

*UC Davis*  
*Employee and Labor Relations*

**Post Deprivation Hearing Procedures**

Effective: February 05, 2010

1. Applicability. This protocol is applicable when a grievance deriving from a collective bargaining agreement (MOU) is filed after the MOU expires and the grievance alleges the University deprived a Grievant(s) of a vested right or benefit (e.g., wages earned, accrued vacation or holiday hours or pay, or a career employee Grievant's layoff, disciplinary suspension, or dismissal). Union grievances are not eligible for processing under this protocol.
2. Employee & Representative Contact Information. The Grievant's appeal to post-deprivation hearing shall include the employee's current home address, and the name, mailing address, telephone number, and e-mail address of the employee's representative, if any.
3. Hearing Officer Selection.
  - a. University Hearing Officer. Within thirty (30) calendar days after receiving the Union's appeal to post-deprivation hearing, the University shall select an available University Hearing Officer to preside over the post-deprivation hearing and shall convey that selection to the Grievant along with a copy of this protocol.
  - b. Arbitrator. If no University Hearing Officer is available, the University shall choose an arbitrator to serve as the Hearing Officer. If an arbitrator serves as the Hearing Officer the University shall solely bear the arbitrator's costs and fees, except with respect to cancellations and/or postponements. Fees and costs relating to cancellations or postponements are borne entirely by the requesting party.
  - c. Challenging the University's Hearing Officer Selection. The Grievant may challenge the first Hearing Officer, whether University Hearing Officer or arbitrator, for any or no reason. Subsequent Hearing Officer challenges must be for cause.
  - d. Grievant's Duty to Respond. If the Grievant fails to contact the University within thirty (30) calendar days to confirm or challenge the selected Hearing Officer, the University's last preceding written answer shall become final.
  - e. Hearing Officer Impartiality. The Hearing Officer shall be impartial, fair, and shall have no bias towards any party to the proceeding and no financial (or other) interest in the outcome.

4. Hearing Time & Location. The University shall choose the time and location for the hearing. The hearing shall be scheduled at a reasonable time on a date when the Grievant is available, and on a date which provides the Grievant a reasonable period of time to prepare for the hearing. The University shall make a reasonable attempt to schedule the hearing within one hundred and eighty (180) days after the date the University receives the appeal to post-deprivation hearing.
5. Recording the Hearing. The University, in its sole discretion, may create an audio recording of the hearing. Either party may request a stenographic record, the cost of which shall be paid by the party requesting such services unless the parties agree otherwise. A copy of the stenographic record may be provided to a party only upon payment of one-half of the total costs of the stenographic services.
6. Grievance Consolidation. Prior to hearing, the University may, in its sole discretion, consolidate some or all of the Grievant's grievances, provided each consolidated grievance is subject to this protocol. If the University consolidates grievances, the University shall provide the Grievant written notice of the consolidation at the earliest opportunity, and in no case less than thirty (30) calendar days prior to the hearing.
7. Statement of the Issue(s). At least ten (10) calendar days prior to the hearing, the University and the Grievant shall attempt to agree upon the issue(s) to be decided by the Hearing Officer and shall convey the issue(s) to the Hearing Officer. If the parties are unable to agree upon the issue(s) to be determined at hearing, each shall submit their proposed issue statement to the other and to the Hearing Officer at least five (5) calendar days prior to the hearing. The Hearing Officer is not vested with authority to hear evidence or rule on any issue(s) not stated at Step 3.
8. No Subpoena Authority. The Hearing Officer, whether University Hearing Officer or arbitrator, is not vested with subpoena authority or power; there is no mechanism for compelling witness testimony.
9. No Formal Discovery. There is no mechanism for formal discovery. The University shall provide the Grievant with the materials upon which the decision was based. To the extent possible, at least ten (10) calendar days prior to the hearing each party shall provide the other with copies of the exhibits and the names of witnesses it intends to present at hearing.
10. Grievant's Representation. The Grievant may be self-represented or may be represented by another person at the hearing. However, pursuant to the Higher Education Employer-Employee Relations Act (HEERA), the Grievant shall not be represented by a University employee who is designated as managerial, supervisory, or confidential.
11. Release Time. The Grievant shall be granted time off with pay during scheduled working hours to attend the hearing. If the Grievant's representative is a member of the same bargaining unit as the Grievant, s/he shall be granted time off with pay during scheduled working hours to attend the hearing. Travel time is not included in the calculation of release time.

12. Closed Hearing. Unless the parties agree in writing otherwise, the hearing shall be closed. The participants in the hearing shall be: the Hearing Officer, the court reporter (if any), the Grievant, the Grievant's representative/advocate, the University's departmental representative, and the University advocate. All witnesses shall be sequestered prior to and after testifying.
13. Admissibility of Evidence. Formal rules of evidence are not applicable. However, evidence protected as privileged under California law is inadmissible, as is evidence relating to settlement negotiations and subsequent remedial measures. Hearsay evidence alone shall be insufficient to support a finding of fact. The Hearing Officer shall judge the evidence based upon its reliability. The Hearing Officer may exclude evidence from either party that s/he determines is irrelevant to the issue(s) to be decided.
14. Order of Case Presentation. If the issue to be decided is whether the University had just cause to support discipline, the University shall present its case-in-chief first. In all other matters, the Grievance shall present her/his case-in-chief first.
15. Presentation of Evidence. The Grievant shall have the opportunity to present evidence which is favorable to the Grievant. The Grievant has the right to appear and testify on her/his own behalf. The Grievant and the University shall have the right to present witnesses on their behalf and to cross-examine witnesses. Hearing testimony shall be done under oath or affirmation. All evidence to be considered by the Hearing Officer shall be submitted at the hearing; the Hearing Officer shall not consider evidence not presented at the hearing.
16. Closing Arguments/Post-Hearing Briefs. Upon completion of the presentation of evidence, the parties may agree to make closing arguments in lieu of post-hearing briefs. If the parties do not agree to closing arguments, the parties shall submit post-hearing briefs within thirty (30) calendar days after the final hearing date. The parties may agree in writing to extend the post-hearing brief filing date.
17. Hearing Officer Report. The Hearing Officer shall mail her/his report (Report) to the Grievant's representative and the appropriate University administrator at the Dean or Vice Chancellor level for the Grievant's work unit (Dean/VC) within thirty (30) calendar days of the close of hearing, or as soon as practicable thereafter. The Report shall contain the following items: (a) statement of issue(s); (b) position of the parties; (c) findings of fact; and (d) recommended decision.
18. Final Decision. Within twenty (20) calendar days of receiving the Report, Dean/VC shall render a final decision on the grievance (Decision), and shall send a copy of the Decision to the Grievant, the Grievant's representative, if any, the University's departmental representative, and the University advocate. The Decision shall take into consideration the Hearing Officer's Report and shall provide the reason(s) for accepting, modifying, or denying the requested remedy(ies).