

## **Complaint Resolution Policy and Procedure for Complaints Directed at Instructional Staff (Faculty, including Instructors) (approved by the Faculty Senate March 2024)**

This complaint policy and procedure is available to any employee or student for the resolution of any disagreement or problem arising out of instructional staff conduct that is allegedly inconsistent with New Mexico Tech's policies or procedures, or inconsistent with any federal or state laws, regulations, rules, or policies, as they apply to an employment relationship. Examples of potential behavior, performance issues, and activities applicable to this policy and procedure include, but are not limited to, those listed in Appendix A.

This policy and procedure does not apply to those situations and circumstances covered in NMT's:

- Notice of Non-Discrimination:
  - inquiries and violations regarding the University's non-discrimination policies can be directed to the Affirmative Action/EEOC Director & ADA Compliance Officer, while
  - inquiries and violations of issues related to Title IX (gender-based discrimination) can be directed to the Title IX Coordinator.
- Regulations Governing Academic Freedom and Tenure (RGAFT) policy for issues that involve academic freedom or tenure<sup>1</sup>.
- Post Tenure Review Procedures.
- Policy and Procedure for Appointment, Promotion & Tenure.
- Student Academic Grievance Policy and Procedure that addresses disagreements with academic decisions.

In cases of grievances filed against a graduate assistant, the graduate dean will determine whether this policy or the student conduct policy is the applicable policy and procedure. This process for resolving alleged prohibited behavior applies to all employees, including faculty (e.g., full-time, part-time, individuals in their probationary period, joint appointments, adjuncts). Persons who have been terminated from employment with New Mexico Tech do not have access to this procedure after the effective date of their termination.

Any retaliatory action of any kind taken by any New Mexico Tech employee against another employee as a result of such employee seeking to resolve a complaint, cooperating in the investigation, or otherwise participating in any proceedings under these procedures is prohibited and is subject to disciplinary action up to and including termination. Any claims of retaliatory action shall be added to the pending grievance incident. Academic Affairs may temporarily intervene to prevent escalation of a grievance.

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<sup>1</sup> In the event applicability of RGAFT is challenged by either party, the matter shall be referred to the Faculty Senate Academic Freedom and Tenure Committee for a recommendation to the VPAA who, in turn will render a decision on RGAFT applicability. If either the complainant or the respondent are unsatisfied with the VPAA's decision, they may appeal to the NMT President.

Complaints relating to hiring, work day and assignments, performance evaluations, and disciplinary actions are designated as “management rights” and, as such, are not subject to this procedure, unless such action was either:

- a. allegedly based on the recipient’s race, color, religion, national origin, physical or mental disability, veteran status, medical condition, pregnancy and parental status, age, spousal affiliation, sexual orientation, or gender identity or
- b. allegedly in violation of any federal, state law, rule, regulation or policy, or New Mexico Tech regulation, rule or policy.

Any reported complaints of retaliation involving a NMT employee associated with AA/EEOC or Title IX processes could also utilize the formal resolution process.

Below are listed both informal and formal processes to arrive at a resolution. Parties are encouraged to follow informal processes, because these often lead to a more collegial post-resolution relationship, to the benefit of the parties and the department. However, circumstances vary for each case and parties are free to choose either path.

Because these are personnel matters, (i) all formal grievance processes will be heard with one complainant and one respondent, i.e. individually not as a collective group, (ii) all hearings will be closed hearings, and (iii) if penalties are invoked, the complainant’s right to know of the penalty(s) is limited to those aspects of the penalty that affect the complainant, such as no-contact orders.

The standard of evidence for the formal processes listed below is “clear and convincing evidence”, with the proviso that this standard applies only to these processes and is not necessarily the standard to be applied in other policies. Examples of those other policies are Regulations Governing Academic Freedom and Tenure, Title IX, or other independent policies.

The grievance/complaint process is as follows:

1. **Informal Process:** The employee or student complainant may choose to initiate the informal complaint process by discussing the problem or disagreement with the individual’s immediate supervisor (if the supervisor is the accused, the employee should seek that individual’s supervisor). The supervisor, in turn, should conduct an investigation and work with the complainant and the respondent to resolve the issue(s), consistent with federal, state and Tech laws, regulations, rules and policies. If such a process fails to satisfy the complainant, they may appeal to higher authorities in Academic Affairs to informally resolve the issue(s). Alleged incidents of misconduct do not have a statute of limitations and can be reported at any time, but a delay may have an impact on the investigation capability and appropriate action available to the institution.
2. **Formal Process:** If the grievance/complaint is not resolved through the informal process listed above, the complainant may choose to file a formal, written grievance to the Associate Vice President of Academic Affairs (AVPAA) or, if the respondent is a graduate assistant, to the Graduate Dean. The complainant is free to skip the informal

process and proceed directly to the formal process, if they so choose. If the AVPAA has a conflict of interest or otherwise cannot serve in this capacity, an appropriate dean may fill this role, as determined by the VPAA. If the VPAA has a conflict of interest the President will appoint someone to fill the role. The findings and recommendations resulting from the investigation shall be forwarded, as appropriate, to the parties involved within 60 working days of receipt of the written complaint unless an alternate timeline is requested by the AVPAA and approved by the VPAA. The AVPAA will take these findings and within 10 working days issue a recommendation to the VPAA (or the individual's supervisor) to resolve these matters.

- a. Appeals and Formal Hearings: If the complainant or respondent is not satisfied with either the informal or formal resolutions (see above), the grievance may be submitted in writing to the VPAA for a formal hearing. Either the complainant or respondent may make such a request.
- b. Formation of the committee: The VPAA shall appoint a grievance committee consisting of five members and two alternates. Committee members must be tenured faculty, but not members of the Academic Freedom and Tenure Committee or Ombudsperson. All committee members must be trained in the appropriate adjudication policies and procedures. The VPAA shall appoint one of the members to chair the committee and to conduct the grievance meetings and review. Either party to the grievance may challenge one member of the committee at a pre-hearing meeting held at least 48 hours prior to the formal hearing. An alternate will replace the challenged member. Parties are not required to attend this pre-hearing meeting but they need to submit the name of the committee member they want disqualified, if desired. Parties will be informed of prospective committee members at least 5 working days prior to the pre-hearing meeting.
- c. Evidence and Advocates: Parties must provide to the committee the name of any witnesses or advisor/advocate they will bring to the hearing, and a copy of any evidence they will present at the hearing. This information will be shared with both parties and copies will be made for hearing panelists. Either party may bring an advisor/advocate to the hearing, whose role will be limited to advising their respective party. In all cases the complainants and respondents have the right to have an advisor/advocate present throughout the investigation and resolution process.
- d. Committee Timeline: Following the pre-meeting hearing, the grievance committee shall meet within ten working days of their appointment for the purpose of initiating the grievance review.
- e. Proceedings of the Committee: At the hearing, the committee shall interview parties to the grievance and review all pertinent documents. Parties to the grievance may submit evidence and may examine and cross-examine witnesses. The grievance committee shall render its recommendation in writing to the VPAA with copies to the complainant and the respondent.

3. VPAA Timeline: The VPAA shall render a decision on the committee's recommendation to resolve these matters within 10 working days from the submission of the Committee's written recommendations. That decision will be communicated to the complainant and respondent in writing.
  
4. Final Appeal: If the complainant or respondent wants to appeal the decision of the VPAA, they must submit a written request for appeal to the President within 10 days of receiving the decision. The President or designee will review the request for appeal and either grant or deny the appeal request. If the appeal request is granted, the President or designee will only review the grounds for the appeal (e.g., how the committee and/or VPAA erred) stated in the appeal request. The President or designee will not conduct a de novo (new) hearing. The President or designee shall return the case back to the committee for reconsideration or the President or designee shall accept, modify, or reject the recommendations of the grievance committee and/or the VPAA's decision. The action of the President shall be final and binding on all parties.

## **Appendix A: Examples of potential behavior and activities subject to this policy and procedure**

- a. Unacceptable workplace behavior/conduct.
- b. Violation of New Mexico Tech rules, policies, and procedures.
- c. Unlawful behavior, including conduct at off-premises events sponsored by New Mexico Tech.
- d. Falsification of New Mexico Tech records.
- e. Deliberate damage to or theft of New Mexico Tech property, or property of New Mexico Tech employees, or property of students or others on campus.
- f. Willful disobedience, insubordination, or failure to carry out reasonable orders or directives from appropriate management personnel.
- g. Dishonesty, deception, or fraud.
- h. Violation of published safety regulations, policies, or procedures, OR actions that reflect a clear disregard for safety.
- i. Failure to cooperate in an investigation.
- j. Tampering with or removing New Mexico Tech-authorized notices.
- k. Willfully endangering the health, welfare, and safety of themselves or other persons. Carrying firearms, explosives, or other weapons on New Mexico Tech property without NMT authorization is prohibited, with the express exemptions of faculty and staff who are authorized to do so in pursuit of their duties (such as research at EMRTC).
- l. Reporting to work under the influence of alcohol, or unauthorized use or distribution of alcohol, or any unauthorized use of controlled chemical substance on New Mexico Tech property.
- m. Abusive workplace behavior, including acts of aggression and violence, fighting, threatening actions, bullying, use of abusive or profane language.
- n. Fraudulent worker's compensation claims.
- o. Misappropriation of funds, and/or unauthorized use or removal of New Mexico Tech property.