



Regulations Governing Academic Freedom and Tenure

New Mexico Institute of Mining and Technology
Socorro, New Mexico 87801

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I. INTRODUCTION

A. Purpose

1. The purpose of the academic freedom and tenure regulations at New Mexico Institute of Mining and Technology (hereinafter referred to as the "Institute") is to protect the freedom of inquiry and expression by its professional teaching and research staff. The regulations are intended to be consistent with the policy of the Institute to provide Equal Employment Opportunity and a Program for Affirmative Action that will prohibit discrimination because of color, creed, sex, age, race, national origin, handicap, or veteran status.

2. The Institute endorses the principles of academic freedom and tenure set forth by the American Association of University Professors in its 1940 *Statement of Principles on Academic Freedom and Tenure* and the 1984 edition of *AAUP Policy Documents and Reports*.

B. Applications of Regulations

1. Part II of these regulations applies to the professional teaching and research staff of the Institute who are tenured or hold probationary appointments in positions that lead to the acquisition of tenure. Persons covered by Part II of these regulations are referred to in Part II as "staff members" and include, but are not necessarily limited to, full-time professional staff members who are engaged at least half-time in teaching and/or research at the Institute, including the College, the State Bureau of Mines and Mineral Resources, the Office of Research and Economic Development, the Center for Explosives Technology Research, and the Petroleum Recovery Research Center. This does not include persons appointed to positions that are specified as temporary, such as research associateships, visiting positions, and post-retirement positions. Every letter of appointment to a professional staff position shall state whether or not the position is one that leads to the acquisition of tenure.

2. Part III of these regulations applies to graduate assistants and other professional staff members.

C. Implementation of Regulations

These regulations supersede all previous regulations and statements of policy concerning academic freedom and tenure at the Institute and are effective for persons appointed previous to, as well as subsequent to, the adoption of these regulations. All professional staff members shall be informed in writing of their tenure status and whether they are covered by Part II of these regulations.

D. Committee on Academic Freedom and Tenure

A Committee on Academic Freedom and Tenure, selected by the Institute Senate, shall have authority as set forth elsewhere in these regulations. The committee shall consist of five members.

E. Ombudsman

“Ombudsman” refers to a person or committee selected by the Institute Senate or equivalent body for the informal investigation of complaints.

II. TENURED AND PROBATIONARY STAFF

In this part, "staff" member refers to a person who is tenured or who holds a probationary appointment in a position that leads to the acquisition of tenure.

A. Statement of Terms of Appointment

1. All appointments to positions that qualify for the acquisition of tenure are of two kinds:

- a. probationary appointments
- b. appointments with tenure.

2. The terms, conditions, and professional status of every appointment shall be stated in writing in the appointment document, a copy of which shall be supplied to the staff member. Any modifications to an appointment must be agreed to by the staff member. Any special understandings or any notices required of either party shall be stated in writing and a copy shall be given to the staff member.

3. All staff members holding probationary appointments shall be informed each year in writing of all matters relative to their eligibility for the acquisition of tenure.

4. After the expiration of the probationary period, a staff member shall have tenure.

5. The President or the President's delegated representative shall notify staff members of the terms and conditions of their appointment for the following academic or fiscal year no later than May 15 and normally on or before April 15.

B. Probationary Appointments

Probationary appointments may be for one year, or for other stated periods, subject to renewal. The total period of full-time probationary service as a staff member of the Institute prior to the acquisition of tenure shall not exceed six years. Except as provided in Section II-H, time spent on leave of absence shall count as probationary period service, unless the individual and the Institute agree to the contrary at the time leave is granted.

C. Termination of Appointment by the Staff Member

A staff member may terminate his or her appointment effective at the end of an academic or fiscal year, provided that he or she gives notice in writing at the earliest possible opportunity, but not later than May 15 or 30 days after receiving notification of the terms of his or her appointment, whichever occurs later. The staff member may request a waiver of this requirement of notice in case of hardship or in a situation where he or she would otherwise be denied substantial professional advancement or other opportunity. Any decision of the administration not to waive this requirement shall be final.

D. Non-reappointment and Termination of Appointments by the Institute

1. Written notice by the President that a probationary appointment is not to be renewed may be given to the staff member during his or her period of probation, provided that the date of written notification precedes both the date of termination and the expiration of the probationary period by at least the times indicated in the following schedule:

- a. if notice is given during the first year of service, three months
- b. if notice is given during the second year of service, six months
- c. if notice is given after the second year of service, twelve months.

In no event shall non-reappointment constitute or be considered a dismissal.

2. Termination of an appointment with tenure, or of a probationary appointment before the end of the specified term, for reasons other than those specified in Sections II-D-3 through II-D-6, can be effected by the Institute only for adequate cause and is termed a *dismissal*. Adequate cause for a dismissal shall be related, directly and substantially, to the fitness of the staff member in his or her professional capacity as a teacher or researcher. Dismissal shall not be used to restrain staff members in their exercise of academic freedom or other legal rights. Written notice of dismissal shall be transmitted to the staff member by the President prior to any public announcement pertaining thereto.

3. In every case of termination due to financial exigency or discontinuance of a program or department of instruction except as specified in Section II-D-4, the staff member concerned shall be given written notice by the President as soon as possible, and in advance of the date of termination, in accordance with the periods guaranteed according to the schedule in Section II-D-1. In lieu thereof, the staff member shall be given equivalent severance salary.

4. Staff members whose initial appointments are to positions for which salaries are supported entirely from contracts or grants and whose employment is therefore subject to long-term financial uncertainty cannot be guaranteed notice or severance pay according to the schedule in Section II-D-1. In case of termination for financial exigency or discontinuance of a program, probationary and tenured staff in this category shall have at least one month's written notice or at least one month's pay in lieu of notice. Such notice of this regulation shall be included in the initial letter of appointment.

5. Determination of financial exigency or discontinuance of a program or department must have the concurrence of the Board of Regents of the Institute. Before terminating an appointment because of the abandonment of a program or of a department of instruction, the Institute shall make every effort to place affected staff members in other suitable positions. If an appointment is terminated before the end of the period of appointment because of financial exigency or because of the discontinuance of a program of instruction, the released staff member's place shall not be filled by a replacement within a period of two years, unless the released staff member has been offered reappointment and a reasonable time within which to accept or decline it.

6. Termination of a tenured appointment or of a probationary appointment before the end of the period of appointment for medical reasons shall be based upon clear and convincing medical evidence which shall, if the staff member so requests, be reviewed by the Ombudsman before a final decision is made by the Board of Regents of the Institute on the recommendations of the President and/or the Committee on Academic Freedom and Tenure.

E. Appeal Procedures

1. A staff member who receives written notice of dismissal shall have the right to:

a. written notification of the reason(s) for dismissal, stated with reasonable particularity by the President or the President's delegate;

b. discussions between the staff member and appropriate administrative officers looking toward a mutual settlement;

c. informal inquiry by the Ombudsman, who shall provide an opinion pertaining to the validity of the reason(s) for dismissal.

2. In the event that the steps stated in Section II-E-1 do not lead to a settlement satisfactory to all parties involved, the staff member shall have the right to a formal hearing by the Committee on Academic Freedom and Tenure.

a. No one shall sit on the hearing committee who has any ascertainable bias or interest in the matter or its outcome. A member of the hearing committee with an ascertainable bias or interest shall recuse himself or herself from hearing the matter and is subject to disqualification for cause in the event he or she does not voluntarily withdraw. The staff member and the administration shall each have a maximum of two challenges of members of the hearing committee without stated cause, and members so challenged shall not participate as committee members in the proceedings. If challenges and disqualifications reduce the size of the hearing committee, the Institute Senate (or equivalent body) shall add members to the committee for that particular hearing. Both the staff member and the administration shall have two challenges without stated cause for members added by the Institute Senate.

b. The hearing committee may, with the consent of the parties concerned, hold joint pre-hearing meetings with the parties in order to (1) simplify the issues, (2) effect stipulations of facts, (3) provide for the exchange of documentary or other information, and (4) achieve such other appropriate pre-hearing objectives as shall make the hearing fair, effective, and expeditious.

c. Service of notice of hearing with specific reason(s) for dismissal in writing shall be made at least 20 days prior to the hearing. The staff member may waive a hearing. If the staff member does not waive a hearing, he or she must respond to the reason(s) for dismissal in writing at least 5 days before the hearing. If the staff member waives a hearing, but denies the validity of the stated reason(s) for dismissal or asserts that the stated reason(s) do not support a finding of adequate cause, the hearing committee shall evaluate all available evidence submitted by either party, including any testimony that may be offered, and rest its recommendation upon the evidence in the record.

d. The staff member shall have the right to choose to the extent permitted by law that the meeting be open or closed.

e. During the proceedings, the staff member shall be permitted to have an advisor and a counsel of the staff member's choice, and the administration shall be permitted to have a counsel of its choice.

f. At the request of either party or of the hearing committee, a representative of a recognized educational organization shall be permitted to attend the proceedings as an observer.

g. A taped recording of the hearing or hearings shall be taken, and a copy of that recording shall be made available to the staff member on request without cost.

h. The burden of proof that adequate cause exists rests with the Institute. The burden of proof is established by a preponderance of evidence.

i. The hearing committee shall grant adjournments to enable either party to investigate evidence when a valid claim of surprise is made.

j. The staff member shall be afforded an opportunity to obtain necessary witnesses and documentary or other evidence, and the administration of the Institute shall, insofar as it is possible for it to do so, secure the cooperation of such witnesses and make available necessary documents and other evidence within its control.

k. The staff member and the administration shall have the right to confront and cross examine all witnesses. Where the witness cannot or will not appear, but the hearing committee determines that the interests of justice require admission of his or her statement, the committee shall identify the witness, disclose the statement, and, if possible, provide for interrogatories directed to the witness.

l. In the hearing of charges of incompetence, the testimony may include that of qualified staff members from this or other institutions.

m. The hearing committee shall not be bound by strict rules of legal evidence, and may admit any evidence which is of probative value in determining the issues involved. Every possible effort shall be made to obtain the most reliable evidence available.

n. The findings of fact and the conclusion shall be based solely on the evidence submitted to the committee during the course of its hearing. The conclusion shall be accompanied and supported by findings of fact regarding each of the stated reasons for dismissal.

o. Except for such simple announcements as may be required covering the time of the hearing and similar matters, public statements and publicity about the case by either the staff member or administrative officers shall be avoided so far as possible until the proceedings, including consideration by the Board of Regents of the Institute, have been completed. The President and the staff member shall be given a copy of the record of the hearing.

p. If the hearing committee concludes that adequate cause for dismissal has not been established by the evidence in the record, it shall so report to the President. If the President rejects the report, he or she shall state the reasons for doing so, in writing, to the hearing committee and to the staff member. If the hearing committee concludes that adequate cause for a dismissal has been established, but that an academic penalty less than dismissal would be more appropriate, it shall so recommend, with supporting reasons.

3. If dismissal or other penalty is recommended by the hearing committee and/or by the President, the President shall, on request of the staff member, transmit to the Board of Regents of the Institute the record of the case. Review by the Board of Regents shall be based on the record of the committee hearing, the committee's conclusions and supporting rationale, and the President's comments. The Board of Regents shall provide additional opportunity for argument, oral or written or both, by each of the parties or by their representatives. The recommendation of the hearing committee shall either be sustained or the proceeding returned to the committee with specific objections. The committee shall then reconsider, taking into account the stated objections and receiving new evidence if necessary. In the event the Board of Regents has referred a matter back to the committee for reconsideration, the Board of Regents shall make a final decision only after study of the committee's reconsideration.

4. If a staff member on a probationary appointment alleges that violations of academic freedom significantly contributed to a decision not to reappoint him or her, the staff member's allegations shall be given preliminary consideration by the Ombudsman, who shall seek to settle the matter by informal methods. In seeking to resolve the matter, the Ombudsman may solicit evidence from the administration concerning the reasons for non-reappointment. If the difficulty is unresolved at this stage, and if the Ombudsman so recommends, the matter shall be heard in the manner set forth in Section II-E-2, except that the staff member making the complaint is responsible for stating the grounds upon which his or her allegations are based, and the burden of proof shall rest upon him or her. If the staff member succeeds in establishing a *prima facie* case, it is incumbent upon those who made the decision not to reappoint him or her to come forward with evidence to show that violations of academic freedom did not contribute to the decision not to reappoint.

5. Where termination of an appointment is based upon financial exigency, or upon *bona fide* discontinuance of a program or department of instruction, staff members shall be able to have the issues reviewed by the Institute Senate (or equivalent body) or by the Ombudsman, with ultimate review of all controverted issues by the Board of Regents of the Institute.

F. Suspensions

The immediate termination of a staff member from his or her duties is termed a *suspension*. The staff member can be suspended, or assigned to other duties in lieu of suspension, only if immediate harm to others is threatened by his or her continuance. Before suspending a staff member, the President or the President's delegate shall consult with the Committee on Academic Freedom and Tenure. A suspension must be followed

by a hearing before the Committee on Academic Freedom and Tenure. Salary shall continue during the period of suspension. A suspension which is intended to be final is a dismissal, and shall be dealt with as such.

G. Terminal Salary

Upon the final decision rendered at the Institute upholding the dismissal of a staff member with tenure, his or her salary shall cease at the latest of the following times: (1) the effective date of dismissal specified in the initial notice of dismissal, (2) one year from the first notice of dismissal, or (3) the date of the final decision at the Institute upholding the dismissal.

Upon the final decision at the Institute upholding the dismissal of a staff member without tenure, his or her salary shall cease at the latest of the following times: (1) the effective date of dismissal specified in the initial notice of dismissal, (2) at the end of a period of time from the first notice of dismissal which is equal to the time period such a person would have been entitled to receive under Section II-D-1, or (3) the date of the final decision at the Institute upholding the dismissal.

H. Political Activities of Staff Members

Staff members, as citizens, are free to engage in political activities. Leaves of absence may be given for the duration of an election campaign or a term of office, on timely application, and for a reasonable period of time. The conditions of such leave of absence shall be set forth in writing, and the leave shall affect tenure status only in that its duration shall not count as probationary service. Exceptions may be granted by the administration.

I. Grievance Procedures

If a staff member feels that he or she has cause for grievance in any matter other than dismissal, he or she may petition the Ombudsman for redress. If it is the opinion of the Ombudsman that the grievance constitutes a possible violation of the academic freedom of the staff member, and if a settlement of the grievance is not possible or appropriate at that time, the findings of the Ombudsman shall be reported to the President, and the staff member shall be provided an opportunity to present his or her case to the Committee on Academic Freedom and Tenure. Review by the Committee on Academic Freedom and Tenure shall be based on the findings of the Ombudsman and arguments, oral or written or both, by either of the parties to the grievance or their representatives. The conclusion of the committee shall be reported, in writing, to the President. The Employee Grievance Procedure, as detailed in the *Employee Handbook*, may be used by a staff member seeking redress in matters not related to Academic Freedom and Tenure.

III. Graduate Assistants, Postdoctoral Fellows, and Professional Staff

A. Graduate Assistants and Postdoctoral Fellows

1. The terms and conditions of every appointment to a graduate student research or teaching assistantship shall be stated in writing, and a copy of the appointment document shall be supplied to the graduate assistant or fellow.

2. If a graduate assistant is not reappointed and can satisfy the Committee on Academic Freedom and Tenure that he or she has established *prima facie* that a violation of academic freedom contributed to his or her non-reappointment, he or she shall be given a statement of reasons by the administration and an opportunity to be heard by the Committee on Academic Freedom and Tenure. Inasmuch as graduate assistants are provided support in order to aid them in reaching certain academic goals, non-reappointment based on violation of the regulations of the Institute or on insufficient academic progress shall not be considered a violation of academic freedom.

3. Postdoctoral fellowships are not considered to carry any expectation of reappointment.

4. In no case shall a graduate assistant or postdoctoral fellow be dismissed prior to the expiration of the term of his or her appointment without having been provided with a statement of reasons by the administration. Upon dismissal, the student or fellow shall have an opportunity to be heard before the Committee on Academic Freedom and Tenure.

5. Graduate assistants and postdoctoral fellows, if the dismissal involves issues of academic freedom, are entitled to the grievance procedures set forth in Section II-1 of these regulations.

B. Professional Staff

1. Any member of the professional staff who has not been reappointed and who is not otherwise protected by the preceding regulations and who can satisfy the Committee on Academic Freedom and Tenure that he or she has established *prima facie* that a violation of academic freedom contributed to his or her non-reappointment must be given a statement of reasons by the administration and an opportunity to be heard by the Committee on Academic Freedom and Tenure.

2. Any member of the professional staff who has been dismissed prior to the expiration of the term of appointment and is not otherwise protected by the preceding regulations must be provided with a statement of reasons by the administration and an opportunity to be heard by the Committee on Academic Freedom and Tenure.

3. Where an administrator alleges that a violation of academic freedom significantly contributed to a decision to terminate his or her appointment to an administrative post, or not to reappoint him or her, that person is entitled to the procedures set forth in Section II-E.

4. All professional staff members are entitled to the grievance procedures set forth in Section II-1 of these regulations.