

## ADMINISTRATIVE HEARING PROCEDURES ALLEGATIONS OF VIOLATIONS OF CIVIL RIGHTS POLICIES

### ARTICLE 1. INTRODUCTION AND GENERAL PROVISIONS

**1.1 Introduction.** This document provides a standard operating procedure for the Grievance Hearing Process referenced in Section VI(C)(3)(i) of the Discrimination Grievance Procedure (“DGP”) issued by the Office of Compliance, Ethics, & Equal Opportunity (“CEEEO”) and performed by the UNM Hearing Office for alleged violations of the University’s Discrimination Policies (University Administrative Policies (“UAP”) 2310, 2720, 2740, and/or 3110) and/or applicable/related Student Codes of Conduct. This procedure may be incorporated in another procedure by reference.

For the process governing hearings that do not involve allegations of violations of the University’s Non-Discrimination Policies, see [Procedures for Live Hearing Appeals of Discipline](#).

#### 1.2 General Provisions

**1.2.1 Calculation of Time, Extension of Time Limits and Good Cause.** Unless otherwise specified herein, the term “days” refers to regularly recognized University business days, and does not include weekends, holidays, or other University closures. The Hearing Officer shall extend any time limit set forth in these rules for good cause upon request from the Parties. Good cause may include the following: that a time limit includes finals week, periods such as vacations, holidays, or intersessions, the absence of one or both Parties, or the absence of Hearing Office staff from the institution. Any time extension shall be communicated in writing to all Parties along with a new written schedule.

**1.2.2 Decisionmaker Training.** The Hearing Officer shall be required to complete specific training prior to conducting a hearing. Such training will be prescribed by the CEEEO, the Title IX Coordinator, 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.

**1.2.3 Sanctioner Training.** In matters alleging sexual harassment in violation of UAP 2740, Sanctioners, including, but not limited to supervisors, chairs, directors, and department equivalents, shall be required to complete training specific to their affiliation or department prior to the sanctioning phase. Such training will be prescribed by CEEEO, the Title IX Coordinator, University policy, procedure, or by order of the Board of Regents or the President.

**1.2.4 Withdrawing a Complaint.** Once the Hearing Office has received the investigative file from CEEO, Complainant must follow the withdrawal process set forth in the DGP. In the event CEEO permits withdrawal of the Formal Complaint, CEEO still has the discretion to carry out another process option and move forward without the Complainant.

### 1.3 Definitions

**ADA Coordinator:** The individual designated to coordinate University Compliance with the Americans with Disabilities Act and related laws. *See* UAP 2310 and 3110.

**Administrative Hearing Determination:** Written decision of the Hearing Officer following a hearing.

**Administrative Hearing Notice:** The document provided to all Parties and their Advisors indicating the date and time of the hearing together with information as required by Article 3.4 herein.

**Advisor:** A person selected by the Complainant or Respondent to perform cross-examination at the hearing. An Advisor also may assist Complainant/Respondent as permitted by Articles 2.1, 2.2, and 2.3 below. There are three types of Advisors:

- 1) Private Advisor: any individual Complainant and Respondent personally select to serve as their Advisor;
- 2) UNM Advisor: Upon the request of Complainant or Respondent, an individual designated by UNM to serve as their Advisor; and
- 3) Attorney Advisor: an attorney engaged by Complainant or Respondent to serve as the Party's Advisor

**CEEEO ("The UNM Office of Compliance, Ethics & Equal Opportunity"):** CEEEO investigates claims of discrimination based on a protected status, sexual harassment, and sexual misconduct. It provides oversight of the University's compliance with federal and state equal opportunity and affirmative action statutes and regulations, including Title VII, Title IX, the Clery Act, and the Americans with Disabilities Act ("ADA"). *See* [Compliance, Ethics & Equal Opportunity](#) for more information regarding CEEEO.

**Complainant:** The person or persons filing a Formal Complaint pursuant to UAP 2720, 2740, and/or 3110 in accordance with the DGP.

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

**Departmental Investigation:** An investigation in which there are multiple complaints asserted by multiple individuals against one Respondent that do not arise from the same factual circumstances.

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

**Discrimination Grievance Procedure (“DGP”):** The procedures followed by the CEEO when processing complaints alleging violations of certain UNM policies. See [CEEEO Discrimination Grievance Procedure](#).

**Formal Complaint:** A complaint of discrimination and/or sexual harassment that triggers the formal grievance procedure set forth in the DGP. See the DGP for more information regarding Formal Complaints.

**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 or the outcome thereof.

**Hearing Officer:** The individual responsible for evaluating the evidence presented by the Parties at a hearing and issuing a subsequent determination as to whether a Respondent violated a UNM civil rights policy.

**Investigative Report:** The final report issued at the conclusion of a formal investigation conducted by CEEEO, which includes: Complainant’s statement(s), Respondent’s statement(s), witness statements, and relevant evidence. This report serves as the threshold record to be used in an evidentiary hearing.

**Impact Statement:** A written statement by the Complainant or Respondent, presented to the Hearing Officer at the close of the hearing for review by the Sanctioner to help the Sanctioner determine the appropriate sanction, if any. In their statements, the Complainant and Respondent may address their experience and the incident in question, as well as respond to how the investigation and hearing was conducted and any areas of agreement or/disagreement with the investigation or hearing. The Impact Statement may not seek to introduce new evidence.

**New Evidence:** New, previously undiscoverable or undisclosed evidence not available to CEEEO, or not in existence at the time of the CEEEO investigation, presented to the Hearing Officer for consideration. With respect to an appeal of an Administrative Hearing Determination, the definition of new evidence in the CEEEO Discrimination Grievance Procedures is applicable.

**Party/Parties:** The Complainant and Respondent are each referred to as a Party to the hearing. Collectively, the Complainant and Respondent are referred to as the Parties.

**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.

**Remedies:** As provided by federal law in cases of sex discrimination, remedies are designed to maintain the Complainant's equal access to the programs and services the University provides, including education, work opportunities, and other activities. This may include the same individualized services described as supportive measures in the DGP. Remedies are confidential and only are offered to Complainant when Respondent is found to have violated UNM policy based on a Preponderance of the Evidence considered at the hearing. Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

**Respondent:** The individual who is alleged to have engaged in discriminatory conduct in violation of UAP 2310, 2720, 2740, or 3110; or is alleged to have violated any other UNM policy based on the same facts and circumstances.

**Sanctioner:** The individual or entity with sanctioning authority who is responsible for deciding the appropriate sanction when there is a determination that University policy has been violated. Sanctioning authority is determined by the policy alleged to have been violated and/or the University entity that has sanctioning authority over the Respondent. Sanctioning authorities may include one or more of the following:

For Staff: The staff member's supervisor, chair, dean, director, or department equivalent. In cases of sex discrimination, consultation with the Title IX Coordinator or designee is also required.

For Students: The UNM Dean of Students. In cases of sex discrimination, consultation with the Title IX Coordinator or designee is also required.

For Faculty: University personnel identified pursuant to the UNM Faculty Handbook or applicable collective bargaining agreement. In cases of sex discrimination, consultation with the Title IX Coordinator or designee is also required.

**Support Persons:** If determined appropriate pursuant to the accommodation set forth in Section 3.1.1, individuals designated by a Party may attend the Pre-Hearing Conference and hearing to provide emotional or physical support to a Party. A support person cannot be a potential Witness in the hearing, an Advisor, nor can they be someone in a Party's supervisory chain if the Party is a university employee.

**Witness:** Any person who may have knowledge of the evidence in an investigation or complaint, including but not limited to the Complainant and Respondent.

## **ARTICLE 2: ROLES AND RESPONSIBILITIES**

**2.1 Advisors, Generally.** The role of any Advisor is to conduct cross-examination of the other Party and other Party's Witnesses. Cross-examination may include questions that challenge the credibility of the Witness.

An Advisor may appear and conduct cross-examination even when the Party whom they are advising does not attend the hearing. An Advisor may be excused from a hearing if the Party does not attend the hearing and the Party did not consult with the Advisor regarding cross-examination questions.

Advisors shall not answer any question directed at the Parties or their Witnesses.

An Advisor may also assist a Party throughout the entire grievance process and assist a Party in preparing for and participating in the pre-hearing process as agreed upon by the Advisor and the Party.

**2.2 Advisors, Limitations.** 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. Advisors may not negotiate a settlement or stipulation on behalf of an advisee, 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.

**2.2.1 UNM Advisors:** Advisors who are assigned to a Party by UNM shall not provide legal advice to Parties on any matter. UNM Advisors are not involved in the appeal process other than to assist the Party in locating the forms to submit an appeal.

**2.2.2 Private Advisors/Attorney Advisors:** Private Advisors and 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.

**2.3 Advisors, Removal/Recusal/Replacement.** Advisors are required to conduct themselves in accordance with the rules of decorum included in this Procedure. The Hearing Officer reserves the right to deny an Advisor the opportunity to ask specific questions if such questions are deemed irrelevant or otherwise in violation of the limitations on evidence as provided in this Procedure. The Hearing Officer reserves sole discretion in determining whether to remove an

Advisor from any part of any proceeding in which the Advisor violates the rules of decorum or refuses to cooperate with a Hearing Officer directive.

**Non-UNM Advisors:** Advisors may recuse themselves from participating at any time after notifying the Hearing Office. The Party advised by the recused Advisor may select another Advisor or request a UNM-assigned Advisor.

**UNM Advisors:** UNM assigned Advisors may make a good cause request to recuse themselves from working with a Party. The Party may select another Advisor or another UNM Advisor may be assigned.

A Party may change Advisors upon notice to the Hearing Coordinator; however, changing Advisors within five (5) days of the hearing is strongly discouraged. If a Party correctly asserts that an Advisor refuses to engage in cross-examination on the Party's behalf, the University will provide an Advisor who will conduct cross-examination and delay the hearing until such time as the new Advisor is prepared to assist the Party.

**2.4 Hearing Officer, Generally.** The Hearing Officer's role is to conduct the hearing and ensure all participants adhere to the *Rules of Decorum*. The Hearing Officer may ask questions deemed relevant by the Hearing Officer. The Hearing Officer also determines the relevance of each question posed by an Advisor or Party during a hearing. The Hearing Officer reviews the evidence and determines whether or not the Respondent violated a UNM policy and reduces that determination to writing for both Parties, and the Sanctioner when a policy violation has occurred.

**2.5 Parties, Generally.** The Party's role is to designate an Advisor, submit to the Hearing Coordinator information not previously considered by the investigator prior to the Pre- Hearing Conference, prepare direct and/or cross-examination questions to ask of the other Party or Witnesses at the hearing, adhere to the proceeding timeline, ask questions of their Witness/es (other than cross-examination of the other Party), communicate with their Advisor, 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 to designate, or confirm designation, of their Advisor. 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) or change in the Party's affiliation with the University. Failure to do so could result in a Party missing the opportunity for a hearing.



## ARTICLE 3. PRE-HEARING MATTERS

**3.1 Pre-Hearing Conference.** After receipt of the information specified in Article 3.2, the Hearing Officer will meet with the Parties and/or their Advisors 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 will also consider the submission of previously undiscovered or undisclosed evidence submitted by the Parties, as described in Article 3.2. 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.

**3.1.1 Accommodations for Disabilities.** This Procedure does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973. 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 the Accessibility Resource Center (ARC), pursuant to University Administrative Policy 2310, or the ADA Coordinator or their designee to provide accommodation, as appropriate. Neither the ADA Coordinator nor ARC shall be required to provide the Hearing Coordinator, Hearing Officer, or other hearing participant the exact medical reason for the exception or accommodation.

**3.2 Pre-Hearing Conference Requirements for Parties.** At least two (2) business days before the Pre-Hearing Conference scheduled for each Party, 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.

### a) Witness List

A list of witnesses the Party intends to call at the hearing. Witnesses may include: persons interviewed by the investigator; persons identified in the Investigative Report, but not interviewed by the investigator; or a previously undiscovered Witness who will testify about new evidence. The Parties must inform the Hearing Coordinator in writing if they do not intend to call any witnesses. The Hearing Officer may grant an extension to submit the witness list for good cause in accordance with Article 1.2.1. A Party may request an extension of time to submit a Witness list by contacting the Hearing Coordinator. Witnesses who were not identified two days prior to the Party's Pre-Hearing Conference will not be permitted to testify at the hearing.

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 Party's list may testify without the consent of the Hearing Officer.

**b) Name of Designated Advisor or Request for a UNM Advisor**

Each party shall provide the Hearing Coordinator with the name of their Advisor 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, or request a UNM Advisor.

**c) Electronic copies of any New Evidence**

Any Party requesting that the Hearing Officer consider new evidence at the Pre-Hearing Conference must submit electronic copies of that evidence to the Hearing Coordinator. In the case of new testimonial evidence, a written summary of the same must be submitted electronically to the Hearing Coordinator.

**3.3. Preparation of Evidence.** All relevant evidence and Witness names should have been submitted by the Parties or gathered by the investigator during the investigation preceding the hearing. The investigative file that is submitted to the Hearing Coordinator at the conclusion of an investigation contains the same evidence and documents provided to the Parties during the investigation. All members of the University community are encouraged to cooperate with the Parties' reasonable requests to provide evidence and to appear at the hearing as witnesses.

**3.3.1 Provision for New Evidence.** The Parties may present new evidence for consideration at the hearing at least two (2) business days prior to the Pre-Hearing Conference, as described in Article 3.2.

The Hearing Officer has sole discretion to determine whether the new evidence will be accepted as evidence. The Hearing Officer shall consider the relevance of the evidence, whether the Party could have obtained it earlier, the time remaining until the hearing, and the degree of prejudice to the other Party when determining whether the new evidence will be accepted as evidence.

**3.4 Administrative Hearing Notice.** In accordance with Section VI(C)(3)(h) of the DGP, upon completion of the Investigative Report, CEEO will submit this report, the investigative file, and other relevant documentation in its entirety to the Hearing Coordinator. Upon receipt of the file, the Hearing Coordinator will schedule the date of the Pre-Hearing Conference and the Hearing. The Hearing Coordinator will send the Parties a Notice of Administrative Hearing no less than ten (10) business days before the hearing date.

The Administrative Hearing Notice will include the following:

- a) A description of the alleged violation(s), a list of all policies allegedly violated, a copy or link to these Administrative Hearing Procedures, and the potential sanctions/responsive actions that could result if the Respondent is determined to have violated a policy;
- b) That a preponderance of the evidence standard will be applied by the Hearing Officer;



- c) The time and date of the hearing and whether the hearing will be in person or conducted via a virtual platform;
- d) Any technology that will be used to facilitate the hearing;
- e) A list of all those identified by the Parties who will attend the hearing, if known;
- f) Information regarding how the hearing will be recorded and how the Parties may access the recording after the hearing;
- g) A statement that if any Party or Witness does not appear at the scheduled hearing, the hearing may be held in their absence. No inference will be drawn from the absence of a Party or Witness;
- h) Notification that the Parties may have the assistance of an Advisor at the hearing and will be required to have one present to conduct cross-examination;
- i) Notification that if a Party does not secure an Advisor of their choice, the University will designate one free of charge;
- j) A copy of the Investigative Report created by CEEO;
- k) A copy of any report issued by another department, including but not limited to Human Resources, which addresses potential violations of policies other than UAP 2720, 2740, or 3110 by an employee Respondent whose alleged conduct arises out of the same facts and circumstances as set forth in the Investigative Report;
- l) An invitation to contact the Hearing Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least five (5) business days prior to the hearing; and
- m) A statement that individuals not designated by the Hearing Officer or these procedures are prohibited from recording the hearing.

## **ARTICLE 4. HEARINGS**

**4.1 Closed Hearings.** 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.

**4.2 Unsanctioned Recordings.** Any participant found to be recording the hearing, 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 employee, student, or visitor alleged to have violated these procedures may be subject to disciplinary action under the UNM policies applicable to each participant.

**4.3 Consolidation.** There is a presumption that separate matters with the same Parties and/or Witnesses shall be adjudicated as separate matters. The Hearing Officer may consolidate Formal Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations arise out of the same facts or circumstances.

#### **4.4 Delays**

**4.4.1 Requests to Alter or Continue Schedule.** Once a pre-hearing and hearing date has been set, any request to alter or continue the schedule shall be submitted in writing within three (3) business days of notice of the scheduled date.

**4.4.2 Determination of Good Cause.** Upon receipt of a timely request, the Hearing Officer shall issue a determination within two (2) business days as to whether good cause exists to grant the request.

**4.4.3 Subsequent Requests.** Any subsequent requests for delay beyond the period set forth in subsection (A) shall not be entertained absent extraordinary circumstances. Such requests must be accompanied by documentary evidence sufficient to establish necessity.

**4.4.4 Factors for Consideration.** In exercising discretion to grant or deny a request for delay, the Hearing Officer shall consider:

- a) The reason for the absence or conflict;
- b) The length of the proposed delay;
- c) The time remaining until the scheduled hearing date; and
- d) The prejudice, if any, to the other Party.

**4.4.5 Rationale Requirement.** The Hearing Officer shall include the rationale for granting or denying any request for delay in the Administrative Hearing Determination.

**4.5 Advisor Designation.** Each Party must have an Advisor for the purpose of conducting cross-examination of the other Party and the other Party's witnesses. A Party may designate a person to serve as their Advisor or may request a University Advisor at no cost by contacting the Hearing Coordinator. An Advisor shall not be a Witness in a proceeding.

A Party must identify their Advisor at least two (2) business days before the Pre-Hearing Conference by contacting the Hearing Coordinator. A Party must also disclose whether their Advisor is an attorney. If a Party appears at the hearing without an Advisor, the hearing may not proceed until either the Party designates an Advisor or the University designates an Advisor for that Party. A Party cannot decline the UNM Advisor without first selecting an Advisor of the Party's choice.

**4.6 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.

**4.7 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* Article 4.9), 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 a policy was violated regardless of whether a Party or Witness attended the hearing or was subjected to cross-examination at the hearing.

**4.8 Determination of a Question as Relevant.** Before a Party or Witness responds to a question on direct or cross-examination, the Hearing Officer must first determine if the question is relevant. The Hearing Officer must explain any decision to exclude a question on the basis that it is irrelevant.

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

- a) Complainant's prior sexual history, unless offered to prove Complainant's consent with respect to Respondent, or to prove that someone other than Respondent committed the alleged conduct;
- b) Information protected by a legally recognized privilege (i.e., attorney-client privilege);
- c) Duplicative or cumulative evidence;
- d) A Party's Family Educational Rights and Privacy Act (FERPA)-protected education records unless the Party gives written consent;
- e) A Party's Health Insurance Portability Act (HIPAA)-protected treatment records unless the Party gives written consent; and/or
- f) Information that is not related to the matter which is the subject of the hearing.

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

**4.10 Order of Evidence.** Pursuant to Article 4.7, 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:

- a) Testify on their own behalf and to have Witnesses testify on a Party's behalf;

- b) Via their Advisor, conduct cross-examination of the other Party and other Party's Witnesses;
- c) Provide follow-up testimony and conduct follow-up direct examination of their Witnesses once cross-examination is complete.

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

**4.11 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. Witnesses are allowed in the hearing room only during their own testimony. Witnesses on a Witness list submitted by a Party and approved by the Hearing Officer shall be allowed to testify even if a Party does not appear at the hearing.

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 the Respondent's violation of a policy 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. No Party may question another Party either on direct or cross-examination. In the event one Party calls the other Party as a Witness, the Advisor of the Party calling the Witness shall ask the questions such that the two Parties are never questioning each other

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 ARC or 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.

**4.12 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 rules of decorum that prohibit any Party, Witness, Advisor, or Hearing Officer from questioning Witnesses or

Parties 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 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:

- a) Questions must be conveyed in a neutral tone.
- b) Parties, Advisors, and Witnesses will refer to all hearing participants using their preferred pronoun and title of courtesy.
- c) 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.
- d) Advisors may not yell, scream, or badger when questioning a Witness.
- e) Participants may not use profanity unless the language is a direct quote from some source such as the Investigative Report or Witness. Advisors may not make personal attacks that harass or intimidate a Party 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.
- f) 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.

**4.13 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, the Party may select a different Advisor of their choice, or accept an Advisor provided by the University. Reasonable delays, including the temporary adjournment of the hearing, may be anticipated when an Advisor is removed. A Party cannot serve as their own Advisor in this circumstance. The Hearing Officer shall make no inference with regard to the removal of an Advisor.

**4.14 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 6 herein 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 5. POST HEARING PROCEDURE**

**5.1 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.

**5.2 Written Argument/Impact Statements.** After hearing the evidence, the Parties have the option of submitting to the Hearing Officer (a) written arguments of no more than five (5) pages; and/or (b) an Impact Statement of no more than five (5) pages, unless the Hearing Officer allows an extension of these page limits. Parties must submit their arguments or Impact Statements 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 Impact Statements to be submitted upon good cause shown by either Party as described in Article 1.2.1.

**5.3 Administrative Hearing Determination.** In making a determination, the Hearing Officer considers all available evidence in the investigative file, contained in the Investigative Report, and any testimony presented at the hearing. The Administrative Hearing Determination shall include the following information as appropriate to the circumstances:

- a) The policies implicated;
- b) A brief statement indicating whether or not a policy violation was found;
- c) A brief procedural history;
- d) In the event an advisor was excused from the hearing, the reasons for excusal;
- e) 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;
- f) If the hearing was delayed, the reason for the delay and rationale for rescheduling it;



- g) A statement of the procedures applied to the hearing, including the burden of proof standard;
- h) 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;
- i) A list of witnesses who testified at the hearing;
- j) An analysis of each alleged policy violation and the evidence relied upon by the Hearing Officer, including the weight given to a particular statement or piece of evidence, in determining whether the Respondent violated such policy;
- k) 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;
- l) Sanctions, if any, determined by the sanctioning authority. The sanctioning of faculty Respondents for UAP 2720 and 3110 violations, however, will not be included in the Administrative Hearing Determination, but will be issued separately by the faculty Sanctioner pursuant to the UNM Faculty Handbook, or CBA, as appropriate. Determinations wherein a violation of UAP 2740 was found will include the sanction in the Administrative Hearing Determination; and
- m) A statement indicating how and when an appeal may be taken.

**5.4 Sanctions.** If the Hearing Officer determines there was a policy violation by either Party, the Hearing Officer shall inform the appropriate sanctioning authority of the findings and provide materials requested by the sanctioning authority to determine the appropriate sanction, if any. The sanctioning authority will inform the Hearing Officer as to the sanctions to be imposed and the Hearing Officer will include those sanctions in the Administrative Hearing Determination. The sanctioning of faculty Respondents for UAP 2720 and 3110 violations, however, will not be included in the Administrative Hearing Determination, but will be issued separately by the faculty Sanctioner pursuant to the UNM Faculty Handbook, or CBA, as appropriate. Determinations wherein a violation of UAP 2740 was found will include the sanction in the Administrative Hearing Determination. The Sanctioner may attend the hearing or review the hearing record for the purpose of issuing the proposed discipline.

**5.5 Remedies.** Upon a finding that the Respondent is responsible for a policy violation, the CEEO or the Title IX Coordinator may provide remedies to Complainant in adjudications involving UAP 2740.

## **ARTICLE 6. APPEALS**

**6.1 Appeal.** No appeal of the Hearing Officer's decision may be taken until the Administrative Hearing Determination is issued to the Parties above. The timing and process for any appeal will be pursuant to the instructions in the Administrative Hearing Determination and the policy, procedure, or order authorizing the appeal.