

PROCEDURES FOR LIVE HEARING APPEALS OF DISCIPLINE ISSUED IN NON-CIVIL RIGHTS MATTERS:

Date adopted: April 14, 2023

Procedure Owner: Assistant Vice President for Human Resources

Related University Policies: UAP 3215

This policy is applicable to appeals by non-bargaining unit, staff employees suspended or discharged for violation(s) of UNM policies except University Administrative Policies (“UAP”), 2720, 2740, and/or 3110 (UNM Civil Rights Policies).

Human Resources will conduct annual reviews to evaluate and assess the effectiveness of the live hearing model. Human Resources will report findings and make recommendations to the President at the end of FY25.

ARTICLE 1. INTRODUCTION

This document provides a standard operating procedure by which a non-bargaining, staff employee may appeal the suspension or discharge imposed by Notice of Final Action pursuant to University Administrative Policy (“UAP”) 3215: Performance Improvement for attendance, behavior, or performance issues that are not based on or associated with violations of UNM Civil Rights Policies. Employees who wish to challenge a suspension or discharge partly or wholly based on violations of the UNM Civil Rights Policies should refer to the appropriate process to challenge such actions as provided in UAP 3215.

Any employee who is in a bargaining unit position represented by a union should refer to the relevant collective bargaining agreement for a description of the pertinent post-suspension or post-discharge process.

ARTICLE 2. GENERAL PROVISIONS

2.1 Definitions.

ADA Coordinator: The individual designated to coordinate University Compliance with the Americans with Disabilities Act and related laws. See [UAP 3110](#).

Administrative Hearing Determination: A written decision resolving the issues presented to the Hearing Officer.

Advisor: The individuals identified by the Employee and Department Representative, respectively, whose role is to provide them support and advice during the hearing process subject to the limitations and requirements set forth in Article 3.1. An Advisor cannot be a potential Witness in the hearing nor can they be someone in a Party’s supervisory chain.

It is the responsibility of the Employee and Department Representative to locate their own Advisor. UNM is not responsible for and will not assign the Employee or Department Representative an Advisor.

Cross-Examination: Questions asked of an opposing Party's Witness at the hearing directly, orally, and in real time to challenge or flesh out statements already given by the Witness.

Department: The University entity seeking to uphold the decision being challenged through this Procedure.

Department Representative: The Department employee representing the Department in all aspects of this process. Generally, this representative is the Employee's supervisor or someone in the Employee's supervisory chain.

Direct Examination: Questions a Party asks of their own Witness during the hearing to clarify or extend statements made prior to the hearing.

Employee: The non-bargaining, staff employee requesting a hearing pursuant to this Procedure.

Good Cause: The basis for seeking extension of the time limits/deadlines set forth in these procedures or otherwise departing from any aspect of these procedures. Good cause includes but is not limited to the fact that a time limit includes finals week or periods such as vacations, holidays, official University closures, or intersessions if the Parties or the Hearing Officer are absent from the institution.

Hearing Coordinator: the office or individual assigned to facilitate the hearing by providing administrative assistance to the Hearing Officer. The Hearing Coordinator has no substantive decision-making authority regarding the issues to be decided at the hearing.

Hearing Notice: The document setting forth the date and time of the hearing which will be provided to all Parties, their Advisors and any Process Observer identified by the Employee.

Hearing Officer: The individual responsible for evaluating the evidence presented by the Parties at a hearing and deciding whether proper/just cause supports the discipline challenged by the Employee.

Just Cause: See [“Proper/Just Cause for Disciplinary Action” Section of UAP 3215: Performance Improvement.](#)

New Evidence: New, previously undiscoverable or undisclosed evidence not available to any individual investigating the facts underlying the disciplinary action in question or not in existence at the time of the investigation, if any.

Party/Parties: The Employee and the Department/Department Representative also may be referred to as a Party to the hearing or the Parties, collectively.

Pre-Hearing Conference: The meeting set by the Hearing Officer to confer with the Parties and their respective Advisors, prior to the hearing.

Preponderance of the Evidence: The burden of proof standard that means when satisfied, that based on the evidence determined to be relevant and considered by the Hearing Officer, it is more likely than not that a policy violation occurred.

Process Observer: The individual identified by the Employee whose role is to observe the hearing process for any procedural irregularities subject to the limitations and requirements set forth in Article 3.3 and provide feedback about the process to the Hearing Officer. A Process Observer cannot be an individual identified as a Witness in the hearing, an Advisor to a Party or someone in the Employee’s supervisory chain.

Witness: Any person who may have knowledge of the evidence in an investigation or complaint, including but not limited to the Employee or Department Representative.

2.2 Calculation of Time and Time Limits. Unless otherwise specified herein, the term “days” refers to regularly recognized University business days, and does not include weekends, holidays, or other University closures. For Good Cause, the Hearing Officer shall extend any time limit set forth in this Procedure. Any time extension shall be communicated in writing to all Parties along with a new written schedule.

2.3 Burden of Proof. The Department Representative bears the burden of proving that the suspension or discharge was for Just Cause as provided in UAP 3215. The Employee bears no burden of proof, but may present evidence refuting the evidence proffered by the Department Representative. The Department Representative’s burden of proof is met when a preponderance of the evidence submitted supports a finding that the suspension or discharge was for Just Cause.

2.4 Hearing Officer Training. Depending on the circumstances, the Hearing Officer may be required to take case-specific training prior to the hearing. Such training will be prescribed by University policy, procedure, or by order of the Board of Regents or the President. If so prescribed or ordered, the Hearing Coordinator will work with the appropriate University Department to obtain and provide the required training to the Hearing Officer prior to the hearing.

2.5 Process Observer Training. The Process Observer will be required to take the [Non-civil Rights Suspension/Discharge Appeal Hearing Process Observer](#) training on UAP 3215: Performance Improvement and these processes.

ARTICLE 3: ROLES AND RESPONSIBILITIES

3.1 Advisors. Each Party may have one individual over the age of 18 serve as an advisor, who may be an attorney, to assist the Party during the hearing process (hereinafter, “Advisor”). Parties may consult freely with their Advisors throughout the hearing process, but Advisors may not speak for the Parties at the hearing unless the Hearing Officer grants an exception to this rule for Good Cause.

Hearings are not legal proceedings. Advisors shall not treat the pre-hearing or hearing process as a legal proceeding regardless of whether the Advisor is also a licensed attorney. Unless Good Cause is shown, Advisors are not authorized to present any part of a Party's case for them. Advisors also may not negotiate a settlement or stipulation on behalf of a Party, confer with another Party's Advisor, object during hearings, offer motions, engage in discovery such as contacting or deposing Witnesses, request additional documentary evidence from the other Party, present opening or closing statements, provide Witness testimony or otherwise engage in conduct that is beyond the Advisor's role as set forth in the preceding Article. Reasonable accommodation requiring exception to any of the above limitations constitutes Good Cause. See Article 4.2.1 for more information regarding the accommodation process.

Advisors who are attorneys retained by a Party must follow the rules applicable to all Advisors. Parties seeking an Attorney Advisor must do so at their own expense. Nothing in this Article shall prohibit Attorney Advisors from providing other legal services to a Party.

3.3 Process Observer. This individual selected by the Employee may attend the Pre-Hearing Conference and Hearing for the purposes of observing those processes for any procedural irregularity. The Process Observer may take notes and provide written feedback to the Hearing Officer. This feedback is limited to concerns of procedural irregularities. It shall not include commentary regarding the appropriateness of the discipline at issue, whether Just Cause supports the discipline issued or otherwise advocate for a particular outcome. The submission of the written feedback shall adhere to the time frames set forth in Article 5.12.

Process Observers are not permitted to present any part of a Party's case and may not offer any objections or take any other actions during the Pre-Hearing Conference or the Hearing except as expressly allowed above.

3.4 The Hearing Officer. The Hearing Officer's role is to conduct all proceedings and ensure all participants adhere to the Rules of Decorum set forth in Article 5.9. The Hearing Officer reviews the evidence and determines whether or not the discipline being challenged is supported by Just Cause and issues a Administrative Hearing Determination.

3.5 Removal/Replacement of Advisors and Process Observers. Advisors and Process Observers are required to conduct themselves in accordance with the Rules of Decorum set forth in Article 5.9. The Hearing Officer reserves sole discretion in determining whether to remove an Advisor or Process Observer from any part of any proceeding in which the Advisor or Process Observer violates the Rule of Decorum or refuses to cooperate with a Hearing Officer directive.

A Party may change their Advisor upon notice to the Hearing Coordinator; however, changing Advisors within five (5) days of the hearing is strongly discouraged.

An Employee may change their selected Process Observer at the discretion of the Hearing Officer if sufficient time exists for the newly selected Process Observer to undergo required training.

3.6 Parties, Generally. A Party's role is to comply with the requirements set forth in this process, including but not limited to the submission of Witness lists and evidence, preparation of Direct and/or Cross-Examination questions for the other Party or Witnesses at the hearing, and otherwise fully participate in the process. A Party may testify on their own behalf and/ or be called as a Witness by the other Party.

Parties are responsible for communicating with the Hearing Coordinator with regard to the designation of their Advisor, if any. Employee is responsible for communicating with the Hearing Coordinator with regard to the designation of their Process Observer, if any. Parties are responsible for responding to communications from the Hearing Coordinator regarding the Pre-Hearing Conference and the hearing. It is the responsibility of the Parties to notify the Hearing Coordinator of any change in the contact information for the Party (e.g., address, email address or phone number). Failure to do so could result in a Party missing the opportunity for a hearing.

ARTICLE 4: PREHEARING MATTERS

4.1 Requesting a Hearing. The Employee is solely responsible for requesting a hearing to challenge a suspension or discharge. The Employee who wishes to challenge a suspension or discharge must submit a request to do so with the Hearing Office within ten (10) days of the suspension or discharge being issued, or the date on the Notice of Final Action, whichever is later. The Employee should include in their request a copy of the document identifying the final action they wish to challenge. Failing to meet this timeline constitutes a waiver of the Employee's right to appeal their suspension or discharge. Failing to provide documentation of the final action the Employee seeks to challenge may result in delays to the other timelines identified herein.

4.2 Pre-Hearing Conference. After receipt of the information specified in Article 4.3, the Hearing Officer will meet with the Parties and/or their Advisors and any designated Process Observer to consider clarifying or narrowing the issues to be heard by the Hearing Officer, to provide an overview of the hearing process, to answer procedural questions, to consider limiting the number of Witnesses, or to consider any other matters which may aid the conduct of the hearing. The Hearing Officer shall have sole discretion to determine whether to hold a single Pre-Hearing Conference for all Parties and/or their Advisors or separate Pre-Hearing Conferences for each Party and/or their Advisor.

4.2.1 Accommodations for Disabilities and Language Services. This Procedure does not alter any institutional obligations under state and federal disability laws. Parties may request reasonable accommodations for disclosed disabilities to the Hearing Coordinator at any point before or during the hearing process. The Hearing Coordinator shall work with University personnel, including but not limited to the institutional ADA Coordinator or their designee, to provide accommodation, as appropriate, and/or necessary language

assistance/interpretation services. With specific regard to disability accommodation, the ADA Coordinator shall not be required to provide the Hearing Coordinator, Hearing Officer, or other hearing participant the exact medical reason for the exception or accommodation.

4.2.2 Process for Accommodations/Language Services. At least fifteen (15) days prior to the hearing to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing by a Party, Witness, Advisor, or Process Observer.

4.3 Pre-Hearing Conference Requirements for Parties. At least two (2) business days before the Pre-Hearing Conference, the Party shall provide the Hearing Coordinator with electronic copies of the following information, copies of which the Hearing Coordinator shall distribute to the other Party or Parties and to the Hearing Officer.

4.3.1 Witness List. Each Party must provide a list of Witnesses the Party intends to call at the hearing, or a statement that no Witnesses will be called. If a Party presents a list of intended Witnesses, they shall provide a brief statement summarizing each Witness' anticipated testimony. The Hearing Officer may grant an extension to submit the Witness list for Good Cause. A Party may request an extension of time to submit a Witness list by contacting the Hearing Coordinator. Witnesses who were not identified by a Party at least two days prior to that Party's Pre-Hearing Conference will not be permitted to testify at the hearing unless Good Cause is shown.

The Hearing Officer may place reasonable limitations on the number of Witnesses, either before or after the list above is submitted, and will inform the Parties of such limitation no later than two (2) business days prior to the hearing. The Hearing Officer may exclude Witness testimony that is cumulative or irrelevant to the issues presented. No Witnesses other than those on the Parties' lists may testify without the consent of the Hearing Officer.

4.3.2 Name of Designated Advisor. Each party shall provide the Hearing Coordinator with the name of the individual they have selected to act as their Advisor, if any, and disclose whether the Advisor is an attorney representing the Party, whether or not such attorney is engaged in the practice of law in New Mexico.

A Party may not bring an Advisor without such notification, unless one of the following exceptions applies:

4.3.2.1 A Party may bring any Advisor without prior notice as provided herein if the other Party and the Hearing Officer consent.

4.3.2.2 If a Party does not designate a non-attorney Advisor within the timelines identified herein, and the other Party designates a non-attorney Advisor, the first

Party identified herein may bring a non-attorney Advisor without prior notification.

4.3.2.3 If a Party does not designate an attorney Advisor within the timelines identified herein and the other Party designates an attorney Advisor, the other Party may bring an attorney Advisor without prior notification.

4.3.2.4 It is the responsibility of the Employee and Department Representative to locate their own Advisor. UNM is not responsible for and will not assign the Employee or Department an Advisor.

4.3.3 Name of Designated Process Observer. The Employee shall provide the Hearing Coordinator with the name of any individual they have selected to act as Process Observer and disclose whether the Process Observer is an attorney, whether or not such attorney is engaged in the practice of law in New Mexico.

4.3.4 Exhibits. Electronic copies of documents the Party plans to introduce into evidence. No other documents may be introduced into evidence without notification unless the other Party and the Hearing Officer consent or, in the absence of such consent, the Hearing Officer approves introduction of such documents because they are necessary for a determination of the case. Approval of the Hearing Officer shall depend on the importance of the document, whether the Party could have obtained it earlier, the time remaining until the hearing, and the degree of prejudice the other Party asserts it will suffer should such documents be admitted.

4.4 Preparation of Evidence.

4.4.1 If any material facts are believed to be in dispute, the Parties shall prepare evidence for the hearing which may be in the form of documents, testimony of Witnesses, or other materials.

4.4.2 All students, faculty and staff are encouraged to cooperate with the Parties' reasonable requests to provide evidence and to appear at the hearing as Witnesses. If a Party is having difficulty getting cooperation from a potential Witness or source of evidence, they shall file a request for assistance with the Hearing Coordinator, who shall forward it to the Hearing Officer. If the Hearing Officer determines that the request is reasonable, they shall assist the Party in gaining the necessary cooperation within the institutional community.

4.5 Administrative Hearing Notice. Upon receipt of the request for a hearing and Notice of Final Action, the Hearing Coordinator will schedule the date of the Pre-Hearing Conference and the Hearing. The Hearing Coordinator will send the Parties a Hearing Notice no less than ten (10) business days before the hearing date.

The Administrative Hearing Notice will include the following:

- An identification of the action being challenged and the Complainant’s stated reason for the challenge.
- The time, date, and location of the pre-hearing conference (described in Section 2.3) and whether the pre-hearing conference will be held in-person or via virtual means.
- The time, date, and location of the hearing, and whether the hearing will be held in-person or via virtual means.
- An identification of any technology that will be used to facilitate/record the hearing.
- A list of UNM personnel who will attend the hearing.
- Information on how the hearing will be recorded and how to access the recording after the hearing.
- A statement that if any Party or Witness does not appear at the scheduled hearing, the hearing may be held in their absence, and that the Party’s or Witness’ testimony and any statements given prior to the hearing will be considered by the Hearing Officer if relevant to the ultimate issue to be decided. No inference will be drawn from the absence of a Party or Witness.
- Notification that the Parties may have the assistance of an Advisor at the hearing, but the Advisor may act in an advisory, non-representative capacity only as provided in Article 3.1.
- Notification that the Employee may designate Process Observer for the limited purpose set forth in Article 3.3 and in accordance with Article 4.3.3.
- A copy of all the materials provided to the Hearing Officer or Hearing Coordinator about the matter.
- An invitation to contact the University’s Americans with Disabilities Act (ADA) Coordinator at least fifteen (15) days prior to the hearing to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing by a Party, Witness or Advisor. See Article 4.2.2.
- Identification of which electronic devices are prohibited from being brought into the hearing.

ARTICLE 5. HEARINGS

5.1 Hearings, Generally & Recordings. All hearings shall be closed to the public, persons who are not participants, and the media. Unless designated by the Hearing Officer, hearings may not be recorded by any person or means. If any participant is found to be recording the hearing, they will be immediately removed from the hearing and prohibited from further participation. If it is later discovered that a participant recorded all or part of the hearing, the individual alleged to have violated these procedures may be subject to disciplinary action under the UNM policies applicable to each participant.

5.2 Delays. A Party may request a delay in the hearing for Good Cause. Requests for a delay must be sent to the Hearing Coordinator for consideration at least five (5) days prior to the hearing, unless the absence is the result of an emergency or unforeseen medical condition. The Hearing Officer has the sole discretion to allow an extension of time. The Hearing Officer shall consider the reason for absence, scheduling conflict or other reason for a delay, length of proposed delay, the time until the hearing date, and the prejudice to the other Party.

The Hearing Officer shall include the rationale for granting or denying a request for a delay in the Administrative Hearing Determination.

5.3 Opening/Closing Statements. Only Parties shall be allowed to make opening or closing statements, and such statements shall be permitted at the discretion of the Hearing Officer. If the Hearing Officer allows one Party this option, each Party will have the same option. Neither opening nor closing statements are considered evidence relied upon by the Hearing Officer.

5.4 Evidence. The Parties may testify, present testimony of other Witnesses, and/or explain documents and other evidence at the hearing. The Hearing Officer may exclude cumulative, unfair, confidential or irrelevant evidence (see Articles 5.5 and 5.6 below), but is not required to follow the rules of evidence applicable to a court proceeding.

The Hearing Officer may rely on any relevant statement of a Party or Witness in reaching a determination of whether Just Cause supported the discipline at issue regardless of whether a Party or Witness attended the hearing or was subjected to Cross-Examination at the hearing.

5.5 Determination of a Question as Irrelevant. The Hearing Officer may exclude a question posed in Direct Examination or Cross-Examination on the basis that it is irrelevant.

5.6 Irrelevant/Inadmissible Evidence. The Hearing Officer shall exclude any evidence that is deemed irrelevant or otherwise inadmissible, including but not limited to the following:

- Information protected by a legally recognized privilege (i.e., attorney-client privilege);
- Duplicative or cumulative evidence;
- A Party or Witness's FERPA-protected education records unless the Party or Witness gives written consent;
- A Party or Witness's HIPAA-protected treatment records unless the Party or Witness gives written consent;
- Information that is not related to the matter which is the subject of the hearing.

The Hearing Officer shall not have the authority to overrule or supersede the confidentiality protections provided by law or under a legally-recognized privilege.

5.7 Order of Evidence. The Hearing Officer may determine the order of evidence to be presented at the hearing. Each Party, however, will have opportunity to do the following:

- Testify on their own behalf and call Witnesses who support the Party's case for Direct Examination by the Party;
- Conduct Cross-Examination of the other Party and other Party's Witnesses;
- Provide follow-up testimony and conduct follow-up Direct Examination of their Witnesses once Cross-Examination is complete.

The Hearing Officer also may ask questions of the Parties and their Witnesses any time during the hearing.

5.8 Witnesses. The Hearing Coordinator is responsible for scheduling Witnesses for the hearing; however, the Parties are responsible for ensuring that their Witnesses appear to testify at a hearing. The Parties shall have the right, within reasonable limits set by the Hearing Officer, to question their own Witnesses. The Hearing Officer will require all Witnesses to affirm the truth of the testimony they present. Non-Party Witnesses are allowed in the hearing room only during their own testimony.

Providing testimony is voluntary and Witnesses cannot be compelled to testify. Witnesses shall notify the Hearing Coordinator during the scheduling process if they choose not to participate. A Witness may refuse to answer all or part of any question posed. The Hearing Officer cannot draw an inference about whether Just Cause supported the discipline in question based solely on the absence of any Party or Witnesses from the live hearing or their refusal to submit to Direct examination or Cross-Examination.

A Party may eliminate a Witness from their list by notifying the Hearing Coordinator in writing. The Hearing Coordinator will notify the other Party or Parties and the Hearing Officer upon receiving such notice.

A Party may provide testimony on their own behalf or be called as a Witness by the opposing Party. When a Party testifies on his or her own behalf, the Hearing Officer may ask the Party questions. A Party may question another Party either on Direct or Cross-Examination.

Reasonable limits on one's right to question Witnesses may be imposed by the Hearing Officer and may include any modifications the Hearing Officer deems appropriate under the circumstances or the result of any accommodation approved by the ADA Coordinator. Requests for modifications to the method a Party's or Witness' testimony is elicited or presented must be included with the Witness list submitted by the Party seeking the modification.

5.9 Rules of Decorum. Hearings are not civil or criminal proceedings and are not designed to mimic formal trial proceedings. As such, the University has adopted these Rules of Decorum that prohibit any Party, Witness, Advisor, Process Observer, or Hearing Officer from treating and/or questioning Witnesses or Parties in an abusive, intimidating, or disrespectful manner. The failure to comply with the Rules of Decorum will be addressed accordingly, including but not limited to removal of the non-compliant participant from the hearing.

These rules and standards apply equally to all participants regardless of sex, gender, or other protected class, and regardless of whether they are in the role of Advisor, Complainant, Respondent, Witness, or other participant.

The following Rules of Decorum are to be observed during the hearing:

1. Questions must be conveyed in a neutral tone;

2. Parties and Witnesses will refer to other all hearing participants using the name and gender used by the person and shall not intentionally misname, deadname, or mis-gender any person in communication or questioning;
3. No participant in a hearing may act abusively or disrespectfully during the hearing toward any other Party, Witness, Advisor, the Hearing Officer, or any other individual participating in the hearing;
4. No Party may yell, scream, badger, or physically “lean in” when questioning a Witness.
5. Participants may not use profanity unless the language is a direct quote from some source such as the Notice of Final Action or Witness. Questions are meant to be interrogative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question;
6. Participants may take no action prior to or at the hearing that a reasonable person would see as intended to intimidate or coerce a Party, Witness, Hearing Officer, or any other participant to testify, refuse to testify, or decide the matter in a particular way.

5.10 Warning and Removal Process. The Hearing Officer shall have sole discretion to determine if the Rules of Decorum have been violated. The Hearing Officer will notify the offending person of any violation of the Rules before or during the hearing. The Hearing Office may immediately remove any person whose violation of Rules is so egregious as to warrant such removal.

Upon a second or further violation of the Rules, the Hearing Officer shall have discretion to either remove the offending person or allow them to continue participating in the hearing or other part of the process. Warnings to, decisions to, and/or reasons for the removal of a Party, Advisor, or Witness shall be included in the Administrative Hearing Determination. If the Hearing Officer removes a Party’s Advisor or the Employee’s Process Observer, a different Advisor or Process Observer may be selected by the applicable Party. Reasonable delays, including the temporary adjournment of the hearing, may be anticipated when an Advisor or Process Observer is removed.

5.11 Written Argument. After the presentation of evidence, the Parties have the option of submitting written arguments to the Hearing Officer no longer than five (5) pages; unless the Hearing Officer allows an extension of these page limits. Parties must submit their arguments to the Hearing Coordinator no later than two (2) business days following the final closing of the hearing. The Hearing Officer has discretion to allow additional time for written arguments and/or to be submitted upon Good Cause shown by either Party.

5.12 Process Observer Feedback. After the presentation of evidence, the Process Observer in attendance, if any, has the option of submitting written feedback to the Hearing Officer regarding the process. The written feedback shall not be longer than five (5) pages; unless the Hearing Officer allows an extension of these page limits. The Process Observer must submit their feedback to the Hearing Coordinator no later than two (2) business days

following the final closing of the hearing. The Hearing Officer has discretion to allow additional time for written feedback for Good Cause shown

5.13 Closing the Hearing. No New Evidence may be submitted for the Hearing Officer's consideration after the hearing concludes. The hearing is deemed fully and finally closed for purposes of appeal pursuant to Article 7 upon the issuance of the Administrative Hearing Determination unless the Hearing Officer expressly leaves the proceedings open pending some later action to be taken by the Hearing Officer, a Party, or another person or entity specifically identified in the Hearing Officer's express instruction that the hearing remain open pending the later action occurring.

ARTICLE 6. POST-HEARING PROCEDURE

6.1 Record of Hearing. The Hearing Coordinator shall make a digital audio recording of the proceedings. The Parties may request a copy of the recording from the Hearing Coordinator after the hearing has been finally closed. Best efforts shall be made to provide the Party with a digital copy of the recording within two (2) days of a request.

The record of the hearing shall consist of the digital recording and an electronic copy of all documents introduced as evidence, including evidence deemed inadmissible by the Hearing Officer. The record shall be kept by the University for ten (10) years after all appeals have been concluded.

6.2 Administrative Hearing Determination. In rendering a determination, the Hearing Officer considers all available evidence, including documentary evidence and testimony presented at the hearing.

The Hearing Officer's determination is limited to one of the following actions:

- If it is determined by a preponderance of the evidence that the Department's position the Employee violated policy is supported by the facts and the level of discipline imposed is appropriate for the violation, the Hearing Officer may uphold the discipline on the grounds it is supported by Just Cause.
- If it is determined by a preponderance of the evidence that the Department's position the Employee violated policy is not supported by the facts, the Hearing Officer may overturn the discipline on the grounds it is not supported by Just Cause.
- If it is determined by a preponderance of the evidence that (a) the Department's position the Employee violated policy is supported by the facts, but (b) the level of discipline imposed is not appropriate for the violation, the Hearing Officer may overturn the discipline. In these circumstances, the Hearing Officer must remit the matter back to the Department for imposition of lesser discipline

The Hearing Officer's Administrative Hearing Determination shall be made available to the Parties, their advisors, the Process Observer and the Human Resources/Labor and Employee Relations Officer. The Administrative Hearing Determination shall include the following information:

- The date and time of the live hearing and whether it was in-person or virtual;
- Whether the hearing was recorded and by what means;
- The identity of each Party and any Advisor(s)/Process Observer, as well as each identified individual's relationship to UNM, if any;
- The identity of the Process Observer who attended, if any;
- The policies implicated;
- A brief statement indicating whether or not Just Cause supported the discipline in question;
- Whether the Parties and/or any Advisor(s)/Process Observer attended the hearing;
- In the event an Advisor/Process Observer was excused from the hearing, the reasons for excusal;
- If a Party did not attend or refused to fully participate, a statement indicating that the Hearing Officer made no inference as to the Party's absence or refusal to answer questions;
- If the hearing was delayed, the reason for the delay and rationale for rescheduling it;
- A statement of the procedures applied to the hearing, including the burden of proof standard;
- A brief review of each Party's Pre-Hearing Conference, including:
 - the date and time for the Pre-Hearing Conference;
 - whether the Party and/or the Party's Advisor attended the conference;
 - whether the Hearing Officer limited the number of Witnesses at the Pre-Hearing Conference, and if so, the rationale for the limit; and
 - any other conditions established for the hearing;
- Whether there were any disruptions to the hearing resulting in the issuance of warnings by the Hearing Officer and, if a participant was removed from the hearing, the reasons for such removal and any resulting delays from such disruptions;
- Whether Parties were afforded the opportunity to make opening and/or closing statements and whether either Party made such statements;
- Whether the Process Observer provided written feedback to the Hearing Officer, a brief summary of any such feedback, the Hearing Officer's position on the same, and a description of any action taken in regard to the feedback, if any;
- A list of Witnesses who testified at the hearing and their relationship to UNM, if any;
- A description of the evidence submitted at the hearing, including any documents or Witness testimony, and identification of which Party presented such evidence;
- An analysis of evidence relied upon by the Hearing Officer for the Hearing Officer's decision, including the weight given to a particular statement or piece of evidence;
- A brief review of evidence excluded by the Hearing Officer, including written statements and testimony offered by a Party or Witness, and the rationale for doing so;
- Statement indicating how and when an appeal may be taken.

ARTICLE 7. APPEALS

7.1 Appeal. The hearing is deemed fully and finally closed for purposes of appeal upon the issuance of the Administrative Hearing Determination. No appeal of any decision made by the

Hearing Officer may be taken until the hearing is fully and finally closed as provided in Article 5.13 herein and an Administrative Hearing Determination has been issued to the Parties. The Employee may file an Appeal according to the instructions provided in Section 10.2 of UAP 3215 Performance Improvement and the Disciplinary Process for any Non-Civil Rights Matter.

ARTICLE 8. MODIFICATION OF PROCESSES

The Assistant Vice President Human Resources has the right to modify these processes as deemed necessary. These processes are intended to aid in the implementation of University policies and are not subject to UAP 1100: Development and Approval of Administrative Policies.