

Proposition: 19-11/12 [A](#)

Title: **Proposed Revisions to Faculty Grievance Review and Resolution Policy 4.05.50**

Sponsors: Stuart H. Munson-McGee (ACES), Gary Rayson (A&S), and Tim Ketelaar (A&S)

**Proposed
Committee
Assignment:**

**Assigned
Committee:** **University Affairs, 4/19.**

Proposal: This proposition presents revisions to the current Faculty Grievance Review and Resolution Policy (section 4.05.50 of the NMSU Policy Manual). The rationale for these proposed changes is given below. A copy of the proposed revisions is attached as Attachment 1 and a copy of the current policy is attached as Attachment 2.

Rationale: The “new” faculty grievance process became effective in July of 2010. Since then, several grievances have been successfully resolved at various stages (pre-grievance; mediation and formal hearing). As these grievances made their way through the processes and questions arose from faculty, grievance board members, and others; notes were made and the following revisions are now being proposed with the intent of making the processes flow more smoothly.

The following list highlights the proposed revisions [originally proposed](#):

- Make more reader/user-friendly. Examples include moving the process Overview from Section E. to combine it with the Purpose P. in Section A.; moving the definitions from Section M to D; adding a Section for “Policy Administrator”, consistent with formatting of other policies in NMSU Policy Manual; rearranging the guidelines for resolving conflicts of interest; re-wording various provisions throughout for clarification, simplification, or consistency;
- Lengthens from 5 days to 10 days the time that the Faculty Grievance Review Board (FGRB) has to meet and decide whether a matter grieved is within the authority of the FGRB; also lengthens the time from 3 to 5 days for a decision appealing a denial of a grievance, and changes the decision maker from the Office of General Counsel to the Asst. VP of Human Resource Services;
- Adds a provision that grievance participants and witnesses shall not be retaliated against;
- Adds provisions for the nine member FGRB to elect a chair, who will then take on some of duties previously done by the Faculty Senate Chair (such as convening the full board to screen the grievances);
- Amends membership of the six at large faculty members to include four tenured/tenure track and two college faculty, in order that if a grievance involves a college faculty member, one of those members might be assigned;
- Clarifies intent that the faculty members shall not also be serving in the capacity of academic administrator, interim or otherwise;
- Adds provisions to address creation and preservation of the grievance record;
- Clarifies role of faculty advisor appointed for grievant; and
- Clarifies that either party may request that a grievance be stayed.

[The following are the friendly amendments recommended and accepted by the standing committee:](#)

Prop 19-11/12 [A Revisions to Change in](#) Policy 4.05.50, ~~re~~ Faculty Grievance Review and Resolution
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- [Clarifies that a quorum of five \(of the nine member FGRB\) is required to meet.](#)
- [Added provisions to address vacancies created by the resignation of an FGRB member during the member's term of service \("Interim Vacancies"\).](#)
- [Added provisions to allow the FGRB to meet telephonically or other electronic means.](#)
- [Clarified for consistency that the terms of service begin in the Spring semester as soon as possible after the election as possible within a new subsection entitled, "Commencement of Staggered Terms".](#)
- [A few other minor clarifications .](#)

ATTACHMENT 1 – Proposed Revised Policy

4.05.50 Faculty Grievance Review and Resolution *[Amendment (FS Proposition 14-09/10A, merging the SI/PE Review board and Faculty Grievance Review Board into one Faculty Grievance Review Board and revising policy and procedures) passed 04.29.10 ; recommended by Administrative Council 06.08.10; approved by Board of Regents 07.20.10]*

The university encourages the early resolution of disputes in the work place through informal discussion; for matters not resolved in the Pre-Grievance Resolution stage (*See A. 2. a.*), this policy provides structured mediation and grievance hearing procedures for resolution by peer and administrative review.

A. Purpose and Overview:

1. To allow matters in dispute to be resolved at the lowest administrative level possible.
2. To provide faculty members a fair, impartial and expeditious grievance review process by which faculty members may seek redress for wrongs they may perceive, and to resolve disagreements/disputes arising in the work place. An overview of this process is given in subsections 2. a through f immediately below; Sections G through L provide the specific procedures for the grievance process. The timeframe provided in brackets is an estimate of the length of time that each stage of the proceedings should take, absent a time extension.
 - a. Pre-Grievance Resolution [30 days]: Prior to initiation of any grievance, the faculty member has 30 days from the date of action or inaction giving rise to the grievance to inform the department head or other administrator not directly involved in the dispute in an attempt to discuss and resolve. A faculty advisor may be chosen at this stage or later by the grievant to assist, or appointed on behalf of the faculty member, upon request. (*See Section G. 2.*)
 - b. Formal Initiation of Grievance [same 30 days of pre-grievance stage]: If the pre-grievance discussions are unsuccessful, the faculty member submits a written grievance within thirty (30) days from the date of the action or inaction giving rise to the grievance. (*See Section H.*)
 - c. Jurisdictional Screening of Grievance [up to 18 days, if appealed]: The grievance is either accepted or declined by a majority of a quorum of the nine member Faculty Grievance Review Board; a declination may be appealed to the Office of the General Counsel (*See Section I.*);
 - d. Dispute Resolution by Mediation [30 days]: A member of the Faculty Grievance Review Board who will not be on the hearing panel (*See Section K.*) coordinates a mediation effort aimed at resolving the grievance without a formal hearing. (*See Section J.*)
 - e. Formal Hearing [30 days or less]: If mediation fails to produce a mutual agreement for resolution, the Faculty Grievance Review Board hearing panel conducts an administrative hearing within 20 days; the board forwards factual findings, the grievance record, and recommendations to the Office of the Executive Vice President and Provost within 10 days from hearing. (*See Section K.*)
 - f. Final Decision [15 days or less]: With the concurrence of the university president, the executive vice president and provost issues the final decision. (*See Section L.*)
3. To establish the Faculty Grievance Review Board (“FGRB”) as the faculty peer review body

charged with facilitating the resolution of faculty grievances in accordance with this policy, and any corresponding procedures. (See Section F.)

4. To prohibit retaliation against any person that attempts dispute resolution in accordance with this policy, including the pre-grievance stage, and/or against those who may be called upon to advise, cooperate, testify, investigate, counsel, mediate or adjudicate matters under this policy. (See Section G. 8)
- B. Scope of Policy and Standing to Grieve: This policy applies throughout the NMSU System. 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. Policy Administrator: The Faculty Grievance Review Board (See Section F.), the Office of the Executive Vice President and Provost, and the Office of the President; with support assistance from the Faculty Senate Chair, and the Offices of Human Resource Services and General Counsel administer this policy.
- D. Definitions:
1. "Chair of Faculty Grievance Review Board": A member of the Faculty Grievance Review Board elected by the membership to serve as the contact person for the full board, who will coordinate procedural matters and communicate on behalf of the board. The chair shall administer policies and procedures, and communicate for the panel collectively, which may necessitate a vote of the board from time to time, if the matter is in debate.
 2. "Chair of the Hearing Panel": A member of the three member hearing panel, designated amongst the three panel members, to serve as the lead in conducting the administrative hearing for the grievance matter. The hearing panel chair conducts the hearing fairly and impartially, consistent with these policies and procedures, and communicates for the panel collectively, which may necessitate a vote of the panel from time to time, if matters are in debate.
 3. "Day": means Monday through Friday, excluding official university holidays and closures.
 4. "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.
 5. "Faculty": as used in this policy means any full or part time tenured, tenure track, or regular non-tenure track faculty member.
 6. "Faculty Advisor" as used in this policy means a member of faculty selected by or on behalf of the grievant to provide consultation support regarding grievance preparation and/or presentation in the informal and formal grievance steps. The faculty advisor may also attend the mediation and formal hearing at the request of the grievant, but may not actively advocate nor participate. The grievant may enlist the faculty advisor, or may request that the Faculty Senate Chair enlist a member of faculty to serve in such capacity. (See Section G. 2.)
 7. "Grievance Record": The grievance record consists of all correspondence between the

grievant and member of the Faculty Grievance Review Board (usually the mediator or the chair of the panel); notifications setting the date, time and location of the mediation session or formal hearing; any written procedural guidance provided to the parties, supplemental to that provided herein; all evidence submitted by the parties at the formal hearing, labeled as to which party submitted it; the written findings of fact determined by a majority of the formal hearing panel, and the written final decision. No materials from an unsuccessful mediation shall be part of the grievance record; if the grievance is resolved in mediation, the resultant Mediation Agreement shall be part of the grievance record.

8. "Grievant": means any faculty member, or any group of faculty alleging a claim that is grievable pursuant to this policy.
9. "Hearing Panel": The hearing panel consists of three members from the nine member Faculty Grievance Review Board, designated by the Faculty Grievance Review Board to conduct the formal administrative hearing, if the matter is not resolved in mediation.
10. "Mediator": as used in the policy is the person or persons designated by the Faculty Grievance Review Board to explore pre-hearing dispute resolution. (*See Sections F. 5. and J.*)
11. "NMSU Entity": is used to describe a department or other administrative unit within an NMSU college or campus, including but not limited to extension service, and experiment stations. The Main Campus library is considered a single entity for purposes of this policy. 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".
12. "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.

E. Grievable and Non-Grievable Matters:

~~1. Grievable Matters: Anything not excluded under subsection 2. below is grievable. Grievances which allege the following shall be resolved through this Faculty Grievance Review and Resolution Policy:~~

~~2. —~~

~~3. Violation, or inequitable application, of university policy;~~

~~4. —~~

~~5. 1. 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, written reprimands.~~

~~6. —~~

~~7. 2. Non-Grievable Matters:~~ The following types of issues are not grievable to the Faculty Grievance Review Board:

- a. Job direction, including coaching and counseling provided for purpose of improving work performance;
- b. Disciplinary verbal warnings, unless subsequently at issue as part of written reprimand being appealed;

- c. Non-renewal of annual employment contract (“temporary contract”) during probationary period of tenure track faculty member, unless a violation of policy or procedure is alleged;
 - d. Promotion and tenure decisions, unless a violation of policy or procedure is alleged. (*See Promotion and Tenure Policy 5.90*);
 - e. Disputed matters that fall within the jurisdiction of another NMSU entity or hearing body, including but not limited to: involuntary termination for cause (*Policy 5.47 Faculty Discipline and Appeal Processes*), complaints of unlawful discrimination (*Policy 4.05.40, Appeals Discrimination*), and intellectual property disputes (*Policy 5.94.20 Research*);
 - f. Reassignment or transfer, provided no change in tenure home, loss in pay or faculty rank, or other violation of policy or procedure;
 - g. Changes in status of ~~an~~at-will academic administration position, consistent with policy and letters of hire;
 - h. The substance of a policy or established practice, unless it has an alleged unfair impact;
 - i. A resignation that has been sent and received.
- F. Faculty Grievance Review Board (“Faculty Grievance Review Board”): The ~~full~~ Faculty Grievance Review Board consists of nine members, from which mediators and smaller hearing panels will be assigned as needed.
- 1. Authority. The Faculty Grievance Review Board and/or its members assigned as mediators or hearing panel members, as appropriate, are authorized:
 - a. To elect a chair and vice chair from the nine member leadership. The chair will receive and send correspondence relating to procedural matters for pending grievances, and take the lead in setting meetings and coordinating with other officials and offices as necessary for the board to administer this policy. The vice chair will act in the chair’s absence.
 - b. To decide whether or not matters brought before it are within its authority, in accordance with NMSU policy (*See Section I.*);
 - c. To ascertain the best approach for mediation, including selection of an appropriate mediator (*See Section J.*);
 - d. To conduct fact finding hearings and to issue recommendations to senior academic administration (*See Sections K-L*);
 - e. To recommend revisions to this policy; to issue supplemental mediation or hearing procedures as may be necessary to assist the mediator, hearing panel and parties during the various grievance steps. Such supplemental procedures shall be consistent with this policy. Supplemental procedures shall be reviewed by the Office of HRS and General Counsel, and approved by the Office of the EVP/Provost. Any procedures that impose duties on the parties to a grievance will be provided to the parties in advance of any mediation session or hearing.
 - 2. Composition/~~E~~Selection of Members:

- a. Composition of the Faculty Grievance Review Board: The Faculty Grievance Review Board shall consist of a total of nine faculty members, six at-large members (4 tenured or tenure track faculty and two college faculty) and three department heads. Only one person from a department may serve at the same time. No more than three may come from the same Faculty Senate electing group, as defined in VI of the Faculty Senate Constitution (*Appendix I-D*).
- b. Election of Members: The nominations and elections shall be conducted prior to the Fall Semester, or as soon thereafter as possible. The Faculty Senate Chair or designee shall coordinate the following:
 - i. At Large Members: The faculty at large members shall not be currently serving as a department head, associate dean or dean on interim or permanent basis. Nominations for the faculty at large positions (either the tenured/tenure track or the college faculty positions) shall be made by members of the Faculty Senate, and shall be 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 nominees for each vacant position.
 - ii. Department Head Members: The Faculty Senate will nominate at least four department heads with faculty rank to fill two of the three department head positions; the Office of the University President will nominate at least two department heads. The election of the three department heads is conducted by the Faculty Senate. One of the three elected must be from the university president's list of nominees.

3. Length of 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. No member shall serve more than two consecutive three year terms. Members of the board who take an extended leave of absence, including periods of sabbatical, shall resign from the board.

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4. Commencement of the Staggered Terms. The term(s) shall commence in the spring, on faculty's first day back to work, or as soon thereafter as practicable. The membership shall continue in office until their replacement(s) have been elected, notwithstanding the limitation of serve to two consecutive three year terms. No member shall serve more than two consecutive three year terms.

5. Vacancies Due to Resignation During Term of FGRB Service:

a. Upon a vacancy created by a faculty member's resignation for any reason, the Faculty Senate Chair shall announce the vacancy, ask interested/qualified faculty to submit their names, and select from these names an individual to serve on the board until elections in the fall.

b. Upon a vacancy created by a department head's resignation, the Faculty Senate chair shall inform the president who will submit two names, from which one will be appointed by the Faculty Senate Chair to serve on the board until elections in the fall.

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c. Replacement members will serve out the remainder of the former member's term. ~~on~~ interim basis, pending elections in the Fall, which will elect someone to serve out the remainder of the original member's term. Members of the board who take an extended leave of absence for more than one month, including periods of sabbatical, shall resign from the board.

6. Meetings.

a. For all meetings of the Faculty Grievance Review Board, a minimum of 24 hours email or written notice will be given to all members of the board.

b. For actions taken by the Faculty Grievance Review Board, a minimum of a quorum of five is needed. ~~for hearings. For hearings, each member appointed to serve on a hearing panel shall attend and participate. To facilitate meetings of the board,~~ members may participate telephonically or by other electronic/digital means, provided ~~that confidentiality is able to be maintained.~~

a-c. For hearing panels, each member appointed to serve on the panel shall attend and participate.

4.7. Faculty Grievance Review Board Hearing Panel: Three members of the Faculty Grievance Review Board, consisting of two faculty members and one department head, shall constitute the hearing panel. The hearing panel shall select one of its members to chair the panel. The hearing panel chair shall communicate with the parties and other NMSU personnel as appropriate, on behalf of the panel.

5.8. Faculty Grievance Review Board Mediator: For each grievance, at least a majority of a quorum of the Faculty Grievance Review Board shall select one of its members to coordinate the mediation phase of the grievance process, in order to resolve the grievance pre-hearing, if possible. (See Section J.) The member assigned as mediator shall not be eligible to serve on the hearing panel for the same case, should the matter proceed to formal hearingsuch a panel be necessary.

6.9. Administrative Support for Faculty Grievance Review Board: The chair of the Faculty Senate or vice chair, as determined between them, and the assistant vice president of human resource services shall coordinate to provide the Faculty Grievance Review Board with the necessary clerical, administrative and/or technical support it requires, which shall include guidance relating to applicable time deadlines and other procedural issues that may arise.

7.10. Initial Transition of Membership: The initial board shall be comprised of existing members of the Review Board on Salary Increase/Performance Evaluation and the Faculty Grievance Review 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.

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G. General Grievance Review and Resolution Policies:

1. Creation and Preservation of the Grievance Record:

a. Method of Communication: Communication between the grievant and any member of the Faculty Grievance Review Board should either be in writing or be promptly documented for the benefit of the other members of the panel or full board. Official correspondence

shall be sent by the Faculty Grievance Review Board chair, mediator or hearing panel chair, as appropriate, and in a manner that maintains confidentiality, and that facilitates confirmation of receipt.

- b. Timing of Creation of "Grievance Record" (*See Also Subsection G. 7.*): At the conclusion of the faculty grievance, at whatever stage it might be resolved, the official grievance record as defined above in Section D. will be forwarded by the chair of the Faculty Grievance Review Board, with the assistance of the Office of HRS; there is no need to copy the Office of the EVP/Provost or any other office with the correspondence generated during the grievance proceeding.
2. Grievant's Right to Faculty Advisor: At any point in the process, the aggrieved faculty member may enlist the aid of a Faculty Advisor, whose role shall be to provide guidance and/or to attend the mediation or formal hearing. The role of Faculty Advisor does not include actively advocating or participating in mediation sessions or hearing on behalf of the grievant. If the aggrieved faculty member requests assistance in obtaining an advisor, the Faculty Senate Chair or designee shall appoint a senior faculty member to serve in that capacity.
 3. Stay of Proceedings: With the concurrence of the Office of the General Counsel, a grievance may be stayed by the chair of the Faculty Grievance Review Board when the grievant is also seeking relief based upon the same set of facts in another forum, or agrees to explore alternative dispute resolution outside the scope of this policy. The matter may be re-opened, if appropriate, depending upon the outcome of the other proceeding. Any party may submit a written request to the chair of the Faculty Grievance Review Board that a particular grievance be stayed.
 4. Confidentiality: All university personnel shall maintain and preserve confidentiality regarding faculty grievance matters, particularly matters discussed or divulged in a confidential mediation setting. *See Section J.7.*
 5. 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. Conflicts Guidelines:
 - i. Under no circumstances will a Faculty Grievance Review Board 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 Faculty Grievance Review Board 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 of the hearing panel member 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 of the mediator or panel member from service shall not be automatic, but shall be decided based upon the specific facts of each case.
 - b. Early Disclosure of Conflict/Voluntary Recusal:
 - i. Any Faculty Grievance Review Board member selected to serve as either the mediator or as a member of the hearing panel in a grievance matter shall disclose actual and

- potential conflicts of interest immediately or as soon as it is realized, in order that it may resolved prior to the informal or formal grievance processes.
- ii. A party shall also raise the issue of an actual or potential conflict of interest on the part of a mediator or hearing board member as soon as the conflict is known.
 - iii. 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 Faculty Grievance Review Board member, the resolution will be either voluntary recusal by the member of the Faculty Grievance Review Board alleged to have the conflict, or by substitution of a different member by the chair of the Faculty Grievance Review Board.
- c. Process to Resolve Alleged Conflict of Interest: In the event a conflict of interest issue is raised and not resolved amicably by substitution of another board member, the chair of the Faculty Grievance Review Board, the mediator or the 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 Faculty Grievance Review Board 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 Faculty Grievance Review Board 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 Faculty Grievance Review Board mediator or hearing panel member is excused based on a finding of conflict of interest, another Faculty Grievance Review Board member shall be selected to serve.
6. Time Deadlines (*See Also Section H. for time limit to initiate grievance*):
- a. The informal and formal review hearings and appeal process will be conducted as expeditiously as possible.
 - b. Upon written request, a~~At the written request from a party shall be granted a one time extension of the time deadline by ,~~the Faculty Grievance Review Board mediator or the hearing panel chair, as appropriate, 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. If an extension is requested, the chair of the Faculty Grievance Review Board will be informed. ~~A denial of a request for time extension may be appealed to the chair of Faculty Senate.~~
 - c. Upon written request, an~~At the written request of any~~ official with responsibility under this policy shall be granted a one time extension of the time deadline by the chair of the Faculty Grievance Review Board; if the Faculty Senate Review Board chair requests an extension, it shall be considered by the chair of the Faculty Senate. , including but not limited to the mediator and the hearing panel chair, the chair of the Faculty Senate may grant a request for an extension of a time deadline applicable to that official.

~~d.~~—A second or subsequent written request for time extension from ~~any~~ party or from a Faculty Grievance Review Board official may will only be granted by the Faculty Senate Chair, due to ~~in~~ exceptional circumstances ~~cases~~, after consideration of the basis for the request and the respective positions of the parties.

7. Filing and Storage of Grievance/Hearing Records: The Faculty Senate Chair, together with the Offices of HRS, with guidance from the Office of General Counsel as needed, shall ensure that the official grievance record documentation (consisting of official grievance, any written response, official correspondence, evidence submitted for hearing and final decision but NOT INCLUDING anything from an unsuccessful mediation session) is maintained as follows:

- a. The grievance record is typically voluminous, and 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 to cross reference a grievance decision in the official personnel file (i.e. to justify a mandated change in salary).
- b. 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.
- c. Copies of the final administrative decision, which may be a Mediation Agreement, shall be stored permanently in the Office of the Executive Vice President and Provost.
- d. The grievance record, consisting of official correspondence and notifications, exhibits and other evidence, recordings, factual findings, and final decision, shall be maintained by the Office of Human Resource Services, in accordance with the university's retention of records policy.

8. Prohibition of Retaliation: Retaliation against any person that attempts dispute resolution in accordance with this policy, including the pre-grievance stage, and/or against those who may be called upon to advise, cooperate, testify, investigate, counsel, mediate or adjudicate matters under this policy is strictly prohibited. Any such claim shall be reported immediately to the Assistant Vice President of Human Resource Services. Such claims will be taken seriously, investigated independently, and if substantiated, will be grounds for corrective or disciplinary action, appropriate to the circumstances.

H. Procedures to Initiate Grievance: After internal communications between individuals with authority to resolve the grievance have failed to resolve a disagreement or dispute that has been identified to the department head as a potential grievance, a faculty member may initiate a formal grievance by delivering a memo with the subject line "Faculty Grievance", to the chair of the Faculty Grievance Review Board, through the Faculty Senate chair. A copy shall also be delivered by the grievant to the department head, cognizant dean or equivalent administrator, and assistant vice president of human resource services. The grievance should be initiated within thirty (30) days from the date of the action or inaction being grieved, or from the time the faculty member reasonably should have known about the action/inaction subject of the grievance. 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, in writing to all parties, an extension of the deadline, for extenuating circumstances, or if so doing facilitates pre-grievance resolution. The memo initiating the grievance resolution process shall:

1. Identify the issue in dispute;
 2. Identify involved parties and provide email and physical address of the grievant to which official grievance correspondence should be sent;
 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 Determine Jurisdiction: The Faculty Grievance Review Board Chair shall convene a quorum of the board to review the grievance and determine whether or not the matter(s) alleged state a grievable claim within the purview of this policy. ~~ensure that a quorum of the board is present prior to determination whether the grievance as stated is within the board's authority.~~ Typically, the Faculty Grievance Review Board Chair will issue the official correspondence to the parties; however, as agreed by the members, any member may issue the written determination to the grievant on behalf of the Faculty Grievance Review Board, provided it is reflective of what the majority decided. The determination to accept or decline a grievance shall be issued in writing to all parties within ten days from the date the grievance was received by the Faculty Grievance Review Board Chair. A copy of the board's determination relating to acceptance shall be sent to the Office of HRS-EMS and University General Counsel. The Faculty Grievance Review Board's determination may be appealed by either party within three days from receipt to Assistant Vice President of Human Resource Services, who will issue a written decision letter sent to all parties within five days from receipt of the appeal.
- J. Procedures for Informal Resolution/Mediation: The purpose of the mediation phase of this grievance procedure is to explore whether or not mediation or other alternate method of dispute resolution might resolve the grievance and obviate the need for the formal hearing and decision making process.
1. The Faculty Grievance Review Board member selected (*See Section F. 5.*) to coordinate the mediation phase of the grievance may serve as mediator, or, if warranted by the facts alleged or the parties involved, and with the approval from the Faculty Grievance Review Board chair, may utilize a mediator external to the Faculty Grievance Review Board to conduct the pre-hearing dispute resolution (mediation) phase of the grievance process.
 2. The Faculty Grievance Review Board mediator may conduct the mediation jointly with an external mediator; may rely on external mediator(s) to conduct the mediation; and may require that more than one mediation session be held.
 3. The Faculty Grievance Review Board member selected to coordinate the mediation phase is encouraged to work with the Faculty Senate Chair, the Office of Human Resource Services and the Office of General Counsel regarding the logistics of conducting the pre-hearing dispute resolution session(s), especially with regard to compliance with applicable time deadlines.
 4. The mediator(s) shall work directly with the parties and the appropriate NMSU officials, as needed, for approval of any mutually agreed upon resolution, if any.

5. The mediator(s) will provide the parties to the grievance written ground rules for the pre-hearing dispute resolution session(s) prior to or at the commencement of the first mediation session. The parties will be asked to read them and to sign, indicating their willingness to abide by them. If any party refuses, the mediation will be cancelled, and the grievance will be submitted to the Faculty Grievance Review Board hearing panel chair for a hearing and decision.
6. If at any point during the mediation, a party's behavior is in violation of the ground rules, and the behavior is counterproductive to the mediation, the mediator has the authority to cancel the session and elect to submit the matter to the formal hearing stage.
7. All documentation, information, positions asserted, admissions or concessions shared for purposes of exploring a pre-hearing dispute resolution shall remain confidential and shall not be divulged by any party or mediator to any person, including the other members of the Faculty Grievance Review Board, nor used against any party at any subsequent hearing or proceeding. With the exception of a Mediation Agreement, if any, the mediator will ask that the parties to leave written documentation behind which the mediator(s) will shred.
8. The only documentation that shall be retained after mediation is a formal signed Mediation Agreement that documents that a mutually satisfactory agreement was reached by the parties. A Mediation Agreement, outlining the agreement, including the details relating to follow up action to be taken, will be drafted during the mediation session and shall be signed by all parties. Ideally, all parties whose authority will be required to resolve the matter will be present at the mediated dispute resolution session(s); however, if additional administrative approvals will be necessary before the parties' mutual agreement can be finalized, the mediator(s) may work outside of the mediation session to obtain the appropriate additional approvals or to further formalize the initial agreement. The provisions relating to confidentiality continue to apply and each NMSU official consulted regarding the potential for settlement shall be advised about the confidential nature of the communications.
9. If the mediation resolves all or part of a grievance, the signed Mediation Agreement shall be filed with the grievance record; each party will be provided with a copy, to facilitate its implementation. The parties shall agree to maintain it in a secure manner that will not jeopardize confidentiality. If the mediation does not resolve all of the issues raised in the grievance, the issues remaining will be submitted for formal hearing. Each party has the authority to decide whether or not to agree to a Mediation Agreement that resolves only part of a grievance.
10. The mediator(s) shall meet with the parties and take other action as necessary to resolve all or part of the grievance. This may include review of documents, interviews or consultations with persons not on the Faculty Grievance Review Board, including but not limited to university officials whose authority to implement a proposed solution will be necessary, provided they will not be involved in the formal hearing process.
11. No later than thirty (30) days from the mediator's receipt of the grievance, absent an extension of time pursuant to Section G. 6., the mediator shall send a request for hearing to the Faculty Grievance Review Board hearing panel chair, with a copy to the Faculty Senate Chair. Unless the mediator indicates that progress is being made and there remains a viable possibility of resolving the grievance in the mediation stage, an extension of time shall not be granted.

K. Procedures for Formal Hearing:

1. **Transference from Mediation to Hearing Panel:** As soon as the mediator informs the chair of the Faculty Grievance Review Board and the chair of the hearing panel in writing that the grievance was not resolved by way of a Mediation Agreement, or 30 days from the date the grievance was referred to mediation, whichever is sooner, the grievance shall be set for hearing by the designated hearing panel.
2. **Timeframe for Hearing:** The hearing shall be conducted within 20 days from notification by the mediator or from the 30 days mediation deadline, whichever is sooner. The chair of the formal hearing panel shall give the parties as much notice as possible of the hearing date.
 - a. If the hearing panel is not able to convene to hear the matter within said timeframe, the chair of the hearing panel shall inform the chair of the Faculty Grievance Review Board, and also seek an extension of time from the chair of the Faculty Senate.
 - b. In order to expedite the hearing, the chair of the Faculty Grievance Review Board may substitute hearing panel members; if necessary as a matter of last resort, the assistance of the chair of the Faculty Senate may be sought to coordinate with all parties about the applicable timelines and to facilitate the setting of the hearing date.
3. **Hearing Procedures:** The parties shall be directed to the applicable hearing procedures and/or given a copy.
 - a. **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.
 - b. **Hearing Participants:** The parties include: The grievant and faculty advisor, if any; the party charged, and the department head or other academic administrator at the discretion of the hearing panel chair. Each party may call witnesses; witnesses may not stay in the hearing beyond the time necessary to provide testimony, with the exception of the parties, who may also provide witness testimony.
 - c. **Documentation for Hearing:** At least five days in advance of the hearing date, each party shall submit to the hearing panel chair four copies of a position statement outlining the points in support of that party's position, with attached exhibits and a list of witnesses, if any. The hearing panel chair shall distribute one copy to the other party, and the other two copies to other two members of the formal hearing panel.
 - d. **Role of Legal Counsel:** Neither administrators nor grievant may be represented at the hearing by legal counsel.
 - e. **Closed Hearing:** The hearing shall be closed to the public. Witnesses other than party representatives shall be excused after presenting testimony. *See subsection 3 b. above.*
 - f. **Time for Presentation at Hearing:** The hearing panel 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.

- g. Conduct of Hearing: The hearing panel chair shall maintain control of the proceeding, including evidentiary and procedural issues. As needed to determine the panel members' collective decision, each panel member may be asked to indicate a position by way of vote. For procedural issues raised by the parties, the chair may ask the parties to step out while the panel deliberates and decides; when the parties return, the chair shall announce the panel's decision on the issue.
 - h. Witness Testimony: Witness testimony shall be taken under oath given by a Notary Public. The chair of the hearing panel may request that all witnesses be sworn in at one time, then asked to leave until such time as they are called to testify, or they may be sworn in individually immediately prior to giving testimony.
 - i. Deliberations: The hearing panel shall deliberate in closed session, apart from the parties. The panel may elect to consult with the Office of the General Counsel or the Office of Human Resource Services or the Office of Employee Management Services staff during the hearing and/or during its deliberations.
 - j. Preservation of Record: The hearing shall be recorded; the parties shall be entitled to a copy of the recording, upon request, after the final decision has been rendered. Responsibility for transcription is on the party desiring the transcription.
4. Findings and Recommendations: Within ten days from the closure of the hearing (last date of deliberations by the hearing panel, the chair shall submit findings and recommendations representative of the hearing 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. Procedures for Final Decision: Within fifteen 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 the final written decision. The decision, together with a copy of the hearing panel's findings and recommendations, shall be delivered to the parties and to the hearing panel chair.

ATTACHMENT 2 – **CURRENT FACULTY GRIEVANCE POLICY**

Note that since this was copied and pasted from the on-line pdf version of the NMSU policy manual (March 27, 2012) and then reformatted, the formatting in this document may not be the same as in the policy manual.

4.05.50 Faculty Grievance Review and Resolution [Amendment (FS Proposition 14-09/10A, merging the SI/PE Review board and Faculty Grievance Review Board into one Faculty Grievance Review Board and revising policy and procedures) passed 04.29.10 ; recommended by Administrative Council 06.08.10; approved by Board of Regents 07.20.10]

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 (“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, Appeals Discrimination), and intellectual property disputes (Policy 5.94 Research).
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* Procedures to Initiate Grievance, Procedures to Accept Grievance, Procedures for Informal Resolution/Mediation and Procedures for Formal Hearing 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 Faculty Grievance Review Board; rejection may be appealed to the Office of the General Counsel;
4. Informal Resolution by Mediation. [30 days or less] A member of Faculty Grievance Review Board, 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 Faculty Grievance Review Board 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 ("Faculty Grievance Review Board"): 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 Faculty Grievance Review Board 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 Faculty Grievance Review Board 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 Faculty Grievance Review Board. The Faculty Grievance Review Board 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.
 - 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.
 - 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. Faculty Grievance Review Board Hearing Panel. Three members, which include 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 be provided to the parties.

5. Faculty Grievance Review Board Mediator. For each case, one member of the Faculty Grievance Review Board, 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 Faculty Grievance Review Board. The chair of the Faculty Senate and the assistant vice president of human resource services shall coordinate to provide the Faculty Grievance Review Board 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 Faculty Grievance Review Board 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 Faculty Grievance Review 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 Office of the 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 Faculty Grievance Review Board 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 Faculty Grievance Review Board member, the resolution will be either voluntary recusal by the member of the Faculty Grievance Review Board, 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.
 - If a challenged Faculty Grievance Review Board 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.

- If the challenged Faculty Grievance Review Board 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 Faculty Grievance Review Board mediator or hearing panel member is excused based on a finding of conflict of interest, another Faculty Grievance Review Board member shall be assigned to serve.

5. Guidelines for Determining Conflicts of Interest:

- a. Under no circumstances will a Faculty Grievance Review Board 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 Faculty Grievance Review Board member shall not mediate, nor hear, a matter involving faculty from their own NMSU entity.
- b. 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.
- c. 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.

6. 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 Faculty Grievance Review Board 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 Faculty Grievance Review Board mediator or hearing panel chair.
- d. A second or subsequent request for time extension from any party or Faculty Grievance Review Board official will only be granted in exceptional cases, after consideration of the basis for the request and the respective positions of the parties.

7. 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 Faculty Grievance Review Board will review the grievance and determine 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 Faculty Grievance Review Board decision may be appealed within three (3) days to Office of the General Counsel, who will issue a written decision letter within three (3) days.

J. Procedures for Informal Resolution/Mediation: The Faculty Grievance Review Board 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 Faculty Grievance Review Board 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 Faculty Grievance Review Board, 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 Faculty Grievance Review Board 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 Faculty Grievance Review Board 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 Faculty Grievance Review Board 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 the Office of the General Counsel or Office of Human Resource Services or the Office of 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 Faculty Grievance Review Board), 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 Faculty Grievance Review Board 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 extension service, and experiment stations. The Main Campus library is considered a single entity for purposes of this policy. 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.