

ADMINISTRATIVE HEARING PROCEDURES: ALLEGATIONS OF VIOLATIONS OF UNIVERSITY ADMINISTRATIVE POLICIES¹

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 CEEO Grievance Procedure (“CGP”) issued by the Office of Compliance, Ethics, & Equal Opportunity (“CEEEO”) and performed by the UNM Hearing Office for alleged violations of the University’s Administrative Policies (“UAP”) 2310, 2720, 2740, 2745, 2760, and/or 3110. This procedure may be incorporated in another procedure by reference. The Administrative Hearing Procedures (“AHP”) set forth addresses alleged violations of UAP on or after August 1, 2024. All sex based discrimination matters concerning alleged violations of UAP before August 1, 2024, will follow the [AHP revised April 2023](#).

1.2 General Provisions

1.2.1 Timeframe. The Hearing Office shall, in most cases, issue a Final Determination regarding alleged violations of UAP within 45 days of receipt of a complete investigative file from the CEEEO. In some cases, such as those involving several Parties and Advisors, extensive evidence, and/or outstanding issues in materials provided to the Hearing Office, the timeframe may be delayed.

1.2.2 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.

1.2.3 Decisionmaker Training. The Hearing Officer shall be required to complete specific training prior to conducting a hearing. Such training will be prescribed by federal and state law, CEEEO, the Title IX Coordinator, University policy, procedure, or

¹ These procedures do not apply to alleged violations of UAP 3215.

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.

1.2.4 Sanctioner Training. In matters alleging sex-based discrimination, including sexual misconduct in violation of UAP 2740 or 2760, 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 CEEO, the Title IX Coordinator, University policy, procedure, or by order of the Board of Regents or the President.

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

1.3 Definitions.

ADA Coordinator: The individual(s) designated to coordinate University compliance with the Americans with Disabilities Act and related laws. See UAP 2310 and 3110.

Administrative Hearing Determination: Written decision, including an analysis of the evidence, of the Hearing Officer's determination of whether a policy was violated 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 guide the Party through the Hearing Process and question the Party and Party's witnesses through Direct-Examination at the hearing. An Advisor may assist a Party as permitted by Articles 2.1, 2.2 and 2.3 below. There are three types of Advisors:

- 1) Private Advisor: any individual a Party personally selects to serve as their Advisor;
- 2) UNM Advisor: Upon the request of a Party, an individual designated by UNM to serve as their Advisor.
- 3) Attorney Advisor: an attorney engaged by a Party to serve as the Party's Advisor.

CEEEO: The UNM Office of Compliance, Ethics and Equal Opportunity. CEEEO investigates claims of discrimination or related misconduct. It provides oversight of the University's

compliance with federal and state equal opportunity and affirmative action statutes and regulations, including Title II, Title VI, Title VII, Title IX, the Clery Act, and the Americans with Disabilities Act (“ADA”). Refer to <https://ceeo.unm.edu> for more information regarding CEEO.

Complainant: The person(s) identified as being the target of alleged discrimination or harassment pursuant to UAP 2720, 2740, 2745, 2760, and/or 3110 in accordance with the CGP.

Consolidated Complaints: A matter involving several complaints against a Respondent by more than one Complainant that arises out of the same set of facts or circumstances and that is consolidated into one investigation.

Cross-Claims: A matter where parties each have a claim against the other that arises out of the same set of facts or circumstances and is consolidated into one investigation.

Cross-Examination: Questioning of a Party or witness at a live hearing by the Hearing Officer to challenge or clarify testimony or other evidence. Cross-Examination questions are developed by Advisors and their respective Parties and submitted to the Hearing Officer in advance of the live hearing. Additional cross-examination questions may arise from evidence presented during the live hearing and considered by the Hearing Officer. In all situations, the Hearing Officer retains sole discretion regarding the relevancy and inclusion of any question and may ask additional questions at will.

Departmental Investigation: Matters where there are multiple complaints against a Respondent that do not arise from the same set of facts or circumstances and may be sufficient to indicate a pattern of acts that, in the aggregate, may violate UNM policy.

Direct-Examination: Questioning of a witness at a live hearing by an Advisor to introduce evidence and/or clarify existing evidence. Direct-Examination questions are developed by Advisors and their respective Parties. Direct-Examination questions are not submitted to the Hearing Officer in advance of the live hearing, but the Hearing Officer retains sole discretion regarding the relevancy of any question.

CEEEO Grievance Procedure (“CGP”): The procedures followed by the CEEEO when processing reports alleging violations of certain UNM policies. The CGP may be found at: <https://oeo.unm.edu/forms/pdf/oeo-CGP.pdf>.

Closing Statement: An optional verbal and/or written statement by a Party composed of arguments regarding the evidence presented. A verbal statement may be made at the conclusion of evidence presented at the live hearing. A written statement may be individually submitted by a Party to the Hearing Officer within the time allotted after the live hearing. A Party’s written statement is not reviewed by the opposing Party. While the statement is an opportunity for a Party to present arguments regarding evidence already in the record, and may be considered by the Hearing Officer in deciding the outcome of a case,

it is not itself considered evidence. This means that new information introduced in the statement will not be given any weight by the Hearing Officer.

Complaint: An allegation or set of allegations that triggers the investigative procedure set forth in the CGP. See the CGP for more information regarding Complaints.

Hearing Coordinator: The hearing facilitator who provides additional administrative assistance to the Hearing Officer. The Hearing Coordinator has no decision-making authority regarding the issues to be decided at the hearing or the outcome thereof.

Hearing Officer: The individual responsible for conducting a live hearing, cross-examining witnesses, evaluating evidence, and issuing a subsequent determination regarding alleged violations of UAP.

Investigative File: The file produced at the conclusion of an investigation conducted by CEEO, which includes: the Investigative Report, Complainant's statement(s), Respondent's statement(s), witness statements, and relevant evidence. This file serves as the record to be used in the administrative hearing should no additional evidence be presented in the form of Party or witness testimony or new evidence.

Impact Statement: A written statement by either Party, provided to the Hearing Officer within five (5) business days of a live hearing's conclusion. The statement is not reviewed by the Hearing Officer. In the event of an adjudication of responsibility, the statement is sent by the Hearing Office to the Sanctioner for their consideration in determining the sanction. 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 reasonably available to CEEO, or not in existence at the time of the CEEO investigation, presented to the Hearing Officer for consideration in advance of the Pre-Hearing Conference. With respect to an appeal of an Administrative Hearing Determination, the definition of new evidence in the CEEO Grievance Procedure is applicable.

Opening Statement: An optional verbal statement by a Party made at a live hearing prior to the presentation of evidence, outlining the Party's expectations of what evidence will be introduced and what the evidence will show. The Opening Statement is not considered evidence.

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, regarding the format of the live hearing,

evidence, and proposed witnesses. Ordinarily, one Pre-Hearing Conference is held with all Parties and Advisors for a case in attendance. However, the Hearing Office will facilitate separate Pre-Hearing Conferences with each Party and their Advisor upon request.

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 violations of UAP 2740 or 2760, 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 CGP. 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, 2745, 2760, 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 or misconduct, consultation with the Title IX Coordinator or designee also is required.

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

Support Persons: Individuals designated by a Party as a support person 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 or someone in a Party's supervisory chain if the Party is a University employee.

Title IX Coordinator: The individual(s) designated to coordinate University compliance with Title IX and related laws.

Witness: Any person who may have knowledge of the evidence in an investigation , including but not limited to the Complainant and Respondent. For inclusion on the list of possible witnesses a party may call at the live hearing to testify, the witness must have participated or been contacted during CEEO’s investigation of the alleged incident(s). However, a party may petition for inclusion of an unknown or unlisted witness with the Hearing Officer at the Pre-Hearing Conference. Inclusion or exclusion of any witness is at the Hearing Officer’s discretion.

ARTICLE 2: ROLES AND RESPONSIBILITIES

2.1 Advisors, Generally. The role of *any* Advisor is to conduct Direct Examination of their Party, should the Party choose to testify, and their Party’s witnesses.

An Advisor may appear and conduct Direct Examination even when the Party whom they are advising does not attend the hearing, so long as there has been some communication between the Advisor and their Party to select witnesses and prepare the Direct Examination. 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 witnesses or Direct 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 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.

2.2.1 UNM Advisors: Advisors who have been 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.

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 Cross-Examines a 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 must designate an Advisor and at their discretion, submit to the Hearing Coordinator information not previously considered by the investigator prior to the Pre-Hearing Conference. Additionally, the Party and their Advisor should prepare an Opening Statement, Direct and Cross-Examination questions, and a Closing Statement. A Party may testify on their own behalf. Close communication with the Advisor throughout the process is essential.

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. PREHEARING 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 their Advisors, if available, 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 their Advisors or separate Pre-Hearing Conferences for each Party and their Advisor. The Hearing Office facilitates separate Pre-Hearing Conferences upon request, which may be sent via email prior to the scheduled Pre-Hearing Conference.

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, pursuant to University Administrative Policy 3110, 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.

- **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.

- **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 Designated Advisor.
- **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 the CGP, upon completion of the Investigative Report, CEEO will submit the Investigative File 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 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.
- That a Preponderance of the Evidence standard will be applied by the Hearing Officer;
- The time and date of the hearing and whether the hearing will be in person or conducted via a virtual platform;
- Any technology that will be used to facilitate the hearing;
- A list of all those identified by the Parties who will attend the hearing, if known;
- Information regarding how the hearing will be recorded and how the Parties may 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. 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 and will be required to have one present to conduct Direct-Examination;
- Notification that if a Party does not secure an Advisor of their choice, the University will designate one free of charge;
- A copy of the Investigative Report created by CEEO.
- 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, 2745, 2760, or 3110 by an employee Respondent whose alleged conduct arises out of the same facts and circumstances as set forth in the Investigative Report.
- 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.
- A statement that individuals not designated by the Hearing Officer or these procedures are prohibited from recording the hearing.

ARTICLE 4. HEARINGS

4.1 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,

10 (Rev. August 2024)

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 person alleged to have violated these procedures may be subject to disciplinary action under the UNM policies applicable to each participant.

4.1.1 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 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.

4.1.2 Delays. A Party may request a delay in the hearing for good cause as described in Article 1.2.1. 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.

4.1.3 Advisor Designation. Each Party must have an Advisor for the purpose of conducting Direct-Examination of their Party (should they choose to testify) and the Party's witnesses. A Party may designate a person to serve as their Advisor or may request a University-designated Advisor at no cost by contacting the Hearing Coordinator.

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-designated Advisor without first selecting an Advisor of the Party's choice.

4.2 Opening and 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.

4.3 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 4.5 below), but UNM Administrative Hearings are not governed by state or federal Rules of Evidence.

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.

4.3.1 Cross-Examination Questions. Potential Cross-Examination questions for the opposing Party and their witnesses must be submitted, via email, in one attachment, by the respective Advisor with their Party copied on the message. Parties should not include the opposing Party and Advisor in this email. Questions must be submitted at least two (2) business days before the live hearing. The Hearing Officer retains sole discretion over what Cross-Examination questions are asked during the live hearing.

A witness's live testimony may raise new Cross-Examination questions from the opposing Party. Accordingly, the Hearing Officer will allow for brief follow-up Cross-Examination, conducted by the Hearing Officer, after initial questioning is complete. As needed, the Hearing Officer will facilitate a brief recess for the Party and Advisor to develop and submit new Cross-Examination questions arising from a witness's live testimony.

4.4 Determination of a Question as Relevant. Before a Party or witness responds to a question on Direct-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. Questions submitted for Cross-Examination will be reviewed for relevancy by the Hearing Officer separately.

4.5 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;
- Information protected by a legally recognized privilege (i.e., attorney-client privilege);
- Duplicative or cumulative evidence;
- A Party's FERPA-protected education records unless the Party gives written consent;
- A Party's HIPAA-protected treatment records unless the Party 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.

4.6 Order of Evidence. Pursuant to Article 4.3, 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 to have witnesses testify on a Party's behalf;
- Via their Advisor, conduct Direct-Examination;
- Provide follow-up testimony and via their Advisor, conduct follow-up Direct Examination.

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

4.7 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 testify on their own behalf. 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.

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.

4.8 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:

1. Questions must be conveyed in a neutral tone;
2. Parties, Advisors and witnesses will refer to all hearing participants 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 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. Advisors may not 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 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;
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.

4.8.1 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.

4.9 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 Proceedings. The Hearing Coordinator shall make a digital audio recording of all proceedings. The Parties may request a copy of records 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.

Records shall consist of the digital recordings of all proceedings 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 Closing and Impact Statements. After hearing the evidence, the Parties have the option of submitting to the Hearing Officer (a) written Closing Statement 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 Closing or Impact Statements to the Hearing Coordinator no later than five (5) business days following the final closing of the hearing. The Hearing Officer has discretion to allow additional time for written Closing 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:

- The names of the parties, their role in the investigation, and the associated investigation number.
- The policies implicated;
- A brief statement indicating whether or not a policy violation was found;
- A brief procedural history;
- In the event an advisor 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;
 - 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;
 - A list of witnesses who testified at the hearing;
 - An analysis of each alleged policy violation consistent with the University's Analysis of Claims, and the evidence relied upon by the Hearing Officer, including the following considerations, as applicable: the weight given to a particular statement or piece of evidence; any power differential that exists between the parties; the ability of a Party to affirmatively consent to alleged conduct, consistent with UAP 2740; the credibility of Parties and/or witnesses;
 - 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;
 - Sanctions, if any, determined by the sanctioning authority.²
 - 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. The Sanctioner is provided with a copy of the Administrative Hearing Determination, and on a case-by-case basis, may be provided additional documentation upon request. The Sanctioner 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.³
- 5.5 Remedies.** Upon a finding that the Respondent is responsible for a policy violation, CEEO or the Title IX Coordinator may provide Remedies to Complainant in adjudications involving UAP 2740 and 2760.

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

² Sanctions for faculty Respondents found responsible for violating UAP 2720 and/or 3110, unless such allegations concern the Violence Against Women Act, are issued separately pursuant to the UNM Faculty Handbook or CBA.

³ See above.

Determination and the policy, procedure, or order authorizing the appeal. In cases where a sanction is issued separately, and after, the issuance of an Administrative Hearing Determination, the appeal may be filed after receipt of the sanction.