Disciplinary Process for Any Non-Discrimination Matter

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 referred to as “UNM’s Discrimination Policies”). If an employee is accused of violating UNM Discrimination 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 Violations of UNM’s Discrimination Policies.

As set forth in greater detail herein, the employee potentially subject to discipline at suspension or discharge must be afforded notice of contemplated action, an opportunity to respond to the allegations against the employee, notice of final disciplinary action to be imposed, if any, an opportunity to appeal any final disciplinary action to be imposed via live hearing before a Hearing Officer (if the employee is not a member of a bargaining unit), and discretionary appeal to the University President and/or Board of Regents (if the employee is not a member of a bargaining unit).

If the employee is a member of a bargaining unit represented by a union, their right to grieve the final action will be pursuant to the terms of the applicable collective bargaining agreement. Bargaining unit employees may also have different or additional rights and/or responsibilities to those provided herein in the relevant collective bargaining agreement.

1. Notice of Contemplated Action and Notice of Final Action for Suspension or Discharge

The Notice of Contemplated Action (NCA) is a written notice that outlines the reasons for considering an employee’s suspension or discharge. The supervisor, manager, chair or director must receive advance approval for the contemplated action by the appropriate chair or director and the VP for HR.

The Notice of Contemplated Action must include all of the following points:

- The acts that the supervisor believes constitute proper/just cause as set forth in Section 3 of UAP 3215: Performance Improvement. These may include one (1) or more of the acts listed in Section 3 of UAP 3215, but are not specifically limited as such.

- A summary of the evidence against the employee.

- An identification of the University policies or other basis, the employee is alleged to have violated.

- Required timeframes in accordance with Section 4 of UAP 3215: Performance Improvement.
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 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 collective bargaining agreement.

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
collective bargaining agreement regarding representation.

3. Notice of Final Action

The Notice of Final Action (NFA) is the final written decision from the employee’s supervisor
after having taken the employee’s response to the NCA into account.

In cases where an employee has been found to have violated policy after a supervisor’s
consideration of the employee's oral and/or written response, the supervisor shall decide on the
action to be taken. In such cases, 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 VP for HR, and serve the
employee with a written NFA. The NFA should be delivered within twenty (20) business days
after receipt of the employee's response to the NCA. Cases occasionally may require additional
time. If so, the employee will be notified via in-person delivery, electronically, or via certified
mail noting the need for additional time (bargaining unit members may refer to their union
contract, if applicable) and stating the anticipated date the NFA will be issued.

The NFA should include all of the following points:

- The final action to be taken.
- The acts constituting proper/just cause, which shall only include allegations specified in
  the notice of contemplated action.
- A summary of the evidence.
- A reply to the employee's response, if any.
• The effective date of the action.
• A statement of the appeal processes available to the employee.

For non-bargaining unit employees, suspensions and discharges issued as provided in the Notice of Final Action may be challenged via live hearing conducted by a Hearing Officer in accordance with Section 7 of UAP 3215: Performance Improvement (see Section 5 below). If the employee is a member of a bargaining unit represented by a union, the employee should review the relevant labor agreement for their grievance procedures.

A copy of the NFA will be sent to the Division of HR for placement in the employee's official personnel file.

4. Computing Time and Delivery of the Notice of Contemplated Action and Notice of Final Action

4.1 Computing Time

Any time period noted under this policy 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 working day.

4.2 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 service, the employee should be asked to sign acknowledgement of receipt via wet signature or electronically. If the employee declines, the supervisor shall so note for the record. If served via certified mail, the Notice(s) must be properly stamped and addressed to the last address in the official UNM system provided by the employee. Service is complete when the Notice(s) is hand delivered, sent electronically, or deposited with the United States Postal Service for delivery by certified mail with a return receipt requested. A copy of the Notice(s) will be sent to the Division of HR 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 collective bargaining agreement containing a final and binding grievance and arbitration procedure. For employees in a bargaining unit represented by a union, please refer to the grievance and arbitration procedure in the applicable collective bargaining agreement for appellate procedures.
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 challenge this disciplinary action by requesting a live hearing before a Hearing Officer.

The non-bargaining unit employee who wishes to challenge a suspension or discharge must submit a request to the Hearing Office within ten (10) business days from receipt of the NFA. The employee should include in their request a copy of the document identifying the final action they wish to challenge and shall state the reason(s) for the challenge. A formal challenge may be made by contacting the main campus Compliance Office. The timeline is determined to begin the next business day after the NFA is issued to the employee.

Employees who are members of a bargaining unit represented by a union who wish to appeal a suspension or discharge should review the relevant agreement for grievance procedures.

Live hearings for non-bargaining unit employee appeals are coordinated by the main campus Compliance Office and will follow the Model Hearing Process for Non-Discrimination Matters. (See link)

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, the reasons justifying extraordinary review, and must identify whether the employee believes the determination did not follow proper procedures, the determination appears to be unsupported by the facts, or the determination appears to violate University Policy. Such requests must be delivered to the President's Office within five (5) business days of the date of the Post-Hearing Determination from the Hearing Officer.

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 has the discretion to review the President’s decision on an appeal of the Final Determination. An appeal may be submitted to the Board of Regents ONLY AFTER the President’s decision is issued.
The Board of Regents will accept review only in extraordinary cases, such as those where proper procedures have not been followed, where the decision appears to be unsupported by the facts, or where the decision appears to violate University policy.