

APM 140 HEARING PROCEDURES
UC Davis

The following procedures implement Academic Personnel Manual (APM) Policy 140-80 regarding conduct of a hearing by a hearing officer.

A. Pre-Hearing Conference

The hearing officer may require a pre-hearing conference between the parties and relevant representatives when the hearing officer determines that holding such a conference is likely to facilitate the conduct of the hearing.

1. **Timing:** The pre-hearing conference should be held, if possible, at least 30 days prior to the scheduled date of the hearing.
2. **Participants in the pre-hearing:** The hearing officer, counsel to the hearing officer, the parties and/or their representatives, and the grievance liaison.
3. **Alternative resolution:** The hearing officer shall inquire of the parties about the possibility of informal resolution in lieu of the hearing, and offer an opportunity for related discussions.
4. **Definition of issues:** The hearing officer will seek the mutual agreement of the parties to the issues to be decided at the hearing. At least 14 days prior to the hearing, the parties shall submit to the hearing officer any achieved agreement on the issues to be determined, as well as a request for consideration of any issues to which no agreement by the parties could be reached. If the parties cannot agree on the issue/s to be determined, the hearing officer shall define them. At least 7 days prior to the hearing, the hearing officer will notify the parties of a determination of contested issues that will be considered at the hearing.
5. **Stipulation of uncontested facts:** The hearing officer will seek the agreement of the parties as to those facts, if any, about which there is no dispute. Any stipulation as to facts shall be submitted to the hearing officer no later than the start of the hearing.
6. **Exchange of witnesses and documents:** At least 10 days prior to the hearing, each party shall provide the other party with copies of materials the party will seek to introduce at the hearing, and the names of witnesses whom the party intends to testify on its behalf in the case. The hearing officer has the discretion to limit each party to those witnesses whose names were disclosed to the other party prior to the hearing and otherwise to limit evidence to that which is relevant to the issues before the hearing officer.
7. **Participants in the hearing:** In the absence of an agreement of both parties in writing to the presence of additional persons, the hearing shall be closed to all persons other than the principal parties to the grievance, i.e., the hearing officer, the hearing officer's counsel, the supervisor or department or unit head, the supervisor's or department's or unit head's representative, the grievant, the grievant's representative, and the grievance liaison.
8. **Recording of hearing:** The hearing shall be recorded. The hearing officer has the discretion to use a certified court reporter (whose cost is borne by the administration) for this purpose, and the parties and their representatives shall have the right to a copy of the recording or transcript. The cost of the copy shall be assumed by the requesting party.
9. **Briefing:** The hearing officer will seek the agreement of the parties with respect to whether pre-hearing and post-hearing briefs will be submitted by the parties, as well as the deadlines

for those briefs. Generally, each party is permitted to provide pre-hearing briefs if it wishes, with the requirement that any such briefs be submitted to the hearing officer and the other party at least 7 days prior to the hearing.

In the absence of a contrary agreement among the parties and the Hearing Officer, post-hearing briefs are generally required. If a stenographic record of the hearing is created by a court reporter, the parties' briefs are generally due two weeks following the receipt of the hearing transcript by the parties, unless the parties agree to an alternative briefing schedule. The parties may seek permission of the hearing officer to submit further briefing.

The parties may not introduce new evidence in their briefs that was not presented at the hearing.

- 10. Confirm date and expected duration of hearing:** The hearing officer will confirm a date for the hearing when each party and its representatives will be able to attend, and will estimate the duration of the hearing based on estimates of the hearing's duration from each party.
- 11. Review the hearing procedures:** the hearing officer will address any questions the parties may have as to the procedures for the hearing.

B. Hearing Procedures

- 1. Participants in the hearing:** In the absence of an agreement of both parties in writing to the presence of additional persons, the hearing shall be closed to all persons other than the principal parties to the grievance, i.e., the supervisor or department or unit head, the supervisor's or department's or unit head's representative, the grievant, the grievant's representative, and the grievance liaison.
- 2. Introduction of Evidence:** Each party shall have the opportunity to present evidence, cross-examine witnesses, and submit rebuttal evidence. Evidence may be oral and/or documentary. Issues regarding the admissibility and weight of evidence shall be decided by the hearing officer.
 - a. The hearing officer shall not have the authority to issue subpoenas. The hearing officer shall handle all procedural issues which arise before and during the hearing.
 - b. The hearing need not be conducted according to the technical legal rules relating to evidence and witnesses.
 - c. The hearing officer may, upon an appropriate showing of need by any party or on its own initiative, request files and documents under the control of the administration.
 - d. All confidential information introduced into evidence, including the identity of confidential sources of personnel evaluations, shall remain so within the hearing and with the hearing officer.
 - e. The hearing officer may call witnesses or make evidentiary requests on the officer's own volition. The hearing officer also has the discretion to require that all witnesses affirm the veracity of their testimony.
 - f. No evidence other than that presented at the hearing shall be considered by the hearing officer or have weight in the proceedings, except that the hearing officer may take notice of any judicially noticeable facts that are commonly known. Parties present at the hearing shall be informed of matters thus noticed, and each party shall

be given a reasonable opportunity to object to the hearing officer's notice of such matters.

3. **Burden of Proof:** At the hearing, the grievant shall bear the burden of establishing by a preponderance of the evidence that:
 - a. a specific administrative act was arbitrary or capricious and adversely affected the appointee's then-existing terms or conditions of appointment (see APM - 140-4-a-1); and/or
 - b. a violation of applicable University rules, regulations, or Academic Personnel policies occurred which adversely affected the appointee's then-existing terms or conditions of appointment. (APM 140-4-A-2)

However, in instances where the grievant is grieving corrective action, including dismissal, under APM 150, then the administration shall bear the burden of establishing by a preponderance of the evidence that the corrective action was taken for good cause.

4. **Findings and recommendations:** Within 30 days of the close of the hearing or, if applicable, of the submission of the parties' post-hearing briefs, the hearing officer shall provide the parties in the case, the grievance liaison and the Chancellor with a written statement of findings and recommendations.