

Interim Complaint Resolution Policy and Procedure for Complaints Directed at Instructional Staff (Faculty, Including Instructors)

Approved by President Stephen Wells January 26, 2019

This complaint policy and procedure is available to any employee or student for the resolution of any disagreement or problem arising out of instructional staff conduct that is allegedly inconsistent with New Mexico Tech's policies, procedures or actions, or inconsistent with any federal, state law, regulation rule or policy, as they apply to an employment relationship. In cases of grievances filed against a graduate assistant, the graduate dean will determine whether this policy or the student conduct policy is the applicable policy and procedure. This process for resolving alleged sexual misconduct or other prohibited behavior applies to all employees, including faculty. Persons who have been terminated from employment with New Mexico Tech do not have access to this procedure after the effective date of their termination.

Any retaliatory action of any kind taken by any New Mexico Tech employee against another employee as a result of such employee seeking to resolve a complaint, cooperating in the investigation, or otherwise participating in any proceedings under these procedures is prohibited and is subject to disciplinary action up to and including termination. Any claims of retaliatory action shall be added to the pending grievance incident. Academic Affairs may temporarily intervene to prevent escalation of grievance.

Complaints relating to hiring, work day and assignments, performance evaluations, and disciplinary actions are designated as "management rights" and, as such, are not subject to this procedure, unless such action was either:

- (a) allegedly based on the recipient's race, color, religion, national origin, physical or mental disability, veteran status, medical condition, pregnancy and parental status, age, spousal affiliation, sexual orientation, or gender identity or
- (b) allegedly in violation of any federal, state law, rule, regulation or policy, or New Mexico Tech regulation, rule or policy.

Any employee including those in the introductory period as well as emergency employees who feel they have been discriminated against may file a complaint alleging discrimination. Such reports shall be filed with the Director of Equal Opportunity and Affirmative Action. Complaints related to sexual or gender-based discrimination will also be reported to the campus' Title IX Coordinator.

In cases involving alleged sexual misconduct the panel must and will be trained in Title IX policies and procedures.

In any case in which academic freedom or tenure is also allegedly at stake, "Regulations Governing

Academic Freedom and Tenure (RGAFT)” may apply. In the event that the applicability of RGAFT is challenged by either party, the matter shall be referred to the Senate Academic Freedom and Tenure Committee for a recommendation to the VPAA who, in turn will render a decision on RGAFT applicability. If either the complainant or the respondent are unsatisfied with the VPAA’s decision, they may appeal to the President.

Any reported complaints of retaliation involving a NMT employee associated with the Title IX or other prohibited behavior resolution processes will be also addressed by the AA/EEOC and the above process could be utilized for formal resolution.

Below are listed both informal and formal processes to arrive at a resolution. Parties are encouraged to follow informal processes, because these often lead to a more collegial post-resolution relationship, to the benefit of the parties and the department. However, circumstances vary for each case and parties are free to choose either path.

Because these are personnel matters, (i) all formal grievance processes will be heard with one complainant and one respondent, i.e. individually not as a collective group, (ii) all hearings will be closed hearings and (iii) if penalties are invoked, the complainant’s right to know of the penalty(s) is limited to those aspects of the penalty that affect the complainant, such as no-contact orders.

The standard of evidence for the formal processes listed below is “clear and convincing evidence”, with the proviso that this standard applies only to these processes and is not necessarily the standard to be applied in other policies. Examples of those other policies are Academic Freedom and Tenure, Title IX, or other independent policies.

The grievance/complaint process is as follows:

1. Informal Process: The employee or student complainant may choose to initiate the informal complaint process by discussing the problem or disagreement with his/her immediate supervisor of the events upon which the complaint is based; or when he or she became aware of the issue of which they are complaining. If the supervisor is the accused, the employee should seek the next higher authority in the chain of command. The supervisor, in turn, should conduct an investigation and work with the complainant and the accused to resolve the issue(s), consistent with federal, state and Tech laws, regulations, rules and policies. If, after such process fails to satisfy the complainant, he or she may seek resolution to higher authorities in Academic Affairs to informally resolve the issue(s). Alleged incidents of misconduct do not have a statute of limitations and can be reported at any time, but this may have an impact on the investigation capacity and appropriate action available to the institution.
2. Formal Process: If the grievance/complaint is not resolved through the informal

process listed above, the complainant may choose to file a formal, written grievance to the Associate Vice President of Academic Affairs (AVPAA) or, if the respondent is a graduate assistant, to the Graduate Dean. The complainant is free to skip the informal process and proceed directly to the formal process, if they so choose. If the respondent is unsatisfied with the outcome of the informal process, they may choose to appeal in writing to the AVPAA for a formal process. If the AVPAA has a conflict of interest or otherwise cannot serve in this capacity, an appropriate dean in the chain of command may fill this role. The AVPAA will work with the Director of Equal Opportunity and Affirmative Action those cases involving equal opportunity or affirmative action. The Title IX Coordinator will also be notified and consulted in all cases involving allegations of sexual misconduct. The findings, recommendations and disciplinary actions resulting from the investigation shall be forwarded to the parties involved within 60 days of receipt of the written complaint unless an alternate timeline is agreed upon. The AVPAA will take these findings and within 10 working days issue a decision to resolve these matters.

3. Appeals and Formal Hearings: If the complainant or respondent is not satisfied with either the informal or formal resolutions (see above), the grievance may be submitted in writing to the VPAA of New Mexico Tech for a formal hearing. Either the complainant or respondent may make such a request.
 - i. Formation of the committee: The VPAA shall appoint a grievance committee consisting of five members and two alternates. Committee members must be tenured faculty, but not members of the AFT Committee or Ombudsperson. All committee members must be trained in the appropriate adjudication policies and procedures. The VPAA shall appoint one of the members to chair the committee and to conduct the grievance meetings and review. Either party to the grievance may challenge one member of the committee panelist at a pre-hearing meeting at least 48 hours prior to the formal hearing. An alternate will replace the challenged member. Parties are not required to attend this pre-hearing meeting but they need to submit the name of the committee member they want disqualified.
 - ii. Evidence and Advocates: Parties must provide to the committee the name of any witnesses or advisor/advocate they will bring to the hearing, and a copy of any evidence they will present at the hearing. This information will be shared with both parties and copies will be made for hearing panelist. Either party may bring an advisor/advocate to the hearing, whose role will be limited to advising their respective party. In all cases the complainants and respondents have the right to have an advisor/advocate present throughout the investigation and resolution process.
 - iii. Committee Timeline: The grievance committee shall meet within ten working days of their appointment for the purpose of initiating the

grievance review.

- iv. Proceedings of the Committee: At the hearing, the committee shall interview parties to the grievance and review all pertinent documents. Parties to the grievance may submit evidence and may examine and cross-examine witnesses. Any third party witness or representative must be a current employee or student of New Mexico Tech, or successfully demonstrate to the committee that they have direct, first-hand knowledge of relevance to the case. The grievance committee shall render its recommendation in writing to the VPAA.
 - v. VPAA Timeline: The VPAA shall render a decision on the committee's recommendation to resolve these matters in a timely manner and less than or equal to 10 working days from the submission of the Committee's written recommendations. That decision will be communicated to the complainant and respondent in writing.
4. Final Appeal: If the complainant or respondent wants to appeal the decision of the VPAA, they must submit a written request for appeal to the President within 10 days of receiving the decision. The President or designee will review the request for appeal and either grant or deny the appeal request. If the appeal request is granted, the President or designee will only review the grounds for the appeal (e.g. how the committee and/or VPAA erred) stated in the appeal request. The President or designee will not conduct a de novo (new) hearing. The President or designee shall return the case back to the committee for reconsideration or the President or designee shall accept, modify or reject the recommendations of the grievance committee and/or the VPAA's decision. The action of the President shall be final and binding on all parties.