

Vermont National Guard

Joint Policy Memorandum

J2022-02

Equal Opportunity Policy

&

Standard Operating Procedure

Equal Opportunity Complaint Process



OFFICE OF THE ADJUTANT GENERAL
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NGVT-TAG-EO (100)

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MEMORANDUM FOR All Vermont National Guard Title 32 Members Serving in a Military Pay Status

SUBJECT: Joint Policy J2022-02 Equal Opportunity and Standard Operating Procedure for Processing Discrimination Complaints

1. The VTNG will not tolerate, condone, or permit any kind of unlawful discrimination, harassment, retaliation, or reprisal to any of its members. The VTNG will ensure that all personnel are afforded equal opportunity in an environment free from prohibited discrimination based on race, color, national origin, religion, sex (including pregnancy), gender identity, or sexual orientation. This policy covers, but is not limited to, adverse actions based on recruitment, retention, discipline, awards, promotions, trainings, and assignments.
2. This SOP defines and establishes the procedure for processing and resolving discrimination complaints involving members serving in a Title 32 status while in a military pay status. Those members who believe they have been subject to discrimination, harassment, or reprisal may file a complaint as described in this SOP and CNBGM 9601.01. Members, including dual status Title 32 technicians serving in a non-military pay status, who believe they have been discriminated in their employment should refer to Joint Policy J2021-20.
3. Any questions you have concerning this policy, the SOP, or the pertinent laws and regulations may be referred to the State Judge Advocate or the State Equal Employment Manager.

GREGORY C. KNIGHT
Major General
The Adjutant General

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This SOP represents TAG’s commitment to create a productive work environment where all members are treated with dignity and respect. If any member has any suggestions on how to improve these procedures, he or she should contact the SEEM. All comments and suggestions are welcome. 26

1. General Information

1.1. Purpose.

The Vermont National Guard (VTNG) is committed to developing and maintaining a professional environment in which all Soldiers and Airmen can expect to be treated with dignity and respect. This Standard Operating Procedure (SOP) implements a policy of equal opportunity for Title 32 Personnel serving in a military pay status, establishes expectations for leaders, and creates a complaint procedure to ensure our Soldiers and Airmen are treated fairly based on merit, fitness, and the capability of supporting mission readiness.

1.2. References.

- a) DoD Directive 1020.02E Diversity Management and Equal Opportunity in the DoD 8 June 2015, incorporates change 2, 01 June 2018
- b) DoD Instruction 1020.03 Harassment Prevention and Response in the Armed Forces, dated February 2018
- c) Army Regulation 600-21, Equal Opportunity in the Army National Guard, dated 22 May 2017
- d) Air Force Instruction 36-2710, Equal Opportunity Program, dated 18 June 2020
- e) CNGBM 9601.01 National Guard Discrimination Complaint Process, dated 25 April 2017
- f) CNGBM 9600.01 Alternative Dispute Resolution Policy and Guidance, dated 9 April 2013

1.3. Cancellation.

This SOP replaces all prior versions, including the Joint Policy Memorandum (NGVT-JP-16), VTNG Equal Opportunity Policy. It also replaces Joint Policy Memorandum (NGVT-JP-10), VTNG Reporting of Sexually Offensive Incidents.

1.4. Applicability.

- a) This SOP applies to all Vermont National Guard personnel serving in a Title 32 status (AGR, M-Day, and Dual-Status Technicians) while the member is serving in a military pay status or if the matter concerns Fitness for Duty. It also includes off-duty conduct that affects the military workplace.
- b) This SOP does not apply to VTNG Service members serving in a Title 10 status.

- c) This SOP does not apply to Title 5 Technicians and Title 32 Federal Technicians who are performing duties in their non-military pay technician status. Those members should refer to the VTNG Equal Employment Opportunity Policy and SOP – J2021-20 published to The Office of the Adjutant General SharePoint Policy Library 12 OCT 2021.

1.5. Effective date.

This policy is effective when signed.

2. Definitions

2.1. Complainant.

An aggrieved person who believes he or she has been discriminated against based on their protected class or has been subjected to retaliation or reprisal as defined in this SOP.

2.2. Alternative Dispute Resolution.

Alternative Dispute Resolution (ADR) is as any procedure that is used to resolve issues in controversy, including but not limited to facilitation, mediation, fact-finding, min-trials, arbitration and the use of ombudsmen, or any combination thereof.

2.3. Commander's Reprisal Prevention Plan.

A plan to protect the Complainant, any named witness, and the subject from acts of retaliation or reprisal.

2.4. Discrimination.

A prohibited practice that occurs when someone treats another person adversely because of that person's race, color, national origin, religion, sex (including pregnancy), gender identity, or sexual orientation. It includes harassment based on a protected class. Discrimination also includes any limitation, segregation, or classification based on a protected class that deprives or tends to deprive a person of opportunities or otherwise adversely affects their status as a member of the VTNG.

2.5. Equal Opportunity Advisor (EOA).

An Equal Opportunity Advisor (EOA) is a DEOMI trained Soldier who advises commanders at all levels within a Battalion on matters pertaining to equal opportunity, climate assessments, and complaint resolutions. The EOA is responsible for initiating informal resolution requests. The EOA conducts staff assistance visits, collects and analyzes statistical data, oversees implementation of the JDEC Strategic Plan, interprets and assures compliance with DoD and DA policies and directives concerning EO; assists in the planning

and presentation of the EO Leader Course, and is available to Soldiers to address their concerns about discrimination.

2.6. Equal Opportunity Leader (EOL).

An Equal Opportunity Leader (EOL) is a Soldier who has graduated from the Equal Opportunity Leaders Course. The EOL advises commanders about informal equal opportunity complaints, conducts unit level equal opportunity training, assists with climate assessments, and serves as the primary resource manager of equal opportunity matters within the unit.

2.7. Equal Opportunity Practitioner.

An Equal Opportunity Practitioner is a DEOMI trained VTANG member who advises commanders on matters pertaining to equal opportunity, climate assessments, and complaint resolutions.

2.8. Equal Opportunity Program (EO).

As used in this SOP, the Equal Opportunity Program (EO), refers to the process and procedure for eliminating discrimination and promoting opportunity based on merit for Title 32 members serving in a military pay status. It is distinct from Equal Employment Opportunity, which is covered under SOP J2021-20.

2.9. Formal Resolution Request.

Written and signed allegations of unlawful discrimination submitted by a Complainant for further processing after he or she has filed an Informal Resolution Request and rejected the proposed resolution during the informal phase of the process.

2.10. Human Resources Equal Opportunity Officer (HREO).

The Human Resources Equal Opportunity Officer (HREO) is the VTARNG member who is responsible for the Army's military EO Program.

2.11. Informal Resolution Request.

Written allegations (or verbal allegations reduced to writing) of prohibited discrimination submitted to a Military Equal Opportunity (MEO) professional by a Complainant typically using NGB Form 333 (Addendum 1). for processing under this SOP. An Informal Resolution Request is a prerequisite for filing a Formal Resolution Request.

2.12. Inquiry Official (IQO).

An individual appointed by the VTNG leadership who holds an equal or higher rank than the alleged discriminating official and has the relevant training and experience to

conduct an expedited inquiry into the facts. The IQO must have time to obtain witness statements and relevant documents, and be able to complete a Leadership Inquiry Report within 60 days of appointment.

2.13. Installation Equal Opportunity Director.

The Installation Equal Opportunity Director is the VTANG member who is responsible for the Wing's EO Program in accordance with the applicable laws, regulations, directives, and policies.

2.14. Military Equal Opportunity (MEO) professionals.

Military Equal Opportunity (MEO) professionals is a short hand categorization of both the Army and Air personnel working in the EO program. It includes the Army's HREO, EOAs, EOLs, as well as the Air Force Installation Equal Opportunity Director and the Air Force Equal Opportunity Practitioner

2.15. Leadership Inquiry Report.

A report that includes a summary of the alleged acts of discrimination, where the alleged acts occurred, relevant procedures of the VTNG (if applicable), witness information, locations of additional files related to the alleged acts, summary of witness statements, findings of facts, and remedies sought.

2.16. Out and About Program.

An outreach process used to gather equal opportunity and human relations information that may shed light on the environment within a brigade or wing.

2.17. Protected Class.

A group of people with a common characteristic who are protected by policy from discrimination on the basis of race, color, national origin, religion, sex (including pregnancy), gender identity, or sexual orientation.

2.18. Request for Information.

For the purposes of this SOP, a request for information is when a member has questions about matters related to discrimination, or has questions about how complaints are handled under the Resolution Request process.

2.19. Retaliation or Reprisal.

For purposes of this SOP, retaliation and reprisal are used together to fully caption prohibited conduct. Retaliation and reprisal means taking or threatening to take an adverse

action (such as issuing an unfavorable personnel action or withholding a favorable personnel action) against any individual for filing a discrimination complaint, or for testifying or otherwise participating in an investigation, proceeding, or litigation. Retaliation and reprisal also includes restraining, interfering, or coercing an individual from utilizing the informal and formal resolution process and any attempts to do the same. The terms further include taking an adverse action against someone for expressing good faith opposition to a perceived discriminatory practice. Examples of reprisal include, but are not limited to, promotion interference; disciplinary or other corrective actions; and meritless decisions on pay, benefits, awards, or training. Examples of retaliation include, but are not limited to, exclusion from social acceptance, activities or interactions; blaming; insulting or bullying; assault; physical or psychological force or threat; and abusive or unjustified treatment that results in physical or mental harm.

2.20. Sexual Harassment.

Unwelcome sexual advances, requests for sexual favors, and/or other verbal or physical conduct of a sexual nature when:

- a) submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career;
- b) submission to or rejection of such conduct by an individual is used as the basis for decisions affecting the individual's job, pay, or career; or
- c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

The conduct prohibited by this SOP includes behavior that is unwelcome or offensive and that interferes with work performance; or creates an intimidating, hostile, or offensive work environment. All allegations of harassment must be evaluated under the totality of the circumstances, to include an assessment of the nature of the conduct and the context in which the conduct occurred. In some circumstances, a single incident of harassing behavior is prohibited harassment whereas, in other circumstances, repeated or recurring harassing behavior may be required to constitute prohibited harassment.

2.21. Whistleblowing

When an individual discloses information he or she reasonably believes evidences, among other things, a violation of any law, rule, or regulation prohibiting discrimination See Section 1034, Title 10, United States Code (U.S.C.).

3. Policy

The VTNG will not tolerate, condone, or permit any kind of prohibited discrimination, harassment, retaliation, or reprisal to its Soldiers and Airmen. It will ensure that personnel serving in a Title 32 military pay status are afforded equal opportunity in an environment free from prohibited discrimination based on race, color, national origin, religion, sex (including pregnancy), gender identity, or sexual orientation. This policy covers, but is not limited to, adverse actions based on recruitment, retention, discipline, awards, promotion, training, and assignments. Military Personnel serving in a Title 32 status who believe they have been subject to discrimination, harassment, retaliation or reprisal may file a complaint as described in this SOP and CNBGM 9601.01.

4. Responsibilities

4.1. The Adjutant General (TAG).

The Adjutant General is ultimately responsible for the care of all VTNG members and for force readiness, which may be adversely impacted by prohibited acts of discrimination. As such, TAG is responsible for establishing and overseeing an effective military equal opportunity program that meets the statutory and regulatory requirements.

4.2. Commanders.

Commanders are responsible, and will be held accountable, for the EO climate within their units. In addition to ensuring that this policy and SOP is followed, commanders are responsible for:

- a) Ensuring personnel are fully aware of the procedures for obtaining redress for any discrimination complaints they may have. To comply with this responsibility, commanders, at a minimum, should prominently display and/or distribute procedures, promote the Reach Up application, and/or publicize the EO page found on the intranet.
- b) Recognizing and assessing indicators of discrimination (for example, through climate surveys) and implementing remedies to eliminate and prevent discrimination and, specifically, sexual harassment.
- c) Conducting fact-finding or other inquiries whenever an allegation of discrimination is brought to his or her attention.
- d) Ensuring Military Equal Opportunity (MEO) professionals are assigned and trained. For the Army, there must be an Equal Opportunity Advisor (EOA) assigned to each brigade level element. There also must be one Equal Opportunity Leader (EOL) and backup EOL assigned to each Company, Battery, Troop, or Detachment. For the Air, there must be an Installation Equal Opportunity Director and an Equal Opportunity Practitioner.

- e) Implementing a Reprisal Prevention Plan. (See Commander's Retaliation and Reprisal Prevention Plan, page 20).
- f) Ensuring all members under their command are trained at least once a year on recognizing and responding to discrimination and harassment.
- g) Reporting all EO complaints to the HREO and/or SEEM.

4.3. The State Equal Employment Manager (SEEM).

The SEEM is responsible for:

- a) Supporting all EO training.
- b) Disseminating information on available resources related to the equal opportunity program.
- c) Submitting data and reports to NGB and other governing bodies as required.
- d) Designing, implementing, and maintaining a system to record complaints.
- e) Providing an alternative dispute resolution program.
- f) Ensuring Soldiers and Airmen have access to written materials containing VTNG's EO policies and the discrimination complaint procedures (including relevant timelines).

4.4. Human Resources Equal Opportunity Officer (HREO).

The HREO is responsible for:

- a) Supporting the SEEM in managing and coordinating the Army EO program to ensure that it complies with all polices and directives.
- b) Advising and assisting with the discrimination complaint process and supporting commanders on EO related issues.
- c) Planning and implementing the Equal Opportunity Leader's Course.
- d) Mentoring and developing the EOAs and EOLs.
- e) Attending and participating in JDEC meetings.

4.5. Equal Opportunity Advisors (EOA).

EOAs are responsible for:

- a) Providing advice and guidance to brigade level leadership on EO matters.
- b) Mentoring and supporting EOLs.
- c) Assuring all units within the brigade level element are in compliance with CNGBM 9601.01.
- d) Conducting Staff Assisted Visits to support the Organizational Inspection Program.
- e) Initiating climate surveys, analyzing the results, and briefing leadership.
- f) Supporting EOLs with annual training.
- g) Meeting with the brigade level commander on an annual basis to review the commander's responsibilities under this SOP, and in particular, to discuss the Commander's Retaliation and Reprisal Prevention Plan.
- h) Reporting all EO complaints to the HREO and/or SEEM.

4.6. Equal Opportunity Leaders (EOL).

EOLs are responsible for:

- a) Creating awareness about the EO complaint process.
- b) Meeting with members to informally discuss any discrimination issues they may have.
- c) Notifying the EOA, HREO, and/or the SEEM of any EO complaints.
- d) Conducting annual training for the unit.
- e) Making sure the unit is in compliance with the OIP checklist.

4.7. Air Force Equal Opportunity Practitioners.

Air Force Equal Opportunity Practitioners are responsible for:

- a) Creating awareness about the EO complaint process to all VTANG military members.
- b) Meeting with members to informally discuss discrimination issues they may have.

- c) Notifying commanders of situations involving unlawful discrimination or harassment when no military complaint is filed and notify commanders of complaints filed against members of the commander's unit.
- d) Notifying the EO Director and/or the SEEM of any EO complaints.
- e) Serving as the subject matter expert for Commander Directed Investigations and other investigations for complaints within equal opportunity purview.
- f) Acting as the liaison for installation agencies, establishments, advisory councils, Affirmative Employment Program Managers, Special Emphasis Program Managers, and special observance committees.
- g) Conducting, analyzing, and out-briefing organizational climate assessments and serving as a member of the Community Action Team.
- h) Instructing Human Relations Education classes and ensuring attendance is recorded in respective personnel data systems and/or reported to the correct point of contact for all military and civilian attendees.
- i) Preparing various reports for NGB or the VTNG as required.
- j) Assuring compliance with CNGBM 9601.01.

4.8. Air Force Installation Equal Opportunity Director.

The Air Force Installation Equal Opportunity Director is responsible for:

- a) Informing and updating the Installation Commander about the EO program.
- b) Managing budget, staffing, and resources for Equal Opportunity Office and programming.
- c) Advocating and making available the Alternate Dispute Resolution Program.
- d) Evaluating the Installation Equal Opportunity Program at least twice per year (ideally in January and July).
- e) Promoting the Equal Opportunity Program to Senior Leadership on the installation and to the base population.
- f) Guiding Equal Opportunity Practitioners through assistance, training, and supervision.

- g) Ensuring appropriate coordination, documentation, and notification of all Equal Opportunity complaint processing activities.
- h) Maintaining and safeguarding complaint files as the custodian of the official record.
- i) Ensuring additional duties do not significantly impact the practitioner's ability to conduct their primary duties and responsibilities.

4.9. State Judge Advocate.

The State Judge Advocate shall defend the VTNG against any administrative complaint, grievance, claim, or action.

4.10. Inspector General.

The Inspector General is responsible for determining whether a complaint involving allegations of retaliation and/or reprisal should be handled by the IG's Office or referred to the SEEM or the commander.

5. General Requests for Information Regarding EO Matters

5.1. Purpose.

Soldiers and Airmen may have questions about whether they experienced or witnessed prohibited discrimination. They may also have questions about the Resolution Request Process. However, they may not want to initiate a complaint at that time. When members have general questions (i.e. a requests for information), they can discuss those matters with an MEO or with leadership. All requests for information involving allegations of prohibited discrimination, regardless with whom they are initiated, should ultimately be referred to an MEO so the MEO can report the matter to the HREO and/or the SEEM.

5.2. Process.

- a) A request for information from a member regarding issues of discrimination does not have to be in writing. However, as explained below, if a member wants to move forward with the Informal Resolution Request process, a Form 333 (See Addendum 1) must be completed.
- d) If a request for information is initiated or referred to an EOL and it appears to be a discrimination complaint, the EOL will listen to the members issue(s) and explain how EO complaints are processed. If the member is interested in pursuing the matter further, the EOL will refer the matter to an EOA.
- c) When a member engages an MEO for the purpose of obtaining information

only, and does not elect to start the Resolution Request process, the visit will be recorded as a request for information and will not result in the initiation of a discrimination complaint unless requested by the Complainant. MEOs shall refrain from categorizing visits as a request for information whenever possible to avoid discrimination complaints not being properly tracked. MEOs shall report all requests for information regarding sexual harassment to the HREO and/or the SEEM.

6. Alternative Dispute Resolution (ADR)

6.1. Objective

Whenever feasible, disputes should be resolved in the most fair and expeditious way possible. The goal of ADR is to provide an opportunity for the parties in a dispute to work toward a voluntary and mutually agreeable resolution. In addition to serving as a potential means of avoiding the expense, delay, and uncertainty associated with processing, investigating, and adjudicating issues through the Informal and Formal Resolution Request process, ADR improves communication and builds positive working relationships between the parties. ADR also provides opportunities to develop creative solutions to disputes that better meet the needs of the parties.

6.2. Requesting ADR

Alternative Dispute Resolution is a tool that can be used to address a variety of issues, including allegations of discrimination. The SEEM will determine if the matter is suitable for ADR. If suitable, mediation is the preferred method of ADR. Participating members and their commander must consent to mediation in writing. If the matter is resolved during mediation, the agreement will be reduced to writing and will be binding on the parties involved.

7. The Resolution Request Process

7.1. Purpose.

The purpose of the Resolution Request process is to provide a prompt, fair, and impartial method to investigate and resolve complaints of discrimination, consistent with CNGBM 9601.01. The objective is to seek opportunities to internally resolve issues at the lowest organizational level as early as possible.

7.2. Scope of the program.

The Resolution Request Process consists of two phases – the Informal Resolution Request Process and the Formal Resolution Process. A person who believes that he or she has been subjected to discrimination, retaliation, or reprisal as defined by this SOP should consult an MEO. The MEO will determine if the matter includes an issue appropriate for

processing under this SOP. If so, the MEO will assist that person with completing NGB Form 333 (see Addendum 1). This form is used to initiate the Informal Resolution Request process. The chain of command will attempt to resolve the matter and issue a proposed resolution. If the Complainant is not satisfied with the proposed resolution, as outlined in Section 9, he or she may file a Formal Resolution Request, which will be referred to NGB. ADR can be requested any time during the process through a commander or an MEO.

7.3. Representation.

A Complainant may choose at any time throughout the Resolution Request process, including the informal stage, to retain a representative at his or her expense. Provided the representative is not engaging in the unlawful practice of law, the representative does not have to be an attorney. The MEO cannot represent or advocate on behalf of the Complainant because he or she acts as a neutral third party whose primary responsibility is helping to process complaints of discrimination.

7.4. Anonymous Complaints.

A Complainant has a right to remain anonymous. When requested, the MEO will refrain from divulging the person's identity until authorized by the Complainant. However, to insure a fair process, the right to remain anonymous will end upon the filing of a formal EO complaint, or upon the election of ADR.

The VTNG has discretion to conduct an investigation into anonymous allegations of discrimination when no Complainant has been identified.

8. The Informal Resolution Request Process.

8.1. Initiating the Informal Resolution Request Process.

- a) To initiate the Informal Resolution Request process (i.e. a complaint of discrimination), the Complainant must contact an MEO, a unit commander, a member of his or her chain of command, the Adjutant General, NGB, or the Inspector General within 180 calendar days from when she or he becomes aware of and/or experiences a discriminatory act, or from the effective date of the personnel action. All complaints of discrimination, regardless with whom they are initiated, will be referred to an MEO. Failure to initiate contact with one of these listed positions within 180 calendar days may result in dismissal of the complaint, unless there are extenuating circumstances as determined by the SEEM.
- b) Initiating an Informal Resolution Request is a pre-requisite for filing a formal complaint. As described below, there must first be a good faith attempt to informally resolve the matter before the Formal Resolution process can occur.

- c) The MEO may conduct a limited inquiry to obtain general information to help her or him determine if the claim is appropriate for processing under CNGBM 9601.01 or to help resolve the matter.
- d) If the MEO determines that the Complainant's issue is not appropriate for processing (i.e. the claim is not jurisdictional), he or she will inform the Complainant and, if possible, refer him or her to the appropriate resource for addressing the matter. If the Complainant insists on filing an Informal Resolution Request, the MEO will not attempt to dissuade her or him.
- e) If the Complainant wants to move forward with the process, she or he will need to complete NGB Form 333. (See Addendum 1). Pursuant to CNGBM 9601.01, all Informal Resolution Requests must be recorded on that form.
- f) The MEO will send NGB Form 333 to the SEEM upon receipt. The SEEM will log the complaint and send the form to NGB to obtain a tracking number.
- g) Within seven calendar days of receipt of a completed NGB Form 333, an MEO will send the Complainant a written acknowledgement of its receipt along with NGB tracking number
- h) The MEO will notify the Complainant's commander at the lowest possible level that an Informal Resolution request has been filed.

8.2. Role of the Inquiry Official.

- a) To help determine an appropriate resolution, the VTNG may appoint an Inquiry Official (IQO). The IQO will be of equal or greater rank to the alleged offender and have the training and experience to ascertain the facts and issues involved. The State Judge Advocate will assist in the appointment of the IQO, including preparing the appointment memo.
- b) Prior to conducting the inquiry, the IQO should consult with the JAG and the SEEM to review the issues and the inquiry plan. Any plan not reviewed with the SEEM may result in an additional inquiry needing to be conducted.
- c) As part of the inquiry, the IQO will interview witnesses and document their responses. She or he will also obtain relevant documents needed to better understand the facts and issues.
- d) The IQO will complete and submit a Leadership Inquiry Report within 60 days of being appointed. The report will be sent to the MEO who will

forward it to the appropriate Commanding Officer. A sample report can be found in Enclosure E of CNGBM 9601.01.

- e) The commander at the lowest level will review the Leadership Inquiry Report and propose an appropriate resolution. The commander at the next higher level will review the proposed resolution.
 - 1) If the commander at the next higher level agrees with the proposed resolution, the commander at the lowest level will meet with the Complainant and explain the proposed resolution.
 - 2) If the commander at the next higher level disagrees with the proposed resolution, he or she will discuss the matter with the MEO to develop an alternate resolution.
 - 3) A proposed resolution must be presented to the Complainant within 30 calendar days from the issuance of the Leadership Inquiry Report.
- f) The Complainant must indicate on NGB Form 333 whether she or he accepts the proposed resolution, withdraws the complaint, or wishes to file a Formal Resolution Request.

8.3. Notice of Proposed Resolution (NPR).

- a) The MEO will conduct a final interview with the Complainant and provide him or her with an NPR no more than 180 days from the date the Informal Resolution Request was initiated.
- b) The NPR will include a summary of the findings in the Leadership Inquiry Report, conclusion, and proposed remedies.
- c) The NPR will state that a Formal Resolution Request must be filed within 30 calendar days from the notice of proposed resolution.
- d) The SEEM will forward the NPR to NGB upon completion of the process.

9. The Formal Resolution Request Process

9.1. Initiating the Formal Resolution Request Process.

- a) If a Complainant is dissatisfied with the NPR, he or she may file a Formal Resolution Request. NGB will determine whether a formal investigation into the allegations is necessary and issue a determination on the merits. The program includes an opportunity for a hearing and a right to appeal.

- b) Before a formal complaint can be filed, a Complainant must have first contacted an MEO and attempted to informally resolve the matter through chain of command or ADR as described in the process above.
- c) Pursuant to CNGBM 9601.01 Enclosure B, A formal complaint must be filed on NGB Form 333. (See Addendum 1). The form must contain a signed statement of the individuals involved, the unit involved, and a description of the actions or practices forming the basis of the complaint.
- d) Formal complaints must be filed with the SEEM or an MEO within 30 calendar days from the date the Complainant received the Notice of Proposed Resolution.
- e) The SEEM will forward the Formal Resolution Request to NGB within five calendar days of its receipt. A copy of the NPR, the Informal Resolution Request, the Leadership Inquiry Report, and any accompanying documentation will be included in the package.
- f) Within 30 calendar days after receiving the Formal Resolution Request and accompanying documentation, NGB will decide whether to investigate or dismiss the case. If dismissed, NGB will issue a Notice of Proposed Dismissal detailing the rationale for its decision. At that point, the Complainant will be advised of his or her rights to request a hearing. If NGB decides to investigate, it will notify the SEEM to appoint an inquiry official (IQO), or it will have one appointed.

9.3. NGB Investigation

- a) The IQO will complete an investigation and issue a report with findings to NGB within 45 calendar days from the date of appointment.
- b) Expenses required to conduct a formal investigation, including travel, a translator (if required), and technical support personnel (for investigations conducted by video conference or telephone) will be paid by the VTNG.

9.4. Post Investigation Procedure.

- a) NGB will issue its NPR within 30 calendar days after receiving the IO's report. NGB's NPR will include findings and recommendations.
- b) The SEEM will submit a written response to NGB's recommended resolution within 30 calendar days after receiving NGB's NPR. The response will be sent to NGB and to the Complainant.
- c) If the allegations of discrimination or harassment are substantiated, NGB

will recommend appropriate remedial actions to the VTNG. See CNGBM 9601.01 Enclosure C.

- d) If the allegations are substantiated, and remedial measures are recommended, the SEEM will inform the Complainant of the completion of remedial actions within 60 calendar days of receipt of NGB's NPR. The Complainant may file a hearing request to seek remedies for VTNG's noncompliance with NGB's recommendations after 60 calendar days following receipt of NGB NPR.
- e) If the allegations are unsubstantiated, in whole or in part, the Complainant may file a request for a hearing within 30 calendar days of receipt of NGB NPR.

10. Commander's Retaliation and Reprisal Prevention Plan

10.1. Objective

Soldiers and Airmen have the right to present complaints of discrimination without fear of intimidation, harassment, retaliation, or reprisal. To protect this right, any commander who is aware of a complaint of discrimination, whether informal or formal, will establish and implement a plan to protect the complainant, any named witness, and other aggrieved persons from acts of retaliation or reprisal. Without an effective plan, issues regarding discrimination and harassment may go unreported because members may fear retaliation or reprisal for utilizing the procedures under this SOP or feel frustration over the lack of an effective resolution addressing their concerns.

10.2. Role of the MEO

MEOs will inform Complainants that they may seek information or guidance from the Inspector General about retaliation. EOAs will also inform Complainants that they may seek legal advice about their reporting options.

10.3. Elements of the Retaliation and Reprisal Prevention Plan

The VTNG's Retaliation and Reprisal Prevention Plan consists of the following elements:

- a) Commanders will lead by example by demonstrating a culture of valuing and addressing complaints of discrimination and by promoting a commitment to preventing retaliation and reprisal through his or her actions and words. At a minimum, commanders will show their support for a thorough, unbiased investigation and make good faith efforts to resolve the underlying issues in the complaint.

- b) Commanders will counsel all members alleged to have engaged in prohibited discriminatory conduct about the prohibition against retaliation and reprisal, providing specific examples of prohibited conduct. (See the definition of retaliation and reprisal on page 4 of this SOP). The counseling shall also include an order not to discuss the allegations with anyone, other than a legal representative, unless specifically authorized by the commander. Commanders will emphasize to those alleged to have engaged in prohibited conduct the importance of treating all parties to the Resolution Request process with respect.
- c) After a Resolution Request has been filed, the commander will submit a memo to the Inquiry/Investigating Officer about the steps she or he took to guard against retaliation or reprisal.
- d) The VTNG will provide information on reporting retaliation and reprisal in trainings, on bulletin boards, the VTNG app, and on its website. The information will include details about the multiple channels for reporting concerns. Complaints of retaliation and reprisal can be submitted anonymously. Commanders are responsible for knowing and disseminating information on recognizing and reporting retaliation and reprisal.
- e) To provide oversight on the Retaliation and Reprisal Prevention plan, the Organizational Inspection Program will include an element to ensure that commanders are aware of their responsibilities under this section.

10.4. Reporting Retaliation or Reprisal

A Complainant who believes that he or she has been subjected to retaliation or reprisal for participating in an activity outlined in this SOP may contact an MEO. Furthermore, any member who believes that there has been a violation of law or regulation, including a law or regulation prohibiting (among other wrongdoings) sexual harassment or unlawful discrimination, may contact the IG or an MEO. As many allegations of retaliation and reprisal fall within the jurisdiction of the IG, the IG will determine how the matter will be processed.

10.5. Whistleblower Protection

As part of the VTNG's Reprisal Prevention Plan, Soldiers and Airmen must be advised about the protections afforded to whistleblowers. Whistleblowing occurs when an individual discloses information she or he reasonably believes discloses, among other things, a violation of any law, rule, or regulation prohibiting unlawful discrimination. See 10 U.S. Code § 1034. When a commander becomes aware of any act or acts of retaliation or reprisal due to a person's whistleblowing activity, he or she must contact the Inspector General immediately. Likewise, any VTNG member who witnesses or learns of any potential retaliatory or reprisal actions for whistleblowing should

immediately report the incident through the chain of command, or directly to the IG. Possible sanctions against violators may result in administrative action and/or other punitive action.

11. The Hearing Process For Complaints

11.1 Overview

NGB has the authority to hold evidentiary hearings to determine disputed facts. The process is available to both Complainants and the VTNG and is detailed in Enclosure C of CNGBM 9601.01. Hearings are held at the ARNG Readiness Center in Arlington, Virginia unless a motion for good cause to relocate is granted by NGB.

11.2. Procedures Related to Hearings.

- a) A Complainant may request a hearing within 30 calendar days of receipt of NGB's NPR where NGB determines the allegations of discrimination are unsubstantiated, or where it dismisses the Complainant's request as unacceptable for processing (e.g. a determination that the complaint fails to state a claim).
- b) A Complainant may request a hearing within 60 calendar days of receipt of NGB's NPR to seek remedies the NGB recommended but denied by the VTNG.
- c) The VTNG may request a hearing on the merits within 30 calendar days of receipt of NGB's NPR if it disagrees with the findings (substantiated in the complainant's favor) or it disagrees with NGB's proposed resolution.
- d) If after a hearing a finding is made against the VTNG, it will have 30 calendar days to either implement the recommended remedies or request reconsideration.
- e) A Complainant or the VTNG may requests a hearing for noncompliance with the terms of a settlement agreement. The request must be filed with NGB within 30 calendar days when the party learns of the breach, unless NGB determines there is good cause for delay.
- f) NGB's Hearing Officer will issue a written Notice of Decision containing findings of fact, conclusions of law, and recommendations for relief (when the allegations of discrimination are substantiated) within 15 calendar days after the hearing record is closed. The Notice of Decision will be delivered to the parties within 5 calendar days after it is issued.

12. Reviewing Official Process.

12.1. Overview

The Reviewing Official Process is a review of the administrative record by a General Officer assigned to NGB.

12.2. The Process

- a) NGB will prepare the case file for review and provide written recommendations to the Reviewing Official.
- b) The Reviewing Official may approve or deny a Request for Review and may do so in whole or in part. The Reviewing Official may recommend Federal funds to the VTNG be suspended or terminated, or make other recommendations for relief within the scope of federal regulations.
- c) The Reviewing Official is not required to rule on each finding, conclusion, or exception, presented in the Request for Review. A decision must be issued within 30 calendar days of receiving NGB's case file.
- d) The VTNG may file a Request for Initial Review of the Hearing Officer's decision explaining the reasons for review based on law, fact, and/or regulation.
 - 1) This request must be filed with NGB within 30 calendar days of receipt of the Notice of Decision. It must also be sent to the Complainant, or his or her State representative(s) by certified mail, return receipt requested, or by personal service.
 - 2) The Complainant can file a written response to NGB within 15 calendar days of receipt of the State's Request for Initial Review of the Hearing Officer's decision. This request must detail reasons for opposition to Initial Review of the Hearing Officer's decision based on law, fact, and/or regulation.
- e) The Complainant may file a Request for Initial Review of the Hearing Officer's Decision in writing, explaining reasons for review based on law, fact or regulation filed with NGB or when a State has failed to implement a recommended resolution within 60 calendar days of receipt of the Notice of Decision.
 - 1) The Request for Initial Review of the Hearing Officer's decision must also be sent by certified mail, return receipt requested, or personally delivered to the VTNG, and/or the VTNG's representative at the same time it is filed with NGB. The request must be sent to the State Judge Advocate c/o the Vermont National Guard, 789 Vermont National Guard

Road, Colchester, VT, 05446.

- 2) The VTNG, or its representative, may file a written response with NGB within 15 calendar days of receipt of the Complainant's Request for Initial Review of the Hearing Officer's decision, explaining the reasons for any opposition to Initial Review of the Hearing Officer's decision based on law, fact or regulation.
- f) The Complainant or the VTNG may file a Request for Final Review of the Initial Reviewing Official's decision. The request must be in writing and must be submitted to NGB within 30 calendar days. The party not requesting the review may file a written response with NGB within 15 calendar days of receipt of the opposing party's request.
- g) The Final Reviewing Official's decision may approve or deny a Request for Final Review, in whole or in part. It may also make a determination to suspend or terminate federal funds or pursue additional remedies.

13. Out and About Program

13.1. Overview.

The Out and About Program is an outreach program used to gather information about the work environment related to equal opportunity and human relations issues at the VTNG. The information gathered helps leadership recognize potential problems. MEOs are responsible for scheduling Out and About visits by coordinating with unit leadership. The MEO will provide the unit leadership a summary of observations following the visit.

13.2. Scheduling.

MEOs will inform Unit Leadership of their intent to conduct the Out and About visit. If there is a scheduling conflict, the MEO will reschedule the visit. An MEO cannot conduct the visit without the commander's approval.

13.3. Process.

The unit will provide an escort with a rank between E-1 to E-4 to assist the MEO. The MEO should ask the unit leadership if there are any specific questions to be asked or areas of concern to be addressed. The MEO will consider those suggestions and ask unit members three to five questions pertaining to the climate of the organization. The questions and answers will be summarized and briefed (or provided in a memo) to the unit commander within 48 hours following the visit.

The summary should include the following:

- a) Number of individuals contacted, broken down by sex.
- b) Questions asked and a summary of responses, highlighting areas of concern.
- c) Observations on nursing stations, EO information on bulletin boards, and diversity event flyers.

14. Comments and Suggestions

This SOP represents TAG's commitment to create a productive work environment where all members are treated with dignity and respect. If any member has any suggestions on how to improve these procedures, he or she should contact the SEEM. All comments and suggestions are welcome.