

# Disciplinary Process for Any Non-Civil Rights Matter

Date adopted: April 14, 2023

Procedure Owner: Assistant Vice President for Human Resources

Related University Policies: UAP 3215

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.

This process applies to matters involving allegations of UNM policy violations except UAP 2720: Prohibited Discrimination and Equal Opportunity, UAP 2740: Sexual Harassment Including Sexual Assault, and/or UAP 3110: Reasonable Accommodation for Employees, Job Applicants, and Participants with Disabilities (collectively, “UNM Civil Rights Policies”). If an employee is accused of violating UNM Civil Rights Policies and any other UNM policy or policies based on the same set of circumstances, please refer to the Sanctioning Process for Matters Involving Allegations of Civil Rights Violations.

As set forth in greater detail herein, the employee potentially subject to suspension or discharge must be afforded the following:

- 1) notice of the contemplated action,
- 2) an opportunity to respond to the allegations against the employee,
- 3) notice of final disciplinary action to be imposed, if any, and
- 4) if the employee is *not* a member of a bargaining unit,
  - a. an opportunity to appeal any final disciplinary action imposed via a live hearing before a Hearing Officer, and
  - b. a discretionary appeal of the Hearing Officer’s determination to the University President and/or Board of Regents

If the employee is a member of a bargaining unit represented by a union, their right to grieve the final disciplinary action will be pursuant to the terms of the applicable [collective bargaining agreement](#) (“CBA”). This CBA may provide the bargaining unit employee different or additional rights and/or responsibilities than those set forth in this process.

## 1. Notice of Contemplated Action of Suspension or Discharge

The Notice of Contemplated Action (NCA) is a written notice that outlines the reasons for the contemplated suspension or discharge of an employee. The supervisor, manager, chair or director of the employee potentially subject to suspension or discharge must receive advance approval for the contemplated action by the appropriate chair or director and the AVP for Human Resources.

The NCA must include the following information:

- The acts that the supervisor believes constitute proper/just cause, including but not limited to the acts set forth in Section 7 of [UAP 3215: Performance Improvement](#).
- A summary of the evidence that supports imposition of the contemplated discipline.
- Identification of the University policies the employee is alleged to have violated, or other conduct or unlawful activity that warrants disciplinary action.
- Deadlines for the employee's response to the NCA set forth in Section 2 below.

## 2. Response to Notice of Contemplated Action

An employee may respond to the NCA orally and/or in writing. The employee shall address the response to the supervisor that signed the NCA. For non-bargaining unit employees, an employee's written response must be received within eight (8) business days from receipt of the NCA. If an employee wants to respond orally, the employee must submit a written request for a meeting to do so and must submit the request within five (5) business days from receipt of the NCA. Any extension of time to the employee's response must be requested in writing and agreed upon by the supervisor in consultation with the UNM Division of Human Resources. If the employee is a member of a bargaining unit represented by a union, response to NCA is pursuant to the terms of the applicable [CBA](#).

If responding orally, the employee may have a support person in the meeting but that individual must not verbally advocate on behalf of the employee. When an employee advises the supervisor of an intent to respond orally, the employee also must advise the supervisor if the employee is bringing a support person to the meeting and disclose whether that person is an attorney. If the employee is a member of a bargaining unit represented by a union, refer to the appropriate [CBA](#) regarding representation.

## 3. Notice of Final Action

The Notice of Final Action (NFA) is the final written decision from the employee's supervisor after consideration of the employee's response to the NCA.

Where an employee has been found to have violated a policy and/or engaged in actionable conduct or unlawful activity, after a supervisor's consideration of the employee's oral and/or written response, the supervisor shall decide on the disciplinary action to be taken. If it is determined that the employee is to be suspended or discharged or the disciplinary action has been reduced to a lower level than stated in the NCA, the supervisor must obtain approval by the chair or director and the AVP for Human Resources. before issuing the written NFA. The NFA should be delivered to the employee within twenty (20) business days after receipt of the employee's response to the NCA. In cases where the supervisor requires additional time to issue the NFA, the employee will be notified via in-person delivery, electronically, or via certified mail of the delay and the anticipated date the NFA will be issued (bargaining unit members may refer to their union contract, if applicable).

The NFA should include all of the following points:

- The final action to be taken.
- The acts constituting proper/just cause for final action (which shall be limited to the acts set forth in the notice of contemplated action).
- A summary of the evidence relied upon by the supervisor.
- A reply to the employee's response to the NCA, if any.
- The effective date of the final action.
- A statement of the appeal processes available to the employee.

For non-bargaining unit employees, suspensions and discharges provided for in the Notice of Final Action may be challenged via live hearing conducted by a Hearing Officer in accordance with Section 10.2 of [UAP 3215: Performance Improvement](#) and as set forth in Section 5.1 below. If the employee is a member of a bargaining unit represented by a union, the employee should refer to the [CBA](#) for their grievance procedures.

## **4. Delivery of the NCA and NFA**

The NCA and NFA shall be in writing and may be delivered in person, electronically, or via certified mail. At the time of delivery, the employee should be asked to sign acknowledgement of receipt via wet signature or electronically. If the employee declines to acknowledge receipt, the supervisor shall so note for the record. If delivered via certified mail, the NCA and NFA must be properly stamped and addressed to the last address provided by the employee. Delivery is complete on the date that the NCA or NFA is hand delivered, sent electronically, or deposited with the United States Postal Service for delivery by certified mail with a return receipt requested. The supervisor or manager issuing the NCA or NFA shall send a copy of the Notice to the UNM Division of Human Resources for placement in the employee's official personnel file.

## **5. Appeals**

As set forth below, this appellate process is only available to an aggrieved non-bargaining unit employee who has been issued an NFA for suspension or discharge. This appellate process is not available to members of a bargaining unit who are subject to a CBA containing a final and binding grievance and arbitration procedure. Employees in a bargaining unit represented by a union should refer to the grievance and arbitration procedure in the applicable [CBA](#) for their appellate procedure.

### **5.1 Live Hearing Appeal**

If a post-probationary or contract employee who is in a non-bargaining unit position has received an NFA for suspension or discharge, the employee may appeal the disciplinary action by requesting a live hearing before a Hearing Officer in accordance with the process set forth in the [Procedure for Live Hearing Appeals of Discipline Issued in Non-Civil Rights Matters](#).

The non-bargaining unit employee who wishes to appeal a suspension or discharge must submit a request to the Hearing Office at [hearingoffice@unm.edu](mailto:hearingoffice@unm.edu) within ten (10) business days from the date of delivery of the NFA. The employee should include in their request a copy of the document identifying the final action they wish to appeal and shall state the reason(s) for the appeal.

Live hearings for non-bargaining unit employee appeals will follow the [Procedure for Live Hearing Appeals of Discipline Issued in Non-Civil Rights Matters](#).

## **5.2 Appeals to the University President**

If the Hearing Officer upholds the supervisor's decision to suspend or discharge an employee, the suspended/discharged employee may request a review by the President. The President has discretion to accept the appeal for review. Normally, review is accepted only in extraordinary cases, such as those where proper procedures have not been followed, where the determination appears to be unsupported by the facts, or where the determination appears to violate University policy.

The employee's request to the President shall be made in writing, and must include the alleged facts, what happened in the proceedings to date, and the reasons justifying extraordinary review as described in the preceding paragraph. Such requests must be submitted to the President's Office within ten (10) business days of the date of the Hearing Officer issues the written determination. Appeals may be submitted electronically through an [online form](#) or via email to [unmpres@unm.edu](mailto:unmpres@unm.edu); by mail to MSC05 3300, Scholes Hall, Suite 144, 1 University of New Mexico, Albuquerque, NM 87131; or by hand-delivery to the Office of the President at Scholes Hall, Suite 144.

## **5.3 Appeal to the Board of Regents**

Under Regents Policy Manual, Section 1.5: Appeals to the Board of Regents, the Board of Regents ("BOR") has the discretion to review the President's decision on an appeal of the Hearing Officer's Administrative Hearing Determination. An appeal may be submitted to the BOR only after the President's decision is issued.

All appeals to the BOR are discretionary, and the Board will exercise discretion to hear such appeals only in extraordinary cases. The appealing employee must submit a written petition to the BOR within ten (10) days from the date the decision being appealed was rendered. The petition must describe the decision being appealed and the basis for the appeal.

## **6. Computing Time**

Any time period noted under this process does not include the day of the action from which this time period begins to run. If the last day of the time period falls on a Saturday, Sunday, holiday, or other recognized University closure (such as Winter Break), the last day of the time period shall be the next business day.

## **7. Modification of Processes**

The Assistant Vice President for Human Resources has the right to modify these processes as deemed necessary. If modifications to Section 5.1: Live Hearing Appeal are deemed necessary, Human Resources shall notify the University President of contemplated changes prior to the modification of these processes. 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.