

Proposed Revisions to Policy 4.05.50

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][Amendment FS Proposition 19-11/12A passed Faculty Senate 05.03.12; signed by the President 05.21.12; approved by Board of Regents 06.21.12]*

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 subsection 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~~A Faculty Consultant 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 ~~18-30~~ days, if appealed]: The grievance is either accepted or declined by a majority of a quorum of the nine member Faculty Grievance Review Board; either party may appeal the board's determination, within three (3) days, to the assistant vice president of human resource services. (*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 ~~for~~ 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 to Faculty as defined in section D.5 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 ~~who alleges they have been personally and materially affected by a decision, action, or inaction.~~
 6. “Faculty ~~Advisor~~ Consultant” as used in this policy means a member of faculty ~~selected by or on behalf of the grievant to provide~~ who provides consultation support ~~regarding in the pre-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 and appeal grievance steps. (*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); the documentation in any format (e.g. email) relating to the grievance, including but not limited to notifications setting the date, time and location of the mediation session or formal hearing; any written procedural guidance provided by the Faculty Grievance Review Board chair, mediator or hearing panel to the parties, supplemental to that provided herein if any; all evidence submitted by the parties at the formal hearing, labeled as to which party submitted it; the written recordings of the formal hearing, the findings of fact determined by a majority of the formal hearing panel, and recommendations, and the Executive Vice President and the written Provost's final decision. No materials from an unsuccessful mediation shall be part of the grievance record; if the grievance is resolved in mediation, the resultant except for notices of meeting dates and the Mediation Agreement shall be part of the grievance record, if any.~~

8. "Grievant": means any faculty member, or any group of faculty, alleging a grievable claim. (See also sections D.5. and E).
9. "Hearing Panel": The hearing panel consists of three members ~~from of~~ the ~~nine member~~ Faculty Grievance Review Board, designated by ~~the Faculty Grievance Review Board~~ to conduct the formal 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. "Party": The parties to a faculty grievance are the individuals who filed the grievance, and any person or entity named or joined as a respondent.

~~— "Respondent": Any person or entity whose action or inaction gave rise to the grievance being filed.~~

13.

14. "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~~Any issue not excluded under subsection ~~E.2. below~~ is grievable.
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 Policy [5.90 Promotion and Tenure Policy](#)*);
- 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 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;
- i-j. Issues that could have been raised in a previous grievance proceeding that was accepted by the Faculty Grievance Review Board, involving the same parties and arising from the same or substantially similar facts, as determined by a majority vote of the Board. This exclusion is intended to bar duplicative claims, or claims that could have been brought at the time the prior grievance was filed.

F. Faculty Grievance Review Board (“Faculty Grievance Review Board”): The 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~~ its membership. 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, processing the grievance,~~ including but not limited to selection of an appropriate ~~-mediator~~ and hearing panel. (*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/Executive Vice President and~~ 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.
 - f. To require the parties' attendance and cooperation in all faculty grievance matters, including the cooperation of the supervisors of the parties.

2. Composition: Election 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 regular non-tenure track 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 1-D*).

b. Election of Members: The nominations and elections shall be conducted ~~prior to~~ during the Fall Semester, ~~or as soon thereafter as possible~~. The Faculty Senate Chair or designee shall coordinate the following:

i. A general announcement calling for nominees, including self-nominations, indicating which positions are vacant.

ii. 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~~ 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.

iii. 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~~ For each vacancy, at least two nominees must be ~~from the university president's list of nominees~~ put forth.

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~~ Term of Service: 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 with a duration of one semester or longer during their term of service, including periods of sabbatical, shall be temporarily replaced pursuant to F.5.a., and resume their elected position upon return. ~~resign from the board remainder of their elected term.~~

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~~ members shall continue ~~in office~~ to serve on the board until ~~their~~ the member's replacement(s) have has been elected, notwithstanding the limitation ~~of serve on service~~ to two consecutive three year terms.

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

a. Upon a vacancy created by a faculty board member's resignation or extended temporary leave of absence of one semester or longer, the Faculty Senate Chair shall announce the vacancy, ask interested/qualified faculty or department heads, as appropriate, to submit their names, ~~and.~~ The Faculty Senate Chair shall select from these names an individual to serve on the board for the remainder of the elected member's term. ~~until the return of the elected member on leave of absence, or~~

~~in the case of permanent resignation, 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.~~

~~e-b. Replacement members will serve out the remainder of the former member's term, which service shall not be counted as part of the two term limit.~~

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. To facilitate meetings of the board, members may participate telephonically or by other electronic/digital means, provided that confidentiality is able to be maintained.

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

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.

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 hearing.

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.

~~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.~~

G. General Grievance Review and Resolution Policies:

~~1. Creation and Preservation of the Grievance Record:~~

~~1. Method of Communication: Communications:~~

~~a. Communication between the grievant and any member of the Faculty Grievance Review Board official with responsibility under this policy should either be in writing or and be~~

promptly documented for the benefit of the other officials (e.g. members of the hearing panel or ~~full board.~~members of the Faculty Grievance Review Board).

~~a.b.~~ 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.

~~Timing of Creation of "Grievance Record" (See Also Subsection G. 7.): At~~

~~c. There shall be no *ex parte* communication between a party, including the ~~conclusion of the party's representative or~~ faculty grievance, at whatever stage it might be resolved, the consultant, and any official grievance record as defined above in Section D. with responsibility under this policy. All parties will be forwarded by the chair of the Faculty Grievance Review Board, with the assistance of the ~~copied on all grievance correspondence.~~~~

~~b.d. The Office of HRS; there is no need to copy the Office of the EVP/the Executive Vice President and Provost or any other offices shall not be copied with the correspondence generated during the grievance proceeding, unless specifically provided in the policy.~~

2. Grievant's Right to Faculty ~~Advisor~~Consultant: At any point in the process, the aggrieved faculty member may enlist the aid of a Faculty ~~Advisor~~Consultant, whose role shall be to provide guidance ~~and/or~~directly to the grievant, and to attend the mediation or formal hearing. The role of Faculty ~~Advisor~~Consultant does not include actively advocating ~~or participating in~~ official communications, mediation sessions or the formal hearing on behalf of the grievant. It is the responsibility of the grievant to keep the Faculty Consultant informed. If the aggrieved faculty member requests assistance in obtaining ~~an advisor~~a Faculty Consultant, 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~~subsection J.7.
5. Fair and Impartial Mediation and Hearing Process: ~~Faculty members~~All parties, including grievant and respondent, 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 with the grievant or respondent. 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, respondent, or a witness has had prior contact with either the assigned

mediator or a hearing panel member, disqualification or 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 with the grievant or respondent or NMSU entity immediately or as soon as it is realized, in order that it may be 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 After a Grievance has been Accepted (See Also Section H. for time limit to initiate): Each step of the grievance):~~

~~7.6. The informal and formal review hearings and appeal process willis intended to be conducted as expeditiously as possible. All requests for time extensions and responses shall be in writing and shall be copied to all parties and the Chair of the Faculty Grievance Review Board. Both time extension requests and responses denying or granting an extension shall be documented for the record, and shall be served on all parties.~~

~~Upon written request,~~

The Faculty Grievance Review Board Chair shall convene a quorum of the Faculty Grievance Review Board to review and decide whether or not to grant requests for extensions of time received from the parties or from the board member serving as the assigned mediators or hearing panel chair.

~~The Faculty Senate Chair shall decide all requests for extensions of time received from~~

the Faculty Grievance Review Board Chair.

- ~~a. The chair of the Faculty Senate the Faculty Grievance Review Board may grant an extension of up to an additional 45 days beyond the thirty (30) day deadline to file a grievance, based on extenuating circumstances, which may include ongoing and genuine efforts to resolve the matter without a formal grievance.~~
 - ~~b. A party shall be granted a one time extension of the time deadline by the Faculty Grievance Review Board, upon written request to the mediator or the hearing panel chair, as appropriate. If an extension is requested, the chair of the Faculty Grievance Review Board will be informed.
Upon written request, an
Second or subsequent requests for time extension from a party shall only be granted by at least a quorum of the Faculty Grievance Review Board, after consideration of the basis for the request and the respective positions of the parties.~~
 - ~~c. An official with responsibility under this policy shall be granted a one time extension of the time deadline by, upon written request to the chair of the Faculty Grievance Review Board; if the Faculty Grievance Review Board chair requests an extension, it shall be considered by the chair of the Faculty Senate.
A second~~
 - ~~d. Second or subsequent written request requests for a time extension from a party or from a Faculty Grievance Review Board an official may with responsibility under this policy shall only be granted by the Faculty Senate Chair, due to exceptional circumstances, for good cause, after consideration of the basis for the request and the respective positions of the parties.~~
8. 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:
- ~~The Chair of the Faculty Grievance Review Board shall be informed about all requests for time extensions and all extensions granted.~~
7. Filing and Storage of Grievance Record: At the conclusion of any stage of the grievance process that concludes the matter, the officials with authority under this policy shall forward documentation belonging in the grievance record (See Definition D. 7.) to the chair of the Faculty Grievance Review Board. The chair shall compile the grievance record and forward to the Office of Human Resource Services, Employee and Management Services for storage and maintenance in accordance with the university's records retention policies.
- a. The grievance record is typically voluminous, and shall not be filed in the official personnel file, ~~but~~. The grievance record will be housed stored 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 document reflecting the final administrative decision, which may action to be taken as a result of a grievance, such as 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.~~

9.8. 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. Throughout grievance proceedings, communications between one party and any member of the Faculty Grievance Review Board shall be copied to the other party as well as the assistant vice president of human resource services. Examples include requests for extensions of time and the responses thereto, supplemental submittals if permitted, notices of appeal. 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. Filing of Formal Grievance Timing: 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. The thirty (30) day deadline maybe waived by the Faculty Grievance Review Board in cases alleging a “continuing violation” where the most recent incident alleged occurred within the thirty (30) day period, or where ongoing and genuine efforts during the pre-grievance stage caused a delay in filing. ~~After pre grievance communication with individuals with authority to resolve the potential grievance have failed to resolve the disagreement or dispute, a faculty member may file a grievance within thirty (30) days from the date of a grievable incident, or from the time the faculty member reasonably should have known about the grievable incident. This thirty (30) day time limit for submitting a grievance will be interpreted liberally in order to encourage informal resolution.~~

2. Form:

a. The grievance shall be in memo format, with the subject line indicating that it is a faculty grievance and the respondents named therein. (e.g. "Faculty Grievance versus Respondents ABC and GHI").

b. The grievance memo shall:

i. Identify their job title and NMSU ID number;

i-ii. Identify the issue in dispute;

ii-iii. Identify involved parties and provide email and physical address of the grievant to which official grievance correspondence should be sent;

iii-iv. Identify efforts made to date to resolve dispute;

- ~~iv-v.~~ Outline the points in support of the grievant's position, ~~and if known the points contra;~~
- ~~v-vi.~~ Attach or reference any supporting documentation; and
- ~~vi-vii.~~ State the remedy requested.
- ~~vii-viii.~~ Include the statement "By signing this grievance, I hereby verify that the facts I have alleged in this grievance are to the best of my knowledge and belief true and accurate."
- ix. Contain the signature of the grievant, with the date signed.

3. Notice: The grievant shall deliver electronically a copy of the grievance to:

- a. the named respondent(s);
- b. the chair of the Faculty Grievance Review Board, who shall notify the Faculty Senate chair that a grievance has been filed;
- c. the Assistant Vice President of Human Resource Services, who will ensure that any other parties, as may be appropriate, are informed (e.g. grievant's and respondents' supervisors).

I. Procedures to Determine Jurisdiction: ~~The Faculty Grievance Review Board Chair~~ Within ten (10) days of receipt of the grievance, ~~the FGRB chair~~ shall convene a quorum of the Board to review the grievance and determine whether or not the ~~matter(s) alleged state a faculty member has standing and has filed a timely claim that is stated a claim that is~~ grievable claim within the purview of under this policy. ~~(See Section D5, E, and H1), and whether or not the board will accept or decline the grievance.~~ The Board will either accept or reject the grievance.

1. Typically, the Faculty Grievance Review Board Chair will issue ~~the~~ official correspondence to the parties on behalf of the Board; 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 of the Board members decided.
2. The determination to accept or decline a grievance shall be issued in writing to all parties within ~~five (5) 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.~~ three (3) days from the date the Board met to determine whether or not to accept the grievance.
3. A copy of the board's determination relating to acceptance shall be sent to the Office of HRS-EMS.
4. The Faculty Grievance Review Board's determination may be appealed by either party in writing to the Assistant Vice President of Human Resource Services and copied to the Chair of the Faculty Grievance Review Board.:
 - a. The appeal must be received by the Office of the Assistant Vice President of Human Resource Services within ~~five (5) three (3)~~ days of the appellant's receipt of the determination from the Faculty Grievance Review Board.
 - b. The appeal must be written, attach a copy of the determination by the Faculty Grievance Review Board, and explain the basis for the appeal.

~~a-c.~~ All parties and the chair of the Faculty Grievance Review Board must be copied with the appeal.

d. All parties shall be given an opportunity to respond in writing and provide their respective position relative to the appeal. Any response shall be submitted to the Assistant Vice President of Human Resources Services within five (5) days of the parties' receipt of the appeal.

e. The Assistant Vice President of Human Resource Services may consult with the Office of the Executive Vice President and Provost, and shall issue a final written decision on the issue of whether or not the Faculty Grievance Review Board should accept or decline the grievance within five (5) ~~seven (7)~~ days from the date that the Assistant Vice President for Human Resource Services received the appeal.

f. A copy of the decision shall be sent to ~~each party~~ all parties and to the chair of the Faculty Grievance Review Board ~~and to the chair of the Faculty Senate.~~

~~I.J.~~ Procedures for Informal Resolution/Mediation: The purpose of the mediation phase of ~~this the~~ 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. 8.~~) to coordinate the mediation phase of the grievance may serve as the 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.~~

~~2.1.~~ The Faculty Grievance Review Board mediator may conduct the mediation jointly with an external a co-mediator; ~~from the Board, or with approval from the Board's chair, may rely on~~ coordinate with external mediator(s) to conduct the mediation; ~~and may require that more than one mediation session be held.~~

2. The mediation may also involve multiple sessions, at the discretion of the mediator(s) and with the cooperation of the parties.

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);~~ mediation sessions, especially with regard to compliance with applicable time deadlines.

4. At the discretion of at least a quorum of the Faculty Grievance Review Board, and in rare instances, the mediation step may be bypassed, allowing the parties to proceed directly to a formal hearing.

4.5. 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.

~~5.6.~~ 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.

~~6.7.~~ 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.

~~7.8.~~ 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.

~~8.9.~~ 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.

~~9.10.~~ 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.

~~10.11.~~ 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.

~~11.12.~~ No later than thirty (30) days from the mediator's receipt of the grievance, absent an extension of time pursuant to ~~Section subsection~~ 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.

J.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 thirty (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 twenty (20) days from notification by the mediator or from the thirty (30-days) day 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. 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 the other two members of the formal hearing panel.
 - b. 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.
~~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.~~
 - c. Witnesses. Each party may call witnesses. Witnesses may only be in the hearing while giving testimony, with the exception of any party who may sit through the hearing and also provide testimony.
 - ~~d. 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.~~
 - ~~e-d.~~ Role of Legal Counsel: Neither administrators nor grievant may be represented at the hearing by legal counsel.
 - ~~f-e.~~ Closed Hearing: The hearing shall be closed to the public. Witnesses other than party representatives shall be excused after presenting testimony. See subsection K. 3. b-c above.
 - ~~g-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.
 - ~~h-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.
Witness
 - h. Testimony: ~~Witness testimony~~ Testimony of any party or witness shall be taken under oath given by a Notary Public. The chair of the hearing panel may request that all

~~witnesses~~persons 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 representatives from 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.

i.i. Preservation of Record: An audio recording of the ~~The~~ hearing shall be ~~recorded~~made and kept by the hearing board chair; 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 (10) days from the closure of the hearing (last date of deliberations by the hearing panel-), the hearing panel 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, evidence submitted at the formal hearing by the parties and the recording of the hearing.

~~K.L.~~ Procedures for Final Decision: 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 the final written decision. The decision, ~~together~~ with a copy of the hearing panel's findings and recommendations attached, shall be delivered to the parties and to the hearing panel chair and FGRB chair.