

EXTERNAL DISCRIMINATION COMPLAINTS



North Carolina Department of Transportation
Office of Civil Rights
External Civil Rights

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NORTH CAROLINA DEPARTMENT OF TRANSPORTATION (NCDOT) EXTERNAL DISCRIMINATION COMPLAINT PROCEDURES

These Discrimination Complaint procedures apply to NCDOT as a whole, its subrecipients (e.g., transit systems, MPOs, universities, counties) and contractors (e.g., consultants, License Plate Agencies, etc.). They describe the process used by the NCDOT Office of Civil Rights (OCR), External Civil Rights (ECR) to process and investigate complaints filed under Title VI of the Civil Rights Act of 1964 and related nondiscrimination authorities. Complaints based on race, color, national origin, income-level, Limited English Proficiency (LEP), sex, age, and disability are covered. *Note:* Religion is covered under NCDOT's Right of Way program (Fair Housing) and programs funded by the Federal Transit Administration or Federal Aviation Administration.

Complaints of alleged discrimination will be investigated by the appropriate authority (i.e., ECR, an NCDOT subrecipient, or a Federal agency). NCDOT will make every effort to obtain early resolution of complaints at the lowest level possible. The option of informal mediation between the affected parties and NCDOT staff may be utilized for resolution. OCR staff will inform complainants of all filing options and avenues of appeal.

FILING OF COMPLAINTS

1. **Applicability** – External complaints cover how participants and beneficiaries (e.g., members of the public and contractors) of NCDOT programs and activities are affected by NCDOT and recipients of federal and state funds through NCDOT, such as contractors and subrecipients. *Note:* Title VI does not include internal complaints related to Equal Employment Opportunity (EEO).
2. **Eligibility** – Any person or class of persons who believes that he/she has been subjected to discrimination prohibited by any pertinent civil rights authorities, based upon race, color, national origin, sex, age, disability, income-level, or LEP, (and religion, where applicable) may file a written complaint with NCDOT's OCR. The law also prohibits intimidation or retaliation of any sort.
3. **Filing Options and Time Limits** – Complaints may be filed by the affected individual(s) or a representative and must be filed no later than 180 calendar days after the following:
 - The date of the alleged act of discrimination; or
 - The date when the person(s) became aware of the alleged discrimination; or
 - Where there has been a continuing course of conduct, the date on which that conduct was discontinued or the latest instance of the conduct.

Title VI and related discrimination complaints may be submitted to the following entities:

- **North Carolina Department of Transportation**, Office of Civil Rights, External Civil Rights, 1511 Mail Service Center, Raleigh, NC 27699-1511; 919-508-1896 or toll free 800-522-0453
- **US Department of Transportation**, Departmental Office of Civil Rights, External Civil Rights Programs Division, 1200 New Jersey Avenue, SE, Washington, DC 20590; 202-366-4070
 - **Federal Highway Administration (FHWA)**, Office of Civil Rights, 1200 New Jersey Avenue, SE, 8th Floor, E81-314, Washington, DC 20590, 202-366-0693 / 202-366-0752
 - **Federal Highway Administration**, North Carolina Division Office, 310 New Bern Avenue, Suite 410, Raleigh, NC 27601, 919-747-7010
 - **Federal Transit Administration (FTA)**, Office of Civil Rights, ATTN: Title VI Program Coordinator, East Bldg. 5th Floor – TCR, 1200 New Jersey Avenue, SE, Washington, DC 20590
 - **Federal Motor Carrier Safety Administration (FMCSA)**, Office of Civil Rights, 1200 New Jersey Avenue, SE, Room #W65-312, Washington, DC 20591, 202-366-8810

- **Federal Aviation Administration (FAA)**, Office of Civil Rights, 800 Independence Avenue, SW, Washington, DC 20591, 202-267-3258

- **US Department of Justice**, Special Litigation Section, Civil Rights Division, 950 Pennsylvania Avenue, NW, Washington, DC 20530, 202-514-6255 or toll free 877-218-5228

NCDOT’s Discrimination Complaint Form can be found at: <https://www.ncdot.gov/programs/titleVI/>

4. **Format for Complaints** – Complaints must be in writing and signed by the complainant(s) or a representative, and include the complainant’s name, address, and telephone number. Complaints received by fax or e-mail will be acknowledged and processed. Allegations received by telephone will be reduced to writing and provided to the complainant for confirmation or revision before processing. Complaints will be accepted in other languages, including Braille.
5. **Complaint Basis** – Allegations must be based on issues involving race, color, national origin, sex, age, disability, income-level, or LEP. The term “basis” refers to the complainant’s membership in a protected group category. *Note:* Religion (or creed) is protected under Right of Way, Public Transportation and Aviation programs.

Protected Categories	Definition	Examples	Pertinent Statutes and Regulations	
			FHWA	FTA
Race	An individual belonging to one of the accepted racial groups; or the perception, based usually on physical characteristics that a person is a member of a racial group	Black/African American, Hispanic/Latino, Asian, American Indian/Alaska Native, Native Hawaiian/Pacific Islander, White	Title VI of the Civil Rights Act of 1964; 49 CFR Part 21; 23 CFR 200; (<i>Executive Order 13166</i>)	Title VI of the Civil Rights Act of 1964; 49 CFR Part 21; Circular 4702.1B; (<i>Executive Order 13166</i>)
Color	Color of skin, including shade of skin within a racial group	Black, White, brown, yellow, etc.		
National Origin (LEP)	Place of birth. Citizenship is not a factor. (<i>Discrimination based on language or a person’s accent is also covered</i>)	Mexican, Cuban, Japanese, Vietnamese, Chinese; Russian; French		
Income-Level	An individual or household determined to be low-income	Poverty status	Executive Order 12898	
Sex	The sex of an individual. <i>Note:</i> Sex under this program does not include sexual orientation.	Women and Men	1973 Federal-Aid Highway Act	Title IX of the Education Amendments of 1972
Age	Persons of any age	21 year old person	Age Discrimination Act of 1975	
Disability	Physical or mental impairment, permanent or temporary, or perceived	Blind, alcoholic, paraputee, epileptic, diabetic, arthritic	Section 504 of the Rehabilitation Act of 1973; Americans with Disabilities Act of 1990	
Religion	Creed. An individual belonging to a religious group; or the perception, based usually on distinguishable characteristics that a person is a member of a religious group	Muslim, Christian, Sikh, Hindu, etc.	Title VIII of the Civil Rights Act of 1968 (Fair Housing Act); 49 USC 47123 (FAA); 49 USC 5332 (FTA)	

COMPLAINT INTAKE

1. **Initial Contact** – As a resource, External Civil Rights (ECR) will provide complainants with an explanation of filing options, information concerning the discrimination complaint process, and a Discrimination Complaint Form.
2. **Complaint Appraisal**
 - a. ECR will review complaints upon receipt to ensure that the necessary information is provided, the complaint is timely, and jurisdictional requirements are met.
 - b. ECR will process and investigate discrimination complaints filed against NCDOT’s subrecipients and contractors, including subcontractors and consultants.
 - c. All complaints shall be investigated unless:
 - The complainant fails to provide required information in a timely manner;
 - The complaint was not timely filed; or
 - The complaint is withdrawn.
 - Any issues that do not involve discrimination, are not based on a protected basis, or do not fall under NCDOT’s jurisdiction will be directed to the appropriate entity. Under no circumstances will complainants be discouraged from filing a complaint.
 - d. Per FMCSA and FTA Title VI Program requirements, discrimination complaints filed against NCDOT’s Division of Motor Vehicles (DMV) and Public Transportation Division (PTD) will also be investigated by ECR. **Note:** Until otherwise directed, complaints filed against NCDOT business units other than DMV and PTD will be forwarded to the appropriate federal agency for processing and investigation, and the complainant will be informed that the complaint has been forwarded.
 - e. Per FTA guidance, complaints filed against recipients of FTA funds through PTD (i.e., transit providers) may be investigated by the transit provider, or ECR. Should the transit provider investigate the complaint instead of ECR, ECR will review the investigation findings and recommendations and concur or propose alternate remedial actions.
 - f. Complaints filed against the NCDOT Division of Aviation, or airports in North Carolina, will be forwarded to the FAA, until otherwise instructed.

COMPLAINT ROUTING

1. All discrimination complaints received at NCDOT (by a business unit, Division or field office, or an NCDOT subrecipient or contractor) will be sent to the NCDOT Office of Civil Rights’ External Civil Rights (ECR) section **within 1-3 calendar days of receipt**.
2. Upon receipt of a possible discrimination complaint by any business unit, the Title VI Liaison Officer of the unit will promptly log the complaint on a complaints tracking sheet. **Note:** Complaint tracking sheets shall be made available to ECR Title VI staff, upon request.
3. Complainants alleging discrimination in person or over the phone shall be referred to ECR at 919-508-1896 by the official who receives the complaint. **Note:** The official who referred the complainant to ECR should also inform his/her Title VI Liaison Officer of the referral in a method to be determined by their Title VI Liaison.
4. **Written** discrimination complaints may be received on NCDOT’s Discrimination Complaint Form, via email, or in letter format. Written complaints shall be immediately sent to the receiving unit’s Title VI Liaison to be logged.
5. The Title VI Liaison Officer will then forward the complaint form or letter and any other pertinent information to ECR for processing (Total time elapsed should be no more than 1-3 calendar days).

COMPLAINT NOTIFICATION

1. When a complaint is received by the External Civil Rights (ECR) section, ECR will provide written acknowledgment to the Complainant by certified registered mail within 10 days of receipt of the complaint. The name of the investigator will be provided as well as the complainant's rights under Title VI and related statutes.
2. If the complaint is complete and no additional information is needed, the complainant will receive a letter of acceptance along with a Complainant Consent/Release form.
3. If the complaint is incomplete, the Complainant will be contacted in writing or by telephone to obtain the additional information. The complainant will be given 15 calendar days to respond to the request for additional information. Failure to do so may be considered good cause for a determination of no investigative merit.
4. The Respondent(s) (the person(s) against whom the complaint was filed) will be notified by certified mail that he/she has been named in a complaint and informed of his/her rights under Title VI and related statutes. This letter also identifies the investigator's name and informs the respondent that he/she will be contacted for an interview.
5. Within 15 days from receipt of a complete complaint, ECR will determine jurisdiction in pursuing the matter and whether the complaint has sufficient merit to warrant investigation. Within five (5) days of this decision, ECR will by registered mail inform the Complainant and Respondent of the decision.
 - a. If the decision is not to investigate the complaint, the notification shall specifically state the reasons for the decision.
 - b. If the complaint will be investigated, the notification shall state the grounds of the NCDOT's jurisdiction, while informing the parties that their full cooperation will be required in gathering additional information and assisting the investigator.
6. The Complainant and Respondent will be informed that NCDOT will attempt to resolve complaints within 60 calendar days after NCDOT has accepted the complaint for investigation. **Note:** In the event that ECR requests an extension to complete an investigation, the Complainant and Respondent will also be notified of the extension.
7. ECR will send a letter to the top official of the NCDOT Division or field office when the complainant(s) or respondent(s) are located in their area. If the parties are located in Headquarters, the program manager will be informed that a complaint was filed. The letter will list the names of the parties involved, the basis of the complaint, and the assigned investigator. **Note:** ECR may request a written response to the allegation(s) in the complaint at this time.

COMPLAINT LOG

1. When a complaint is received by ECR, the complaint will be recorded on the External Discrimination Complaint Log with other pertinent information, and assigned a Case Number. (**Note:** All complaints must be logged).
2. The Complaint Log will be maintained by the NCDOT's Civil Rights Office and shared with federal oversight agencies (e.g., FHWA, FTA, FMCSA) when requested.

INVESTIGATION

1. Investigative Plan

The investigator shall prepare an investigative plan that captures, but is not limited to the following:

- Complainant(s) name and address;
- Respondent(s) name and address;
- Contract number (or project number) and contractor and/or subcontractor name(s), if applicable;
- Applicable law(s);
- Basis for the complaint;

- Allegations, events or circumstances that caused the person to believe he/she has been subjected to discrimination;
- Appropriate information needed to address the issue;
- Name of persons to be interviewed and issues of which they have first-hand knowledge;
- Questions for the complainant, respondent, witness(es), etc.;
- Evidence to be obtained during the investigation; and
- Remedy sought by the complainant.

2. **Conducting the Investigation**

- The investigation will address only those issues relevant to the allegations in the complaint.
- Confidentiality will be maintained to the fullest extent possible.
- Interviews will be conducted to obtain the facts and evidence regarding the allegations in the complaint. The investigator will ask questions to elicit information about aspects of the case that the witness can provide firsthand information.
- Interviews may be recorded. Consent to record may be required if the interviewee is located outside of NC.
- A chronological contact sheet shall be maintained in the case file throughout the investigation.
- The interviewee may have representation of his/her choice at the interview.

3. **Informal Resolution**

The Alternative Dispute Resolution (ADR) process is offered as an alternative for resolving Title VI and other external complaints. The investigator and/or Office of Civil Rights (OCR) will make every effort to assist the parties with reaching a voluntary, mutual resolution. During initial interviews with the complainant and respondent, the investigator will request information regarding specifically requested relief and settlement opportunities. The attempts to resolve complaints using ADR are required by the Alternative Dispute Resolution Act of 1998.

Resolution Expectations – If the complaint is against an NCDOT subrecipient or business unit, such as the DMV, where External Civil Rights (ECR) will conduct the investigation, the ECR will, as deemed appropriate, contact the organization or unit and seek to determine if they are able to informally resolve the allegation(s) short of issuing a Letter of Finding (LOF). If they commit to resolving the allegation(s), ECR will hold open the complaint giving them time to implement the agreed upon corrective action(s). Once they have resolved the allegation(s), ECR will not issue an LOF, but will document close-out of the complaint and notify the complainant as to the decision. **Note:** If a complainant is not satisfied with NCDOT’s disposition of their complaint, ECR will apprise the complainant of their options to appeal the decision to a federal agency with jurisdiction, or file a separate complaint directly with another agency.

4. **Investigative Report**

- Within 60 days of starting the investigation, the investigator will complete an investigative report and submit the report and supporting documentation to the External Civil Rights Manager for review. The investigative report should also include recommended actions, if necessary. **Note:** An investigation may extend beyond 60 days if a federal agency (e.g., FHWA) approves an extension.
- The ECR Manager will review the investigative report and case file. Subsequent to the review, the ECR Manager will submit the investigative report, investigative files, and recommended decisions to the OCR Director.
- Upon the OCR Director’s approval, the investigative report and recommendations shall be deemed final or forwarded to the appropriate federal agency for a final agency decision.

CASE FILES

All complaint records and investigative working files will be maintained electronically or in a confidential area within the OCR. Records will be considered working for as long as the related incident, project, or issue is considered open or unresolved. When the case is closed, non-transitory records will be placed in a closed case file and kept for at least 12 years, after which they may be destroyed, or deleted if electronic.