

Proposition: 14-09/10 Amended

Date Submitted: 3/19/2010

Sponsor: Rayson (A&S)

Proposed Committee Assignment:

Assigned Committee: Faculty Affairs 4/6/10

Title: **A Proposal to Modify the NMSU Faculty Grievance Policy “4.05.50 Appeals – Faculty” so as to replace the *University Appeals Board and the Review Board of Faculty Salary Increase/Performance with the Faculty Grievance Review Board (FGRB).***

Rationale: The proposal makes more streamlined the grievance process by eliminating duplication among review boards and by making more clear what is and isn't a grievable matter.

Body: Replace Policy 4.05.50 “Faculty – Appeals” except for the section labeled “Senior Senator Review Committee: Appeals of Involuntary Termination of a Continuous Contract or Temporary Contract during its Term”, which is retained. Replace the original text with the proposed text.

History: Approved by ADAC 3/8/10
Approved by ADC 3/16.10

Format of Presentation 1) Proposed Text
2) Original Text to be replaced
3) Discussion

Proposed Text:

Faculty Grievance Review and Resolution

The University encourages the resolution of work disputes through informal discussion. For those matters that are not resolved amicably through effective communication within the NMSU entity, the University is committed to providing a formal grievance process that allows for timely and consistent peer and administrative review.

A. Purpose

1. To provide fair and impartial grievance review and resolution and hearing processes by which faculty shall seek resolution of disagreements and disputes arising from the employment relationship.
2. To recognize and authorize the Faculty Grievance Review Board as the faculty peer review body that will facilitate the resolution of faculty grievances through informal mediation or a quasi-judicial hearing process.

B. Scope; Standing to Grieve

This policy applies throughout the NMSU System, to provide a venue for faculty to bring grievances forward for resolution by faculty peers and senior academic administration, when the faculty member has not been able to resolve the matter informally through discussion within their NMSU entity. This policy is intended for and limited to grievances in which the faculty member is personally and materially affected by a decision, action, or inaction.

C. Grievable Matters

Grievances which allege the following shall be resolved through this Faculty Grievance Review and Resolution policy:

1. Violation, or inequitable application, of university policy;
2. Administrative decisions, actions and failures to act which unfairly or negatively impact the terms and conditions of employment, including but not limited to: the setting of goals and objectives, assignment of work load and schedules, credit for service activities and supported and unsupported research, academic freedom and performance evaluation.

D. Non-Grievable Matters

The following types of issues are not grievable to the Faculty Grievance Review Board:

1. Job direction, including coaching and counseling provided for purpose of improving work performance;
2. Disciplinary verbal warnings, unless subsequently at issue as part of written reprimand being appealed;
3. Non-renewal of annual employment contract (“temporary contract”) during probationary period of tenure track faculty member;
4. Promotion and tenure decisions, unless a violation of policy or procedure is alleged. (See Promotion and Tenure Policy 5.90 which details the multi-stepped review process for promotion.)
5. Disputed matters that fall within the jurisdiction of another NMSU entity or hearing body, including but not limited to: involuntary termination for cause (Policy 4.05.50, Senior Senator Review Committee), complaints of unlawful discrimination (Policy 4.05.40, Office of Institutional Equity), intellectual property disputes (Policy 5.94, Special Dispute Resolution Committee).
6. Reassignment or transfer, provided no change in tenure home, loss in pay or faculty rank, or other violation of policy or procedure
7. Changes in status of at-will academic administration position, consistent with policy and letters of hire;
8. The substance of a policy or established practice, unless it has an alleged unfair impact;

9. A resignation that has been sent and received.

E. Overview of Faculty Grievance Process

This Faculty Grievance Review and Resolution policy is designed to allow matters in dispute to be resolved at the lowest administrative level possible. Following is a summary of the grievance process. (See Sections H through K below).

1. Pre-Grievance Resolution. [20 days or less] Prior to filing a written grievance, the faculty member seeks internal departmental resolution; faculty advisor is chosen or appointed upon request.
2. Formal Initiation of Grievance. [same 20 day period as in No. 1 above] Faculty member submits written grievance within 20 days from notice of grievable action/inaction.
3. Jurisdictional Screening of Grievance. [11 days or less] The grievance is either accepted or rejected by the FGRB; rejection may be appealed to University General Counsel;
4. Informal Resolution by Mediation. [30 days or less] A member of FGRB, who will not be on the hearing panel, serves as mediator to facilitate mutual informal resolution.
5. Formal Resolution by Hearing. [30 days or less] The assigned FGRB hearing panel conducts administrative hearing within 20 days and forwards factual findings and recommendations to Executive Vice President and Provost within 10 days from hearing.
6. Final Decision. [15 days or less] With the concurrence of the University President, the Executive Vice President and Provost issues final decision.

F. Faculty Grievance Review Board (“FGRB”)

The full Faculty Grievance Review Board consists of nine members, from which mediators and smaller hearing panels will be assigned as needed. Each hearing panel shall include one department head with faculty rank.

1. Authority. Each FGRB mediator, hearing panel or full board, as appropriate, is authorized:
 - a) To decide whether or not matters brought before it are within its authority, in accordance with NMSU policy;
 - b) To investigate and mediate as needed to facilitate an informal resolution of the grievance;
 - c) To conduct fact finding hearings and to issue recommendations to senior academic administration;
 - d) To revise the grievance procedures set forth at Sections H through K below, with the approval of the entire FGRB and approval of the Executive Vice President and Provost, with the concurrence of the President.

2. Composition/Selection of Members.
 - a) Make Up of Full FGRB. The FGRB shall consist of a total of nine (9) tenured faculty members. Only one person from a department may serve at the same time. No more than three may come from the same Faculty Senate voting unit. Six members shall be elected at-large and three department heads with faculty rank shall be elected by the Faculty Senate.
 - b) Election of Members. The nominations and elections shall be conducted during the Fall Semester.
 - i. At Large Members. The tenured faculty members shall be nominated by members of the Faculty Senate and elected by the faculty at large. Elections shall be conducted in accordance with procedures followed for election of Faculty Senate Chair, with the exception that the number of candidates shall not be limited, and there shall be at least two for each position vacancy.
 - ii. Department Head Members. For each department head vacancy, the University President shall nominate two department heads with faculty rank; the Faculty Senate shall elect one.
3. Term of Service. The first nine members elected after enactment of this policy shall serve either a one, two or three year term, to be decided by lot. After these initial terms have been completed, elected members shall serve staggered three year terms. The term(s) shall commence in the Spring, on faculty's first day back to work. No member shall serve more than two consecutive three year terms.
4. FGRB Hearing Panel. Three members, which includes two tenured faculty members and one department head with faculty rank, shall constitute the hearing panel. The panel shall select from among its own members a chair whose name will provided to the parties.
5. FGRB Mediator. For each case, one member of the FGRB, on a rotational basis, shall be designated by the Chair of Faculty Senate to serve as mediator for the informal resolution step. The member assigned as mediator shall not be eligible to serve on the hearing panel for the same case.
6. Administrative Support for FGRB. The Chair of the Faculty Senate and the Assistant Vice President of Human Resource Services shall coordinate to provide the FGRB with the necessary clerical, administrative and/or technical support it requires. The Chair of the Faculty Senate and the Assistant Vice President of Human Resource Services will also coordinate to provide guidance to the FGRB mediator and/or hearing panel chair regarding applicable time deadlines and other procedural issues that may arise.
7. Initial Transition of Membership. The initial Board shall be comprised of existing members of the Review Board on Salary Increase/Performance Evaluation and the University Appeals Board. Any discrepancy in the number of Faculty involved will be resolved by lot and staggered terms will adhere, as close as possible, to those existing within the current bodies, with discrepancies also being resolved by lot.

G. Policies Governing Grievance Review and Hearing Processes

1. Faculty Right to Advisor. At any point in the process, a faculty member may enlist a faculty colleague to advise with preparation of the grievance materials and to attend informal and formal meetings/hearing. If the faculty member requests assistance in obtaining an advisor, the Executive Vice President and Provost or designee shall appoint a senior faculty member to serve in that capacity.
2. University Right to Stay Proceeding. At the discretion of the consultation with University General Counsel, a pending grievance may be stayed when the grievant simultaneously seeks relief for the same claim in another forum, or agrees to explore an alternative dispute resolution method. The matter may be re-opened, if appropriate, depending upon the outcome of the other proceeding.
3. Confidentiality. All university personnel shall maintain and preserve confidentiality regarding faculty grievance matters. No party shall discuss any case with anyone involved in investigating or deciding the matter, except as permitted by these procedures.
4. Fair and Impartial Mediation and Hearing Process. Faculty members are entitled to a fair and impartial review of their claims. This includes the prompt resolution of actual or perceived conflicts of interest:
 - a) Early Disclosure of Conflict/Voluntary Recusal. Any FGRB member selected to serve as either mediator or as a member of a hearing panel shall disclose any potential or actual conflict of interest immediately, or as soon as practicable, in order that the issue may be fully resolved prior to the informal or formal grievance processes. A party shall also raise the issue of a potential or actual conflict of interest as soon as the conflict is known. After consideration of the relevant facts and positions of the parties, if it is determined that a conflict exists sufficient to call into question the impartiality of the FGRB member, the resolution will be either voluntary recusal by the member of the FGRB, or substitution of a different member.
 - b) Conflict Resolution Process. In the event a conflict of interest issue is raised, verbally or in writing by anyone involved in the informal or formal grievance review processes, the mediator or hearing panel chair, as appropriate, shall give notice of the potential conflict to the parties and proceed to resolve the issue as expeditiously as possible.
 - i. If a challenged FGRB mediator or hearing panel member agrees that the conflict is sufficient to render the member unable to participate in a fair and impartial manner, the member shall be excused from further participation.
 - ii. If the challenged FGRB mediator or hearing panel member disagrees that there is a conflict sufficient to affect impartiality, the matter will be decided by the Chair of the Faculty Senate.
 - Each party may provide their position on the issue, and to comment on the position of the other party. Other evidence may be considered if relevant or needed to decide the issue; however,

the parties are entitled to know and comment on any other evidence considered by the Chair of Faculty Senate in making the decision.

- If a FGRB mediator or hearing panel member is excused based on a finding of conflict of interest, another FGRB member shall be assigned to serve.

c) Guidelines for Determining Conflicts of Interest.

- i. Under no circumstances will a FGRB mediator or hearing panel member participate in a hearing convened to hear a grievance from a person with whom the member has a familial, personal or close professional relationship. A FGRB member shall not mediate, nor hear, a matter involving faculty from their own NMSU entity.
- ii. If one or more of the witnesses has a close relationship with one of the hearing panel members, disqualification from service shall not be automatic, but shall be decided based upon the specific facts of each case.
- iii. If the grievant or a witness has had prior contact with either the assigned mediator or a hearing panel member, disqualification from service shall not be automatic, but shall be decided based upon the specific facts of each case.

5. Time Deadlines.

- a) The informal and formal review hearings and appeal process will be conducted as expeditiously as possible.
- b) At the request from a party, the FGRB mediator or hearing panel may grant a one-time extension of the time deadline, after notice to the other party and consideration of that party's position relative to the request.
- c) The Chair of Faculty Senate may grant a request for extension of a time deadline at the request of the FGRB mediator or hearing panel chair.
- d) A second or subsequent request for time extension from any party or FGRB official will only be granted in exceptional cases, after consideration of the basis for the request and the respective positions of the parties.

6. Filing and Storage of Grievance/Hearing Records.

- a) If the grievant prevails on an issue affecting a document contained in the official personnel file, that document will be revised and the original document will be moved to the grievance file, to document compliance with the decision on the grievance.
- b) The grievance record shall not be filed in the official personnel file, but will be housed in a grievance file with the Office of Human Resource Services.

Occasionally, it may be appropriate to file or cross reference a grievance decision in the official personnel file (i.e. to justify a mandated change in salary).

- c) Copies of all final decisions shall be stored permanently in the Office of the Executive Vice President and Provost.
- d) The grievance record, consisting of correspondence, exhibits, tape recordings, and decisions at each level of review, shall be maintained by the Office of Human Resource Services, in accordance with the University's retention of records policy.

H. Procedures to Initiate Grievance

After internal communications have failed to resolve a disagreement or dispute, a faculty member may initiate a grievance by delivering a memo, subject line "Faculty Grievance", to the Chair of the Faculty Senate, copied to the Assistant Vice President of Human Resource Services and cognizant Dean or equivalent administrator, within twenty (20) days from the official date of the action or when the faculty member knew or reasonably should have known about the grievable action/inaction. This time limit for submitting a grievance will be interpreted liberally in order to encourage informal resolution. The Chair of Faculty Senate may also grant a 20 day extension of the deadline, if so doing facilitates pre-grievance resolution.

The memo shall:

1. Identify the issue in dispute;
2. Identify involved parties;
3. Identify efforts made to date to resolve dispute;
4. Outline the points in support of the grievant's position, and if known the points contra;
5. Attach or reference any supporting documentation; and
6. State the remedy requested.

I. Procedures to Accept Grievance.

The full FGRB will review the grievance and determined if a grievance is in their authority. The grievance shall be accepted or declined within five (5) days from the date of the grievance. The FGRB decision may be appealed within three (3) days to Office of the University General Counsel, who will issue a written decision letter within three (3) days.

J. Procedures for Informal Resolution/Mediation

The FGRB member assigned to mediate the grievance shall attempt to resolve the matter informally by working with the parties and the appropriate NMSU officials, as needed for approval of the proposed resolution, if any. If warranted by the facts alleged, more than one mediator may be utilized, or an outside mediator may be agreed upon by the parties. If the full FGRB adopts specific mediation procedures, those shall be provided to the parties and adhered to.

1. The mediator shall meet with the parties and take other action as necessary to resolve the grievance. This may include review of documents, interviews or consultations with persons not on the FGRB, and briefing appropriate University officials who will not be involved in the decision making process.
2. As soon as it is clear that the matter is not capable of being resolved informally, and no more than thirty (30) days from the mediator's receipt of the grievance, the mediator shall forward the matter to the hearing panel chair to be set for hearing.
3. The FGRB mediator and the parties shall keep the mediation process confidential to the extent possible under law.
4. Statements made and positions taken in this informal mediation grievance step shall not be admissible in the grievance hearing, nor used in any other subsequent document or forum.

K. Procedures for Formal Hearing

1. Transference from Mediation to Hearing Panel. As soon as the mediator notifies the hearing panel chair in writing that the grievance will not be resolved by the informal mediation, or 30 days from the date the grievance was referred to mediation, whichever is sooner, the grievance shall be set for hearing.
2. Timeframe for Hearing. The FGRB hearing panel shall give both parties as much notice as possible of the hearing date. The hearing shall be conducted within twenty (20) days from notification by the mediator or from the 30 days mediation deadline, whichever is sooner.
 - a) If the hearing panel is not able to convene to hear the matter within 20 days, the panel chair shall seek an extension of time from the Chair of the Faculty Senate, who shall coordinate to conduct a teleconference, prior to the deadline, with all parties to facilitate the setting of the hearing date.
 - b) The Chair of the Faculty Senate may substitute FGRB members for one or more hearing panel members in order to expedite the hearing.
3. Hearing Procedures. The parties shall be directed to the applicable hearing procedures and/or given a copy.
 - a) Documentation for Hearing. The parties shall exchange exhibits and witness lists five days in advance of the hearing and shall submit copies to the hearing panel chair, who shall distribute to the panel members. The parties may also submit a position statement summarizing their position and the supporting evidence; if they do so, it shall also be delivered five days in advance of the hearing, and copied to the other party.
 - b) Hearing Participants. The participants at the hearing include: the grievant, the grievant's faculty advisor, if any; the department head; and the dean of the college or equivalent administrator, or their designee.

- c) Role of Legal Counsel. Neither administrators nor grievant may be represented at the hearing by legal counsel.
 - d) Closed Hearing. The hearing shall be closed.
 - e) Witness Testimony. Witness testimony shall be taken under oath given by a Notary Public. No person that will be called to testify as a witness shall be allowed to be present in the audience until after they have testified, with the exception of the departmental representatives.
 - f) Preservation of Record. The hearing shall be tape recorded; the parties shall be entitled to a copy of the tape or other electronic recording after the final decision has been rendered. Responsibility for transcription is on the party desiring the transcription.
 - g) Disclosure Statement. The hearing panel chair shall ensure that all perceived or actual conflicts of interest have been resolved prior to commencing the hearing by asking for all participants, including the panel members, to indicate that they are not aware of any potential conflicts of interest.
 - h) Time for Hearing. The chair will assure that all parties have an opportunity to present their cases and may impose reasonable time limits; therefore, the parties should be prepared to make concise statements of their respective positions and refrain from presenting duplicative witness testimony etc.
 - i) Conduct of Hearing. The chair shall maintain control the hearing, including evidentiary and procedural issues. At the discretion of the chair, such issues may be resolved by vote of the panel.
 - j) Deliberations. The hearing panel shall deliberate in closed session, apart from the parties. The panel may elect to consult with University General Counsel or Human Resource Staff-Employee Management Services staff during the hearing and/or during its deliberations.
4. Findings and Recommendation. Within ten (10) days from the closure of the hearing (last date of deliberations by the FGRB), the chair will submit findings and recommendations representative of the panel's collective decision, which may include any dissenting opinion, to the Office of the Executive Vice President and Provost, along with the grievance record.

L. Final Decision by Provost/President

Within fifteen (15) days from receipt of the hearing panel's findings and recommendations, the Executive Vice President and Provost, with the concurrence of the University President, shall issue a final written decision. The decision, together with a copy of the hearing panel's findings and recommendations, shall be delivered to the hearing participants and to the hearing panel chair.

M. Definitions

1. “Day” means Monday through Friday, excluding official University holidays and other days that the NMSU campus may be officially closed.
2. “Delivered” or “delivery” means hand-delivery or delivery via certified mail to the address listed in the university directory, return receipt requested. E-mail delivery marked with the “confidential” option may also be used as a supplemental means to expedite unofficial notice of a communication or decision, but is not to be used as the date of delivery for purposes of calculating deadlines.
3. “Faculty”: as used in this policy means any full or part time tenured, tenure track, or regular non-tenure track faculty member.
4. “Grievant” means any faculty member, or any group of faculty alleging a claim that is grievable pursuant to this policy.
5. “Mediator” as used in the policy is the member of the FGRB assigned to explore with the parties the possibility of an informal resolution of the grievance, in lieu of proceeding to formal hearing.
6. “NMSU Entity” is used to describe a department or other administrative unit within an NMSU college or campus, including but not limited to the library, extension service, and experiment stations. Private not-for-profit corporations affiliated with NMSU for fundraising, research, public service, or student activity purposes, while possibly subject to follow applicable NMSU policy to maintain their recognized status, are not “NMSU entities”.
7. “University Policy” as used in this policy includes the formally adopted policies and procedures, as well as protocol clearly established through practice, of any NMSU entity.

Original Text (to be replaced)

4.05.50 Appeals - Faculty

This section includes (1) a description of procedures for appealing salary increase/performance evaluations to the Review Board of Faculty Salary Increase/Performance Evaluation; (2) a description of the procedures for appealing violations of procedure or due process regarding promotion/tenure and general administrative actions to the University Appeals Board; and, (3) a description of the procedures for appealing the involuntary termination of a continuous contract or a Temporary Contract During Its Term to the Senior Senator Review Committee. (*See also Appeals - Discrimination*) Under normal circumstances, employees are encouraged to resolve issues through discussion with the immediate supervisor(s). If resolution is not attained, the employee may appeal to the next level of administration. If resolution is not attained, an informal or formal grievance may be filed with the Office of Institutional Equity/EEO. Employees shall be free to file grievances without fear of reprisal. Grievance Exceptions: Any action or complaint commenced in any state or federal agency or court may, at the discretion of the president/executive vice president and provost, result in a stay of any pending internal proceeding (grievance, tenure review, appeal, etc.) filed by or on behalf of an employee, unless the complainant alleges any form of prohibited discrimination. In that case, the internal proceeding will continue until all administrative remedies are exhausted, without regard to the nature of and/or conclusions of any external proceeding. Upon termination of the external proceeding, except those involving discrimination allegations, as described above, the president/executive vice president and provost will review the status of the internal proceeding in the light of the results, if any, of the external proceedings. If, in the president's/executive vice president and provost's opinion, further action is required, the internal proceeding will continue according to policy and procedure. If the president/executive vice president and provost decide that no further action is necessary, the internal proceeding will terminate.

Review Board of Faculty Salary Increase/Performance Evaluation: The Review Board of Faculty Salary Increase/Performance Evaluation hears appeals regarding salary increases and performance evaluation.

Composition of the Review Board: The Review Board of Faculty Salary Increase/Performance Evaluation consists of three elected tenured faculty members and one member of the administration. The faculty members will serve staggered 3-year terms and the administration member will also serve a 3-year term. Three alternate members to the Review Board will also be elected. These will serve staggered 3-year terms as replacements for regular members of equivalent terms, should a regular member be unable to complete the term, and may also be used as replacements when regular members are otherwise unable to serve for a particular case. Nominations for the faculty positions will be through members of the Faculty Senate. The nomination must specify the position for which the nominee will run. (Normally two positions, one Review Board member and one alternate, will be vacated each year.) Elected Review Board members in the faculty positions must be from different colleges. Two or more nominees for the administrative position on the Review Board will be made by the president; nominees will be at the level of department head, assistant dean, or above. Presidential nominations will be submitted after the election results are known in order to assure representation of the various colleges. The presidential nominee receiving the second highest number of votes will serve as alternate in cases involving the administrative member of the Review Board or administrative members staff Faculty members of the Review Board will be elected by faculty ballot. The administrative position will be elected by ballot of Faculty Senate members. A plurality of 40 percent of the votes cast will be necessary for election for each position and, if necessary, a runoff election between the nominees with the largest number of votes will be held. A quorum of the Review Board will consist of four members. No member will sit in cases involving that Review Board member or members of that Review Board member's department. In order to avoid actual or perceived conflicts of interest, the chair can excuse any member of the Review Board. The elected faculty Review Board member in the third year of service will serve as chair. The elected faculty Review Board member in the second year of service will serve as chair-elect. The chair-elect will serve as chair in case of absence or disqualification of the chair.

GRIEVANCE PROCEDURES

A working day is defined here and throughout this chapter as Monday through Friday, except for official university holidays.

The faculty member first should seek to resolve a grievance by conferring with the department head and, if necessary, the dean. If the grievance is not resolved through these informal conferences, the following outlines the process for appealing salary/performance evaluation through the Review Board of Faculty Salary Increase/Performance Evaluation. If circumstances warrant, the chair or the executive vice president and provost may extend specified time limits upon the written request of any party. The opposite party will be given an opportunity to comment on such a request before a decision is made.

STEP ONE - Filing: Within 10 working days of notification of an administrative action, a faculty member may present in writing to the department head or appropriate administrator a memo with the subject line Grievance, containing a comprehensive rationale for the grievance, including the basis for the grievance and the remedy requested.

STEP TWO - Administrative Review: Within 10 working days of receipt of the grievance, the department head/appropriate administrator will meet with, the dean or appropriate administrator, the chair of the Review Board of Faculty Salary Increase/Performance Evaluation, and the appellant, in an attempt to settle the grievance. Within 5 working days of this meeting, the dean or appropriate administrator will reply in writing to the appellant, with copies to the department head, chair of the Review Board, and the executive vice president and provost, describing the action taken, if any, to adjust the matter.

STEP THREE - Referral to Review Board of Faculty Salary Increase/Performance Evaluation: If the grievance is not resolved by administrative review, the faculty member may initiate a formal appeal within 10 working days by petitioning the chair of the Review Board by memo through the Office of the Executive Vice President and Provost. The faculty member will provide the dean and the chair of the Review Board a copy of this appeal memo. The faculty member will forward to the Office of the Executive Vice President and Provost a copy of the following material:

- Appellant's evaluation form with summary sheet and appendages submitted by the faculty member during the evaluation period.
- Written statements from the department head to the faculty member outlining objectives agreed upon during the evaluation session.
- Memoranda and/or documents submitted by the faculty member, including the comprehensive rationale for the grievance.
- Written recommendations by the department head, deans, or appropriate administrators regarding the appeal.
- Correspondence and recommendations from the administrative review.

Within 5 working days of receipt of the above material, the Office of the Executive Vice President and Provost will provide four copies of all appropriate materials to the chair for distribution to the Review Board. The chair of the Review Board will submit a statement of its findings and recommendations within 10 working days to the executive vice president and provost, along with related correspondence.

STEP FOUR - Hearing: The Review Board meets no more than 20 working days after a petition has been referred to them according to the guidelines specified below. The chair of the review board will submit a statement of its findings and recommendations within 10 working days to the executive vice president and provost, along with related correspondence.

STEP FIVE - Disposition: A final decision by the executive vice president and provost, along with a copy of the Review Board's findings and recommendations, will be issued in writing to the parties involved, with copies of the decision to the members of the Review Board of Faculty Salary Increase/Performance Evaluation, within 10 working days. All documentation, including the executive vice president and provost's decision, will be filed in the Office of the Executive Vice President and Provost.

Review Board Guidelines:

1. The chair of the Review Board will attempt to settle an issue to the satisfaction of the parties involved before pursuing more formal avenues of action.
2. At least 2 working days in advance of the hearing, the chair of the Review Board will distribute to Review Board members and both parties (through the Office of the Executive Vice and Provost) copies of additional notices and communications from either party. The Review Board members will review these materials, along with those noted in STEP THREE above, previous to the hearing.
3. No new written information may be presented in the hearing by either party without the consent of the chair.
4. The chair will be designated the official timer.

Hearing Procedure: The Review Board will begin the hearing no more than 20 working days after a petition has been referred to them. Participants will be members of the Review Board, the appellant, department head and dean of the college or appropriate administrators, and the graduate dean or designee if the appellant is a member of the graduate faculty, and may include at the option of the appellant one faculty member to assist in the preparation and presentation of the case. Neither administrators nor appellant may be represented at the hearing by legal counsel. The hearing will normally be limited to 1 hour; however, the chair will assure that all parties have an opportunity to present their cases. Therefore, the appellant and administrators should be prepared to make concise statements of their respective positions. Each hearing will consist of the following elements:

Phase 1: All participants will be present. The main spokesperson for the administrators, usually the department head, will explain their rationale. Other administrators, keeping within a time constraint of no more than 15 minutes total time for administrators, may supplement the statement. The appellant's rationale will also be presented within a time constraint of no more than 15 minutes. The next 15 minutes will be devoted to questions and brief statements from administrators and the appellant concerning previous statements.

Phase 2: Members of the Review Board and appellant will be present. Five minutes will be allotted should the appellant choose to make a statement to the Review Board with administrators not present.

Phase 3: Members of the Review Board and administrators will be present. Five minutes will be allotted to the administrators should they choose to make a statement to the Review Board with the appellant not present.

Phase 4: The Review Board will send its recommendation to the executive vice president and provost within 3 working days of the hearing. Within 10 working days, a final written decision will be provided to all participants by the executive vice president and provost. All documentation, including the executive vice president and provost's final decision, will be filed in the Office of the Executive Vice President and Provost.

APPEALS - PROMOTION/TENURE (VIOLATIONS OF PROCEDURE OR DUE PROCESS) AND GENERAL ADMINISTRATIVE ACTIONS

When a faculty member alleges a violation of policy or due process* with regard to tenure or promotion, the University Appeals Board, after review by appropriate administrators through the executive vice president and provost's level, convenes to hear such appeals. In addition, administrative actions that a faculty member considers unfair may be referred to the University Appeals Board after normal administrative review. Administrative actions that may be appealed include, but are not limited to: actions concerned with the setting of goals and objectives; course load; assignment and schedules; and credit for service activities and supported and unsupported research. The University Appeals Board does not have jurisdiction over appeals of salary increases and performance evaluations, cases involving dismissal of tenured faculty for cause, discrimination, student grievances and staff employee grievances, or cases involving student discipline. In all instances, the University Appeals Board will attempt to resolve all complaints on an informal basis.

**The process of promotion and tenure decisions includes peer review. The advisory*

judgments of departmental and college promotion and tenure committees, department head, dean and executive vice president and provost are not, in themselves, appealable. Under the terms of the Civil Rights Act of 1964, such judgments are reviewable insofar as they may be discriminatory; otherwise, appeals of promotion and tenure decisions may be based only on violations of procedure or due process that this manual provides. (See Promotion, - Promotion and Tenure)

Composition of the University Appeals Board: The University Appeals Board will consist of six tenured faculty members and one member of the administration. The faculty members will serve staggered 3-year terms and the administrative member will also serve a 3-year term. Three alternate faculty members also will be elected to the University Appeals Board. These alternates will serve staggered 3-year terms as replacements for regular members of equivalent term should those members be unable to complete the term or otherwise be unable to serve for a particular case. Nominations for the faculty positions will be made in writing to the vice chair of the Faculty Senate, and accompanied by a brief description of the nominee's qualifications for the position and agreement to run. The nomination must specify the position for which the nominee will run (normally two positions will be vacated each year). No two University Appeals Board members may be from the same department. Two or more nominees for the administrative position on the University Appeals Board will be made by the president of the university. Nominees may be at the level of department head, assistant dean, or above. Faculty members on the University Appeals Board will be elected by faculty ballot. The administrative member and the alternate administrative member will be elected by secret mail ballot of faculty senators. The administrative nominee receiving the second highest number of votes will serve as alternate administrative University Appeals Board member. In both instances, a plurality of 40 percent of the votes cast will be necessary for election for each position and, if necessary, a runoff election between the two nominees for a given position with the largest number of votes will be held. A quorum of the University Appeals Board will consist of five members. In order to avoid actual or perceived conflict of interest, either party involved in an appeal may request that a particular member be recused. If such a request is made, the University Appeals Board will meet and by majority vote, can recuse any member. In the event the chair of the University Appeals Board is thought to be the member to have the conflict of interest, the chair-elect will call a meeting to determine if the chair will be recused. In any event, no member will sit in cases involving that University Appeals Board member or staff member. The University Appeals Board will annually, no later than March 31, elect a chair and a chair-elect. The chair-elect will serve as chair in case of absence or disqualification of the chair.

Procedures: (Refer to flowchart in Appendix 4-A.) A faculty member with a grievance should first seek to resolve it by conferring with the administrator involved and, if necessary, the supervisor of the administrator involved. If the issue is not resolved through these informal conferences, the following outlines the process for a grievance and appeal to the University Appeals Board. The executive vice president and provost or the chair of the University Appeals Board has discretion to extend specified time limits for administrative or other purposes or upon the written request of any party. The opposite party will be given an opportunity to comment on such a request before a decision is made. The process described below may be terminated at any point if a settlement acceptable to all parties involved is reached or if the appellant withdraws the grievance/appeal.

STEP ONE - Filing: Within 10 working days of notification of an administrative action, the faculty member with a grievance will present in writing to the administrator involved a memo with the subject line Grievance, containing a comprehensive rationale for the grievance, including the basis for the grievance and the remedy requested. Grievances that occur as a result of an accumulation of acts or actions may be filed at any time, provided the last alleged action occurred within 10 working days. The appellant may consult with the chair of the University Appeals Board to determine the form this memo should take. Copies will be sent to the administrator(s) involved in the grievance and to the chair of the University Appeals Board. If the department head of the appellant is not the administrator involved, then the department head will receive a copy of the grievance and all other relevant documents. The appellant may request that the chair of the University Appeals Board appoint a senior faculty member, not in the appellant's department and not a member of the University Appeals Board,

as a mentor who may assist in developing the case through all the steps.

STEP TWO - Initial Review: Within 10 working days of receipt of the grievance, the administrator involved will conduct a meeting with, the chair of the University Appeals Board, the dean or the immediate supervisor of the administrator involved, and the appellant (and mentor if assigned), in an attempt to settle the grievance. Within 5 working days of this meeting, the administrator involved will reply in writing to the appellant, with a copy to the immediate supervisor of the administrator involved, University Appeals Board chair, and the executive vice president and provost, describing the action taken, if any, to adjust the matter.

STEP THREE – Executive Vice President and Provost's Review: If the grievance is not resolved at the initial review, the appellant may, within 10 working days of notification of the results of the review described in STEP TWO, request a meeting with the executive vice president and provost by memorandum, attaching the original memorandum and responses from the initial review. This meeting should take place within 10 working days of the date of receipt of the memorandum by the Office of the Executive Vice President and Provost. Attendees at this meeting will include the appellant (and mentor if applicable), the chair of the University Appeals Board, and the executive vice president and provost. Within 10 working days of this meeting, the executive vice president and provost will reply in writing to the appellant, describing the action taken, if any, to adjust the matter. The executive vice president and provost will provide copies of this reply to those who participated in the initial review.

STEP FOUR - Referral to University Appeals Board: If the grievance is not resolved by the executive vice president and provost's review, the faculty member may initiate a formal appeal within 15 working days of receipt of the executive vice president and provost's decision by petitioning the chair of the University Appeals Board by memo through the Office of the Executive Vice President and Provost. The faculty member will provide the administrator involved and the chair of the University Appeals Board a copy of this appeal memo. The faculty member will forward to the Office of the Executive Vice President and Provost a copy of all appropriate material, including:

- A memo citing the basis for the grievance, a comprehensive rationale, and the remedy requested.
- A copy of the memorandum originally filed in STEP ONE.
- A copy of all previous correspondence and administrative responses to date.

The Office of the Executive Vice President and Provost will provide seven copies of all materials to the chair for distribution to the University Appeals Board, within 5 working days of receipt of the formal appeal.

STEP FIVE - Investigation: The University Appeals Board will meet within 10 working days after an appeal has been referred to them to determine if the appeal merits further study. At least 2 working days before this meeting, the chair of the University Appeals Board will distribute the appeal to the University Appeals Board members. If the University Appeals Board agrees that the case merits further study, it will conduct an investigation and hearing. The University Appeals Board will review the petition containing the written statement of the grievance, the written administrative response, and other supporting evidence collected. A copy of any written administrative response will be provided to the appellant. The University Appeals Board will consider these written statements as the initial element in its investigation of the appeal.

- If the University Appeals Board decides not to hold an investigation, it will forward its decision directly to the appellant, with copies to the president and all persons involved with the administrative review.
- If the University Appeals Board does agree to investigate the appeal, it will submit, within 10 working days, a copy of the appeal, additional notices, and communications to the party(ies) against whom the grievance is directed with an invitation for them to submit a written reply to the chair of the University Appeals Board within 15 working days. The chair of the University Appeals Board will provide the appellant with a copy of this response. The University Appeals

Board will review the appeal containing the written statement of the grievance, the written administrative response(s), and other supporting evidence collected. A copy of any written administrative response will be provided to the appellant. The University Appeals Board will consider these written statements as the initial element in its investigation of the appeal.

- During the investigative phase of an appeal, procedures will be informal, and records will be limited to minutes of University Appeals Board meetings. The University Appeals Board may interview both parties, separately or jointly. The investigation will be completed within 25 working days from receipt of the written reply from the administrator involved. Both parties will have access to all of the investigation results. If an informal settlement of the issue is reached during the investigation, the chair will terminate the investigation and notify the appropriate parties within 10 working days of the settlement.

STEP SIX - The Formal Hearing: At the end of the investigative stage, if no settlement has been reached, the chair of the University Appeals Board will call a formal hearing on the appeal. The chair will notify the parties involved in writing at the conclusion of the investigation concerning the time and place of the hearing, the issues to be considered, and provide them with a written report of the investigation results. The formal appeals hearing will be held within 10 working days following this notification.

- The hearing will be limited to specific items identified during the investigation.

- The University Appeals Board will decide if the hearing will be open or closed. A tape recording of the hearing will be preserved in the executive vice president and provost's archives, copies of which will be available to either party upon request.

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- The hearings of the University Appeals Board will not be bound by the rules of civil procedure, and any evidence of probative value in determining the issues involved may be admitted. Every possible effort will be made to obtain the most reliable evidence available.

- Each party may bring a representative (*e.g.*, a mentor or other person) to assist in the preparation and presentation of the case. However, neither administration nor the appellant will be represented at this hearing by legal counsel.

- Each party may present witnesses to testify to facts in support of the party's position; however, the statements of these witnesses must be made in the time allocated for the party having the floor. Normally, each party will have a total of 45 minutes in which to present. Upon the completion of formal statements, including presentations of witness testimony by both parties, there will be an opportunity for cross-examination, not to exceed 30 minutes for each party. Finally, each party will have not longer than 10 minutes for a summary statement.

STEP SEVEN - Decision: After all statements have been taken, parties and witnesses will be excused. The University Appeals Board will then deliberate and reach its decision. Within 15 working days of the appeals hearing, the chair will submit summary minutes, recommendations and rationale, copies of the tape recordings, and related papers to the president. The recommendations and rationale will include a summary of the University Appeals Board's opinion(s), including any dissenting opinion(s). The chair will also distribute a copy of the findings and recommendations to each party. The chair may, at this time, call a meeting with the president and the University Appeals Board to discuss the decision. Within 10 working days of receipt of these materials, the president will inform, in writing, the University Appeals Board and other appropriate persons of the final decision. Complete documentation, including the president's decision, and rationale if applicable, will be filed in the archives of the executive vice president and provost. If the president rejects the decision of the University Appeals Board, reasons for the rejection must be provided in writing. A record of the decision of the University Appeals Board, all documentation, and the president's decision will be

deposited in the archives of the Faculty Senate. The University Appeals Board will report annually to the Faculty Senate at its September meeting on the number of cases heard in the preceding academic year and the outcome of these cases. [*See* flowchart in Appendix 4-A.]

Discussion: A task force was appointed by the Dean’s Council last Fall to revise faculty grievance procedures, comprised of Dean Titus, Interim Dean Fant, Professor and UAB Chair Gary Rayson, Faculty Senate Chair Chris Erickson, Asst. VP Human Resource Services D’Anne Stuart and Assistant General Counsel Lisa Warren (Chair). Its purpose was to bring forward recommendations to update and streamline the existing faculty grievance procedures contained within 4.05.50. Consideration was given to consolidating all grievances into one procedure; however, because involuntary termination appeals heard by the Senior Senator Review Committee (the 3rd procedure in 4.05.50) are tied to policies in 5.98 and subject to distinct legal requirements, it was decided to first focus on the Salary Increase/Performance evaluation and the University Appeals Board procedures. The recommendation is to combine the first two grievance policies under 4.05.50 into one that will govern all grievances relating to administrative actions alleged to violate policy or to have an unfair or negative impact on the terms and conditions of employment. The doing so will make more streamline the grievance procedure. For example, now that annual performance reviews and tenure and promotion are linked together in the Policy 5.98 Promotion and Tenure, whether a grievance should go to the UAB or the RBFSI-PE is far from obvious.

Organization of Proposed Revised Faculty Grievance Process:

- A. Purpose
- B. Scope; Standing to Grieve
- C. Grievable Matters
- D. Non-Grievable Matters
- E. Overview of Faculty Grievance Process
- F. Faculty Grievance Review Board (“FGRB”)
- G. Policies Governing Grievance Review and Hearing Process
- H. Procedures to Initiate Grievance
- I. Procedures to Accept Grievance
- J. Procedures for Informal Resolution/Mediation
- K. Procedures for Formal Hearing/Final Decision
- L. Final Decision by Provost/President
- M. Definitions

Summary of Proposed Substantive Revisions:

1. Consolidates the Performance Evaluation/Salary Increase grievance procedure with the more general “unfair administrative actions” grievance procedure. Renames the board to “Faculty Grievance Review Board”.
2. Clarifies the types of actions that are grievable and non-grievable.

3. Provides an initial screening process for the board to expedite the determination as to whether the board has jurisdiction to hear the matter. If the grievance is declined, there is a process to seek an independent review from UGC. (currently rejection by the UAB is not appealable-makes consistent with staff grievance policies).
4. Provides that the final decision on the Board's findings recommendations will be made by the EVP/Provost, with concurrence of University President. (currently Provost decides SI-PE matters and President decides UAB matters)
5. Changes the composition of the board to consist of a larger panel of nine, from which individual mediators and three member hearing panels will be chosen as needed for each grievance. One rationale for this was to separate the mediation function from the hearing officer function, for increased objectivity. (input from both SI/PE and UAB grievance board chairs was that they became "tainted" prior to serving hearing officer) Another was to ensure that an adequate pool is created from which to draw, in order that conflicts of time and interest may be worked around. (input was that grievances are not heard in a timely manner)
6. Changes the composition of the board to have the administrator positions (that are nominated by the President and elected by the Faculty Senate) to be department heads with faculty rank.
7. Grants the full FGRB the authority to revise procedures, subject to approval by the EVP/Provost and the President.
8. Removes the Provost Office from early procedural decisions. Assigns support administrative, technical and clerical support functions jointly to the Faculty Senate and the Asst. VP for HRS in order to keep the procedure flowing in accordance with the policy/procedures.
9. Devotes subsection G. to basic policies relating to the hearing process: 1. Faculty Right to Advisor (formerly "mentor"); 2. University Right to Stay Proceeding (changed from EVP/Provost to General Counsel to prevent Provost from hearing facts prior to appeal); 3. Confidentiality; 4. Fair and Impartial Mediation/Hearing Process (includes process for resolving alleged conflicts of interest); 5. Time Deadlines (clarity attempted); 6. Filing and Storage of Grievance/Hearing Records.
10. Provides essential procedures in subsections H through K: H. Initiation of Grievance; I. Acceptance of Grievance; J. Informal Resolution/Mediation; K. Formal Hearing and L. Final Decision by Provost/President.
11. Provides a Definitions section in M.