

**Proposition:** 06-08/09 Amended

**Date Submitted:** 10/02/08

**Sponsors:** Chris Brown (A&S), Carlos Rosencrans (CAHE)

**Proposed Committee Assignment:** Faculty Affairs

**Assigned Committee:** Long Range Planning 10/9/08

**Title:** **Proposal to Amend Section 5.98 of the NMSU Policy Manual**

**Proposal:** The language in the portion of Section 5.98 labeled “Nonrenewal of Contract and Termination of Appointment” should be amended as indicated below.

### **Proposed Language**

Nonrenewal of Contracts and Termination of Appointment: In the process of evaluating performance and issuing temporary contracts, it may be necessary not to renew a temporary contract. During the trial period, non-renewal of the contract may be without implication of criticism or specification of cause. **The reason for non-renewal will be stated, if so requested by the faculty member subject to non-renewal. The reason is only to be communicated if requested by the faculty member. The choice of the manner of notification (verbally or in writing) is to be made by the faculty member. The faculty member must request the reason for non-renewal prior to the end of the faculty member’s contract. Prior to non-renewal, the Department Head, or comparable administrator, must consult with the promotion and tenure committee of the department before any recommendation of non-renewal is forwarded to the dean. The consultation is to be in the form of a meeting and the Department Head or comparable administrator must identify the faculty member(s) at risk for non-renewal. In addition, the department head or comparable administrator must provide the committee with all relevant information, to the extent allowed by law, related to the non-renewal.** Notification of the non-renewal of short-term or non-continuous appointment is made in writing according to the following schedule: (1) for faculty members in their first year of service at this university – 3 months or more before the end date of their contract; (2) for faculty members in their second year of service at this university – 6 months or more before the end date of their contract; (3) for faculty members who will have 3 or more years of service at this university at the time of nonrenewal – 1 year or more before the end date of their contract. (A Contract Status Form must be processed by the department head for the nonrenewal of a temporary contract prior to the deadlines established for notification. The employee should acknowledge receipt of such notification by dating, signing, and returning the Contract Status Form.)

### **Original Language**

Nonrenewal of Contracts and Termination of Appointment: In the process of evaluating performance and issuing temporary contracts, it may be necessary not to renew a temporary contract. During the trial period, nonrenewal of the contract may be without implication of criticism or specification of cause. Although no cause for termination need be given, department heads must consult with senior faculty of the department before any recommendation of nonrenewal is forwarded to the dean. Notification of the nonrenewal of short-term or non-continuous appointment is made in writing according to the following schedule: (1) for faculty members in their first year of service at this university – 3 months or more before the end date of their contract; (2) for faculty members in their second year of service at this university – 6 months or more before the end date of their contract; (3) for faculty members who will have 3 or more years of service at this university at the time of nonrenewal – 1 year or more before the end date of their contract. (A Contract Status Form must be processed by the department head for the nonrenewal of a temporary contract prior to the deadlines established for notification. The employee should acknowledge receipt of such notification by dating, signing, and returning the Contract Status Form.)

### **Discussion**

During the Summer 2008, the Regents Task Force on Policy and Procedures met to investigate the issues surrounding the non-renewal of contracts in the College of Health and Social Services. The Task Force concluded that there was no substantive violation of policy but also identified areas where NMSU's policies could be improved. This proposal implements Recommendation 2 and 5 of the Task Force Report. The explanation given in the report explains the rationale for the proposed change:

#### **B: Was University policy concerning non-renewal followed?**

The time line regarding the non-renewal of x and y follows:

##### Process Dates

August 16, 2007	X and Y began their tenure track status as assistant professors.
February 6, 2008	A meeting with the Provost, Dean, and Department Head took place to discuss the possible non-renewal of X and Y.
February 7, 2008	The Department Head met with Department Promotion and Tenure Committee to seek their input on the performance of all first-year, tenure track faculty in the Department (Dr. X, Dr. Y and Dr. Z).
February 12, 2008	Preparation of the non-renewals of Dr. X Dr. Y was completed and signed by the Department Head, Dean, and Provost.
February 13, 2008	Dr. X and Dr. Y were notified of their non-renewals.

NMSU policy as to the process that is to be followed in the event of a contract non-renewal can be found in section 5.98 of the Policy Manual, which is attached to this report. The part of the policy relevant to the cases of Dr. X and Dr. Y is that section concerning faculty in the first year of service. The policy requires that senior faculty in the department be consulted and that affected faculty members be notified at least three months prior to the end of the contract. Dr. X and Dr. Y were given at least three months notice.

The policy related to consultation with senior faculty is as follows:

*Although no cause for termination need be given, department heads must consult with senior faculty of the department before any recommendation of non-renewal is forwarded to the dean.*

Dr. HHS chair, the Department Head of Health Science, called a meeting of the departmental Promotion and Tenure Committee and asked the Committee to discuss all first year tenure track faculty members who were in their trial periods and thus subject to non-renewal. The Department Head did not disclose to the Committee that he was considering non-renewal for Dr. X and Dr. Y. According to the Department Head, he informed the committee that he was having the meeting "to gather information related to some administrative issues related to tenure track faculty that were time sensitive".

Subsequently, after consultation with Dr. Jeffrey Brandon, Dean of the College of Health and Social Services, and Dr. Waded Cruzado, Executive Vice-President and Provost, Dr. Robinson decided to recommend non-renewal of both Dr. X and Dr. Y. This decision was affirmed by Dean Brandon and Provost Cruzado.

#### **Findings:**

The policy related to non-renewal of first year tenure track faculty members was followed. However, the Task Force recommends changes be made to the non-renewal policy.

#### **Recommendation 2:**

Section 5.98 of the NMSU Policy Manual should be amended by replacing the requirement that senior faculty be consulted in cases of non-renewal to an explicit requirement that the department Promotion and Tenure committee be consulted. Moreover, it should be made clear in the Policy Manual that the consultation take place in the form of a meeting and that the Department Head identify faculty members at risk for non-renewal. In addition, the department head must provide the committee with all relevant information, to the extent allowed by law, related to the non-renewal. These policy changes will afford greater opportunity for effective counsel and for achieving consensus within the department prior to an action.

The report goes on to say:

#### **D: Was University policy followed in communicating to the affected faculty the decision not to renew their respective contracts?**

Current University policy states that "[d]uring the trial period, non-renewal of the contract may be without implication of criticism or specification of cause (Section 5.98)." Non-renewal without cause can be to the benefit of the faculty member. If cause is given, the non-renewed faculty member can be required to reveal the reason for dismissal to potential new employers, which could adversely affect future employment opportunities.

On the other hand, failure to communicate reasons for dismissal can lead to misunderstandings. For example, if cause for non-renewal is not given, the faculty member may assume that the reasons for non-renewal are not legitimate and will consequently seek re-instatement; an action which the faculty member might not have pursued had the faculty member known the cause of non-renewal. The American Association of University Professors (AAUP) states:

“The Association’s extensive experience with specific cases since 1971 has confirmed its conclusion that the reasons in support of the faculty member’s right to be informed outweigh the countervailing risks. (AAUP, <http://www.aaup.org/AAUP/pubsres/policydocs/contents/nonreapp-stmt.htm>).”

**Finding:**

Current NMSU policy does not require the reason to be given for non-renewal.

**Recommendation 5:**

Section 5.98 should be amended to require the reason for non-renewal to be stated, either verbally or in writing, if so requested by the faculty member subject to non-renewal, thereby placing the decision in the hands of the faculty member.