



Policy on Resolution of Complaints Directed at Instructional Staff

Office of Academic Affairs

Policy Document Number: AA-02.1-2024

Approved by the President: October 2024

Policy Purpose: This policy establishes the ability for any employee or student to resolve any disagreement or problem arising out of instructional staff conduct that is allegedly inconsistent with New Mexico Tech's policies or procedures, or inconsistent with any federal or state laws, regulations, or statutes, as they apply to an employment relationship.

POLICY STATEMENT

3

Policy Statement:

3

POLICY STATEMENT

Policy Statement:

Any employee or student for the resolution of any disagreement or problem arising out of instructional staff conduct that is allegedly inconsistent with any New Mexico Tech (NMT) policies procedures or any federal or state laws, regulations, rules, or policies, as they apply to an employment relationship. Parties are able to pursue informal and formal processes to arrive at a resolution. While informal processes are encouraged because they can lead to a more collegial post-resolution relationship, circumstances vary for each case and parties are free to choose either path.

Because these are personnel matters,

- a. all formal grievance processes will be heard with one complainant and one respondent, i.e., individually not as a collective group,
- b. all hearings will be closed hearings, and
- c. if disciplinary action results, the complainant's right to know of the disciplinary action is limited to those aspects that affect the complainant, such as no-contact orders.

The dignity and privacy of the individuals involved is to be respected throughout the investigative process, which should be pursued in a timely fashion. Any retaliatory action of any kind taken by any NMT employee against another individual as a result of such employee/student 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 a grievance. Any reported complaints of retaliation involving a NMT employee associated with AA/EEOC or Title IX processes could also utilize the formal resolution process.

This policy and its associated procedure does not apply to those situations and circumstances covered in:

- NMT's Notice of Non-Discrimination:
 - Inquiries and violations regarding the University's non-discrimination policies can be directed to the Affirmative Action/EEOC Director and ADA Compliance Officer, while
 - Inquiries and violations of issues related to Title IX (gender-based discrimination) can be directed to the Title IX Coordinator.
- NMT's policy, *Regulations Governing Academic Freedom and Tenure (RGAFT)* for issues that involve academic freedom or tenure¹.

¹ In the event applicability of RGAFT is challenged by either party, the matter shall be referred to the Faculty Senate Academic Freedom and Tenure Committee for a recommendation to the Vice President of Academic Affairs (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 NMT President.

- NMT’s Student Academic Appeal Policy and its associated procedures that address disagreements with academic issues.

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 policy, 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 or state laws, regulations, rules, or policies; or NMT policy or procedure.

In cases of grievances filed against a graduate student, the Dean of Graduate Studies will determine whether this policy or the Student Conduct Policy is the applicable policy. This process for resolving alleged prohibited behavior applies to all employees, including faculty (e.g., full-time, part-time, individuals in their probationary period, joint appointments, adjunct appointments). Individuals who have been terminated from employment with NMT do not have access to this procedure after the effective date of their termination.

Mahyar Amouzegar
Mahyar A. Amouzegar
President

Michael Jackson
Michael Jackson
Provost and VPAA

To preserve the integrity of this document, any revisions to the *Policy on Resolution of Complaints Directed at Instructional Staff* including any changes to the procedures and appendices below, must follow the process outlined in the *Policy on Development, Amendment, and Rescindment of Policies*.

Procedures for Resolving Complaints Directed at Instructional Staff

The standard of evidence for the process 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; i.e., RGAFT, Title IX, or similar independent policies.

The steps associated with the grievance/complaint process is as follows:

1. **Informal Process**: The employee or student complainant must initiate the informal complaint process by discussing the problem or disagreement with the individual’s immediate supervisor or when they become aware of the issue of which they are complaining. If the supervisor is the accused, the employee should seek that individual’s supervisor. The supervisor, in turn, should conduct an investigation and work with the complainant and the respondent to resolve the issue(s), consistent with federal or state laws, regulations, rules, and policies as well as NMT policies and procedures. If, after this process fails to satisfy the complainant, they may appeal 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 must file a formal, written grievance to the Associate Vice President of Academic Affairs (AVPAA); or, if the respondent is a graduate assistant, to the Dean of Graduate Studies. If the AVPAA has a conflict of interest or otherwise cannot serve in this capacity, an appropriate dean may fill this role, as determined by the VPAA. The findings and recommendations resulting from the investigation shall be forwarded, as appropriate, to the parties involved within 60 working days of receipt of the written complaint unless an alternate timeline is requested by the AVPAA and approved by the VPAA. The AVPAA will take these findings and within 10 working days issue a recommendation to the VPAA (or the individual’s supervisor) to resolve these matters.
 - a. **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 for a formal hearing. Either the complainant or respondent may make such a request.
 - b. **Formation of the Committee**: The VPAA shall appoint a grievance committee comprised of five members and two alternates. Committee members must be tenured faculty, but not members of the Academic Freedom and Tenure 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 at a pre-hearing meeting held 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, if desired. Parties will be informed of prospective committee members at least five working days prior to the pre-hearing meeting.

- c. 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 panelists. 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.
 - d. Committee Timeline: Following the pre-meeting hearing, the grievance committee shall meet within 10 working days of their appointment, to initiate the grievance review.
 - e. 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 NMT, or successfully demonstrate to the committee that they have direct, first-hand knowledge relevant to the case. The grievance committee shall render its recommendation in writing to the VPAA with copies to the complainant and the respondent.
3. VPAA Timeline: The VPAA shall render a decision on the committee's recommendation to resolve these matters within 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, but shall return the case to the committee for reconsideration. The President or designee shall accept, modify, or reject the recommendations of the grievance committee and/or the VPAA's decision. The actions of the President shall be final and binding on all parties.

APPENDIX A: EXAMPLES OF PROHIBITIVE BEHAVIOR

Examples of potential prohibitive behavior, performance issues, and activities subject to this policy and procedure include, but are not limited to:

- a. Unacceptable workplace behavior/conduct or unsatisfactory performance.
- b. Violation of NMT rules, policies, and procedures.
- c. Unlawful behavior or conduct, including conduct at off-premises events sponsored by NMT.
- d. Falsification of NMT records.
- e. Deliberate damage to, unauthorized use of, or theft of NMT property, or property of NMT employees, or property of students or others on campus.
- f. Willful disobedience, insubordination, or failure to carry out reasonable orders or directives from appropriate management personnel.
- g. Dishonesty, deception, or fraud.
- h. Misappropriation of funds.
- i. Violation of published safety regulations, policies, or procedures, OR actions that reflect a clear disregard for safety.
- j. Failure to cooperate in an investigation.
- k. Tampering with or removing NMT-authorized notices.
- l. Willful misuse of sick leave privileges (for staff only).
- m. Gambling on NMT premises.
- n. Willfully endangering the health, welfare, and safety of themselves or other persons. Carrying firearms, explosives, or other weapons on NMT property without NMT authorization is prohibited, with the express exemptions of faculty and staff who are authorized to do so in pursuit of their duties (such as research at EMRTC).
- o. Reporting to work under the influence of alcohol, or unauthorized use or distribution of alcohol, or any unauthorized use of controlled substance on NMT property.
- p. Acts of aggression and violence, including fighting, threatening actions, bullying (abusive workplace behavior), using abusive or profane language.
- q. Fraudulent Worker's Compensation claims.