POST SUSPENSION AND POST-DISCHARGE HEARING PROCEDURE FOR NON-BARGAINING UNIT STAFF FOR SUSPENSIONS AND DISCHARGES BASED ON VIOLATIONS OF UNM POLICY EXCEPT UNM CIVIL RIGHTS POLICIES

ARTICLE 1. INTRODUCTION

1.1 General. This document provides a standard operating procedure for formal post-suspension and post-discharge hearings for staff who have received a notice of final action for suspension or discharge 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 the University’s civil rights/discrimination policies (UAP 2720, 2740, or 3110). Staff who wish to challenge a suspension or discharge partly or wholly based on violations of the University’s civil rights/discrimination policies should refer to the appropriate process as set forth in UAP 3215 and the Disciplinary Process for Matters Involving Allegations of Violations of UNM Discrimination Policies.

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. Faculty members, student employees, individuals holding graduate assistantships, and house officers, should refer to the relevant bargaining agreement, personnel handbook or manual for a description of the pertinent post-suspension and post-discharge process.

1.2 Definitions.

1.2.1 Complainant: the person requesting a hearing pursuant to this Procedure.

1.2.2 Respondent: the person, Unit, Department, College, Program, or other University entity seeking to uphold the decision being challenged through this Procedure.

1.2.3 Parties: the Complainant and Respondent collectively.

1.2.4 Hearing Officer: the decisionmaker appointed or constituted pursuant to policy, procedure, or by order of the Board of Regents or the President to hear the evidence presented by the parties at the hearing and to decide whether to uphold the decision being challenged.

1.2.5 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.

1.2.6 Advisor: the individual identified by the Complainant and/or Respondent who each has selected and intends to bring to the hearing for assistance or support. The Hearing Office will not appoint an advisor for either Complainant or Respondent.
1.3 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 these rules. Good cause shall include the fact that a time limit includes finals week or periods such as vacations, holidays, or intersessions if the parties or the Hearing Officer are absent from the institution. Any time extension shall be communicated in writing to all parties along with a new written schedule.

1.4 Burden of Proof. The Respondent bears the burden of proving that the suspension or discharge was for just cause as provided in UAP 3215. The Complainant bears no burden of proof, but may present evidence refuting the evidence proffered by the Respondent. Respondent’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. A preponderance of the evidence means that, based on the relevant, reliable evidence submitted, it is more likely than not that the suspension or discharge being challenged was for just cause.

1.5 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.

1.6 Advisors. Any person may serve as an advisor. The advisor’s role is to assist and provide support for a party during the hearing. A Party may consult freely with the Party’s advisor during the hearing, but the advisor may not act as the Party’s representative. This means the advisor may not speak on behalf of the Party unless the Hearing Officer deems it appropriate under the circumstances or pursuant to a reasonable accommodation approved by the ADA Coordinator.

The Hearing Office will not appoint an advisor for either Complainant or Respondent.

1.7 Opening/Closing Statements. Only parties shall be allowed to make personal opening or closing statements at the discretion of the Hearing Office. If the Hearing Office allows one party this option, each party will have the same option.

1.8 Decorum. Administrative hearings are not civil or criminal proceedings and are not designed to mimic formal trial proceedings. As such, the University has adopted rules of decorum that prohibit any party, witness, Advisor, or Hearing Officer from questioning witnesses/parties and/or otherwise conducting themselves in an abusive, intimidating, or disrespectful manner. These rules may be enforced through the removal of any participant who refuses to comply with said rules.

The rules and standards apply equally to all hearing participants, including but not limited to advisors, the Parties and witnesses, and the Hearing Officer; regardless of protected class.
The following Rules of Decorum are to be observed in the hearing:

1. Questions must be conveyed in a neutral tone;

2. All hearing participants shall refer to parties, witnesses, Advisors, or other person involved in hearing using the name and gender used by the person and shall not intentionally misname, deadname, or misgender any person in communication or questioning;

3. No hearing participant may act abusively or disrespectfully during the hearing toward any other hearing participant.

4. Hearing participants may not yell, scream, badger, or physically “lean in” to the personal space of any other hearing participant and may not approach one another without first obtaining permission from the Hearing Officer;

5. Hearing participants may not use profanity (unless directly quoting evidence) or make personal attacks upon any other hearing participants. 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. Hearing participants may take no action at the hearing that a reasonable person would see as intended to intimidate or coerce a party, witness, Hearing Officer, or any other hearing participant.

1.9 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.

The Hearing Officer shall have discretion to remove the offending person or allow them to continue participating in the hearing or other part of the process.

The Hearing Officer shall document any decision to remove an Advisor in the written determination regarding responsibility.

ARTICLE 2. PREHEARING MATTERS

2.1 Requesting a Hearing. A Complainant who seeks to challenge a suspension or discharge via this process must have submitted a timely and complete request to do so to the Hearing Office in accordance with the applicable appeal section in UAP 3215. The failure to have met this constitutes a waiver of the Complainant’s right to request a post-suspension or post-discharge hearing under this Procedure.

2.2 Notice of Hearing. Upon receipt of the request for a hearing and associated documentation of the final action being challenged as provided in this Procedure, the Hearing Coordinator will schedule the date of the hearing. The Hearing Coordinator will send the parties, copying Human
Resources Department of Client Services, notice of the hearing no less than twenty (20) business days before the hearing date. The notice of hearing 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 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 all those who will attend the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties 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 Section 2.5.4 herein.
- 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) business days prior to the hearing to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing. The ADA Coordinator’s recommendation regarding such arrangements should be provided to the Hearing Coordinator at least ten (10) business days prior to the hearing as provided in Section 2.5.4.1 herein.
- Identification of which electronic devices are prohibited from being brought into the hearing.

2.3 Pre-Hearing Conference. The Hearing Officer will meet with the parties to consider clarifying or simplifying the issues to be heard by the Hearing Officer, answering any procedural questions, limiting the number of witnesses, or considering any other matters which may aid the hearing process. Unless otherwise agreed upon by both parties, pre-hearing conferences will be held separately for each party.

2.4 Preparation of Evidence.

2.4.1 The parties shall prepare evidence for the hearing which may be in the form of documents, testimony of witnesses, or other materials which address the issue of whether just cause supports the suspension and/or termination.

2.4.2 All members of the institutional community shall 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, the Hearing Coordinator shall assist the party in gaining the necessary cooperation within the institutional community.

2.4.3 If a party wishes to submit their own information prior to or during the hearing that is protected by legal confidentiality provisions, including but not limited to those provided by the Health Information Portability and Accountability Act (HIPAA) or the Family Educational Rights and Privacy Act (FERPA); or information protected by a legally recognized privilege, including but not limited to the attorney-client privilege, physician-patient privilege, priest-parishioner privilege, or spousal privilege, such party should submit that request at the pre-hearing conference. An opposing party may not submit protected information of another party, witness, or other person at a hearing without written consent of the party, witness, or other person who is the subject of the protected information.

Any information protected by legal confidentiality provisions or a legally recognized privilege that is submitted to the Hearing Officer prior to or during the hearing that the submitting party obtained without consent as provided herein or other illegitimate means shall be rejected and shall not be given any evidentiary weight. Moreover, any party obtaining such confidential or privileged information for purposes of submission prior to or during a hearing before the Hearing Officer through any means other than through the Hearing Officer as provided herein may be subject to further disciplinary action up to and including termination from employment. The Hearing Officer shall not have the authority to overrule or supersede the confidentiality protections provided under law or a legally-recognized privilege.

2.5 Hearing Deadlines. At least ten (10) business days before the hearing, each 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 and to the Hearing Officer:

2.5.1 A final list of witnesses, which includes a brief statement summarizing each witness’s anticipated statement, or a statement that no witnesses will be called. The Hearing Officer may place reasonable limitations on the number of witnesses after the list is submitted, but 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 issue presented as determined in the sole discretion of the Hearing Officer. No witnesses other than those on the list may testify without the consent of the Hearing Officer.

2.5.2 Any witness statement submitted pursuant to Section 3.5.

2.5.3 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.

2.5.4 The name of any advisor appearing with the party at the hearing and whether the advisor is an attorney. A party may not bring an advisor without such notification and unless approved by the Hearing Officer.

ARTICLE 3. HEARINGS

3.1 Delays. A party may request a delay in the hearing for good cause. Good cause includes the unavoidable absence of a party, witness or advisor on the hearing date. Requests must be sent to the Hearing Coordinator for consideration. The Hearing Officer has the sole discretion to allow delays. 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.

3.2 Evidence. The parties may testify and may present testimony of other witnesses, and/or submit documents and tangible evidence at the hearing. The Hearing Officer may exclude cumulative, unfair, or irrelevant evidence, but is not required to follow judicial rules of evidence.

3.3 Excludable Evidence. The Hearing Officer shall exclude the following types of evidence:

- Information protected by a legally recognized privilege or other law as set forth in Section 2.4.3;
- Duplicative evidence;
- Evidence that is not pertinent to the issue to be decided; and
- Any other evidence that the Hearing Officer, in their sole discretion, determines to be irrelevant.

The Hearing Officer shall state the basis for any decision to exclude evidence.

3.4 Order of Evidence.

(1) The department issuing the suspension or discharge presents its case first;

(2) The employee challenging the suspension or discharge presents the employee’s case;

(3) The discretion of the panel, follow-up by both sides may be allowed;

(4) The department makes a final statement;

(5) The employee responding makes a final statement.

The Hearing Officer may alter the order of evidence at the Hearing Officer’s sole discretion for good cause. The Hearing Officer may ask questions any time during the hearing.
3.5 **Witnesses.** Consistent with the evidentiary limitations set forth herein, the parties may present the testimony of witnesses in support of their case. The parties are responsible for ensuring that their witnesses appear to testify at a hearing. The parties and the Hearing Officer shall have the right, within reasonable limits set by the Hearing Officer, to question the parties and all witnesses. The Hearing Officer will require all witnesses to affirm the truth of the testimony they present. Witnesses are allowed in the hearing room during their testimony only.

3.6 **Modified examinations.** Reasonable limits on one’s right to questions witnesses may be imposed by the Hearing Officer and may include any modifications the Hearing Officer deems appropriate under the circumstances or by accommodation approved by the ADA Coordinator. This includes but is not limited to allowing a party or witness to testify remotely. Requests for modifications to the method a party’s or witness’ testimony is elicited or presented must be included in the witness list submitted by the party seeking the modification pursuant to Section 2.5.1.

3.7 **Record of Hearing.** The Hearing Coordinator shall make a digital audio recording of the proceedings. The parties may request a copy of the recording. Such requests shall be made to the Hearing Coordinator. The Hearing Coordinator shall provide the party with a digital copy of the recording.

The record of the hearing shall consist of the digital recording and an electronic copy of all documents introduced as evidence. The record shall be kept by the University for ten (10) years after all appeals have been concluded or after the time for appeal has expired, whichever comes first.

3.8 **Written Argument.** After hearing the evidence, the parties have the option of submitting written arguments to the Hearing Officer. If they so choose, Parties must submit their arguments to the Hearing Coordinator no later than two (2) business days following the hearing.

3.9 **Closing the Hearing.** No new evidence may be submitted after the hearing. The hearing is deemed fully and finally closed for purposes of appeal pursuant to Section 4.0 herein upon the issuance of the Hearing Officer’s 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.

3.10 **Written Determination.** The Written Determination shall include the following information as appropriate to the circumstances:

- Identification of the question(s) under consideration by the Hearing Officer for determination, which may include one or more of the following:
  - Whether a preponderance of the evidence demonstrates there was just cause for discipline.
  - Whether the discipline issued was appropriate under the circumstances.
• The reasoning underlying the Hearing Officer’s determination(s), including an identification of the evidence supporting the determination, how it was weighed against the other evidence, and why it was given the weight it was given.
• The date and time of the live hearing and the policies implicated and a brief statement indicating whether or not just cause supported the suspension or discharge;
• A brief procedural history to include: the dates of the issuance of the Notice of Contemplated Action; date the employee responded to the Notice of Contemplate Action and form of response (written and/or oral), if any; the date of issuance of the Notice of Final Action and Complainant’s request for hearing;
• A statement as to whether either party requested alterations of the deadlines or other dates and whether such requests were granted.
• A statement of the procedures applied to the hearing;
• A list of each party and their advisor, if any;
• A brief review of each party’s pre-hearing conference including: the date and time for the pre-hearing conference; the identities of the pre-hearing conference attendees; whether the Hearing Officer limited the number of witnesses at the pre-hearing conference and if so, the rationale for the limit;
• Any delay to the original hearing date and the reason for the delay;
• The date, time and format of the hearing; a statement that the hearing was recorded; whether the parties and/or their advisors attended;
• A statement as to whether participants abided by the rules of decorum and whether warnings were given by the Hearing Officer; reasons for the warnings; whether a participant was removed from the hearing and the reasons for removal; whether a hearing delay was caused by the removal of an advisor;
• Whether parties were afforded the opportunity to make opening and/or closing statements; whether the parties made statements;
• A list of witnesses who provided testimony at the hearing;
• A brief review of evidence considered by the Hearing Officer; whether any evidence was excluded with a reason for any exclusions; how the evidence was evaluated;
• Whether testimony was excluded by the Hearing Officer and the reason for any excluded testimony;
• Whether any non-testimonial evidence was excluded and rationale for any excluded non-testimonial evidence;
• A brief summary of each party’s position;
• Statement indicating how and when an appeal may be taken.

3.11 Closed Hearings. All administrative hearings shall be closed to the public and the media.

ARTICLE 4. APPEALS

4.0 Appeal. No appeal of the Hearing Officer’s order may be taken until the hearing is fully and finally closed as provided in Section 3.11 herein. Any subsequent appeal must be submitted pursuant to the timelines provided in the policy, procedure, or order authorizing the appeal.