recommended in the NGB NPR, the Complainant will be informed by the State representative of the completion of remedial actions within 60 calendar days of receipt of the NGB NPR. The Complainant may file a hearing request to seek remedies for a State's noncompliance with NGB-DI-EC recommendations after 60 calendar days following receipt of the NGB NPR (see reference b).

(3) If discrimination or harassment 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 (see reference b).

g. State Action. The State representative must submit a written response pertaining to NGB's recommended resolution to NGB-DI-EC and the Complainant within 30 calendar days of receipt of the NGB NPR. The State representative, thereafter, must provide an update on the State's continuing remedial efforts every 30 calendar days to NGB-DEI-CMA. The State representative will issue a notice to the NGB-DI-EC and the Complainant upon the State's completion of remedial actions, at which time NGB-DI-EC will issue a closure memorandum for the complaint file.

ATTACHMENT C

REFERENCES

PART I. REQUIRED

- a. Chief of the National Guard Bureau (CNGB) Instruction 9601.01, "National Guard Discrimination Complaint Program," 27 September 2015
- b. CNGB Manual 9601.01, "National Guard Discrimination Complaint Process," 25 April 2017
- c. CNGB Instruction 9400.01, "Nondiscrimination in Federally Assisted Programs," 29 November 2017
- d. Public Law 88-352, 02 July 1964, "Civil Rights Act of 1964," 29 C.F.R. §1614, "Federal Sector Equal Employment Opportunity," 24 August 2023

PART II. RELATED

- e. Army Directive 2022-13, "Reforms to Counter Sexual Harassment/Sexual Assault in the Army," 20 September 2022
- f. Air Force DAFI90-6001_DAFGM2023-1, "Department of the Air Force Guidance Memorandum to Department of the Air Force Instruction (DAFI) 90-6001, Sexual Assault Prevention and Response (SAPR) Program," 29 September 2023
- g. Department of Defense Guidance, "Revised Guidance for Implementing Cross Cutting Recommendation 1 of the Tier 1 Recommendations of the Independent Review Commission on Sexual Assault in the Military," 14 September 2022
- h. Department of Defense Final Report, "Hard Truths and the Duty to Change: Recommendations From the Independent Review Commission on Sexual Assault in the Military," 02 July 2021
- i. Army Report, "Report of the Fort Hood Independent Review Committee," 06 November 2020
- j. Air Force Memorandum AFI36-2406_AFGM2024-01, Air Force Guidance Memorandum to Air Force Instruction 36-2406, "Officer and Enlisted Evaluation Systems," 17 January 2024, Paragraph 1.8. "Evaluator's Mandatory Considerations"
- k. Army Regulation 623-3, "Evaluation Reporting System," Paragraph 3-26, 14 June 2019
- l. Department of Defense Issuance 1350.02, "DoD Military Equal Opportunity Program," (Paragraph 2.7a(9)), 04 September 2020, Incorporating Change 1, 20 December 2022