

# D175: Undergraduate Student Conduct and Grievance Policy

Approved By: Faculty Senate and UNM President

Last Updated: **Draft 9/9/19**

Responsible Faculty Committee: Faculty Senate Policy Committee

Office Responsible for Administration: Dean of Students

Legend: Proposed text shown in **red**; proposed deletions shown in ~~strikeout~~. Large sections of deleted text shown at end of Policy draft to limit interruption of document flow.

Revisions to the Policy Rationale, Policy Statement, and Applicability sections of this document must be approved by the full Faculty Senate and the UNM President after consultation with the ASUNM President and the Dean of Students.

## POLICY RATIONALE

The University of New Mexico (UNM) is committed to academic excellence and student success. The UNM Student Grievance Procedure is intended to ~~This Policy~~ provides procedures for resolution of disputes of an academic nature between undergraduate students and UNM faculty, allegations of discrimination or sexual harassment by undergraduate students, and allegations of other kinds of undergraduate student misconduct, as well as procedures for handling undergraduate student disciplinary matters.

## POLICY STATEMENT

Whenever possible, it is important to take a supportive problem-solving approach to resolving academic disputes. However, UNM may take disciplinary action against an undergraduate student for a violation of the Student Code of Conduct or other UNM policy when the offense occurs on UNM premises or at a UNM-sponsored event, or when the violation occurs off campus and failure to take disciplinary action is likely to ~~threaten~~ disruption of the academic process or other campus functions, ~~interfere with the educational process or the orderly operation of UNM,~~ or endanger the health, safety or welfare of the UNM community or any individual student or employee. ~~UNM may take disciplinary action for a violation of the Visitor Code of Conduct when the offense occurs on UNM premises, as part of a UNM-sponsored event or in connection with University activities.~~

### 1. Matters Covered Under this Policy

The following ~~categories~~ types of disputes or disciplinary matters are covered by this Policy and handled in accordance with the procedures described in the Procedures Section of this document. Any questions about these procedures should be directed to the Office of the Dean of Students. The Dean of Students may create additional processes and procedures that are in accordance with this Policy to aid the Dean of Students in administration of this Policy.

**1.1. Academic record disputes** involving undergraduate students seeking retroactive withdrawal, enrollment, or disenrollment or for other academic record changes.

**1.2. Academic disputes** arising within the academic process, shall follow the procedures set for in Article 2, unless they involve allegations of academic dishonesty which are handled under Article 3. whereby an undergraduate student believes that he or she has been academic progress has been evaluated in an unfair or improper manner treatment by a faculty member or academic program/department in connection with the academic process. For example, it applies to disputes over assignment of grades, decisions about program or degree requirements or eligibility, or claims that course requirements are unfair.

**1.3. Allegations of Academic Dishonesty** arising from violation of academic dishonesty rules as defined in the Definitions Section herein.

#### **1.4. Allegations of Discrimination and/or Sexual Harassment**

UNM urges any individual who has experienced discrimination, sexual harassment, sexual misconduct and/or sexual violence, or has knowledge about such an incident, to report the incident to the Title IX Coordinator at Office of Equal Opportunity (OEO) within 24 hours, or as soon as reasonably practicable, by calling (505) 277-5251 or by email at oeounm@unm.edu. Confidential and/or anonymous reports can be made (refer to Procedures Section 4 herein for reporting options). Complaints can also be made to the UNM Ethicspoint Hotline 1-888-899-6092. The UNM OEO is tasked with investigating allegations of discrimination, sexual harassment, sexual misconduct and/or sexual violence and determining whether anti-discrimination policy has been violated. If OEO determines that an undergraduate student has violated UNM's anti-discrimination policy, disciplinary proceedings shall be handled under the Procedures set forth in Article 4 herein.

**1.5. Allegations of Student Misconduct NOT Involving Discrimination or Sexual Harassment** arising from violation of the Student Code of Conduct or other UNM policy.

## **2. Matters that may also be Covered under other UNM Policies**

### **2.1. Health Sciences Center (HSC) Students**

Additional policies and procedures listed in section 6.3.2 herein apply to HSC undergraduate students.

### **2.2. Visitors to the UNM campus**

Visitors to the UNM campus are subject to the Visitor Code of Conduct.

## **3. Matters Not Covered Under This Policy**

**3.1.** Disputes involving access to or information in an undergraduate student's educational records shall follow procedures set forth in the UNM Student Records Policy, published in the student handbook, the *Pathfinder*.

**3.2.** Grievances arising out of an undergraduate student’s status as a UNM employee hired through the Student Employment Office shall follow procedures set forth in the [UNM Student Employee Grievance Procedure](#), published in the student handbook, the *Pathfinder*.

**3.3.** Disputes involving matters occurring in the residence halls shall follow the procedures set forth in the *Residence Hall Handbook* in addition to this Policy.

**3.4.** Any undergraduate student grievances concerning decisions made by UNM personnel, outside the academic process, for which specific procedures are not established, shall be resolved between the [undergraduate](#) student and the office or department involved. If no resolution is reached, the parties may appeal to the appropriate dean or director and then to the appropriate vice president, [Provost, or Chancellor](#). Appeals should be filed in writing within [ten \(10\) working days](#) ~~one week~~ of the decision.

**3.5.** Resolution of disputes of an academic nature initiated by graduate [or professional](#) students shall follow the *Faculty Handbook* [Policy D176](#) “Graduate and Professional Student Grievance Policy.”

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## APPLICABILITY

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All academic UNM units, including the Health Sciences Center and branch community colleges.

Revisions to the remaining sections of this document may be amended with the approval of the Faculty Senate Policy and Operations Committees after consultation with the ASUNM President and the Dean of Students.

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## DEFINITIONS

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[Academic Dishonesty](#) includes, but is not limited to, [plagiarism \(including self-plagiarism\), dishonesty in quizzes, tests, or assignments; claiming credit for work not done or done by others; hindering the academic work of other students; misrepresenting academic or professional qualifications within or outside UNM; and nondisclosure or misrepresentation in filling out applications or other University records.](#)

[Complaint](#) refers to:

- [request for formal resolution of academic matters per Section 2.3. herein;](#)
- [allegations of prohibited discrimination as defined herein filed with UNM's Office of Equal Opportunity; or](#)
- [allegations of misconduct referred to the Dean of Students per Section 5.2. herein.](#)

[Discrimination](#) includes all forms of unlawful discrimination based on an individual's or group's protected class(es), including unlawful discrimination based on age (40 and over), ancestry, color, ethnicity, gender identity, gender/sex, genetic information, medical condition, national origin, physical or mental disability, pregnancy, race, religion, sexual orientation, spousal affiliation, veteran status and any other protected class as described in University

Administrative Policy #2720. Sexual harassment is a form of gender discrimination that includes sexual violence, which is considered a severe form of sexual harassment. For purposes of this Policy, "discrimination" also includes retaliation for having made allegations of discrimination, having participated in an investigation into allegations of discrimination, or otherwise having engaged in opposition to unlawful discrimination. Retaliation is explicitly prohibited under University Administrative Policies #2200, 2720, and 2740.

Misconduct is any activity performed by a UNM undergraduate student that violates state and/or federal laws or regulations, local ordinances, or UNM policy.

Office of Equal Opportunity or OEO is the UNM office that processes allegations of discrimination or sexual harassment as defined herein, including but not limited to investigating such allegations and making determinations as to whether or not UNM's policies prohibiting discrimination or sexual harassment have been violated. OEO does not issue sanctions for violations of policy.

Undergraduate Student includes both full-time and part-time students pursuing undergraduate studies, degree and non-degree, including credit and noncredit courses. Student status continues for the entire period of enrollment, including UNM holidays, class breaks and summer session, if the student is enrolled for the preceding spring and following fall academic terms.

Working Days refer to UNM traditional work days defined by UNM Human Resources as five (5) work days Monday through Friday ending at 5:00 PM. Working days do not include official UNM holidays listed in UAP Policy 3405 "Holidays."

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## WHO SHOULD READ THIS POLICY

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- Undergraduate students including branch community college students
- Faculty members
- Staff in the Office of the Dean of Students
- Staff in the Office of Equal Opportunity
- Staff at Student Health and Counseling (SHAC)
- Administrative staff responsible for undergraduate student events

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## RELATED DOCUMENTS

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### *Regents Policy Manual*

**RPM 1.5** "Appeals to the Board of Regents"

**RPM 4.2** "Student Code of Conduct"

**RPM 4.3** "Student Grievances"

**RPM 4.4** "Student Records"

**RPM 4.8** "Academic Dishonesty"

### *Faculty Handbook*

**D75** "Classroom Conduct"

**D100** "Dishonesty in Academic Matters"

**D176** “Graduate and Professional Student Conduct and Grievance Policy”

*University Administrative Policies Manual*

**2200** “Reporting Suspected Misconduct and Whistleblower Protection from Retaliation”

**2720** “Prohibited Discrimination and Equal Opportunity”

**2740** “Sexual Misconduct”

**3405** “Holidays”

The *Pathfinder*—UNM Student Handbook.

Office of Equal Opportunity **Discrimination Claims Procedures**

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## CONTACTS

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Direct any questions about this Policy to Dean of Students Office.

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## PROCEDURES

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Reasonable deviations from these procedures by UNM will not invalidate a decision or proceeding unless significant prejudice results. At branch community colleges, the role of Dean of Students will be performed by the applicable position designated at each branch community college.

### Article 1. Academic Record Disputes

#### 1.1. Scope

This article sets forth the procedures which should be followed by an undergraduate student seeking retroactive withdrawal, enrollment, or disenrollment, or for other academic record changes involving exceptions to the rules governing registration and academic records which are set forth in the *UNM Catalog*. It does not cover disputes involving academic judgment (e.g. grades).

#### 1.2. Petitions

**1.2.1.** An undergraduate student seeking a change in the student's ~~his or her~~ academic record within the scope of this article shall submit a petition to the Registrar's Office for consideration by the Faculty Senate Admissions and Registration Committee. The petition shall:

1. Include a statement of the nature of the request including why the student feels it should be granted.
2. Specify the semester involved and the subject/department code, course and section numbers.
3. Specify the student's name, UNM I.D. number, mailing address, email address and telephone number.
4. Include documentation of extenuating circumstances, such as medical, family, or employment needs.
5. Be typed and signed.
6. Optionally, include supporting statements from involved faculty and academic units.

**1.2.2.** Upon receipt of the petition, the Registrar’s Office shall forward a copy to the instructor of the course. The instructor shall make any response within fifteen (15) working days of receipt. If the instructor has not responded within fifteen (15) working days, the Faculty Senate Admissions and Registration Committee (“Committee”) shall proceed to consider the petition without the instructor's response.

### **1.3. Appeal**

At the next regular meeting after receipt of the instructor's response (or lack of response), the Faculty Senate Admissions and Registration Committee shall take action on the petition. If the Committee denies the petition, it shall issue a brief statement giving the reasons for the denial. Absent any new information from the undergraduate student, the Committee’s decision shall be final. If the undergraduate student has new information that was unavailable at the time the Committee made the decision and that may affect the Committee’s decision of denying the petition, the undergraduate student may request reconsideration from the Committee. The Committee’s decision upon reconsideration is final for UNM.

## **Article 2. Academic Disputes**

### **2.1. Scope**

This article sets forth the procedures which should be followed by an undergraduate student who believes that ~~he or she has been~~ **academic progress has been evaluated in** an unfairly or improperly **manner** ~~treated~~ by a faculty member or academic program/department. For example, it applies to disputes over assignment of grades, decisions about program or degree requirements or eligibility, or claims that course requirements are unfair.

### **2.2. Informal Resolution**

**2.2.1.** The **undergraduate** student should first try to resolve the grievance informally by discussing the grievance with the faculty member as soon as reasonably possible after the **undergraduate** student becomes or should become aware of the matter. If the **undergraduate** student and faculty member cannot reach agreement, the **undergraduate** student should discuss the grievance with the chairperson or supervisor of the department or division. If the grievance is still not resolved, the **undergraduate** student should discuss the grievance with the appropriate dean. When the dispute arises from a particular course, the appropriate dean is the dean of the college offering the course.

**2.2.2.** In these informal discussions, the chairperson, supervisor, or dean is encouraged to mediate the dispute actively. In particular, the chairperson, supervisor, or dean should talk to both the **undergraduate** student and the faculty member, separately or together, and should examine any relevant evidence, including any written statements the parties wish to submit.

**2.2.3.** These informal discussions shall be completed within twenty (20) working days ~~four weeks~~ after the **undergraduate** student **initially raised the issue with the faculty member.** ~~becomes or should become aware of the matter.~~

### 2.3. Formal Resolution Appeals of Academic Matters

If the informal discussions do not resolve the grievance, the undergraduate student may bring a formal complaint appeal using the procedures set forth in the following sections. During the formal resolution process, the chairperson and/or dean cannot overrule a faculty member's academic judgment. This formal complaint appeal process shall begin within ten (10) working days ~~two weeks~~ following completion of the informal discussions.

**2.3.1.** The undergraduate student shall make a written complaint to the appropriate dean within ten (10) working days following completion of the informal discussions.

**2.3.2.** The complaint shall describe the grievance, including a statement of what happened, and the undergraduate student's reasons for challenging the action or decision. The complaint shall also describe the undergraduate student's attempts to resolve the grievance informally. The undergraduate student may attach copies of any relevant documents. The undergraduate student shall send a copy of the complaint to the faculty member and the faculty member's ~~his or her~~ chairperson. The faculty member shall have five (5) working days ~~two weeks~~ from the receipt of the complaint to respond in writing to the dean. A copy of the faculty member's response shall be provided to the undergraduate student, consistent with the federal Family Educational Rights and Privacy Act (FERPA).

**2.3.3.** ~~In deciding the appeal~~ In making a determination on the formal complaint, the dean shall receive and review any written evidence or statements submitted by the parties, and shall provide both parties the opportunity to review and respond to all evidence. The dean shall interview each party and may interview other persons with relevant information. At the dean's ~~his or her~~ discretion, the dean may decide to hold an informal hearing involving both parties and any witnesses. Where the dispute primarily concerns factual questions, rather than matters of academic judgment, the dean should normally hold such a hearing. If a hearing is to be held, the dean will give the parties no less than five (5) working days notice. The undergraduate student and/or faculty member shall be allowed to bring an advisor to the hearing, but legal counsel shall not be permitted. Cross-examination of witnesses shall be permitted, but the dean may require that questions be directed through the dean.

**2.3.4.** At the dean's ~~his or her~~ discretion, the dean may convene an advisory committee to hold a hearing or otherwise help the dean ~~him or her~~ evaluate the dispute. For this purpose, the dean may utilize a standing committee appointed within the dean's college.

**2.3.5.** The dean shall issue a written decision explaining the dean's ~~his or her~~ findings, conclusions, and reasons for the decision. The decision shall be sent to each party, and to the faculty member's chair. The decision shall be made within twenty (20) working days ~~three weeks~~ after the complaint is filed, unless an informal hearing is held, in which case the decision shall be made within thirty (30) working days ~~four weeks~~. (This period may be extended to allow for UNM holidays or other periods when UNM is not in session.) The chairperson or dean cannot overrule a faculty member's academic judgment.

## 2.4. Appeal of Formal Decision

During the appeal process, the Provost, President, and/or Board of Regents cannot overrule a faculty member's academic judgment.

### 2.4.1. Appeal to Provost or Chancellor

Either party may appeal the dean's decision to the Provost or Chancellor within ten (10) working days of receipt of the decision. The Provost or Chancellor or designee shall resolve the grievance utilizing any procedures available to the dean set out above. At the Provost's or Chancellor's discretion, the Provost or Chancellor ~~his or her~~ may refer the matter to the Faculty Ethics and Advisory Committee for consideration of disciplinary action against the faculty member involved, if such action appears warranted.

### 2.4.2. Appeal to the President

~~The President has the discretionary authority to review all decisions by the senior administrators. A request for a review by the President shall be made in writing, and must include the alleged facts, what happened in the proceedings to date, and the reasons justifying extraordinary review. Such requests must be filed in the President's Office seven (7) ~~ten (10)~~ working days of the date of the written decision from the last reviewer.~~

### 2.4.2. Appeal to the Board of Regents

In accordance with Regent Policy 1.5 "Appeals to the Board of Regents," students affected by a decision of the administration, faculty, student government, or hearing board may appeal the decision to the Board of Regents. The Board has discretion to determine whether the appeal will be considered. A request for a review by the Board of Regents shall be made in writing, and must include the alleged facts, what happened in the proceedings to date, and the reasons justifying extraordinary review. Such requests must be filed in the President's Office within ~~ten (10)~~ seven (7) working days of the date of the written decision from the last reviewer.

## Article 3. Academic Dishonesty

### 3.1. Scope

This article sets forth procedures which shall be followed in cases of suspected academic dishonesty as defined in the Definitions Section of this Policy. These procedures are not exclusive; various UNM departments and programs may have additional policies and procedures on academic dishonesty.

### 3.2. Academic Dishonesty within Courses: Faculty-Imposed ~~Sanctions~~ Consequences

**3.2.1.** When a violation of the academic dishonesty rules appears to have occurred within the academic process, the faculty member shall discuss the apparent violation with the undergraduate student as soon as possible and give the undergraduate student an opportunity to explain. ~~After this discussion, T~~ The faculty member may impose an appropriate consequence ~~sanction~~ within the scope of the academic activity, such as grade reduction and/or involuntary withdrawal from the course. The faculty member shall notify the undergraduate student of the

academic consequence sanction. The faculty member should contact the Dean of Students Office to see if there are any prior incidents of academic dishonesty on file for that student.

**3.2.2.** The faculty member ~~should~~ may report the matter to the Dean of Students Office, by using the faculty adjudication form provided by that office or submitting written documentation describing the events and indicating if he/she the faculty member wishes the Dean of Students Office to pursue any additional disciplinary action against the undergraduate student. The faculty member may use the Dean of Students Office's faculty adjudication form in submitting the written documentation. The Dean of Students Office will notify the undergraduate student of the report, and the undergraduate student may request a copy of the report from Dean of Students Office. A copy of such report shall be sent by the Dean of Students Office to the student. In cases where the undergraduate student has multiple findings of academic dishonesty, the Dean of Students Office may initiate additional disciplinary action in accordance with the Policy.

**3.2.3.** The undergraduate student may challenge a faculty-imposed consequence ~~sanction~~ using the process defined in section 2.3 herein.

### **3.3. Academic Dishonesty in Other Settings**

When academic dishonesty occurs other than in connection with a course, the person who observes or discovers the apparent violation shall may transmit a statement describing the occurrence in writing to the appropriate faculty member or the Dean of Students. The Dean of Students Office will notify the undergraduate student of the report, and the undergraduate student may request a copy of the report from Dean of Students Office. A copy of such report shall be sent by the Dean of Students Office to the student. The faculty member or Dean of Students will address the situation in accordance with sections **3.2.1** or **3.4** herein, respectively.

### **3.4. Sanctions Imposed by the Dean of Students**

Upon receiving a report of academic dishonesty pursuant to section **3.3** herein, the Dean of Students may initiate disciplinary action in accordance with this Policy. In some instances, a faculty member may impose academic consequences and the undergraduate student may also be sanctioned by the Dean of Students for violating the Student Conduct Policy. A decision of the Dean of Students may be appealed in accordance with Section **5.5** herein.

## **Article 4. Allegations of Discrimination and/or Sexual Harassment**

UNM urges any individual who has experienced discrimination, sexual harassment, sexual misconduct and/or sexual violence, or has knowledge about such an incident, to report the incident to the Title IX Coordinator at Office of Equal Opportunity within 24 hours, or as soon as reasonably practicable, by calling (505) 277-5251 or by email at oeounm@unm.edu. Confidential and/or anonymous reports can be made. Complaints can also be made to the UNM Ethicspoint Hotline 1-888-899-6092.

UNM recognizes that an individual who has experienced sexual misconduct may want to speak with someone on campus before deciding whether to report the incident to the police or OEO for investigation. UNM and community partners have developed a victim-centered and victim-controlled process. The following centers are designated advocacy and support sites for those

students who have experienced all types of crimes or violence including sexual misconduct. Students who utilize these centers may talk with anonymity to individuals employed at these centers. However, these centers will report the nature, date of report, and general location of the incident to the Clery Act Compliance Officer. in OEO.

- LoboRESPECT Advocacy Center – Phone Number: (505)277-2911 Website: <https://loborespect.unm.edu/>
- LGBTQ Resource Center – Phone Number: (505)277-5428 Website: <https://lgbtqrc.unm.edu>
- Women’s Resource Center – Phone Number (505)277-3716 Website: <https://women.unm.edu>

#### **4.1. Scope**

This article sets forth the procedures which should be followed when there are allegations that an undergraduate student has engaged in an act of discrimination or sexual harassment, which ~~by definition~~ includes sexual misconduct and sexual violence.

#### **4.2. Reporting to/and Investigation by the Office of Equal Opportunity (OEO)**

**4.2.1.** Allegation(s) that a student has engaged in an act of discrimination or sexual harassment will be referred to UNM’s Office of Equal Opportunity (OEO) for investigation pursuant to OEO’s Discrimination Claims Procedure.

**NOTE #1:** Propose deletion of OEO procedures which are governed by OEO Claims Procedures—see proposed deleted text at end of this document.

**4.2.2.** OEO has no sanctioning authority. If the respondent is an undergraduate student other than an HSC undergraduate student and is found to have violated policy, OEO will refer the matter to the Dean of Students Office to determine the sanction to be imposed, as defined through Regent Policy 4.2 “Student Code of Conduct.” If the respondent is an HSC undergraduate student, OEO will refer the matter to the applicable HSC dean to determine the sanction. Before determining sanctions for sexual discrimination, the applicable HSC dean should consult with the Dean of Students to ensure consistency of sanctions pertaining to OEO findings. Sanctions should be designed to eliminate the misconduct, prevent its recurrence, and remedy its effects, while supporting UNM’s educational mission and obligations under UNM policy and state and federal law, including but not limited to Title IX of the Education Amendments of 1972, the Civil Rights Act of 1964, and the New Mexico Human rights Act.

If the respondent is a faculty member, OEO will refer the matter to the faculty member’s department chair to determine the sanction to impose in accordance with Faculty Handbook Policy C07 “Faculty Discipline.” If the respondent is a staff member, OEO will refer the matter to the staff member’s supervisor to determine the sanction to be imposed in accordance with University Administrative Policy 3215 “Performance Management.”

## 4.3. Appeals

### 4.3.1. Appeal OEO Findings to the UNM President

Students may appeal a final determination issued by OEO to the President within five (5) working days of the date of issuance of the final determination from OEO. Refer to the OEO Discrimination Claims Procedures for allowable grounds for appeal and procedures.

### **4.3.2. Appeal of Sanctions Issued by the Office of the Dean of Students**

Decisions regarding a sanction of suspension, expulsion or banning from campus or which results in a significant interruption toward degree completion imposed by the Office of the Dean of Students for violations of the University's prohibition against discrimination may be appealed to the Office of the President. The appeal must be in writing, contain a statement of the sanction (s) being appealed and the grounds therefore, and must be received at the Office of the President within seven (7) working days of the date of the written decision from the Office of the Dean of Students. Either the sanctioned student or complainant may appeal a sanctioning decision in cases involving sexual discrimination, sexual harassment, sexual misconduct, or sexual violence. Only the sanctioned student may appeal a sanctioning decision in cases involving discrimination that is not related to sexual harassment, sexual misconduct, or sexual violence.

Appeals of sanctions issued for violations of the University's prohibition against discrimination, including sex discrimination, sexual harassment, sexual misconduct, or sexual violence, are only permissible if the grounds for such appeal are that: 1) there was significant procedural error of a nature sufficient to have materially affected the outcome; 2) the decision was not in accordance with the evidence presented; 3) there is significant new evidence of which the appellant was not previously aware, that the appellant could not have possibly discovered through the exercise of reasonable diligence, and the absence of which was sufficient to have materially affected the outcome ; and/or 4) the severity of the sanction is grossly disproportionate to the violation(s) committed.

### **4.3.3. Appeal of Sanctions Issued by the Applicable HSC Dean**

Decisions regarding HSC undergraduate students receiving a sanction of suspension, expulsion or banning from campus or which results in a significant interruption toward degree completion imposed by the applicable HSC dean for violations of the University's prohibition against discrimination may be appealed to the HSC Chancellor. The appeal must be in writing, contain a statement of the sanction (s) being appealed and the grounds therefore, and must be received at the Office of the Chancellor within seven (7) working days of the date of the written decision from the applicable HSC dean. Either the sanctioned student or complainant may appeal a sanctioning decision in cases involving sexual discrimination, sexual harassment, sexual misconduct, or sexual violence. Only the sanctioned student may appeal a sanctioning decision in cases involving discrimination that is not related to sexual harassment, sexual misconduct, or sexual violence.

Appeals of sanctions issued for violations of UNM's prohibition against discrimination, including sex discrimination, sexual harassment, sexual misconduct, or sexual violence, are only permissible if the grounds for such appeal are that: 1) there was significant procedural error of

a nature sufficient to have materially affected the outcome; 2) the decision was not in accordance with the evidence presented; 3) there is significant new evidence of which the appellant was not previously aware, that the appellant could not have possibly discovered through the exercise of reasonable diligence, and the absence of which was sufficient to have materially affected the outcome ; and/or 4) the severity of the sanction is grossly disproportionate to the violation(s) committed.

#### **4.3.3.1. Discretionary Appeal to the UNM President**

The President has the discretionary authority to review the decision of the HSC Chancellor. A request for a review by the President shall be made in writing, and must include the alleged facts, what happened in the proceedings to date, and the reasons justifying extraordinary review. Such requests must be filed in the President's Office within seven (7) ~~ten (10)~~ working days of the date of the written decision from the last reviewer.

#### **4.3.1. Appeal to the Vice President for Student Affairs**

The decision on sanctions made by the Dean of Students Office may be appealed to the Vice President for Student Affairs ~~if the sanction imposed is suspension, expulsion or banning from the campus or results in a significant interruption toward degree completion.~~ The undergraduate student must submit a written request for appeal to the Vice President for Student Affairs within ten (10) working days of the date of the written decision from the Dean of Students. The Vice President for Student Affairs will send written notification of the decision to the appealing party within ten (10) working days of receiving the request for appeal. A copy of the decision shall be sent to the Dean of Students.

#### **4.3.2. Appeal to the President**

The President has the discretionary authority to review all decisions by senior administrators. A request for a review by the President shall be made in writing and must include the alleged facts, what happened in the proceedings to date, and the reasons justifying extraordinary review. Such requests must be filed in the President's Office within ~~ten (10)~~ seven (7) working days of the date of the written decision from the last reviewer.

#### **4.3.4. Appeal to the Board of Regents**

In accordance with Regent Policy 1.5 "Appeals to the Board of Regents," students affected by a decision of the administration, faculty, student government, or hearing board may appeal the decision to the Board of Regents. The Board has discretion to determine whether the appeal will be considered. A request for a review by the Board of Regents shall be made in writing and must include the alleged facts, what happened in the proceedings to date, and the reasons justifying extraordinary review. Such requests must be filed in the President's Office within ~~ten (10)~~ seven (7) working days of the date of the written decision from the last reviewer.

#### **4.4. Disciplinary Information Provided to Victim of Violence or a Non-forcible Sex Offense**

Upon written request, Dean of Students UNM, to the extent permitted by the federal Family Educational Rights and Privacy Act (FERPA), will disclose to the individual who alleges that they were subjected to a crime of violence or a nonforcible sex offense the final results of the disciplinary proceedings conducted by UNM issued to the undergraduate student who is the alleged perpetrator of the offense(s) alleged. If the individual who is alleged to have been subjected to the crime of violence or nonforcible sex offense at issue is deceased as a result of

such offense(s), the next of kin of such individual shall be treated the same as that individual for the purpose of disclosing the final result of the disciplinary proceedings.

Additionally, in cases of sexual violence as described herein, the respondent and inquiring parties have the right to be notified in writing of the final determination and any sanctions imposed to the extent permitted by the federal Family Educational Rights and Privacy Act (FERPA).

**NOTE #2:** Propose deletion of Rights of Complainants Alleging Sexual Violence because they are governed by OEO Claims Procedures—see proposed deleted text at end of this document.

## **Article 5. Allegations of Student Misconduct NOT Involving Discrimination or Sexual Harassment.**

### **5.1. Scope**

This article sets forth the procedures which should be followed when there are allegations that an undergraduate student violated Regent **Policy 4.2** “Student Code of Conduct” or other UNM policy not involving discrimination or sexual harassment, which are addressed in **Article 4** herein.

### **5.2. Referral of Misconduct to Dean of Students Office for Non-HSC Students**

Allegations of misconduct in violation of the Student Code of Conduct or other UNM policy must be in writing and submitted to the Dean of Students Office which has primary authority to deal with disciplinary matters pertaining to undergraduate students other than HSC undergraduate students. Complaints of alleged misconduct should be submitted as soon as possible after the event takes place, preferably within sixty (60) calendar days. Absent just cause, complaints must be submitted within one (1) year following discovery of the suspected misconduct.

The standard of proof utilized to resolve misconduct violating the Student Code of Conduct ~~and Visitor Code of Conduct~~ charges shall be that of preponderance of the evidence, meaning that the evidence, considered in its entirety, indicates that, more likely than not, the accused undergraduate student (or chartered student organization) ~~or visitor~~ violated UNM policy or the Code of Conduct. Charges will be resolved in accordance with the Dean of Students Procedures. The Dean of Students may refer the complaint to the Student Conduct Officer for review, investigation, and/or resolution. A decision, in most cases, will be rendered within sixty (60) calendar days of the filing of a complaint. This date can be modified at the discretion of the Dean of Students ~~or the Student Conduct Officer~~ if deemed necessary such as to conduct a hearing that protects the rights of all parties. Decisions of the Dean of Students pertaining to undergraduate students are subject to appeal in accordance with Section **5.5** herein.

#### **5.2.1. Options for Resolving the Charges**

Upon referral, or upon the Student Conduct Officer's his or her own initiative, the Student Conduct Officer may review relevant evidence and consult with the person referring the allegation, the undergraduate student accused, and any witnesses. The Student Conduct Officer will send written notification to the accused undergraduate

student indicating the nature of the activity in which the undergraduate student was allegedly involved, and what UNM rules were allegedly violated. The undergraduate student will be given the opportunity to meet with the Student Conduct Officer to review the options for resolving the charges.

If the undergraduate student fails to attend the meeting, the Student Conduct Officer may decide the charges based upon the information available and/or place a hold on the undergraduate student's registration. The accused undergraduate student will also be offered one or more of the following options to resolve the charges; however, the Student Conduct Officer is authorized to refer the charges for a formal hearing before the Student Conduct Committee even if the undergraduate student does not elect a formal hearing. If an undergraduate student fails to select an option, the Student Conduct Officer will decide which hearing process will be followed. The options for resolving the charges are:

**5.2.1.1. Mediation:** This option is reserved for situations where all relevant parties in an incident agree to have a conflict resolved through mediation and sign an agreement to mediate. If all parties agree to this process and mediation is successful, a formal finding will not be issued with regard to the Student Code of Conduct charges. However, failure of the mediation process or failure to fulfill the terms of a final mediation agreement could lead to reactivation of these charges and additional disciplinary action. Mediation will not be used to resolve complaints alleging sexual violence.

**5.2.1.2. Informal Disposition Conference:** The accused undergraduate student and Student Conduct Officer will meet informally to discuss the alleged violation(s). If the substantive facts and sanction can be agreed upon, a disciplinary action agreement will be prepared by the Student Conduct Officer and signed by the accused undergraduate student. A signed disciplinary action agreement will constitute a waiver by the student of the right to an administrative hearing or formal hearing as well as any appeal, and an acceptance of the findings and sanction.

**5.2.1.3. Administrative Hearing with the Student Conduct Officer:** This option allows the accused undergraduate student to present evidence to the Student Conduct Officer for consideration and suggest witnesses that the Student Conduct Officer may consider interviewing before a decision is rendered. The Student Conduct Officer may contact other individuals who have knowledge about the incident giving rise to the charges. The party waives the right to question such individuals or otherwise participate in an evidentiary hearing. Administrative Hearings are not tape recorded. Within three (3) weeks of the completion of all witness interviews, the Student Conduct Officer will send the party charged a letter which indicates the finding in the case and any disciplinary sanction imposed. The Student Conduct Officer may find the party charged not responsible for violating the Student Code of Conduct, or may find the party responsible and impose a disciplinary sanction in accordance with Article 4 of the Student Code of Conduct.

**5.2.1.4. Formal Hearing with the Student Conduct Committee:** The Student Conduct Committee will hold a hearing when a party chooses the hearing option of a formal hearing before the Committee or when the Student Conduct Officer refers the matter to the Committee. This option allows the accused undergraduate student to respond to the charges, present witnesses on the student's his or her own behalf and question witnesses. Formal hearings are tape recorded. Within three (3) weeks of the conclusion of the hearing, the Student Conduct Committee will send the party charged a letter which indicates the finding in the case and any disciplinary sanction imposed. The Student Conduct Committee may find the party charged not responsible for violating the Student Code of Conduct, or may find the party responsible and impose a disciplinary sanction in accordance with Article 4 of the Student Code of Conduct.

A formal hearing with the Student Conduct Committee is conducted in accordance with the Dean of Students Hearing Procedures, approved by the UNM President, that ensure all the rights listed in section 6 herein.

**Note #3:** The above sentence results in proposed deletion of the detailed hearing procedures in the current policy; see proposed deleted text at end of this document.

Decisions of the Student Conduct Committee are subject to appeal to the Vice President for Student Affairs, as per Article 5.7.1 herein if the sanction imposed by the Committee is suspension, expulsion or banning from the campus

or results in a significant interruption toward degree completion. Per Section sections 5.7.2 and 5.7.3 the President and Board of Regents have discretionary authority to review decisions of the Student Conduct Committee and senior administrators.

The Student Conduct Committee will consist of three (3) members, ordinarily including one (1) undergraduate student, one (1) faculty member and one (1) staff member, with the Dean of Students serving as an additional, nonvoting member and Chair of the Student Conduct Committee. The undergraduate student, faculty member, and staff member of a Student Conduct Committee are drawn from a standing pool consisting of faculty members designated by the Faculty Senate President, staff members designated by the Staff Council President, and undergraduate student members designated by the Presidents of ASUNM and GPSA.

B. No one may serve on the Student Conduct Committee who has a conflict of interest or bias with respect to the case to be heard such that he or she cannot hear the case fairly and impartially, however, prior knowledge of the parties in the case or of the conduct that is the subject of the case does not itself constitute a conflict of interest or bias. Allegations that a member of the Committee has a conflict of interest or is biased shall be reviewed by the Dean of Students, whose decision is final.

C. A party charged may be found responsible for violating the Code of Conduct by a majority vote of the Student Conduct Committee.

**5.2.1.5.** When a case involves misconduct violating the Student Code of Conduct charges against more than one party, the Student Conduct Officer will determine whether to hold one hearing to resolve charges against all parties or hold separate hearings for each accused undergraduate student.

**5.2.1.6.** The Student Conduct Officer will prepare an Investigation Report for the Student Conduct Committee. The Investigation Report includes, among other things, summaries of interviews with the complainant, the accused undergraduate student and any third-party witnesses; photographs of the relevant site(s); other relevant evidence; and a detailed written analysis of the events in question. The Investigation Report will be provided to the Student Conduct Committee, the complainant, and the accused undergraduate student.

**5.3.** An undergraduate student allegedly committing a criminal offense under state or federal law that is also a violation of the Student Code of Conduct or other UNM policy may be subject to UNM disciplinary proceedings. UNM may pursue disciplinary action against an undergraduate student at the same time the undergraduate student is facing criminal charges for the same offense, even if the criminal prosecution is pending. UNM may also pursue disciplinary action even if criminal charges were dismissed, reduced, or resolved in favor of the undergraduate student-defendant.

**5.4.** Unless otherwise specified in the decision, sanctions issued by the Dean of Students Office (not including an Emergency Suspension as outlined in in section 5.5 herein) shall not be implemented until the appeal process as set forth under section 5.7 herein is completed.

### **5.3. Referral of Misconduct to Applicable HSC Dean for HSC Undergraduate Students**

Allegations of misconduct by an HSC undergraduate student in violation of the Student Code of Conduct, HSC Student Conduct policies, or other UNM policy must be in writing and submitted to the applicable HSC dean. Complaints of alleged misconduct should be submitted as soon as possible after the event takes place, preferably within sixty (60) calendar days. Absent just cause, complaints must be submitted within one (1) year following discovery of the suspected misconduct.

The standard of proof utilized to resolve misconduct charges shall be that of preponderance of the evidence, meaning that the evidence, considered in its entirety, indicates that, more likely than not, the accused undergraduate HSC student violated UNM or HSC policies. The applicable HSC dean will render a decision within sixty (60) calendar days of the filing of a complaint. This date can be modified at the discretion of the dean if deemed necessary such as to conduct a hearing that protects the rights of all parties.

An HSC undergraduate student allegedly committing a criminal offense under state or federal law that is also a violation of the Student Code of Conduct or other UNM policy may be subject to UNM disciplinary proceedings. UNM may pursue disciplinary action against an HSC undergraduate student at the same time the HSC undergraduate student is facing criminal charges for the same offense, even if the criminal prosecution is pending. UNM may also pursue disciplinary action even if criminal charges were dismissed, reduced or resolved in favor of the HSC undergraduate student-defendant.

#### 5.4. Emergency Suspension and Banning from Campus

The Dean of Students may immediately suspend an undergraduate student (or chartered student organization) and/or ban an undergraduate student ~~or visitor~~ if the Dean concludes that the person's continued presence on the campus may endanger persons or property or may threaten disruption of the academic process or other campus functions. When a person has been immediately suspended or banned by the Dean of Students, the person may request to meet with the Dean to consider whether the emergency suspension should be continued. ~~The meeting shall be held as soon as possible (no later than one week) after the request. The Dean of Students shall give the person an opportunity to explain his or her position and shall receive evidence or hear from witnesses with pertinent information, if requested by the person. In the case of a chartered student organization, the Dean will meet, if requested, with the organization's president or other designated officer.~~

~~C. After the meeting, if the Dean finds that the person's continued presence may endanger persons or property or threaten disruption of the academic process or other campus functions, the Dean shall continue the suspension and/or ban. Otherwise, the emergency suspension and/or ban shall be revoked or modified.~~

For undergraduate students and chartered student organizations, an emergency suspension or banning does not end the disciplinary process. Resolution of the charges will proceed as set forth herein. ~~Visitors will normally be given the opportunity to meet with the Dean of Students to discuss alleged violations of the Visitor Code of Conduct prior to a decision concerning the visitor's final status on campus. For visitors, the Dean of Students will decide whether to maintain an emergency ban and make it permanent, or modify or end the emergency ban, ordinarily after giving the visitor an opportunity to meet. The decision of the Dean of Students concerning a visitor is final.~~

#### 5.5. Appeals, Records, and Rights

##### 5.5.1. Appeal of Sanctions by Issued by Dean of Students ~~to Vice President for Student Affairs~~

The decision on sanctions pertaining to undergraduate students made by the Dean of Students may be appealed to the Vice President for Student Affairs if the sanction imposed by the Committee is suspension, expulsion or banning from the campus or results in a significant interruption toward degree completion. The undergraduate student must submit a written request for appeal to the Vice President for Student Affairs within ~~ten (10)~~ seven (7) working

days of the date of the written decision from the Dean of Students. The grounds for appeal to the Vice President are that: 1) there was significant procedural error of a nature sufficient to have materially affected the outcome; 2) the decision was not in accordance with the evidence presented; 3) there is significant new evidence of which the appellant was not previously aware, that the appellant could not have possibly discovered through the exercise of reasonable diligence, and the absence of which was sufficient to have materially affected the outcome ; and/or 4) the severity of the sanction is grossly disproportionate to the violation(s) committed. ~~or the Student Conduct Committee.~~ A complainant may appeal to the Vice President only in cases involving alleged sexual violence.

The Vice President for Student Affairs will send written notification of the decision to the appealing party within seven (7) ~~ten (10) working days~~ two weeks of receiving the request for appeal. A copy of the decision shall be sent to the Dean of Students.

The grounds for appeal to the Vice President are the same as for an appeal to the Dean of Students (see Article 7.1(A)). On appeal the Vice President for Student Affairs shall review the decisions of the Student Conduct Officer, Student Conduct Committee and/or the Dean of Students. The Vice President for Student Affairs may meet with the party appealing to discuss the reasons for the appeal.

C. After reviewing the case, the Vice President for Student Affairs may:

i. Affirm or overturn the findings of the Dean of Students or the Student Conduct Committee;

ii. Affirm or alter the sanction imposed by the Dean of Students or the Student Conduct Committee; or

iii. Remand the case to the original tribunal (Student Conduct Committee or Student Conduct Officer) for further proceedings. A remand will generally occur where new evidence is to be reviewed or as otherwise determined by the Vice President for Student Affairs. Where a case is remanded, the decision of the Student Conduct Committee or Student Conduct Officer may be appealed after rehearing to the Vice President for Student Affairs.

### **5.7.2. Appeal to the President**

The President has the discretionary authority to review all decisions by senior administrators. A request for a review by the President shall be made in writing, and must include the alleged facts, what happened in the proceedings to date, and the reasons justifying extraordinary review. Such requests must be filed in the President's Office within ten (10) ~~seven (7)~~ working days of the date of the written decision from the last reviewer.

### **5.5.2. Appeal of Sanctions Issued by the Applicable HSC Dean**

Decisions regarding HSC undergraduate students receiving a sanction of suspension, expulsion or banning from campus or which results in a significant interruption toward degree completion imposed by the applicable HSC dean for violations of UNM or HSC policies may be appealed to the HSC Chancellor. The undergraduate HSC student must submit a written request for appeal to the Office of the HSC Chancellor within seven (7) ~~ten (10)~~ working days of the date of the written decision from the applicable HSC dean. The grounds for appeal to the HSC Chancellor are that: 1) there was significant procedural error of a nature sufficient to have materially affected the outcome; 2) the decision was not in accordance with the evidence presented; 3) there is significant new evidence of which the appellant was not previously aware, that the appellant could not have possibly discovered through the exercise of reasonable diligence, and the absence of which was sufficient to have materially affected the outcome ; and/or 4) the severity of the sanction is grossly disproportionate to the violation(s) committed.

The HSC Chancellor will notify the appealing party of the Chancellor's decision within ten (10) working days of receiving the request for appeal. A copy of the decision shall be sent to the applicable HSC dean.

#### **5.5.2.1. Discretionary Appeal to the UNM President**

The President has the discretionary authority to review the decision of the HSC Chancellor. A request for a review by the President shall be made in writing, and must include the alleged facts, what happened in the proceedings to date, and the reasons justifying extraordinary review. Such requests must be filed in the President's Office within seven (7) ~~ten (10)~~ working days of the date of the written decision from the last reviewer.

#### **5.5.3. Appeal to the Board of Regents**

In accordance with Regent Policy 1.5 "Appeals to the Board of Regents," students may appeal the decision to the Board of Regents. The Board has discretion to determine whether the appeal will be considered." A request for a review by the Board of Regents shall be made in writing, and must include the alleged facts, what happened in the proceedings to date, and the reasons justifying extraordinary review. Such requests must be filed in the President's Office within ~~ten (10)~~ seven (7) working days of the date of the written decision from the last reviewer.

### **Article 6. General Provisions**

The following provisions are applicable to all portions of this Policy

#### **6.1. Undergraduate Student ~~and Visitor~~ Conduct Records**

Records regarding undergraduate student conduct shall be kept in the Dean of Students Office for a period of ten (10) years after final disposition, except for records of expulsions which shall be permanently maintained. ~~Records regarding action taken against visitors to UNM may be permanently maintained. Tape recordings of Student Conduct Committee hearings will be maintained in the Dean of Students Office for the same time period as the written records pertaining to the case. Copies of the final decision shall, in an academic dishonesty case, be sent to the faculty member.~~

#### **6.2. ~~Rights of those Charged with Violations~~ the Parties Participating in ~~Student Code of Conduct~~ Grievances**

**Rights of Those Charged**

**Rights of Complainants**

The rights of the parties participating in grievances as provided herein include:

**6.2.1. The party charged with an alleged violation has** the right to written notice of the charges at issue in the proceeding that contains sufficient detail and time to prepare for a hearing.

**6.2.2. The party charged with an alleged violation has** the right to a timely hearing before an appropriate official or committee.

**6.2.3. The party charged with an alleged violation has** the right to know the nature and source

of the evidence used in a hearing process.

**6.2.4.** Both parties have the right to present evidence ~~in~~ on their ~~his or her~~ own behalf.

**6.2.5.** Both parties have the right to choose not to testify and/or not to answer questions; in such cases, the decision maker will decide the charges based upon all of the evidence presented.

**6.2.6.** Subject to the limits set forth in this Policy, both parties have the right to be accompanied by an advisor at a hearing. The advisor may be an attorney retained by a party at their ~~his or her~~ own expense. The advisor, including an attorney advisor, cannot act as a representative of the advisee, cannot have a voice in meetings or hearing and therefore is not permitted to present arguments or evidence or otherwise participate directly in meetings or hearing.”

**6.2.7.** The party alleging that the accused undergraduate student engaged in misconduct has the right to submit a victim impact statement to the hearing officer or committee during the sanctioning portion of the discipline process.

**6.2.8.** The party alleging that the accused undergraduate student engaged in misconduct has the right to have past irrelevant behavior excluded from the discipline process.

**6.2.9.** Both parties have the right to be free from retaliation for having made an allegation of misconduct or having participated in a grievance under this procedure. See UAP Policy **2200** “Reporting Suspected Misconduct and Whistleblower Protection from Retaliation.”

### **6.3. Variances**

#### **6.3.1. Introduction**

This Policy, ~~These Student Grievance Procedures~~ to the extent applicable, shall apply to all UNM units. Because of differences in administrative structure, however, some modifications to these rules are necessary. The following sections identify those modifications.

#### **6.3.2. Health Sciences Center**

Undergraduate students in academic programs in the Health Sciences Center (HSC) have adopted student codes of conduct (including standards of professionalism) with which undergraduate students in those academic programs must comply, in addition to the UNM Student Code of Conduct and other UNM policies. Except for allegations of discrimination or sexual harassment, which shall be referred to the UNM OEO Office as provided in Article 4 herein, to the extent that HSC academic programs have adopted policies and procedures that govern the adjudication of undergraduate student conduct and undergraduate student grievance matters, those policies and procedures supersede this Policy. A decision by the dean of the School of Medicine, College of Pharmacy, College of Nursing, or College of Population Health may be appealed to the HSC Chancellor, or ~~his or her~~ designee, under procedures adopted by the Chancellor's Office.

Discretionary review by the UNM President and Board of Regents, as provided for in Section 5.5 herein, is accorded to undergraduate students in academic programs in the HSC.

Academic programs in the School of Medicine, College of Pharmacy and College of Nursing may, at their discretion, refer cases of alleged student misconduct to the UNM Dean of Students for review and possible action under the UNM Student Code of Conduct, except that allegations that a student in a Health Sciences Center academic program has engaged in any act of sexual violence shall be referred to the UNM Office of Equal Opportunity.

#### 6.4. Former Students

These procedures apply to disputes between undergraduate students and other members of the UNM community. If the undergraduate student has left the UNM community (by graduation or otherwise), these procedures shall continue to apply so long as the event giving rise to the dispute occurred while the student was a member of the UNM community and so long as UNM has the power to resolve the matter. UNM retains the right to change grades or rescind degrees, when, after the grade or degree has been awarded, it discovers new information indicating that the grade or degree was not earned in accordance with all UNM academic, student conduct and other applicable requirements and policies.

#### 6.5. Designees of Deans, Vice Presidents, Vice Chancellors, or Senior Level Administrators

Whenever this Policy specifies an action or decision by a college/school dean, the Dean of Students, a vice president, a vice chancellor, or other senior level administrator, that individual may delegate consideration and decision of the matter to a designee. Such designee will normally be, but is not required to be, a member of the decision maker's staff.

Below are sections that are proposed to be deleted:

**NOTE #1** Propose deletion of the following OEO procedures from Section 4.4 of current policy because they are governed by OEO Claims Procedures

~~A. A complaint alleging that a student has engaged in an act of sexual violence, as defined in footnote 1 herein, or sexual harassment, as defined in University Administrative Policy #2730, will be referred to the University's Office of Equal Opportunity (OEO) for investigation pursuant to OEO's Discrimination Claims Procedure. OEO will issue a Final Letter of Determination finding either No Probable Cause or Probable Cause that the accused student has committed an act of sexual violence or otherwise violated the University's prohibition against sexual harassment. The accused student and complainant have the right to appeal OEO's Final Letter of Determination as provided for in OEO's Discrimination Claims Procedure.~~

~~B. If Probable Cause is found that a student committed an act of sexual violence or sexual harassment, OEO will refer the matter to the Dean of Students Office to determine the sanction to be imposed. Sanctions should be designed to eliminate the misconduct, prevent its recurrence, and remedy its effects, while supporting the University's educational mission and obligations under Title IX. Ordinarily, after consulting with the accused student, the Student Conduct Officer will decide which of the options set forth in Section 4.2(B) herein will be utilized to determine the sanction. The options of an administrative hearing with the Student Conduct Officer and the formal hearing with the Student Conduct Committee will be modified as appropriate so as to focus solely on determining what sanction(s) to impose.~~

~~C. The decision on sanctions made by either the Student Conduct Officer or Student Conduct Committee may be appealed as provided for by Article 7 herein, except that the only permissible grounds for appeal is that there was significant procedural error of a nature sufficient to have materially affected the outcome of the sanction decision,~~

and/or the severity of the sanction is grossly disproportionate to the violation(s) committed. Both the accused student and the complainant may appeal the sanction decision. Neither the accused student nor the complainant may appeal the findings and determination made by OEO in the Article 7 appeals process.

D. f OEO finds No Probable Cause that a student committed an act of sexual violence or sexual harassment, OEO will refer the matter to the Dean of Students Office for review to determine whether charges under any other provisions of the UNM Student Code of Conduct are warranted or other action should be taken.

**NOTE #2:** Propose deletion of the following Rights of Complainants Alleging Sexual Violence because they are governed by OEO Claims Procedures

#### ~~7.6. Rights of Complainants Alleging Sexual Violence~~

~~Because of the serious nature of the alleged action, in addition to the rights listed in Article 7.5, complainants alleging sexual violence also have these additional rights:~~

~~A. The right to request to be permitted to testify from another room or in such a way as to be visually screened from the accused student.~~

~~B. The right to know the nature and source of the evidence used in a hearing process and to submit evidence and suggest witnesses, consistent with the rights of the accused.~~

~~C. The right to be notified in writing of the final determination and any sanctions imposed to the extent permitted by the federal Family Educational Rights and Privacy Act (FERPA).~~

~~D. The right to be informed of options to notify law enforcement authorities on and off campus as to the incident and to be assisted in doing so by campus officials. Criminal complaints filed with law enforcement are investigated separately from the student disciplinary process.~~

~~E. The right to be informed about other resources on campus, including UNM's Office of Equal Opportunity, Student Health and Counseling, and the Women's Resource Center.~~

~~F. The right to be informed of interim measures available to assist the complainant during the disciplinary process, for example, making reasonable changes in academic and/or on campus living situations, and providing counseling or security escort service on campus.~~

~~G. The right to have past sexual history excluded as evidence unless the Dean of Students makes a specific finding that it is relevant.~~

~~H. The right to appeal a decision of the Student Conduct Officer or the Student Conduct Committee, subject to the same requirements and limitations as the accused.~~

**Note #3:** Propose deletion of the following rules for hearings because hearings will follow Model Hearing Procedures approved by the President.

The following rules shall apply to formal hearings conducted by Student Conduct Committee:

~~6.1 The hearing shall be closed, unless the Dean of Students decides to let others attend if he or she deems that their presence may be helpful to the review and determination of the charges, or if there are other compelling reasons for their presence.~~

~~6.2. The accused student, the complainant and their advisors, if any, shall be allowed to attend the entire portion of the hearing at which information is received (excluding deliberations).~~

~~6.3. The accused student and the complainant may each have an advisor (including an attorney) attend the hearing. The role of the advisor is to provide his or her advisee with support and counsel regarding the~~

process. The advisor (including an attorney advisor) cannot act as a representative of his or her advisee, cannot have a voice in the hearing and therefore is not permitted to present arguments or evidence or otherwise participate directly in the hearing.

6.4. Student Conduct Committee members may question the accused student, the complainant and any witnesses.

6.5. The accused student has the right, within reasonable limits set by the Dean of Students to question all witnesses who testify. The Dean of Students may also permit the complainant to question the witnesses, within reasonable limits. However, the accused student and the complainant will not be permitted to directly question each other in hearings to determine the sanction to be imposed on a student for whom UNM's Office of Equal Opportunity has issued a Probable Cause determination under Article 4.4 herein. Questions for the accused student and the complainant from the other party may be suggested by each of them to the Student Conduct Committee who will decide whether to pose them.

6.6. The accused student and the complainant may each request the presence of witnesses at the hearing by informing the Dean of Students of their names and expected testimony at least five business days before the hearing. Based upon the Investigation Report, the Student Conduct Committee may call witnesses not identified by either the complaint or the accused student. The Dean of Students may refuse to call a requested witness if he or she determines that the expected testimony is not sufficiently relevant to the charges, would be duplicative of other testimony, or would otherwise not be significantly helpful to the review and determination of the charges. The Dean of Students will try to arrange the attendance of witnesses who are members of the University community (students, staff and faculty). The accused student and complainant are responsible for arranging the attendance of persons from outside of the University. The Student Conduct Committee has no subpoena authority. The accused student and complainant will each receive a list of witnesses called to testify at least three business days before the hearing.

6.7. The accused student and the complainant may each submit pertinent documentary evidence for consideration by the Student Conduct Committee at least five business days before the hearing. As with witnesses, the Dean of Students may, for the reasons cited in Article 6.6, decline to accept a party's evidence. Both parties will be provided access to all documentary evidence accepted, consistent with the federal Family Educational Rights and Privacy Act (FERPA).

6.8. The Student Conduct Committee may proceed independently to secure evidence for the hearing. Both parties will have an opportunity to review any such evidence at least three business days before the hearing, consistent with the federal Family Educational Rights and Privacy Act (FERPA).

6.9. The hearing will be tape recorded and the Dean of Students Office will keep the tape(s). The tape is the property of the University. No typed record will be made.

6.10. The rules of evidence used in civil or criminal trials are not applicable to formal hearings conducted by the Student Conduct Committee.

6.11. Within three weeks of the conclusion of the hearing, the Student Conduct Committee will send the accused student a decision letter which includes the Committee's findings and any disciplinary sanction imposed. The Student Conduct Committee may find the party charged not responsible for violating the Code of Conduct, or may find the party responsible and impose a disciplinary sanction. As set forth in Article 7.6.C, in a case of alleged sexual violence, the complainant will also be notified of the Student Conduct Committee's decision, to the extent permitted by the federal Family Educational Rights and Privacy Act (FERPA).

6.12. The Student Conduct Committee may seek advice from the Office of University Counsel throughout the adjudication process on questions of law or procedure; however, factual determinations are the exclusive domain of the Committee.

6.13. Decisions of the Student Conduct Committee are subject to appeal to the Vice President for Student Affairs, as per Article 7.2 herein, if the sanction imposed by the Committee is suspension, expulsion or banning from the campus.

**Note #4:** Propose deletion of the following procedures for appeal because they violate Regent Policies 1.5 and 4.3 pertaining to appeals.

~~10.4. Review by the President and the Board of Regents~~

~~A. The parties' right to appeal decisions under these procedures terminates where indicated herein. The President and the Board of Regents normally review appeals of student grievance or disciplinary decisions only in extraordinary cases, such as where proper procedures have apparently not been followed, where the decision appears to be unsupported by the facts, or where the decision appears to violate University policy.~~

~~B. Requests for review made to the President or the Board of Regents normally will be considered only after the avenues of appeal established herein have been exhausted. C. If review is granted, appropriate procedures shall be set by the President or the Board of Regents. The procedures shall be communicated to the parties in advance, and shall provide each party the opportunity to explain his or her position orally and/or in writing. New evidence (such as additional documents or testimony of witness) will not normally be taken by the President or Regents.~~

~~10.5. Conflict with Other Procedures~~

~~Except as otherwise stated herein, in the event this Student Grievance Procedure conflicts with previously adopted policies and procedures, these procedures shall take precedence.~~

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## HISTORY

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May 13, 2014 – Revisions approved by the President  
July 2, 2013 – Revisions approved by the President  
June 19, 2001 – Revisions approved by the President  
March 5, 1999 – Revisions approved by the President  
May 1995 – Revisions approved by the President  
May 1994 – Revisions approved by the Faculty Senate  
August 11, 1987 – Approved by Board of Regents  
May 2, 1987 – Approved by GSA Senate  
April 1, 1987 – Approved by ASUNM Senate  
March 10, 1987 – Approved by Faculty Senate

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## DRAFT HISTORY

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September 9, 2019—Draft revision updated to address campus comments.

February 19, 2019 – Draft revision updated for FSPC changes in response to recommendations from Operations Committee.

February 9, 2019 – Draft revision updated with recommendation from Operations Committee for consideration by Policy Committee.

October 4, 2018 -- Draft revision updated to include latest review by Policy Committee

September 26, 2018 – Draft revision updated to include latest review by Policy Committee

June 23, 2017 – Draft revision updated to address campus comments and Policy Committee recommendations.

March 13, 2017 – Draft revisions to remove DOS procedures and other D175 Taskforce recommendations.

January 2, 2017—Draft revisions based on D175 Taskforce recommendations.

September 20, 2016—Draft revision developed to address inconsistencies between the Pathfinder and Faculty Handbook.