

Proposition: 21-15/16

Title: A Proposition to Modify Rule 4.05.50 Faculty Grievance Review and Resolution

Proposition Sponsors:

Stuart Munson-McGee, ACES

Gary Rayson, A&S

Committee Assignment: *Assigned by FS Vice Chair*

Proposition Tracking (as needed):

Action	Date
Reviewed by Policy Administrator (per policy 1.10)	
Sent to UAC (per policy 1.10)	2/25/2016
Sent to AAG (per policy 1.10)	2/26/2016
Returned from AAG (per policy)	
Reconciliation and returned to UAC (per policy 1.10) if necessary	
Submitted for final review and approval by Faculty Senate	
Final Faculty Senate action	

Proposition

This proposal amends Rule 4.05.50, the Rule that provides the processes by which faculty grievances are resolved through an elected board known as the Faculty Grievance Review Board (FGRB). This nine-member board provides a mediator from its membership, and if mediation does not resolve the grievance, then three different members are selected from the FGRB membership to serve as a hearing panel, to hear the evidence and to render findings of fact and issue recommendations to the EVP/Provost. The Provost then makes the final decision. In addition to minor revisions to clarify and to reformat consistent with the ARP template, substantive changes were made to improve the process.

The current Rule is available on the NMSU web site, the proposed revised version given in Appendix 1, and a redlined version of the original proposal is given in Appendix 2.

Rationale

Experiences with the Faculty Grievance Review Board in the past 2 years have highlighted several areas within the current policy that need to be changed to the grievance review and resolution process to make it more equitable and more timely. The proposed Rule has been developed based on those experiences.

The Rule was also substantially reformatted without making substantive changes to conform to the Administrative Rules and Procedures format.

The major changes to the content in this revision to Rule 4.05.50 are given below:

1. “General Counsel” deleted from Policy Administrator (Table at end of document) and from FGRB’s jurisdictional determination (Part 7 C. 1.) and from Filing and Storage of Grievance Records (Part 4 G.)
2. Faculty Status will be determined by HRS when requested by FGRB Chair (Part 2 B.)

3. Added new basis for grievance ineligibility—if issue could have been brought before in prior grievance—to bar duplicative claims (Part 3 A. 9.).
4. Restructured section on Recognition and Authority of FGRB, including adding clarification that they may decide whether grievances are filed by eligible faculty, filed timely or filed in proper form (Part 3 B. 2.) and to compel attendance of the parties and witnesses if necessary (Part 3. B. 6.).
5. Department Head members will be nominated by the Provost rather than the Chancellor (Part 3 D. 1. C.) (at least 2 nominees per vacant position). Also if a Department Head vacancy is created during the term, the Provost (rather than president) will nominate two Department Heads and Faculty Senate Chair will select one to serve the remainder of the vacating member's term.
6. Elected FGRB members shall attend an orientation training within one month from beginning FGRB service, and shall have already received mediator training or agree to attend such training when offered (Parts 3 D. 1. f. and g.).
7. Added a provision that if an FGRB member is not available for more than 12 weeks, including during the summer, the member may be deemed resigned from the FGRB (Part 3. D. 3. b.).
8. Added a provision that under no circumstances shall the Provost or Chancellor be copied with correspondence generated during the grievance proceeding, unless allowed by the Rule (e.g. advice sought from General Counsel) (Part 4 A. 3.).
9. Added provisions to simplify how to obtain and document time extensions: i.e. the reason for the extension must be given, put request in writing and copy all parties, and FGRB decides with concurrence of FS Chair. (Part 4 F.).
10. Added new provisions regarding timeliness of filing: e.g. a waiver would be allowed for continuing violations and if ongoing and genuine efforts have caused a delay in filing... (Part 6. A.)
11. Adds 2 more days (from 3 days to 5 days) for parties to appeal an FGRB ruling that the grievance has been accepted/rejected (Part 7. C. 2).
12. Provided that in rare instances, at the discretion of a majority of a quorum of the FGRB, the mediation step may be bypassed. (Part 7 E.).
13. Added clarification regarding mediator responsibilities (Part 8 D.).
14. Simplified the timeframe to conduct the formal hearing. In the revised version, the FGRB has 10 days to select hearing panel from the date the mediator informs the FGRB Chair that mediation not successful and that a hearing is needed (Part 9 B.) and then hearing panel must hear the grievance within 20 days from notification by the FGRB chair that a formal hearing is needed (Part 9 D.).
15. Clarified the hearing panel chair's duties (Part 9 C.).
16. Require copying the supervisor(s) of each party upon acceptance of grievance by FGRB.

17. Clarified that FGRB members must continue to serve on the FGRB until the member's replacement has been elected, notwithstanding the limitation on service to two consecutive 3 year terms. (Part 3. D. 2.).
18. Renamed the Faculty Adviser to Faculty Consultant (Part 2 C.).
19. Added a definition for "Grievant" (Part 2. F.).
20. Enhanced provisions to ensure that the "grievance record" remains intact and is stored with HRS for retention of records period and by parties that have access to the record (e.g. the FGRB Chair and the final decision maker) (Part 4 G.).
21. Language added to "strongly encourage" the grievance to make a good faith effort to resolve the grievance, but note that this does not mean that before the 30-day time limit is up, that they should hold off on filing the grievance... it can still be resolved informally after the grievance is filed (Part 5 A.).
22. Added details regarding "how to" file a grievance (Parts 8. B. and C.).
23. Clarified that if an external mediator is used by the FGRB rather than an FGRB member, that the FGRB chair will act as the mediation coordinator (Part 7 D. 3.).
24. Clarified that if the EVP/Provost has a conflict of interest, that the Chancellor or the Chancellor's designee will receive the FGRB's findings/recommendation and issue the final decision (Part 9. G.).
25. Significantly reduced the role of the Faculty Senate (FS) Chair throughout the Rule to make the process more responsive and less cumbersome since the role of the FS Chair was principally to act as an intermediary in the exchange of paper work among the parties involved.

Appendices

Appendix 1 – Proposed Rule 4.05.50

Appendix 2 – Redlined version of current Rule 4.05.50