

Proposition: 13-10/11
Date Submitted: 1/31/2010
Sponsor: Rayson (A&S), Bloomquist (ACES)

**Proposed
Committee
Assignment:** Faculty Affairs

**Assigned
Committee:** **Faculty Affairs 2/15/11**

Title: A Proposal to Revise Policies 4.05.50 and 5.98 in the NMSU Policy Manual, replacing the *Senior Senator Review Committee* with the *Faculty Appeals Board*, and rewriting the procedures relating to faculty disciplinary action and appeals therefore in a newly numbered Policy 5.47.

Rationale: The proposal comes from the second phase of work done by a task force assigned to study and review faculty grievances. Because the process outlined in current 4.05.50 addresses only appeals from terminations of tenured and tenure track faculty, the policy was broadened to address disciplinary action generally, and to apply it to all faculty. The revisions also require the deletion of some material from Policy 5.98.

The policy revisions as proposed will provide a streamlined policy and procedure addressing faculty corrective and disciplinary action, should it be necessary.

Body: Delete Portion of Policy 4.05.50 “Faculty – Appeals”, under heading “Senior Senator Review Committee: Appeals of Involuntary Termination of a Continuous Contract or Temporary Contract during its Term”; and Delete Two sections from Policy 5.98 under headings, “Involuntary Termination of a Temporary Contract” and “Involuntary Termination of a Continuous Contract”; and Replace all with the language below, which is consolidated, revised and renumbered as Policy 5.47, “Faculty Discipline and Appeal Processes”:

Highlights Relating to Proposed Revisions to Policies 4.05.50 and 5.98

1. This policy is not to be used to address substandard work product, productivity or other work performance issue; those issues are more appropriately addressed with mentoring, counseling, the performance evaluation process, the post tenure review process, the promotion and tenure process, which are governed by other existing policies. This is expressly clarified under B., “Scope”.
2. The Senior Senator Review Committee appeal process contained at the end of Policy 4.05.was not a “grievance” policy; it addressed only the appeal process by a tenured or tenure track faculty member. The proposed revision is much broader and will provide needed guidance from the first whisper of an allegation, through the final appeal process. It clearly provides a fair investigative process by which the facts will be determined, during which time the faculty member may or may not be placed on leave with pay pending the results of the investigation; followed by receipt of a notice of intent to take administrative action and right to a pre-

determination hearing; followed by a post-discipline appeal hearing, and a final review by the university president.

3. The revisions will be organized into one Policy 5.47, entitled “Faculty Discipline and Appeals Processes”, and contain the following distinct sections:
 - A. Purpose
 - B. Scope.
 - C. Definitions and Roles
 - D. Policy Overview
 - E. Alternative Dispute Resolution
 - F. Administrative Leave
 - G. Confidential Investigation
 - H. Just Cause Required
 - I. Administrative or Corrective Action
 - J. General Description of Due Process
 - K. Time Deadlines and Extensions
 - L. Pre-Determination Process
 - M. Post-Determination Appeal
 - N. Final Review by University President
 - O. Maintenance and Storage of All Hearing Record
4. The policy is also broadened to apply to all regular faculty.
5. As noted above, current Policy 4.05.50 addresses only the post-deprivation appeal process; the corresponding provisions for effectuating the involuntary termination of a tenured or tenure track faculty, presently housed in Policy 5.98, are also proposed to be updated consistent with fundamental legal requirements. Therefore, the revision to Policy 5.98 will be the deletion of two “Involuntary Termination” paragraphs, and the addition of a cross reference to the new Policy 5.47.
6. “Day” is defined at C. 1. as a business day (Monday through Friday and excluding university holidays). Provisions for time extensions are provided at K.
7. Section E. recognizes the reality that sometimes contested legal matters may be more effectively resolved through alternative dispute resolution.
8. Section F. provides details about when, how, and why a faculty member might be placed on administrative leave with pay pending an internal investigation.
9. Section G. describes the confidentiality with which the internal investigation will be handled, as well as the rights of the faculty member charged with misconduct.
10. Section H. clarifies that “just cause” is required before serious discipline may be imposed.

11. Section I. describes a range of corrective action that may be taken, based upon the results of the internal investigation, including written warning, mandatory attendance at training, suspension without pay, reduction in salary or involuntary dismissal. The severity of the infraction will determine the level of discipline; the range is not intended to be a progressive discipline policy, but rather, a way to provide more flexibility regarding options for corrective action, i.e. in the event that an involuntary termination is deemed to be too harsh, yet a written warning too lenient.

12. Consistent with state and federal law, faculty are to be provided with notice and a hearing prior to termination for cause during the term of their faculty contract. Federal constitutional law requires both a pre-disciplinary and a post-disciplinary hearing process. Both hearings need not be extensive, nor is the intent to duplicate effort; they are geared to ensuring a fair fact finding process prior to imposing the discipline, as well as to provide a fair appeal process from the decision made by the pre-determination hearing officer. These two types of hearings are described at L. and M. Section M 4. a. describes the basic requirements for a fair and impartial hearing, including how to resolve any conflicts of interest. The dean will serve as the pre-determination hearing officer. NOTE: the policy does not provide, “dean or designee” throughout because the definition of dean includes any designee that might be necessitated by a conflict of interest. That is the only reason given in the policy for such a designation; the thinking was that these types of actions should not be subject to delegation to others by way of a designee, as is commonly done for other business transactions. These are serious issues involving serious consequences and need to be heard by senior administration. The Faculty Appeals Board will take the place of the Senior Senator Review Committee, and will hear any appeal from the dean’s decision, render findings and recommendations to the executive vice president and provost, who will issue the decision. The provost’s decision may be appealed for a final review to the university president, which decision shall be final. The revised policy provides some procedural detail to assist the persons/bodies charged with carrying out these important duties.

History: In 2009, a task force was assembled to evaluate, and propose changes in current grievance policies for faculty. The task force was comprised of representatives from the Dean’s Council, Human Resources, the University Counsel, and members of the faculty. Initial discussions were limited to modification and improvement of the grievance policy pertaining to issues that included, but were not limited to performance evaluation and due process issues. It did not address issues pertaining to involuntary termination and corrective and disciplinary actions. Those initial efforts culminated in the proposed changes to the University Policy Manual that were adopted and approved by the Board of Regents in July of 2010. The task force then focused its efforts on those portions of the grievance policy omitted during the initial discussions. The present proposition contains the results of those discussions and recommendations.

Format of Presentation:

- 1) Proposed Text
- 2) Original Text to be replaced, shown in strikeout